

POLITICAL LAW AND GOVERNMENT ETHICS NEWS

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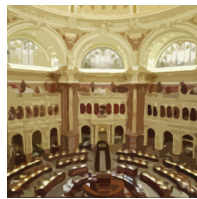
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SUPREME COURT LOOSENS RESTRICTIONS ON ISSUE ADS

In *Federal Election Comm’n v. Wisconsin Right to Life*, the Supreme Court ruled that the anti-abortion group Wisconsin Right to Life (WRTL) should have been allowed to broadcast ads in the weeks leading up to the 2004 primary election. The Court held that the 2002 Bipartisan Campaign Reform Act’s (BCRA) ban on television and radio ads mentioning candidates and paid for by corporations and unions in the weeks preceding an election was unconstitutional as applied to the proposed issue ads. The decision upheld WRTL’s First Amendment right to broadcast issue ads without respect to timing.

Background

The electioneering communication (EC) provisions of BCRA ban corporate and labor funding of television and radio ads that mention a clearly identified candidate, are targeted to the candidate’s electorate, and are broadcast 30 days before a primary election or 60 days before a general election. The EC provisions were designed to eliminate what Congress perceived as “sham issue ads,” ads purporting to discuss issues but that were also meant to impact federal elections. “Sham issue ads” were seen as a major loophole in allowing corporations and labor unions to pour money into elections.

As part of a grassroots lobbying campaign to end the Senate filibuster of judicial nominations, WRTL wanted to broadcast radio and television ads encouraging citizens to call Sens. Kohl and Feingold to oppose the filibuster. The ads were slated to run in the weeks preceding the primary election. Although the ads did not mention the election or that Sen. Feingold was a candidate in the election, the mere mention of Sen. Feingold and the targeting of the ads to his state triggered the EC provisions. Therefore, if WRTL ran the ads during the EC period, WRTL would have been in violation of BCRA. WRTL filed suit against the Federal Election Commission (FEC), challenging BCRA’s restrictions as applied to its issue ads and seeking injunctive relief allowing WRTL to air its issue ads during the EC blackout period. The District Court for the District of Columbia ruled that WRTL’s ads were permissible because they were issue ads and were not meant to influence a federal election. The FEC and intervenors to the case appealed.

Supreme Court Decision

The Supreme Court's decision establishes that corporations, such as WRTL, have a First Amendment right to air grass-roots lobbying ads, paid with corporate funds in the weeks before an election. The decision carves out an important exception to BCRA's prohibition on corporate and labor funding of ECs.

In determining whether WRTL's ads should be prohibited under BCRA, the Court stated that it was necessary to determine whether the speech at issue was the "functional equivalent" of express advocacy speech (i.e., does not use specific words such as "vote for," "vote against," "elect" or "defeat" but is nevertheless meant to influence a federal election) or if it was issue advocacy (discussing issues without regard to influencing a federal election). Such a determination is difficult, the Court said, because candidates are oftentimes very closely associated with issues. The First Amendment, however, "requires us to err on the side of free speech rather than suppressing it." The Court concluded that an "ad is the functional equivalent of express advocacy," and thus impermissible, "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

The Court determined that WRTL's ads did not constitute express advocacy or its equivalent because their content was consistent with that of a genuine issue ad. The ads focused on a legislative issue, took a position on the issue, argued that the public should adopt the position, and encouraged the public to take action. The Court also noted that the ads did not mention the election, Sen. Feingold's candidacy, a political party or Sen. Feingold's challenger, and the ads did not comment on Sen. Feingold's character, qualifications or fitness for office.

Consequences of Court Decision

As a result of the decision, corporations and unions may use general treasury funds to broadcast ads in the weeks preceding an election discussing issues so long as the ads do not discuss an election, a candidate's character or qualifications for office, or urge the public to elect or defeat the candidate. Rather than focusing on the timing of an ad, the new test focuses on the content of an ad and whether the ad may reasonably be interpreted as something other than an appeal to vote for or against a specific candidate.

The FEC has recently announced plans to address the Court's decision. Implementing regulations will be promulgated by the end of the year. Corporations and labor organizations who intend to advertise in the 2008 election season are encouraged to seek counsel regarding the content of their ads.

LOBBYING REFORM LEGISLATION

After a senator blocked House and Senate negotiators from going to conference, Majority Leader Reid and Speaker Pelosi introduced a bill incorporating the House and Senate versions so that a conference committee would not be necessary. Both houses passed the legislation and it is currently awaiting the president's signature for enactment.

The Reid/Pelosi bill mirrors provisions found in the bill passed by the House on May 24, 2007 and the Senate version passed on January 18, 2007 prohibiting gifts from lobbyists and the entities that employ or retain them as well as incorporating changes to each chamber's rules. For example, the bill increases disclosure of lobbying activities as well as increasing the frequency of disclosure. Lobbyists will be required to file reports quarterly,

rather than semiannually, and must also disclose all contributions made to federal candidates. Candidate committees, party committees, and leadership PACs must also disclose lobbyist involvement in bundling contributions on their behalf.

Other changes also affect the “revolving door” provisions so that senators now have a two year cooling off period while House members and staffers retain their one year cooling off periods. Members who are convicted of certain criminal offenses will now lose their congressional pensions, there are increased penalties for knowing and willful falsification of lobbying reports or failure to file the required reports, and members face new restrictions when using non-commercial flights or attending political conventions. The bill also addresses earmark reform, valuation of tickets, and institutes restrictions on spouses or immediate family members of members of Congress who are registered lobbyists or who have been retained to influence legislation.

LOBBYING DISCLOSURE ACT FILING SCHEDULE

Lobbying firms and lobbyists are required to file their semiannual reports with the secretary of the Senate and the clerk of the House on August 14, 2007. The schedule below outlines the reporting requirements for the year. Please be aware that there is a possibility that the reporting requirements for 2007 may change if the new lobbying legislation becomes effective. Stay tuned for any changes to the reporting schedule.

Lobbying Disclosure Act Filing Schedule in 2007

Report	Reporting Period	Report Due
Mid-Year Report	January 1 – June 30	August 14, 2007
Year-End Report*	July 1 – December 31	February 14, 2008

* See “Lobbying Reform Proposals,” p. 2

LESSONS FOR LOBBYISTS: CHARITY EVENTS

The House amended its gift rules in May 2007 by reinstating the exception allowing members and staff to attend events sponsored by charities that retain or employ lobbyists. The primary purpose of the event must be to raise funds for a 501(c)(3) organization, the invitation must be unsolicited, and it must come from the sponsor of the event. The change permits lawmakers to attend free-of-charge events sponsored by charities, even if the event is not “widely attended.”

NOTES FROM THE HILL

- House Ethics Task Force considers the creation of an independent body tasked with filtering ethics complaints
- House and Senate promise to publicize earmarks in all appropriation bills for the remainder of the session
- FEC commissioners face Senate confirmation hearings
- Senate passes Energy Bill

FEC FILING SCHEDULE FOR POLITICAL ACTION COMMITTEES (PACs) IN 2007

The FEC filing schedule for PACs in 2007 is below. PACs that filed on a quarterly basis during the 2006 election year file on a semiannual basis during 2007. Monthly filers continue filing according to the monthly schedule. PACs may change their filing frequency only once during the calendar year. Notification of change in filing frequency must be made to the FEC in writing.

Report	Reporting Period	Report Due
Monthly Reports		
February	January 1 – 31	February 20, 2007
March	February 1 – 28	March 20, 2007
April	March 1 – 31	April 20, 2007
May	April 1 – 30	May 20, 2007
June	May 1 – 31	June 20, 2007
July	June 1 – 30	July 20, 2007
August	July 1 – 31	August 20, 2007
September	August 1 – 31	September 20, 2007
October	September 1 – 30	October 20, 2007
November	October 1 – 31	November 20, 2007
December	November 1 – 30	December 20, 2007
Year-End	December 1 – 31	January 31, 2008
Semiannual Reports		
Mid-Year	January 1 – June 30	July 31, 2007
Year-End	July 1 – December 31	January 31, 2008

FEC UPDATES

The FEC fined the National Association of Realtors 527 Fund \$78,000 for accepting contributions in violation of federal limits and source prohibitions and for failing to register and file reports as a federal political action committee.

POINTERS FOR PACs

The FEC recently published guidance concerning internal controls and best practices for committees. The FEC's suggestions for internal controls on bank accounts are outlined below.

- Limit the number of bank accounts to only those required to manage the PAC.
- Obtain an employer identification number (EIN) in the name of the committee from the Internal Revenue Service (IRS).
- Bank statements should be delivered to an individual who is not charged with processing transactions.
- Only the treasurer should be permitted to open and close bank accounts.
- Someone other than the check signers should reconcile the bank statements each month in a timely manner.

Prior to filing each report, reconciliation between bank and accounting records and the disclosure reports should occur.

SPECIAL ELECTIONS

- The Special Runoff in California's 37th District will be held on August 21st to fill the seat of the late Rep. Juanita Millender-McDonald (D-CA).
- As a result of Rep. Marty Meehan's (D-MA) retirement, the Special Primary in Massachusetts's 5th Congressional District will be held on September 4, 2007.
- Rep. Paul Broun won the Special Runoff in Georgia's 10th Congressional District, which was held on July 17, 2007, to fill the seat of the late Rep. Charlie Norwood (R-GA).
- Sen. John Barrasso (R-WY) was selected by Wyoming Governor Dave Freudenthal to replace the late Sen. Craig Thomas (R-WY). A special election will be held in November 2008 to fill the remainder of the term.

CONTRIBUTION LIMITS FOR FEDERAL ELECTIONS

The contribution limits chart provides a summary of the contribution limits for federal elections. Under the Bipartisan Campaign Reform Act, certain contribution limits are indexed for inflation every two years. With the exception of the biennial limit for individuals, the new limits are effective for the election cycle. The date range for the 2008 election cycle is Nov. 8, 2006 – Nov. 4, 2008.

Contribution Limits					
Donor					
Recipient	Individual ¹	Multicandidate PAC ²	Non-multi-candidate PAC	National Party	State Party
Senate Candidate	\$2,300/election	\$5,000/election	\$2,300/election	\$5,000/election	\$5,000/election
House Candidate	\$2,300/election	\$5,000/election	\$2,300/election	\$5,000/election	\$5,000/election
Presidential ³ Candidate	\$2,300/election	\$5,000/election	\$2,300/election	\$5,000/election	\$5,000/election
National Party	\$28,500/calendar year	\$15,000/calendar year	\$28,500/calendar year	Unlimited	Unlimited
State Party ⁴	\$10,000/calendar year	\$5,000/calendar year	\$10,000/calendar year	Unlimited	Unlimited
PAC	\$5,000/calendar year	\$5,000/calendar year	\$5,000/calendar year	\$5,000/calendar year	\$5,000/calendar year
Cycle Limits	\$108,200 per Two-Year Cycle (1/1/07-12/31/08) · \$47,700 to federal candidates · \$65,500 to other political cmtes Of the \$65,500 limit, no more than \$42,700 to federal PACs that are not party cmtes.	N/A	N/A	A combined \$39,900/six-year cycle may be given to Republican and Democratic Senate candidates by the RNC/NRSC and the DNC/DSCC respectively.	N/A

¹ Individual contributions to House and Senate candidates will increase in particular congressional races upon the triggering of the “millionaire’s amendment.” When the triggering of the increased limits occurs, individual contributions made in response to the “millionaire’s rule” do not count against an individual’s overall aggregate limit.

² A committee achieves multicandidate committee status when it has been registered for at least six months or more, contributed to five or more federal candidates, and received contributions from more than 50 contributors.

³ Presidential candidates may accept funds for the general election before their party’s nominating convention and still be eligible for public funding if they deposit the funds in a separate account, refrain from using the funds, and refund all contributions in full if the candidate accepts public funding for the general election.

⁴ The state, district and local party committees in a state share a contribution limit since they are affiliated.

AKIN GUMP'S POLITICAL LAW AND GOVERNMENT ETHICS PRACTICE

Akin Gump Strauss Hauer & Feld LLP has long understood the importance of complying with federal and state campaign finance, lobbying and ethics laws. Because of this, Akin Gump has established and maintained a strong practice advising clients on the often complex and confusing legal and regulatory framework surrounding political activity.

The recent, explosive growth of regulation affecting campaign activity, lobbying, and the interaction between the public and their elected officials requires both individuals and businesses to consider and structure their political activities carefully. No one, whether an individual, corporation, nonprofit organization or trade association, can afford to ignore the myriad regulations governing interaction with federal and state political officials. Akin Gump is committed to providing its clients with a full range of related services, and its political law and government ethics practice is an integral part of that mission.

Our services include establishing political action committees, advising on permissible corporate activity; assisting in interactions with federal and state officials, representing and defending clients before the Federal Election Commission and state campaign finance regulatory authorities, providing strategic advice for maximizing an organization's political involvement, ensuring compliance with the Foreign Agent Registration Act and the Lobbying Disclosure Act, administering both federal and state PACs, filing federal and state campaign finance reports and tax documents, and analyzing PAC employee and member participation.

Our practice represents a diverse group of individuals, donors, trade associations, corporations, grassroots groups and nonprofits. With the recent scandals and legislative and regulatory changes, the stakes are higher than ever for those engaging in political activity. Our strength is providing the legal and advisory experience necessary to champion our clients' goals while working within the confines of the complex regulatory scheme governing political activity.

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