

Court ruling backs issue-based political ads

by: ROBERT G. MCCAMPBELL
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On June 25, the Supreme Court issued its much-anticipated ruling in *Federal Election Commission v. Wisconsin Right-to-Life Inc.* and found that a law prohibiting independent "issue" advertising by corporations and labor unions in advance of elections was unconstitutional. The court reiterated the long-standing principle that debate on public issues should be "uninhibited, robust, and wide open."

The case arose from an advertisement that WRTL wanted to broadcast criticizing the U.S. Senate's filibuster of President Bush's judicial nominees and urging Wisconsin residents to "contact Senators Feingold and Kohl and tell them to oppose the filibuster."

The Bipartisan Campaign Reform Act prohibited corporations and unions from running this type of advertisement using a candidate's name within the days preceding an election.

Corporations and labor unions are generally prohibited from spending their own funds to expressly advocate in an election; for example "Re-elect Smith," or "Vote against Jones." The question for the court, then, was whether the advertisement about the filibuster issue was the "functional equivalent" of express advocacy and could therefore be prohibited without violating the First Amendment.

The court ruled in favor of WRTL and reasoned that the organization possessed a First Amendment right to express itself on public issues even during the period shortly before an election.

The opinion stated that an advertisement will not be prohibited unless it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The court explained that its purpose was to create a "safe harbor" so that organizations would know what advertising is permitted.

What does this mean for the next campaign cycle? One thing it means is that we can expect to see more independent issue ads by corporations and labor unions.

We can also expect to see presidential candidates forego public funding. Although they can accept public funding for their campaigns of \$82 million in 2008, candidates making that choice are then limited to spending \$82 million, which may prove insufficient.

For example, in August 2004, after Sen. John Kerry opted to accept public financing, he faced attack ads by a group called Swift Boat Veterans for Truth and could not spend money on counter-advertising because he needed to save the public funding for later in the campaign.

In 2008, it is unlikely that a candidate will accept public financing because of the potential need to raise and spend additional money to counter independent issue advertising.

The court's decision to allow more issue advertising was supported by organizations on both sides of the political spectrum, including the American Civil Liberties Union, the National Rifle Association, the AFL-CIO, the U.S. Chamber of Commerce, Focus on the Family, Coalition of Public Charities, the Cato Institute and others.

Given the support for issue advertising by such a diverse group of organizations, we can certainly expect the public debate on issues to be "uninhibited, robust, and wide open."

Robert McCampbell is an attorney with Crowe & Dunlevy. He left to serve as the U.S. attorney for the Western District of Oklahoma from 2001-2005 and returned to the firm in September 2005.

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