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Courts Take On Campaign Finance Decision

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WASHINGTON — Two federal courts here issued decisions on Friday addressing the impact of Citizens United, January's big Supreme Court campaign finance ruling, on a new issue — whether the government may constitutionally restrict the size of contributions to groups that spend money to support political candidates.

One court said that individual contributions to advocacy groups known as 527s may not be limited. Another said that contributions to political parties can, though it said it was aware the resulting playing field might not be a level one.

Stephen M. Hoersting, a lawyer for the winning side in the first case, said the ruling represented a logical and welcome extension of Citizens United.

"The court affirmed," Mr. Hoersting said in a statement, "that groups of passionate individuals, like billionaires — and corporations and unions after Citizens United — have the right to spend without limit to independently advocate for or against federal candidates."

Fred Wertheimer, the president of Democracy 21 and a longtime supporter of campaign finance regulation, said he welcomed the second decision as "a major victory in the battle to prevent corruption and the appearance of corruption of political parties and their federal candidates through unlimited campaign contributions."

The five-justice majority in Citizens United ruled that corporations and labor unions may spend their own money to support or oppose political candidates through independent communications like television advertisements. The decision did not disturb prohibitions on corporate contributions to candidates, and it did not address whether the government could regulate contributions to groups that make independent expenditures.

The case concerning 527s, named after a section of the tax code, was brought by SpeechNow.org, which said it wanted to raise money to produce advertising to back candidates who supported the First Amendment. The group sued the Federal Election Commission, saying that limits on annual contributions from individuals were unconstitutional.

Writing for a unanimous nine-judge panel of the United States Court of Appeals for the District of Columbia Circuit, Chief Judge David B. Sentelle said the Supreme Court had identified only one government interest sufficient to overcome the First Amendment protections afforded to contributions for political speech: preventing corruption or the appearance of corruption.

Chief Judge Sentelle said that Citizens United had foreclosed that rationale where the spending is not coordinated with a candidate.

Indeed, Justice Anthony M. Kennedy, writing for the majority in Citizens United, said that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."

The election commission had argued in the SpeechNow.org case that large contributions to groups that made independent expenditures could "lead to preferential access for donors and undue influence over officeholders."

Chief Judge Sentelle said those arguments "plainly have no merit after Citizens United."

Since the expenditures themselves do not corrupt, Chief Judge Sentelle reasoned, neither do contributions to groups that make the expenditures.

A special three-judge panel of the Federal District Court for the District of Columbia used much the same reasoning to come to a different conclusion in a separate decision on Friday, this one concerning contributions to political parties. The case was brought by national, state and local Republican groups.

The decision was written by Judge Brett M. Kavanaugh, who ordinarily sits on the appeals court and was a member of the nine-judge panel in the first case.

The question was whether the so-called soft-money ban in the Bipartisan Campaign Reform Act of 2002 is constitutional. The law, often called McCain-Feingold, limits individual contributions to political parties even if the money is to be spent on activities unrelated to federal elections.

The Supreme Court upheld the soft-money ban in a 2003 decision, McConnell v. F.E.C. It said there was "no meaningful distinction between the national party committees and the public officials who control them" and so "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders."

That reasoning, left intact by Citizens United, was enough to dispose of the case, Judge Kavanaugh wrote. The challengers' position, he said, "carries considerable logic and force" but boils down to "asking us to overrule McConnell's holding with respect to the ban on soft-money contributions to national political parties."

"As a lower court," he continued, "we of course have no authority to do so."

Judge Kavanaugh noted that recent developments had left political parties in a comparatively weakened position.

"Under current law," he wrote, "outside groups — unlike candidates and political parties — may receive unlimited donations both to advocate in favor of federal candidates and to sponsor issue ads. We recognize" the Republican National Committee's "concern about this disparity, which, it argues, discriminates against the national political parties in political and legislative debates. But that is an argument for the Supreme Court or Congress."