

Wiley Files Supreme Court *Amicus* Brief Supporting First Amendment Challenge to Federal Campaign Finance Law

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Washington, DC – Wiley, a preeminent Washington, DC law firm, recently filed an *amicus* brief in the U.S. Supreme Court on behalf of the Republican National Committee, supporting a First Amendment challenge to portions of a federal campaign finance law. The case, *Federal Election Commission v. Ted Cruz for Senate, et al.*, was argued before the Court last week.

The *amicus* brief, filed December 22, argues that the 2002 Bipartisan Campaign Reform Act (BCRA) violates the First Amendment and “openly deter[s] individuals from self-financing challenges against incumbent officials.” The brief urges the Supreme Court to affirm a June 3, 2021 judgment by the U.S. District Court for the District of Columbia that Section 304 of BCRA, which limits the repayment of candidate loans, is unconstitutional. “Congress may not directly or indirectly impede the fundamental First Amendment right of candidates to spend personal funds on campaign speech,” according to the brief.

The RNC *amicus* brief was written by Wiley Election Law & Government Ethics Practice chair Michael E. Toner and partners Brandis L. Zehr and Andrew G. Woodson. Wiley partners Stephen J. Obermeier and Jeremy J. Broggi and associate Christopher J. White also contributed to the brief.

The 2002 law “targets a specific type of debt – personal loans by the candidate – but exempts contributions used to pay down vendor debt and bank loans,” Wiley explains in the brief. These restrictions on repayment of a candidate’s personal loans burden the individual

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running for office, as well as the candidate's party and supporters.

BRCA sets a \$250,000 cap on the amount of post-election contributions a candidate can use as repayment for personal loans they made to their own campaign. "Because personal loan debts greater than \$250,000 are excluded from this calculation," supporters of a candidate "could find themselves willing to write a check but with no one to cash it," Wiley argues in the brief. "In this way, the prohibition burdens the rights of contributors just like candidates."

Wiley's Election Law team represents a wide array of clients before federal district courts, federal appeals courts, the U.S. Supreme Court, and state courts. This representation often involves First Amendment, equal protection, and due process challenges to campaign finance and other election laws at the federal and state levels.