



Frequently Asked Questions About the Legal challenge to Super PACs

1. What are the origins of the Ending Super PACs campaign?

The seeds for the campaign were planted at Free Speech For People's November 2014 symposium at Harvard Law School, [Advancing A New Jurisprudence For American Self-Government And Democracy](#). We publicly launched the [Ending Super PACs](#) campaign in November 2015, with another [event](#) at Harvard Law School. For more background, see the following:

- Ron Fein, U.S. News & World Report, Nov. 4, 2015, [The Beginning of the End of the Super PAC?](#)
- Video of panel discussion, Harvard Law School, Nov. 16, 2015, [Ending SuperPACs: Is the SpeechNow Ruling Vulnerable?](#)
- Renée Loth, Boston Globe, Nov. 23, 2015, [The birth of the super PAC](#)
- Albert W. Alschuler & Laurence H. Tribe, Newsweek, Dec. 10, 2015, [Who Blew the Lid Off Campaign Contributions?](#)
- Albert W. Alschuler, [Limiting Political Contributions After McCutcheon, Citizens United, and SpeechNow](#), 67 Fla. L. Rev. 389 (2015)

2. What are the key prongs of the Ending Super PACs campaign?

Our strategy is to challenge super PACs from multiple angles. So far, we have publicly launched two elements of this plan: a [complaint under the Federal Election Campaign Act](#), and a proposed [local ordinance](#) in St. Petersburg, Florida. There will be more to come.

3. Do we need to overturn *Citizens United* to end super PACs?

No. Contrary to popular misconception, super PACs were not created by the Supreme Court's decision in [Citizens United v. FEC](#). Rather, they were created two months later, by a decision of the U.S. Court of Appeals for the D.C. Circuit in [SpeechNow.org v. FEC](#). The court of appeals' [SpeechNow](#) decision opened the door to super PACs by holding that the federal law limiting contributions to political committees (\$5,000 per person per year) didn't apply to a political committee that promised to make only "independent expenditures."

The decision was legally erroneous at the time under Supreme Court precedent (including *Citizens United*), but Attorney General Eric Holder [decided](#) not to appeal this decision to the Supreme Court, operating under the mistaken theory that "the court of appeals' decision will affect only a small subset of federally regulated contributions."

This prediction, like the court's speculation that contributions to super PACs could not lead to corruption or the appearance of corruption, has proven incorrect with time. To this day, the Supreme Court has not reviewed the question.

4. What did *SpeechNow* get wrong?

There's much to criticize. Some of it, of course, goes back to *Citizens United*, and even the 1976 [Buckley v. Valeo](#) decision, which requires us to talk about the problem solely in terms of "corruption" (or even "quid pro quo corruption," which is much narrower than what the Framers of the Constitution [understood](#) "corruption" to mean), rather than political equality.

But even if you start with the premises of *Citizens United*, *SpeechNow* was a bridge too far. *Citizens United* involved a ban on *independent expenditures*. *SpeechNow* then extended *Citizens United* to the entirely different context of limits on *contributions*, thus treating contributions as if they were independent expenditures. This error then led the D.C. Circuit to opine that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." But this is factually wrong: contributions to groups that make only independent expenditures *can and do* lead to [corruption and the appearance of corruption](#).

5. What is the basic idea of the FEC complaint?

A bipartisan group of members of and candidates for Congress, under the leadership of Free Speech For People, are filing a lawsuit to challenge the D.C. Circuit's *SpeechNow* decision and end super PACs.

6. What does the complaint seek?

The complaint, filed with the FEC on July 7th, asks the FEC to investigate a bipartisan group of federal super PACs for violating the \$5,000 contribution limit, which is still on the books in the Federal Election Campaign Act at [52 U.S.C. 30116](#). (Indeed, FEC regulations at [11 C.F.R. 110.1](#) explicitly state that the limit applies to "contributions made to political committees making independent expenditures.") The complaint documents how these super PACs have accepted contributions vastly exceeding that limit (in some cases, accepting millions of dollars from a single donor), and summarizes the legal and factual backgrounds for how large contributions to super PACs can lead to corruption and the appearance of corruption.

7. Who are the plaintiffs?

The bipartisan group of plaintiffs leading this challenge include Representative Ted Lieu (D-CA), Representative Walter Jones (R-NC), Senator Jeff Merkley (D-OR), and three Republican and Democratic candidates for the House of Representatives.

8. Who are the members of the legal team?

Besides the [team](#) here at Free Speech For People, the lawyers for this challenge also include:

- [Prof. Albert Alschuler](#) of the University of Chicago Law School, a nationally-recognized expert on corruption whose work has been [cited](#) by the Supreme Court;
- [Anne Weismann](#), Executive Director of the Campaign for Accountability, an experienced litigator with extensive experience in both the nonprofit sector and the federal government;
- [Prof. Laurence Tribe](#) of Harvard Law School, one of the nation's foremost constitutional law scholars;
- [Ambassador \(ret.\) Norman Eisen](#), the former chief ethics counsel to President Barack Obama; and
- [Prof. Richard Painter](#) of the University of Minnesota Law School, the former chief ethics counsel to President George W. Bush.

9. What are the next steps in the challenge?

The FEC can either (1) take up the complaint, (2) dismiss it, or (3) fail to act on it. Within 60 days after a dismissal, or after 120 days of failing to act, we will file a lawsuit in the federal district court in the District of Columbia. Under [52 U.S.C. 30109](#), the court may “declare that the dismissal of the complaint or the failure to act is contrary to law.”

10. Why do you think you can prevail if the FEC is following *SpeechNow*?

Our strategy is to prevail *at the Supreme Court*.

While the *SpeechNow* decision does *not* in fact completely control this case—it does not say anything about eliminating limits on *corporate* contributions, which are at issue here but which, at the request of Senate Majority PAC, the FEC has refused to enforce since 2010; and it does not apply in the 6th, 8th, or 11th Circuits, where two of our complainants and one of the respondents are based—we can understand why at least three of the six FEC commissioners might feel constrained by it. However, our clients’ rights are not terminated just because the FEC has so far “acquiesced” in the *SpeechNow* decision. As Judge Easterbrook has [explained](#), “[a] party aggrieved by [an] agency’s decision to throw in the towel may protest and obtain an independent decision.” Of course, a district court judge in D.C., or a three-judge panel of the D.C. Circuit, would also be bound by *SpeechNow*, as far as it goes.

But we are aiming higher. Our path to victory is based on presenting the question to the Supreme Court, in combination with other cases involving this issue which may be percolating at the same time. And the Supreme Court is not bound by *SpeechNow* at all.