

# *Citizens United*: The Judicial, Regulatory and Legislative Aftermath

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The Supreme Court's decision on January 21, 2010, in *Citizens United v. FEC* is still reverberating in all three branches of government. Since the last issue of *Election Law News*, a court case building on *Citizens United* has been decided, the Federal Election Commission (FEC) has taken steps to implement *Citizens United*, and Congress has begun considering bills in response to *Citizens United*.

On March 26, 2010, the United States Court of Appeals for the District of Columbia Circuit decided *SpeechNow.org v. FEC*. SpeechNow.org wanted to collect money from individuals in order to run independent advertising expressly advocating the election or defeat of federal candidates. However, the FEC contended that by doing so, SpeechNow.org would become a Political Action Committee (PAC) subject to registration and reporting requirements, as well as contribution limits of \$5,000 per person. Relying on the conclusion in *Citizens United* that the First Amendment harm resulting from restrictions on independent expenditures cannot be justified by any countervailing government interest, the Court of Appeals held that the limits on individual contributions to PACs could not be imposed on SpeechNow.org. Rather, SpeechNow.org has a First Amendment right to raise as much money as it would like to finance its independent expenditures.

Three weeks later on April 15, the FEC met to schedule a series of regulatory rulemaking proceedings. The schedule first contemplates completion of a number of rulemakings that the FEC has already begun. The schedule indicates that the FEC will then initiate proceedings to implement *Citizens United* by July at the earliest. At approximately the same time, the FEC will initiate proceedings to implement *SpeechNow* if it is not appealed to the Supreme Court and

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another court case called *Emily's List v. FEC* (see November 2009 issue of *Election Law News*). The FEC hopes to finalize all of these rulemakings before the end of year.

Then on April 29, Senator Charles Schumer (D-NY), Congressman Chris Van Hollen (D-MD) and Congressman Mike Castle (R-DE) introduced the "Democracy Is Strengthened by Casting Light On Spending in Elections Act" or the DISCLOSE Act as a direct response to *Citizens United*. The DISCLOSE Act is discussed in the first article- "Schumer-Van Hollen Is As Much About Prohibition As About Disclosure"-of the May 2010 issue of *Election Law News*.

As is apparent from all of this activity, the Supreme Court's decision in *Citizens United* was not the last word, but only the beginning of a new round of debate on the campaign finance laws. Keep reading *Election Law News* for additional updates and analysis.