

**For Immediate Release**

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## **Federal Appeals Court to Review a Case that Could End Super PAC Spending in U.S. Elections**

WASHINGTON, DC (Friday, March 1, 2019) -- A federal appeals court will soon have the opportunity to review its 2010 ruling which created super PACs, following a federal district court decision yesterday in a case led by Members of Congress seeking to end super PAC spending in US elections.

*Lieu v. Federal Election Commission*, which was filed in federal district court in Washington, D.C. in November 2016 on behalf of a bipartisan coalition of Members of Congress and 2016 congressional candidates led by Representative Ted Lieu (D-CA-33), Senator Jeff Merkley (D-OR), and the late Representative Walter Jones (R-NC-3), seeks the reversal of the March 2010 federal appeals court ruling in *SpeechNow.org v. FEC*. In that decision, the U.S. Court of Appeals for the D.C. Circuit concluded that the federal law limiting contributions to political action committees to \$5,000 per person per year did not apply to political committees that promised to make only “independent” expenditures, thus unleashing super PACs.

“Super PACs weren’t created by Congress, or the U.S. Supreme Court—they were created by a lower court decision, based on faulty assumptions, that has never been reviewed or revisited,” says Ron Fein, Legal Director of Free Speech For People. “It’s been almost a decade since the D.C. Circuit unleashed super PACs on our democracy, and it’s clear that the experiment has failed. We look forward to giving the courts the opportunity to overrule the *SpeechNow* decision so we can rebuild our democracy.”

“When huge corporations and the super-wealthy can drown out the voices of ordinary Americans, we’ve lost President Lincoln’s vision of a government of the people, by the people, and for the people,” says Senator Jeff Merkley, “We need to put ‘We the People’ back in charge, and that starts by closing the gaping super PAC loophole that has allowed dark money to overwhelm our elections. We look forward to making our argument before the U.S. Court of Appeals for the D.C. Circuit that the time has come for it to revisit and reverse its ruling that created super PACs.”

“Since the *SpeechNow.org v. Federal Election Commission* decision, the amount of money being spent on our elections has exploded, adding fuel to the public perception of election corruption,” says Congressman Ted Lieu. “Americans across the political spectrum want to see their elected officials responsive to them instead of

big money donors. The idea that one person or one corporation can essentially buy an election is a threat to our democracy. I am honored to be a lead plaintiff in this case and look forward to demonstrating to the D.C. Circuit Court of Appeals that big money donors are now using super PACs to evade federal campaign contribution limits and undermine the integrity of our elections.”

“For nearly a decade, the *SpeechNow* ruling by the U.S. Court of Appeals for the D.C. Circuit has allowed big money donors to evade federal campaign contribution limits and corrupt even further our political process,” says John Bonifaz, Co-Founder and President of Free Speech For People. “The real-world experience of this ruling and the threat that super PACs pose to our democracy must now be reviewed by the D.C. Circuit. We look forward to advancing this case to the appellate level.”

As [explained](#) by scholars and experts in political corruption and constitutional law, the *SpeechNow* ruling was legally erroneous at the time under Supreme Court precedent (including *Citizens United*). Unfortunately, then-Attorney General Eric Holder decided not to appeal *SpeechNow* to the Supreme Court, on the (clearly mistaken in retrospect) [theory](#) that the *SpeechNow* decision would “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. As a result, super PACs have become one of the primary vehicles for wealthy donors to evade campaign contribution limits designed to prevent corruption and the appearance of corruption. Meanwhile, Chief Justice Roberts has given [signals](#) that suggest that he would be willing to sustain limits on contributions to super PACs even within the framework of *Citizens United*.

On Thursday, February 28, the district court held that it was bound to follow *SpeechNow* until it is overturned. Indeed, as the court noted, the *Lieu* plaintiffs made clear that the case is intended as a vehicle for appeal to higher courts: “Plaintiffs acknowledge that the D.C. Circuit’s interpretation of *Citizens United* in *SpeechNow* binds this Court unless *SpeechNow* has been overruled by either the D.C. Circuit sitting en banc, or the Supreme Court.” Consequently, the district court concluded that it was required to dismiss the complaint in light of *SpeechNow*.

This frames the case for appeal to a higher court that can overrule *SpeechNow*. The next stage is an appeal to the U.S. Court of Appeals for the D.C. Circuit.

Free Speech For People, a national non-profit public interest organization founded on the day of the U.S. Supreme Court’s ruling in *Citizens United v. FEC*, serves as co-lead counsel for the plaintiffs, along with Brad C. Deutsch and the law firm of Garvey

Schubert Barer; Stephen A. Weisbrod and the law firm of Weisbrod Matteis & Copley; and veteran government accountability attorney Anne Weissmann. Mr. Deutsch served as lead counsel to the 2016 presidential campaign of Senator Bernie Sanders, and previously served for eight years as Chief of Staff and Senior Legal Advisor to Commissioner Steven T. Walther at the Federal Election Commission.

The legal team also includes a bipartisan group of distinguished scholars and practitioners in the law of the First Amendment, corruption, and government ethics: Professor Laurence Tribe (Harvard Law School); Professor Albert Alschuler (Univ. of Chicago Law School, emeritus); and Professor Richard Painter (Univ. of Minnesota Law School, and former chief ethics counsel to President George W. Bush).

For more information about the case, visit:

<https://freespeechforpeople.org/lieu-v-federal-election-commission/>