

Contact: Edward Erikson
Phone: 202-420-9947
Email: edward.erikson@gmail.com

President Obama Nominates Merrick Garland to Serve as 113th Justice of the U.S. Supreme Court

Judge Garland's Judicial Philosophy Could Determine the Fate of *Citizens United*

WASHINGTON, D.C. - President Obama has nominated Judge Merrick Garland to serve as the 113th justice on the U.S. Supreme Court. Judge Garland has served on the U.S. Court of Appeals for the District of Columbia since 1997, where he has been involved in a number of notable campaign finance and corporate speech cases.

With regard to campaign finance cases, Judge Garland was part of the unanimous en banc decision in *SpeechNow.org v. Federal Election Commission*¹ that greenlighted the creation of “super PACs.” He also authored the 2015 en banc decision in *Wagner v. Federal Election Commission*² that rejected First Amendment and equal protection challenges to the Federal Election Campaign Act’s ban on federal campaign contributions from individuals and companies that are negotiating or performing federal contracts. Judge Garland also wrote a decision upholding a lobbying disclosure statute against a First Amendment challenge,³ joined a unanimous decision invalidating Federal Election Commission regulations as insufficiently stringent for implementing the Bipartisan Campaign Reform Act (also known as McCain-Feingold),⁴ and joined a decision affirming the Federal Election Commission’s action against former Senator Larry Craig for unlawfully converting campaign funds to pay for personal legal expenses.⁵

¹ *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

² *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) *cert. denied sub nom, Miller v. F.E.C.*, No. 15-428, 2016 WL 207263 (U.S. Jan. 19, 2016).

³ *NAM v. Taylor*, 582 F.3d 1 (2009).

⁴ *Shays v. FEC*, 528 F.3d 914 (2008).

⁵ *Fed. Election Comm’n v. Craig for U.S. Senate*, No. 14-5297, 2016 WL 850823 (D.C. Cir. Mar. 4, 2016). Judge Garland was also part of a panel decision that held that the National Commission on Economic Growth and Tax Reform, an organization formed by then-Senate Majority Leader, Robert Dole, and then-Speaker of the House of Representatives, Newt Gingrich, was an “action organization” that did not qualify

Judge Garland has also participated in a number of noteworthy corporate speech claims. He was part of both the panel and en banc decisions in *American Meat Institute v. United States Department of Agriculture* that rejected the meat industry's First Amendment challenge to the USDA's country-of-origin labeling regulation,⁶ joined a panel decision holding that a Federal Trade Commission rule requiring a corporation to gain the support of at least one randomized controlled trial before it could claim a causal relationship between consumption of its products and the treatment or prevention of any disease did not violate the First Amendment,⁷ and was part of a panel decision that upheld federal regulations implementing privacy provisions against a First Amendment challenge from a credit rating agency.⁸ Judge Garland also sat on a three-judge panel that concluded that the commercial speech doctrine required the Federal Drug Administration to consider whether disclaimers on dietary supplements would negate potentially misleading health claims.⁹

“It is time for a bold, inclusive, and impact-driven effort to overturn *Citizens United* and its doctrinal predecessor, *Buckley v. Valeo*,” said John Bonifaz, co-founder and president of Free Speech For People, a next-generation leader in the democracy movement founded on the day of the *Citizens United* ruling. “Judge Garland’s nomination brings hope that a new Court majority could indeed overturn *Citizens United* and *Buckley*, and make real the American ideal of ‘one person, one vote.’”

“Now is the time for campaign finance and corporate power reformers to move from defense to offense with cutting-edge initiatives to overturn *Citizens United* and other egregious court decisions,” said Ron Fein, Free Speech For People’s legal director. “Judge Garland’s judicial philosophy could determine how these issues play out for a generation, so he should address how his views could affect them.”

Free Speech For People has issued five questions for Judge Garland that would help illuminate his views:

1. Do you believe that *Citizens United* is out of step with Supreme Court precedent regarding campaign finance?

for tax exempt status. *Fund for the Study of Econ. Growth & Tax Reform v. I.R.S.*, 161 F.3d 755, 756 (D.C. Cir. 1998).

⁶ *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 746 F.3d 1065 (D.C. Cir.) reh’g en banc granted, opinion vacated, 35 ITRD 2763 (D.C. Cir. 2014) and judgment reinstated, 760 F.3d 18 (D.C. Cir. 2014).

⁷ *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478 (D.C. Cir. 2015).

⁸ *Trans Union LLC v. F.T.C.*, 295 F.3d 42 (D.C. Cir. 2002).

⁹ *Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir. 1999).

2. Do you believe that political equality, electoral integrity, or limiting the undue influence of wealth on politics can be legitimate bases for regulating campaign spending?
3. Do you believe corporations should be treated as people with constitutional rights?
4. Do you believe that contributions to and expenditures by so-called “super PACs” have the potential to corrupt?
5. Do you believe that the Court should continue to give money the protections of “speech” under the First Amendment?

Free Speech For People has led the attack on *Citizens United* since the organization’s founding on the day of the decision. It has built an effective and widely-supported campaign for a 28th Amendment to the U.S. Constitution to overturn *Citizens United* and the Court’s 1976 ruling in *Buckley v. Valeo*, to restore democracy to the people, and to advance the fundamental principle of political equality for all. It has also worked via its Legal Advocacy Program to push back in the courts against the doctrine of unlimited campaign spending and the fabrication of corporate constitutional rights.

For more on Free Speech For People, visit: www.FreeSpeechForPeople.org.