

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FEDERAL ELECTION COMMISSION *v.* NRA POLITICAL VICTORY FUND ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93-1151. Argued October 11, 1994—Decided December 6, 1994

Petitioner Federal Election Commission (FEC) brought this civil action against respondents seeking to enforce a provision of the Federal Election Campaign Act (FECA). The District Court ruled against respondents. The Court of Appeals reversed and entered its judgment on October 22, 1993. Without first seeking or obtaining the Solicitor General's authorization, the FEC filed in its own name a petition for a writ of certiorari on January 18, 1994, two days before the expiration of the 90-day filing period mandated by 28 U. S. C. §2101(c). The United States filed a brief contending that the FEC lacked statutory authority to represent itself in this case in this Court, but that, pursuant to 28 U. S. C. §518(a) and its implementing regulation, the Solicitor General had authorized the FEC's petition by letter dated May 26, 1994. This authorization came more than 120 days after the §2101(c) filing deadline had passed. The FEC filed a brief in response asserting that it has independent statutory authority to represent itself in this Court.

Held:

1. The FEC may not independently file a petition for certiorari in this Court under 2 U. S. C. §437d(a)(6). That statute empowers the FEC "to . . . appeal any civil action . . . to enforce the provisions of [the FECA]," but it omits any mention of authority to file a "petition for a writ of certiorari" or otherwise conduct litigation before the Supreme Court. By contrast, 26 U. S. C. §§9010(d) and 9040(d) explicitly authorize the FEC to "appeal from, and to petition the Supreme Court for certiorari to review" (emphasis added), judgments in actions to

enforce the presidential election fund laws, thereby indicating a congressional intent to restrict the FEC's independent litigating authority in this Court to such actions. The contrasting language in §§9040(d) and 437d(a)(6) is particularly telling because these sections were originally enacted as part of the same legislation. The mere existence of sound policy reasons for providing the FEC with independent litigating authority in this Court for actions enforcing the FECA does not demonstrate a congressional intent to alter the Solicitor General's prerogative under §518(a) to conduct and argue the Federal Government's litigation here, since that statutory authority itself represents a policy choice by Congress. Nor is it dispositive that the FEC has represented itself before this Court in several FECA enforcement cases in the past, since none of those cases involved a challenge to the Court's jurisdiction. Moreover, the provisions authorizing the FEC to litigate in the federal courts are not the sort of substantive provisions which can be said to be within the agency's province to interpret. Pp. 2-9.

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2. The Solicitor General's "after-the-fact" authorization does not relate back to the date of the FEC's unauthorized filing so as to make it timely. Under governing agency law principles, particularly the doctrine of ratification, the authorization simply came too late in the day to be effective: The Solicitor General attempted to ratify the FEC's filing on May 26, 1994, but he could not himself have filed a certiorari petition on that date because the 90-day time period for filing a petition had already expired. This result is entirely consistent with, and perhaps required by, §2101(c). If the Solicitor General were allowed to retroactively authorize untimely agency petitions, he would have the unilateral power to extend the 90-day statutory period by days, weeks, or, as here, even months. This would impermissibly blur §2101(c)'s jurisdictional deadline. Pp. 9–11.

Petition for certiorari dismissed for want of jurisdiction. Reported below: 6 F. 3d 821.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion. GINSBURG, J., took no part in the consideration or decision of the case.