

Appeals Court Ruling Sweeps Away Contribution Limits for PACs Independently Supporting Federal Candidates

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On March 26, 2010, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *SpeechNow.org v Federal Election Commission*. This decision has important implications for the ability of individuals to use their funds to influence the election of federal political candidates.

In brief, the Appeals Court held, in an unanimous en banc (nine judge) opinion:

- A federal political action committee (PAC) may organize in such a way as to limit its activities to making independent expenditures in support of federal candidates for political office. "Independent expenditures" are funds that are not donated to or coordinated with a political campaign.
- It is unconstitutional for Congress to limit the size of contributions by individuals to such an Independent Expenditure PAC. Congress may require that such an Independent Expenditure PAC register as a political committee with the Federal Election Commission and report its contributors and expenditures to the FEC.

What implications does this have for your political activity?

- In the past, individuals could legally spend their own funds in unlimited amounts to influence a federal election through independent advertising or other efforts not coordinated with a political candidate. However, they were unable to legally employ a central clearing house or committee to do the hard work of preparing advertisements, buying broadcast time and administering the independent political campaign in concert with other like-minded individuals.
- Annual contributions to a federal PAC for such a purpose were limited to no more than \$5,000. Now, individuals may make UNLIMITED contributions to an Independent Expenditure PAC, thus shedding the requirement that they play a direct role in any unlimited federal independent political expenditures.
- The Independent Expenditure PAC's expenditures must still be independent. In other words, they may not be coordinated with a federal political campaign. Extensive regulations define what constitutes coordination.
- The Independent Expenditure PAC will still be required to include a disclaimer on any federal political advertising, disclosing it paid for it. Also, it will be required to register as

a political committee with and report the names of its contributors and its independent expenditures to the FEC.

- This ruling on its face appears to permit an Independent Expenditure PAC to accept contributions earmarked to be spent in support of or opposition to particular federal candidates.
- The Appeals Court sent the case back to the District Court to consider whether it should issue an injunction barring enforcement of the contribution limits. Hence, technically the FEC still may attempt to enforce the contribution limits pending entrance of that injunction. The decision may be further appealed to the United States Supreme Court.
- It is unclear what impact this ruling may have on state and local campaign finance laws that place contribution limits on Independent Expenditure PACs formed to support state and local candidates for public office.
- If you decide to create an Independent Expenditure PAC, you will need to carefully consider your particular circumstances and determine if such expenditures legally qualify as "independent," if any advertisements include required disclaimers, and if all required disclosure forms are properly and timely filed with the FEC.

If you have any questions regarding your ability to participate in the political process, please contact your Governmental Affairs lawyer at Warner Norcross & Judd LLP.