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Administration Initiative to Eliminate Improper Payments Starts to Come into Focus

On March 22, the Office of Management and Budget (OMB) released new guidance for implementing President Obama's recent Executive Order 13520, which instructs the federal government to reduce improper payments to individuals and businesses. The initiative attempts to use transparency, public participation, and executive branch accountability to reduce "payment errors" and eliminate "waste, fraud, and abuse" in major federal programs. The guidance, however, is incomplete, and OMB will have to work to fill out the program's details.

An improper payment can consist of any funds wrongly disbursed by the federal government to an individual or business as a program beneficiary, grantee, or contractor. The government improperly distributes billions of dollars every year – it improperly expended nearly $100 billion in Fiscal Year 2009, according to the recently released guidance – for reasons ranging from a basic data entry mistake to a failure to verify a beneficiary's qualification for funds. The

administration's initiative, which builds upon reforms made in 2002, targets "high-priority" programs, or those that repeatedly report improper payments above a certain percentile threshold. The guidance, however, fails to specify that threshold.

The Improper Payments Information Act of 2002 (H.R. 4878), along with the Recovery Auditing Act passed the same year, requires federal agencies to account for the root causes of error in programs susceptible to "significant improper payments" in their annual performance reports to OMB. The Obama administration's program goes further by requiring all federal agencies with a "high-priority" program to set a goal to reduce improper payments to an acceptable percentage of disbursements or total disbursed funds and publically report on that goal semi-annually. Each agency is also to designate a Senate-confirmed official who will answer for the agency if it fails to meet its goal.

The Nov. 22, 2009, executive order lays out several new public disclosure requirements, greatly enhancing accountability in federal payments to private entities. By May 20, OMB, acting in conjunction with the Treasury and Justice departments, is required to begin publishing certain information online, including the names of the designated agency officials, the current and historical amounts of improper payments, their proportion to total agency payments, and the successful recovery rates and amounts of those payments. OMB will also have to publish the causes of the improper payments, each agency's targets for reducing and recovering improper payments, and the entities that have received the greatest amount of outstanding improper payments.

Along with this catalog of information on the administration's initiative, the head of each agency will have to make public a report submitted to the agency's inspector general each quarter on any improper "high-dollar" disbursements. The guidance unfortunately fails to specify what constitutes a "high-dollar" disbursement, but the report will include any actions the agency has taken or plans to take to recover the funds, as well as what steps the agency will take in the future to prevent a similar occurrence. To further engage the public, OMB, again acting in conjunction with the Treasury and Justice departments, is required by the end of May to establish a central Internet database for collecting and sorting public tips on the suspected fraud, waste, or abuse of government-disbursed funds. Each agency will have to provide a clearly marked link on its homepage for the public to access this database.

With project due dates still a few months away, it is hard to tell whether OMB will be ready to implement the requirements in time. Indeed, the new guidance released in March is more of a skeletal structure for the implementation of E.O. 13520, with many details left to flesh out before the executive order’s full transparency measures can be put into place.

Treasury's Rush to Sell Citigroup Shares Could Cost Taxpayers

On March 29, the Treasury Department announced that it would begin selling the 7.7 billion Citigroup shares it owns, which represent the government's 27 percent stake in the company. The move is the most significant step Treasury has taken so far in the long process of winding

down the Troubled Asset Relief Program (TARP). Since selling the stock will generate more than $30 billion, a profit of at least $7 billion, many news reports are claiming it proves the bailout was a "great business" for the government. However, Treasury's sale may be in conflict with one of TARP's statutory goals: maximizing taxpayer returns.

In a *Watcher* article published in January, OMB Watch detailed how the TARP legislation imposes two imperatives on Treasury: 1) maximize the return on taxpayer money and 2) ensure economic stability. According to TARP's authorizing law, Treasury must take both goals into account in deciding when to sell assets acquired through the bank bailout program. However, Treasury's actions do not necessarily mean that it is following both of these guidelines.

A look at Citigroup's current and historical market valuations calls into question the government's seriousness about maximizing return on the taxpayers' investment. When Treasury announced it would sell its Citigroup shares, the stock price was about $4 per share. Three years ago, at $50 per share, it was more than ten times as high as it is today, a price that would give the government about a $325 billion profit if the stock were to return to its record high price. To put that in perspective, it would be about three times the projected ultimate cost of TARP. Citigroup's stock price has not been this low since the beginning of 1993. Given the substantial drop in Citigroup's share price, it would appear that the firm's stock is greatly depressed and may increase significantly with time. Alternatively, the top share price occurred when Citigroup was earning massive profits on the peak of the housing bubble, giving weight to the argument that the bank's share prices will not reach that level for years, if ever again.

Additionally, while Treasury hasn't announced when it will start selling the stock, the process will take at least the rest of the year. During that time, the current price ($4.18 per share as of March 29) could fall below the "break-even" price of $3.25 a share. In the last three months alone, the price has fallen as low as $3.15, well below the break-even price. So while the stock price may be above $4 per share today, even a relatively small price slump could jeopardize the sale's profit margin. Unless Treasury chooses to stop the stock sale in such a situation, it could even result in taxpayers losing money on the sale.

But another factor appears to be at work: politics. The Obama administration has indicated its discomfort with maintaining a presence in the private sector, and it wants out as soon as possible. Treasury Secretary Timothy Geithner gave voice to this concern during an interview with CNBC on April 5, saying, "We don't want to be in the business of owning a share in a private company a day longer than necessary." Additionally, Treasury's announcement of the share sale came only two weeks after March 16, the earliest date Treasury could sell the stock in 2010.

President Obama also has expressed misgivings about direct ownership of corporations by the federal government, underscoring the haste to divest the government of such arrangements. But while the merits of government ownership of equity in private firms are debatable, the TARP legislation excludes these arguments as an acceptable reason for Treasury to exit the financial sector.

The bailout as a whole, and the Citigroup support specifically, are perceived as unpopular. Indeed, President Obama said that the bailout was as "popular as a root canal" during his 2010 State of the Union address. From the administration's perspective, the sooner the bailout ends, and the sooner it no longer has an ownership stake in a large bank, the better. These concerns, the attitude within in the administration to dump all ownership of American corporations, and the intention to sell at a relatively low price, suggest that Treasury is primarily interested in untangling itself from Citigroup, rather than strictly adhering to TARP's twin goals.

Treasury has not publicly stated whether it would stop selling Citigroup stock if the price falls significantly, but *BusinessWeek* quoted one bank analyst as saying, "If we get to the summer and the stock is down at $3, I think the government will continue to sell as long as the market absorbs it. The government just does not want to own the equity of these companies." If this prediction is true, the government's political unwillingness may end up costing the taxpayer over the coming year, as it leaves the potential for hundreds of billions of dollars of profit on the table.

Open Government Day Arrives April 7

Several key requirements of the Open Government Directive are due on April 7, turning the day into a critical moment for government transparency. The main materials being released are specialized Open Government Plans that federal agencies are mandated to produce based on stakeholder input. There will also be a document to address federal spending transparency, as well as a review of policies that impede open government efforts.

The plans will state the individual agency's strategy for improving transparency, public participation, and collaboration. Meanwhile, open government groups are gearing up to evaluate the strategies. Expectations are that the plans will be quite substantive, both in scope of issues addressed and goals being set, at least for the major agencies. At the same time, it is also widely expected that there will be wide variations in the plans, with some being in an advanced state of implementation and others in very early stages. Numerous independent agencies are also developing Open Government Plans, though their obligation to do so under the directive is unclear.

Agencies across the federal government have been collecting input and ideas from the public for weeks through online discussions on their newly launched open government webpages, also required under the directive. The process has elicited hundreds of ideas from the public, with thousands of votes to help agencies prioritize the proposals. Many agencies have described their online discussions around open government as huge successes and announced intentions to keep the dialogue going beyond the launch of the agencies' plans on April 7.

Chief Information Officer Vivek Kundra recently elaborated on the additional content of the upcoming plans during a Senate hearing on government secrecy. In his testimony, Kundra stated that the plans would include details of "internal controls implemented over information quality, including system and process changes, and the integration of these controls within the

agency's existing infrastructure." Although the spirit of the directive is to make information useful to the public widely accessible, Kundra noted that information controls would also need to exist to protect personally identifiable and security-related information.

Open government organizations are poised to assess the plans as soon as they come out. Working together under the OpenTheGovernment.org coalition, these organizations are auditing individual agency plans based on preset criteria through a Google Wiki. The criteria for this initial assessment are basic and based on the Open Government Directive requirements, but also allow for additional points to be awarded for agencies that go above and beyond the call of duty.

The Office of Information and Regulatory Affairs (OIRA) will also produce materials from a review regarding policy impediments to open government. The Open Government Directive required that OIRA, along with the Federal Chief Information Officer and Federal Chief Technology Officer, review existing policies of the Office of Management and Budget (OMB). The overall purpose of this process is to create an improved policy framework that enables open government. The OIRA policy materials are expected to identify impediments to open government and either propose revisions to eliminate the impediments or clarify interpretation to reduce confusion.

Open government advocates have been calling for policy changes in several areas that would increase government transparency. Many of these recommendations are included in a November 2008 report, *Moving Toward a 21st Century Right-to-Know Agenda*. Such problems include the lack of resources and accountability for implementation.

Additionally, OMB's Deputy Director for Management is required to release a long-term comprehensive strategy for federal spending transparency that includes requirements from the Federal Funding Accountability Transparency Act (FFATA) and the American Recovery and Reinvestment Act. The plan will require quarterly reports from agencies on their progress toward improving the quality of federal spending information.

Finally, the Open Government Dashboard on the White House website is also expected to be updated in the near future to include access to all agency Open Government Plans. Currently, the dashboard is only an assessment of whether an agency has completed a task required under the Open Government Directive, and that is likely to remain the case in this update. Ultimately, however, this dashboard is expected to be revised to include aggregate statistics and visualizations that provide an assessment of the state of openness within the federal government.

EPA's New HERO Defends the Public's Right to Know

The U.S. Environmental Protection Agency (EPA) recently launched a new online database that provides access to the scientific studies used in making key regulatory decisions. The EPA released the Health and Environmental Research Online (HERO) database on March 24.

According to the agency, this action "is part of the [Obama administration's] open government directive to conduct business with transparency, participation, and collaboration."

In a press statement, EPA Administrator Lisa Jackson asserted, "The HERO database strengthens our science and our transparency – two pillars of our work at EPA ... Americans have a right to know the background of decisions that affect their lives and livelihoods. We're taking a big step forward in opening government to the people."

The HERO database, containing more than 300,000 scientific articles, is free, searchable, and open to the public. The database is intended to open the doors on the science EPA uses to create regulations impacting environmental and public health. HERO includes information on the key studies EPA uses to develop environmental risk assessments. EPA uses risk assessments to characterize the nature and magnitude of health risks to humans and the ecosystem from pollutants and chemicals in the environment.

By improving access to this research, the agency is helping the public to analyze and understand the same information being used by agency scientists. New studies will be regularly added to the database, and the agency is accepting suggestions from the public on additional scientific studies that should be included.

Searches in the HERO database may be conducted using keywords or by searching by author or publication title, among other parameters. Users may also narrow their searches to particular topics, such as environmental effects and health effects, or by particular substances such as mercury or asbestos. Each document in the database is assigned a HERO identification number with which users may search as well. Overall, the website appears to provide a comprehensive method for the public to sort through the thousands of scientific research documents used by EPA personnel.

A search conducted in the HERO database provides the title, authors, date, abstract, and other information about a scientific article. Where available, there is a link to the journal or publisher's website for access to the article itself. Not all publishers provide free access to entire articles, so some users may encounter an economic barrier to accessing the information. The HERO database is currently limited, typically, to abstracts, without the ability to see full articles or raw data that would allow users to analyze article content. However, this summer, the agency plans to expand the analytic capacity of the system by adding a feature highlighting objective, quantitative data extracted from high-profile studies.

According to the director of EPA's National Center for Environmental Assessment, John Vandenberg, the database is already heavily used in-house by agency staff as they assess the potential ecological and public health threats of numerous substances. Although the majority of the HERO documents are highly technical research articles that would be most valuable to trained scientists, there is abundant information useful for non-scientists, as well. One search provided links to several informational EPA web pages, a link to the Environmental Working Group's 2009 sunscreen guide, and numerous science articles from publications for a general audience.

The EPA's poor use of scientific data was heavily criticized during the George W. Bush administration. Numerous instances of political manipulation and suppression of science eroded public confidence in the integrity of the agency's actions. The Bush administration was also criticized for closing several publicly accessible EPA libraries and failing to account for many of the documents that were removed. The scientific articles in HERO are the same types of documents that generally have been available in EPA libraries around the country.

The new online HERO database is a strong step toward rebuilding collaboration with the public, ensuring the agency acts in a scientifically sound manner, and continuing EPA's momentum on transparency and science. Several additional steps by the Obama administration would take EPA – and other agencies – even further down the road toward improved scientific integrity.

For example, following through on President Obama's memo calling for recommendations to guarantee scientific integrity and establishing a written policy on how agency scientists may communicate with the media, the public, and other scientists would greatly strengthen the free exchange of scientific ideas.

The EPA plans to broaden both the features and scope of information included in HERO. According to the HERO website, agency scientists will link all scientific references used in their assessments to the HERO database. Future improvements could include additional data sets, environmental models, and services that connect data and models. The agency is seeking input from the public on ideas for improving HERO.

EPA to Limit Mountaintop Mining

The U.S. Environmental Protection Agency (EPA) announced new guidance April 1 that should limit the impacts of mountaintop coal mining in Appalachia. The agency issued the guidance to clarify EPA's expectations regarding legal and scientific interpretations when issuing permits for the destructive surface mining practice.

The practice of mountaintop mining involves blasting off the tops of mountains to access coal seams hidden below. The debris from blasting is pushed down the mountainsides into the valleys below. This "valley fill" not only covers miles of streams but also damages rivers, water sources, and aquatic life downstream when the fill leaches pollutants.

A summary of EPA's guidance describes the damage from this practice: "Since 1992, nearly 2,000 miles of Appalachian streams have been filled at a rate of 120 miles per year by surface mining practices. A recent EPA study found that nine out of every 10 streams downstream of surface mining operations exhibit significant impacts to aquatic life." Health impacts result from highly toxic pollutants such as selenium leaching into downstream water sources.

One of the "midnight regulations" completed by the George W. Bush administration made it legal for mining companies to dump this fill. The rule became effective on Jan. 11, 2009, just days before Barack Obama was inaugurated. The Obama administration has struggled with how

to approach overturning or revising the rule. The agency conducted reviews of the permitting process and the scientific impacts of the mining practice before announcing the new policy.

EPA had been under pressure from environmentalists, coal companies, and even Sen. Robert Byrd (D-WV), who had met with EPA Administrator Lisa Jackson several times, to provide clarity on the permitting process. Byrd's office released a press statement April 1 saying, "I am pleased that EPA Administrator Jackson took our concerns about the need to provide clarity very seriously and has responded with these guidelines."

In announcing the new guidance, Jackson noted the extensive scientific study and review the agency had conducted. She said that the agency would also begin focusing on the "emerging evidence of the potential health impacts" of mountaintop mining. "Let me be clear: this is not about ending coal mining. This is about ending coal mining pollution. Coal communities should not have to sacrifice their environment, or their health, or their economic future to mountaintop mining. They deserve the full protection of our Clean Water laws," Jackson said.

The policy change comes on the heels of an announcement March 26 that EPA was proposing to significantly reduce or stop mining at the Spruce No. 1 surface mine in Logan County, WV, one of the largest surface mining operations ever proposed, according to EPA's press release. The mining proposal "would bury over 7 miles of headwater streams, directly impact 2,278 acres of forestland and degrade water quality in streams adjacent to the mine," EPA said. Spruce mine received a permit in 2007, but the permit was challenged in court, thus delaying any mining. EPA and the mine's owners could not reach an agreement that would have significantly mitigated the environmental impacts of the mine.

The new guidance applies to all pending and new mountaintop mining permit requests and to permit renewals. The policy was sent to EPA's regional administrators in regions 3, 4, and 5, covering Appalachian states from Pennsylvania south to Georgia, Alabama, and Mississippi. Under the Clean Water Act (CWA), states have the responsibility for issuing permits to discharge pollutants into waterways. The guidance is intended to provide the regional and state offices with a framework for evaluating individual permit applications consistently and in keeping with the requirements of the CWA, the National Environmental Policy Act, and the Environmental Justice Executive Order (E.O. 12898).

The guidance contains the latest scientific information important to determining compliance with the CWA, clarifies how the law applies to mountaintop mining and its debris to achieve water quality protection, and enhances opportunities for members of coal mining communities affected by potential mining activity to participate in reviewing proposed new actions.

The policy also calls for a greater emphasis on numerical standards to measure the electrical conductivity of streams, the first time EPA has used a conductivity standard. By measuring electrical conductivity, regulators can determine the extent of pollutants in water. Specifically, the conductivity measure is the amount of salt in the water which results from mine debris and runoff, essentially turning fresh water into salt water and damaging aquatic life.

Reaction to the new guidance by environmental groups was laudatory. Earthjustice, one of the environmental groups that sued on behalf of Appalachian conservation groups to overturn the Bush midnight regulation, issued a statement quoting its president Trip Van Noppen, saying, "We commend Administrator Jackson and the EPA for recognizing that the people of coal communities deserve the full protection of our clean water laws, and we're glad to see that EPA is back on the job."

Rob Perks of the Natural Resources Defense Council said, "At long last, the EPA is committing to protecting Appalachian communities from the world's worst coal mining. Today's action to protect waterways from the impacts of mountaintop removal is restoring science to its rightful place and reinforcing the agency's commitment to the Clean Water Act.... For every ton of coal extracted, another 20-25 tons of mining waste is disposed of in so-called valley fills. Strict enforcement of scientific requirements in the Clean Water Act is a much-needed step in the right direction."

Bruce Watzman of the National Mining Association expressed the displeasure of mining companies, saying, "America's coal mining communities are deeply concerned by the impact of policy announced today by EPA on coal mining permits, employment and economic activity throughout Appalachia.... The policy was announced without the required transparency and opportunity for public comment that is afforded to policies of this magnitude."

EPA will take public comment on the guidance, which is effective on an interim basis pending completion of the comment process. According to EPA's press release, the agency will consider revising the guidance after the comment process and after the agency's Science Advisory Board completes its review of EPA's scientific studies.

New Vehicle Standards Take Aim at Climate-Altering Emissions

The Obama administration recently announced new standards that will improve fuel efficiency in new vehicles starting in 2012. The standards mark the first time in U.S. history that the federal government has crafted regulations aimed specifically at reducing greenhouse gas emissions and stemming the impact of global climate change.

In a joint rulemaking unveiled April 1, the U.S. Environmental Protection Agency (EPA) and the Department of Transportation (DOT) established standards that will apply to vehicles in model years 2012 through 2016.

EPA's portion of the regulation will limit greenhouse gas emissions from tailpipes. By model year 2016, the average car will emit no more than 250 grams of carbon dioxide per mile. The standards will reduce emissions by 960 million metric tons, "equivalent to taking 50 million cars and light trucks off the road in 2030," according to EPA's press release.

DOT's National Highway Traffic Safety Administration (NHTSA) will update its Corporate Average Fuel Economy (CAFE) standards to comport with EPA's emissions limits. The average

model year 2012 vehicle will be required to achieve a fuel efficiency rate of 29.7 mpg (miles per gallon). The standard ratchets up the fuel efficiency level each year through 2016, when the average vehicle will need to reach 34.1 mpg.

The standards are the culmination of a compromise President Obama brokered shortly after assuming office. In May 2009, the Obama administration agreed to model regulations after a California vehicle emissions program supported by environmentalists and adopted by 13 other states and the District of Columbia. These standards had never been implemented because the Bush administration did not grant the required waiver under the Clean Air Act that California needed in order to act. Automakers signed on to the plan, preferring the standards be set at the federal level, instead of at the state level, to achieve a uniform national standard.

On March 31, the president announced that the federal government will double the size of its fleet of hybrid vehicles, according to BNA (subscription required). According to the administration, a car manufactured in 2016 could save consumers $3,000 over the life of the vehicle. The administration estimates the standards will conserve 1.8 billion barrels of oil. "This is a significant step towards cleaner air and energy efficiency, and an important example of how our economic and environmental priorities go hand-in-hand," said EPA Administrator Lisa Jackson.

EPA's regulatory impact analysis (RIA) for the final rule estimates that the benefits of the rule far outweigh the costs. The estimated lifetime costs of the rule are $51.5 billion dollars, while the lifetime discounted benefits are more than $240 billion. According to the RIA, "EPA estimates that the additional technology required for manufacturers to meet the GHG standards for this final rule will cost on average $948/vehicle. This cost is roughly $100 lower than that projected" in the agencies' proposed rule issued in September 2009. The difference in costs between the proposed and final rule is due to revisions in the costs of new technologies expected to be used by manufacturers to comply with the rule.

The vast majority of consumer benefits will come from fuel savings. According to NHTSA's fact sheet on the final rule, "the lifetime benefits of the CAFE standards will total over $182 billion," which accounts for the bulk of the total benefits. "NHTSA attributes most of these benefits—about $157 billion—to reductions in fuel consumption."

Both agencies explained that there were many benefits they expect from the rule that are not counted in their analyses. For example, NHTSA's fact sheet indicates that the agency "has not monetized reductions in toxic air pollutants due to the standards (a benefit), nor potential reductions in vehicle performance or utility (a cost) that might result from the standards. However, by any metric, NHTSA expects that the benefits of the standards will vastly outweigh the costs."

Environmentalists and the automotive industry are cheering the new standards. "These standards are a grand slam: billions of dollars in consumer savings at the pump, a huge reduction in oil use, significant cuts in pollution, and they will help a more sustainable domestic auto industry thrive," said Michael Brune, Executive Director of the Sierra Club.

The auto industry has also provided its support. "Today, the federal government has laid out a course of action through 2016, and now we need to work on 2017 and beyond," Alliance of Automobile Manufacturers President and CEO Dave McCurdy said April 1.

SpeechNow.org Decision May Expand the Role of Independent Groups

On March 26, the U.S. Court of Appeals for the District of Columbia issued a unanimous opinion in *SpeechNow.org v. Federal Election Commission*. The court decided that the Federal Election Commission (FEC) could not limit donations to independent political groups that will spend money to support or oppose candidates. This is the first major court ruling to apply the U.S. Supreme Court's holding in *Citizens United v. FEC*.

Organized under Section 527 of the tax code, SpeechNow.org can now receive unlimited contributions from individuals, but it must register as a political committee and disclose its financial information to the FEC. The appeals court found that because 527s operate independently of candidate campaigns, there is no chance for corruption. The opinion expands the impact of *Citizens United* by extending the rationale in that decision from campaign spending to campaign donations.

In November 2007, SpeechNow.org sought approval from the FEC for its plan to collect unlimited contributions from individuals to conduct "express advocacy." The group wants to air messages in support of federal candidates who favor free speech and oppose those who back legislation that restricts the rights to speech and association.

After the FEC informed the group that it would be deemed a political committee and could not accept unlimited contributions from individual donors, SpeechNow.org filed suit. The organization's challenge charged that limits on annual contributions from individuals were an unconstitutional violation of free speech and association rights. Under the FEC rules, individual donations to 527s for express advocacy were limited to $5,000 a year.

The decision announced on March 26 concluded that the 527 can receive unlimited contributions from individuals but must register with the FEC as a political committee. The ruling follows the judgment of the Supreme Court's January *Citizens United* decision, which found that corporations and unions can spend as much as they like in advocating for or against candidates as long as they disclose their activities and do not coordinate with candidates' campaigns.

The ruling in *SpeechNow.org*, written by Chief Judge David Sentelle, said that since the Supreme Court ruled in *Citizens United* that political expenditures do not corrupt the political process, neither do contributions to groups that make such expenditures. According to the appeals court's opinion, if there was no reason to limit independent spending, donations to groups that would be doing so should not be restricted. The appeals court said the government simply had no interest in limiting contributions to independent groups.

During oral argument, the FEC argued that large contributions to groups that broadcast such independent expenditures may "lead to preferential access for donors and undue influence over officeholders." The court responded that those arguments "plainly have no merit after *Citizens United*."

The FEC also maintained that the *Citizens United* case did not apply because that decision involved spending limits, not contribution limits. According to BNA Money and Politics (subscription required), during arguments, FEC attorney David Kolker noted that limits on contributions to political parties have not been changed. "Similar restrictions on non-party groups also should remain, the FEC lawyer said, because such groups can act as 'shadow parties' and be used to circumvent limits on contributions to candidates."

The appeals court did uphold disclosure requirements and decided that SpeechNow.org still has to organize as a political committee and fulfill financial reporting requirements. However, those restrictions were not heavily challenged; SpeechNow.org was primarily concerned with being able to collect unlimited donations for its political advocacy. The group also claimed that it had no objection to more limited reporting requirements the Internal Revenue Service (IRS) places on 527 organizations.

The court found that complying with reporting rules would only place a minimal burden on SpeechNow.org's First Amendment rights. The opinion states that "the public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenses or independent expenditures." Information on contributors, which candidate the expenditure supports or opposes, expenditures of $1,000 or more made in the 20 days before an election, and any expenditures of $10,000 or more made at any other time must be disclosed to the FEC.

SpeechNow.org, its president David Keating, and four potential contributors were represented by attorneys from the Center for Competitive Politics and the Institute for Justice. Supporters of the ruling consider this another boost to the free speech rights of Americans and those who join together to engage in advocacy. Steve Simpson, an attorney for the Institute for Justice, said, "This decision ensures that all Americans can band together to make their voices heard during elections."

SpeechNow.org emphasized the decision in *EMILY's List v. FEC* as support for its challenge. In the *EMILY's List* case, regulations were struck down that limited donations to nonprofit political action committees used for campaign activity. However, the D.C. Circuit Court questioned the constitutionality of limits on contributions to independent political committees, even though those issues were not directly challenged in the *EMILY's List* lawsuit. After the *EMILY's List* decision, many predicted that SpeechNow.org had a good chance of winning its appeal.

In another case, *Republican National Committee v. FEC*, the U.S. District Court for the District of Columbia upheld provisions of the Bipartisan Campaign Reform Act that limit "soft money" contributions to political parties. The law prohibits political parties from accepting unlimited contributions from individuals, companies, and unions. The court said it does not have the

authority to overturn a Supreme Court ruling upholding the ban on soft money fundraising by national party committees. The Republican National Committee (RNC) wanted to raise soft money for state elections, congressional redistricting, and other activities outside of federal elections. On April 2, the RNC filed an appeal to the Supreme Court.

The result of this patchwork of rulings is that currently, political parties cannot seek unlimited contributions from donors, but independent groups can. This has created an environment that favors contributions toward largely unregulated "independent" political organizations, rather than to candidates or political parties. Some observers worry that this will have exactly the effect that the Supreme Court and the appeals court denied it would: an increase in corruption and a decrease in disclosure about the activities of these groups due to the lack of a 21st-century reporting infrastructure.