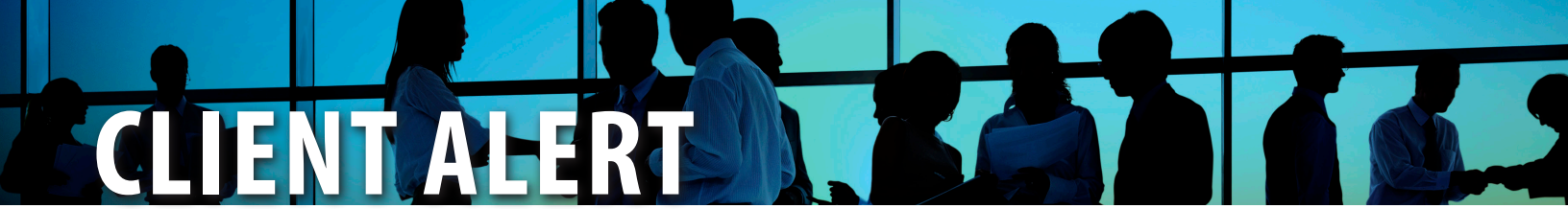

UPDATE: FEC CANDIDATE LOAN REPAYMENT LIMITATION RULED UNCONSTITUTIONAL IN SUPREME COURT DECISION

by Katie Reynolds and Charlie Spies

On May 16, 2022, the United States Supreme Court ruled that limiting the repayment of candidate loans to their own campaign to $250,000 (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.

In finding the loan repayment limit unconstitutional, the Majority called such limitation a "drag" on a candidate's First Amendment rights. Specifically, the Court emphasized personal loans as a "ubiquitous tool for financing electoral campaigns[]" as the bulk of the seed money for many current campaigns are personal loans from candidates to get the campaign started. The ability to lend money to campaigns, the Court emphasized, is essential to new candidates and challengers, as they are often fighting uphill battles against incumbents. Notably, the Court unanimously concluded that the loan repayment limit infringed in some degree on the First Amendment rights of candidates.

Because the loan repayment limit infringed on First Amendment-protected electoral speech, the Court next considered whether the loan repayment limit was justified by a "permissible interest." While the Court did not opine as to what level of scrutiny was required, it made clear that the government could not meet its burden under any scrutiny standard. First, the Court noted the government's inability to provide a single case of quid pro quo corruption due to not having a loan repayment limit, despite most states not having a loan repayment limit. Rather, the government relied on articles that hypothesized potential issues that could occur without the loan repayment limitation. In response to this, the Court stated that the "[g]overnment may not seek to limit the appearance of mere influence or access" and that while "the line between quid pro quo corruption and general influence may seem vague at times[,]" the First Amendment "requires [the Court] to err on the side of protecting political speech rather than suppressing it." Second, Court also dismissed the government's argument that using contributions to repay a loan is equivalent to a "gift," stating that because candidates are already repaid in full for their loans. As such, increasing the amount a candidate can be repaid does not increase any quid pro quo concerns. Third, the Court attacks the government's argument that the Court should use "legislative deference" in this case on two grounds: (1) the Court providing deference to the legislature, especially in situations where the law may have been passed as an effort to "insulate legislators from effective electoral challenge" is inappropriate; and (2) the Court's role is "to decide whether a particular legislative choice is constitutional," not to be beholden to legislators.

Practically speaking, this holding allows candidates to loan their own campaign unlimited resources and then eventually get paid back from the campaign. We expect the FEC to release further guidance to campaign committees in the near future. 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.

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