



Office of the Attorney General
Washington, D. C. 20530

June 16, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

Re: SpeechNow.org v. FEC, Nos. 08-5223 and 09-5342 (D.C. Cir.)

Dear Mr. Leader:

In accordance with 28 U.S.C. 530D, I write to advise you of the Department of Justice's decision not to petition the Supreme Court to review the decision of the U.S. Court of Appeals for the District of Columbia Circuit in this case. The court of appeals, sitting en banc, unanimously held that two provisions of the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 441a(a)(1)(C) and (a)(3)(B), violate the First Amendment as applied to the plaintiffs.

Section 441a(a)(1)(C) prohibits any individual from contributing more than \$5000 per year to a single political committee. Section 441a(a)(3)(B) prohibits any individual from contributing more than \$69,900 per two-year election cycle to all political committees combined. The latter figure is periodically adjusted for inflation.

Plaintiff SpeechNow.org is an unincorporated nonprofit organization. It wishes to raise money solely from individuals and to spend that money on independent expenditures advocating the election or defeat of federal candidates. Once SpeechNow raises or spends more than \$1000 in a single year, it will be a political committee subject to the FECA contribution limits. SpeechNow states that it will not contribute its money to other political committees, and that it will not take money from corporations, unions, or other political committees. The other plaintiffs in this case are individuals who wish to contribute various amounts to SpeechNow, some of which would exceed one or both of the FECA contribution limits. The plaintiffs brought this action claiming that those contribution limits, as well as the FECA recordkeeping and disclosure requirements that apply to political committees, are unconstitutional as applied to them.

Pursuant to FECA's judicial-review provision, the case was certified to the en banc court of appeals. The court unanimously held that the contribution limits are unconstitutional as applied to the individual plaintiffs' planned contributions to SpeechNow. The court of appeals concluded that, in light of the Supreme Court's recent decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), contributions to an independent-expenditure committee like SpeechNow do not implicate the government's valid interest in combating corruption and the appearance of corruption. However, the court unanimously upheld the application to SpeechNow of the political-committee recordkeeping and disclosure requirements.

The court of appeals' decision sustaining the plaintiffs' as-applied challenge does not strike down FECA's contribution limits on their face. Rather, the decision affects only a limited subset of the circumstances to which those contribution limits apply. Significantly, the court of appeals did not call into question the application of FECA's limits on contributions to candidates; to political parties; or to political committees that themselves make contributions to candidates or to other political committees. Nor did the court of appeals call into question the longstanding federal prohibitions on corporate and labor-union contributions to candidates or the regulation of "soft money" contributions to political parties. (The Supreme Court will soon consider whether to take up the "soft money" issue in *Republican National Committee v. FEC*, No. 09-1287.) Rather, the court of appeals limited its decision to political committees, like SpeechNow, that engage solely in independent electoral advocacy. Furthermore, any contributions that may be made pursuant to the court of appeals' decision will still be subject to public disclosure under the FECA provisions that the court of appeals upheld.

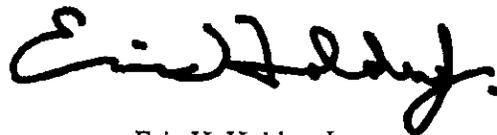
In ruling on the plaintiffs' as-applied challenge, the en banc court of appeals relied substantially on an intervening Supreme Court decision that was not available to Congress at the time it enacted the challenged limits on individual contributions to political committees. In *Citizens United*, the Supreme Court held that the government's interest in preventing actual or apparent corruption did not provide a constitutionally sufficient rationale for a federal prohibition on independent electoral expenditures by corporations. In this case, the en banc court of appeals unanimously concluded that the decision in *Citizens United* was controlling.

Because the particularly limited nature of SpeechNow's contribution and expenditure practices means that the court of appeals' decision will affect only a small subset of federally regulated contributions, because the court of appeals relied substantially on an intervening Supreme Court decision that was not available to Congress at the time it enacted the FECA limits on individual contributions to political committees, and because the court of appeals' decision does not conflict with any other circuit court decision, the Department has decided not to seek Supreme Court review at this time.

A petition for a writ of certiorari would be due June 24, 2010.

Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", written in a cursive style.

Eric H. Holder, Jr.
Attorney General