



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](mailto:judy.pino@ncla.org), 202-869-5218

In NCLA Amicus Win, Supreme Court Rejects FEC’s Argument Against Sen. Cruz’s Standing to Sue

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

Washington, DC (May 17, 2022) – In a 6-3 [ruling](#), the Supreme Court has invalidated a provision of federal campaign finance law limiting the amount of money a candidate can be repaid for personal loans made to their campaign. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in support of Senator Ted Cruz’s challenge to Section 304 of the Bipartisan Campaign Reform Act of 2002, which unconstitutionally burdens core political speech. Senator Cruz also raised challenges to the Federal Election Commission’s (FEC) implementing regulation. In the *amicus* brief, NCLA argued, and the Court agreed, that the FEC’s proposed heightened standing standard, if adopted, would severely restrict the ability to challenge unlawful government action.

In his 2018 campaign for reelection to the U.S. Senate, Senator Cruz loaned his campaign committee \$260,000, \$10,000 more than Section 304 permitted him to be repaid using post-election contributions. It was uncontested that the restrictions on loan repayment resulted in Senator Cruz suffering a \$10,000 loss. Yet, FEC argued that the loss is “fairly traceable” only to the FEC regulation, not to the enabling statute, and thus that Sen. Cruz and his campaign lacked Article III standing to challenge the statute.

Chief Justice Roberts, in his opinion for the Court, rejected FEC’s argument that appellees lacked standing because their injuries were, according to the agency, “self-inflicted.” Roberts established that the Court has “never recognized a rule of this kind under Article III.” To the contrary, the Court has “made clear that an injury resulting from the application or threatened application of an unlawful enactment remains fairly traceable to such application, even if the injury could be described in some sense as willingly incurred.”

FEC asked the Court to adopt a new, heightened standard for establishing that an injury is “fairly traceable” to complained-of conduct. The agency wrongly asserted that a plaintiff lacks standing to challenge an allegedly unconstitutional statute when his injury is most directly attributable to an agency regulation adopted to implement the challenged statute rather than to the statute itself. FEC’s heightened standing standard would have thwarted *all* nondelegation doctrine challenges. In such cases, the adoption of the pertinent legislation does not by itself directly inflict injury; the legislation merely invites a federal agency to exercise open-ended, delegated legislative powers. Not only did the Court clarify that Section 304 “abridges First Amendment rights” and “burdens political speech,” but it also protected the ability to challenge unlawful federal government actions.

NCLA released the following statements:

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

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

“Senator Cruz’s standing to bring suit was obvious. Willfully violating an unconstitutional law to create standing has always been a part of our legal process. Indeed, that is precisely how the most iconic civil rights cases reached the courts. FEC’s position, that courts may not hear cases involving so-called self-inflicted injuries, would deprive citizens of their ability to challenge unlawful government acts. We applaud the Supreme Court for rejecting this recipe for mischief.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

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.

###