



Iowa General Assembly

2007 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

BIPARTISAN CAMPAIGN REFORM ACT — ELECTIONEERING RESTRICTIONS EASED

Filed by the United States Supreme Court
June 25, 2007

Federal Election Commission v. Wisconsin Right to Life, Inc.
No. 06-969

<http://www.supremecourtus.gov/opinions/06pdf/06-969.pdf>

Summary. In June 2007 the United States Supreme Court held, in Federal Election Commission v. Wisconsin Right to Life, Inc., that the Bipartisan Campaign Reform Act of 2002 (BCRA) limitation on broadcast ads mentioning a candidate within 30 days of a primary or caucus or 60 days of a general election was unconstitutional.

Analysis and Conclusion. The BCRA is a federal law which regulates big money campaign contributions in federal elections. Section 203 of the Act makes it a federal crime for a corporation to use its general treasury funds to pay for any "electioneering communication". That term is defined as any "broadcast, cable or satellite communication that clearly identifies a federal candidate within 60 days of a general election or 30 days of a primary election. That provision was earlier upheld by the Court in McConnell v. Federal Election Comm'n, 540 U. S. 93 (2003), however, that decision "did not purport to resolve future as-applied challenges" to the electioneering provisions. Electioneering communications have been referred to as sham issue ads. Supporters of the restrictions contend these communications target the named candidate more than they advocate for a particular issue.

In the *Wisconsin* case the Court held that the electioneering restrictions set out in § 203 of the Act were unconstitutional *as applied* to the advertisements at issue and stated the section can be constitutionally applied only if it is narrowly tailored to further a compelling interest. [emphasis added] The Court stated:

To safeguard this liberty [freedom of speech on public issues], the proper standard for an as-applied challenge to BCRA §203 must be objective, focusing on the communication's substance rather than on amorphous considerations of intent and effect...[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. [emphasis added] [page 16]

In applying this standard the Court concluded that the advertisements sponsored by Wisconsin Right to Life, Inc. were not express advocacy and offered a two-part test to evaluate future advertisements.

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on a legislative issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office. [page 16]

Impact of Decision. The Court did not overturn § 203 of the Act. Restrictions on electioneering communications remain in place, but the restrictions are weakened. Under the decision an advertisement will be unlawful only if there is no reasonable interpretation of that advertisement other than as an appeal to vote for or against a specific candidate.

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