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**NCLA Amicus Brief Challenges FEC’s Heightened Standard for Standing in Sen. Cruz’s Campaign Suit**

*Federal Election Commission v. Ted Cruz for Senate, et al.*

**Washington, DC (December 22, 2021)** – The Federal Election Commission (FEC) is urging the Supreme Court to adopt a new, heightened standard for establishing that an injury is “fairly traceable” to complained-of conduct, a showing required of all plaintiffs in order to establish their standing to sue. Adopting FEC’s theory of standing would significantly restrict judicial challenges to all kinds of unlawful federal government action. For that reason, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) with the U.S. Supreme Court today in *FEC v. Ted Cruz for Senate, et al.*, asking the Court to carefully consider the broader negative impact of FEC’s proposed standard.

Consistent with the First Amendment, federal law imposes no limits on the amount of money that candidates for federal office may provide to their own campaigns. Self-financing often takes the form of loans, which a campaign committee may repay using contributions received either before or after the election. Section 304 of the Bipartisan Campaign Reform Act of 2002 (BCRA), however, states that campaigns may repay no more than \$250,000 of pre-election loans with post-election contributions. In his 2018 campaign for reelection to the U.S. Senate from Texas, Appellee Ted Cruz loaned his campaign committee \$260,000, \$10,000 more than Section 304 permitted him to be repaid using post-election contributions. Appellees filed suit against FEC in federal district court, seeking declaratory and injunctive relief against enforcement of Section 304 and its implementing regulations.

FEC argues that the loss is “fairly traceable” only to the FEC regulation, not to the enabling statute, and thus that Appellees lack Article III standing to challenge the statute. But given the extremely close relationship between FEC’s regulation and Section 304 of the statute (in fact, the statute provides the sole authority for issuing the regulation), NCLA argues that the Appellees’ loss must also be deemed “fairly traceable” to Section 304. NCLA also disputes FEC’s claim that standing is defeated by the Cruz campaign’s deliberate triggering of the law. If that were true, then test-case plaintiffs from Rosa Parks and even earlier would not have had standing to challenge the laws they opposed.

The heightened standing standard proposed by FEC would, if adopted, severely restrict the ability of NCLA and other public-interest organizations to challenge unlawful government action. FEC’s assertions find no support in the Supreme Court’s case law. For these reasons, the Court should affirm the district court’s holding that Appellees possess standing to challenge the constitutionality of Section 304 of the BCRA.

**NCLA released the following statement:**

“FEC’s position is not simply wrong; it also threatens to impair the ability of NCLA and like-minded critics of government overreach to challenge unconstitutional federal statutes.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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