

CASE ARGUED JANUARY 27, 2010, DECIDED MARCH 26, 2010

No. 08-5223 (L), 09-5342

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**SPEECHNOW.ORG, DAVID KEATING,
FRED M. YOUNG, JR., EDWARD H. CRANE, III,
BRAD RUSSO and SCOTT BURKHARDT,
*Appellants,***

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal from the United States District Court
for the District of Columbia,
Case No. 08-cv-00248 (JR)

**APPELLANTS' MOTION FOR IMMEDIATE
ISSUANCE OF THE MANDATE**

Pursuant to D.C. Cir. Rule 41, this Court has directed the Clerk to withhold issuance of the mandate in this case until “seven days after disposition of any timely petition for rehearing.” Order of March 26, 2010. The Court specified, however, that its instruction was “without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.” *Id.* Plaintiffs asked for expedited

consideration of this appeal so that they may speak for and against candidates in the 2010 primary season. With that season now upon us, SpeechNow.org and the Individual Plaintiffs respectfully move that the Court direct the Clerk to issue the mandate immediately.

Plaintiffs have been litigating this case for more than two years. Soon after filing this case, Plaintiffs sought a preliminary injunction so they could run their advertisements in races during the 2008 election season. The District Court denied that motion, however, preventing Plaintiffs from running their planned advertisements during the entire 2008 primary and general election season. *Cf. Citizens United v. FEC*, 130 S. Ct. 876, 895 (2010) (discussing the fact that Citizens United was prevented from speaking for two years).

Plaintiffs would like to run advertisements during the 2010 election season, but the mandate in this case will not issue under this Court's order until May 17, 2010 at the earliest. Two states, Illinois and Texas, have already held their primaries, and twenty-three others are scheduled to hold their primaries between now and June 8, 2010. Federal Election Commission, 2010 Congressional Primary Dates and Candidate Filing Deadlines for Ballot Access, <http://www.fec.gov/pubrec/fe2010/2010pdates.pdf>. Even after the mandate issues, there will be additional

proceedings in the District Court before a final judgment issues that allows Plaintiffs to begin their operations. Once that happens, the individual Plaintiffs must transfer their funds to SpeechNow.org and SpeechNow.org must produce and begin broadcasting its advertisements, which will take additional time. In light of this Court's decision holding that Plaintiffs have a First Amendment right to raise funds in unlimited amounts to finance their advertisements, the public interest is plainly served by allowing the proceedings on remand to go forward as quickly as possible.

In addition, there is no good reason to delay issuance of the mandate. Plaintiffs do not intend to petition for rehearing. While the Federal Election Commission has informed Plaintiffs' counsel that it opposes this motion, it has not indicated whether it intends to seek rehearing. However, there is no reason to believe that this Court would grant a petition for rehearing from what was a unanimous *en banc* decision. There is therefore no reason to delay issuance of the mandate, particularly when Plaintiffs have such a short window of opportunity to speak effectively.

For the foregoing reasons, the Plaintiffs respectfully request that the Court direct the Clerk to issue the mandate immediately.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 16, 2010, a true and correct copy of APPELLANTS' MOTION FOR IMMEDIATE ISSUANCE OF THE MANDATE was filed electronically using the court's ECF system and sent via the ECF electronic notification system to the following counsel of record:

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