

CLIENT ALERT

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FEC CANDIDATE LOAN REPAYMENT LIMITATION RULED UNCONSTITUTIONAL IN DISTRICT COURT DECISION

By Katherine N. Reynolds and Charles R. Spies

Under the Federal Election Campaign Act, any candidate that incurs personal loans in connection with their election campaign may only use up to \$250,000 of campaign contributions to repay those loans after the election. On June 3, 2021, the United States District Court for the District of Columbia ruled that this limitation (codified under 52 U.S.C. § 30116(j)) is unconstitutional. The Plaintiffs, Ted Cruz for Senate and Senator Ted Cruz, filed suit against the Federal Election Commission ("FEC"), stating that the repayment limitation unconstitutionally infringes the First Amendment rights of the Senator, the Campaign, and any individuals who might seek to make post-election contributions.

The Court found that the loan repayment limit restricts the First Amendment protected rights of political speech and association for both candidates and their contributors by imposing a constraint on the repayment options available to candidates who choose to make personal loans to their campaigns. In holding that the loan repayment limitation infringes on these Constitutional rights, the District Court relied on long-standing principles that synonymize the spending of funds with perpetuating speech. Specifically, the Court stated, "When a candidate makes expenditures on behalf of her campaign, she exercises her right to speak; and when a contributor donates to that campaign, he exercises the right to associate with the candidate and to express his support. The contributions to a campaign in turn promote more expenditures and political speech by the candidate." The Court also noted that candidates often self-fund their campaign to get it established in the short-term and that the loan repayment limitation "places a particular burden on relatively unknown challengers who may require more financing up front in order to wage an effective campaign against a better funded incumbent."

The FEC argued that the repayment limitation should be upheld, citing concerns that donors would begin contributing to a political campaign post-election, hoping that assisting in the loan repayment could be leveraged for eventual political favors. However, the Court found that the Commission failed to present adequate evidence that the government had a compelling interest in upholding the limitation, stating that the Commission had failed to show any case of actual quid pro quo corruption arising from repaying a candidate's personal loans to his or her campaign committee. Additionally, the Court found the Commission's

use of legislative history, scholarly articles, and even a poll conducted on the issue at the behest of the Commission, to be unpersuasive, stating that the Commission's reasoning for upholding the loan repayment limitation "amount[ed] to speculation that contributions to pay off a candidate's personal loans carry a danger of quid pro quo corruption."

The Court finally found that even if the Commission could cite a compelling government interest, the repayment limitation was not "closely drawn" to protect expressive and associational freedoms, humorously stating that "[t]he government's rationale for the loan-repayment limit fits about as well as a pair of pandemic sweatpants."

The Court's decision is subject to appeal, so candidates and organizations should not rely on the preceding information until the appeals process has been exhausted. For further questions or information on this subject, please contact Katie Reynolds at kreynolds@dickinson-wright.com or Charlie Spies at cspies@dickinson-wright.com with the Dickinson Wright Political Law team.

KEY CONTACTS



Charles R. Spies is a Member in Dickinson Wright's Washington D.C. office. He can be reached at 202.466.5964 or cspies@dickinsonwright.com.



Katherine N. Reynolds is an Associate in Dickinson Wright's Washington D.C. office. She can be reached at 202.659.6944 or kreynolds@dickinsonwright.com.

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