



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

F.E.C. v. WISCONSIN RIGHT TO LIFE (2007) TUESDAY, MAY 27, 2008

OVERVIEW

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The school year is ending and the general election season is right around the corner. Our spotlight is on campaign finance reform, and a case that concerns the right of citizens to engage in the process of electing our representatives through political speech and debate. In this case, *F.E.C. v. Wisconsin Right to Life* (2007), the Court ruled that a federal law's restriction on issue ads before an election was unconstitutional.

RESOURCES

- http://www.oyez.org/cases/2000-2009/2006/2006_06_969/
- <http://www.law.cornell.edu/supct/html/02-1674.ZS.html>
- <http://www.citizenbee.org/user/StudentGuide.aspx?id=787>

ACTIVITY

The First Amendment was written to ensure the ability of citizens to have a voice in government. In 1798, James Madison said that “free communication” about officials and laws was “the guardian of every other right.” In the early twentieth century, many people became concerned that corporations and wealthy individuals had too much influence in politics. Since 1907, Congress has passed numerous laws including a ban on contributions to political candidates from corporations and interstate banks and other limits on contributions by groups and individuals. Considering the constitutionality of these donation restrictions in 1976, the Supreme Court ruled that campaign contributions to a candidate are in fact a form of political expression protected by the First Amendment, but that government's interest in preventing “corruption, or the appearance of corruption” outweighed the free speech right.

The Bipartisan Campaign Reform Act of 2002, more commonly known as the McCain-Feingold Act, contained restrictions on campaign contributions as well as the broadcasting of “issue ads” in 60 days before an election. The McCain-Feingold Act created a new category of crime: for corporations or non-profits to run issue ads sixty days before an election was called “electioneering communications.” (Issue ads are commercials that promote a candidate's stand on an issue, without mentioning a candidate by name.) This law was challenged and upheld in *McConnell v. F.E.C.* (2003).

In 2004, a nonprofit group called Wisconsin Right to Life (WRTL) produced and paid for commercials urging viewers to tell their Senators to oppose the filibuster of judicial nominees. WRTL wanted to keep running these ads through the 2004 general election. However, the McCain Feingold Act prohibited companies and non-profit organizations from airing such advertisements sixty days before an election. WRTL believed that it had a First Amendment right to express a political view. The F.E.C. argued that the ad was a “sham issue ad” and that its true purpose was to effect the general election.

The Supreme Court held that the McCain-Feingold Act's restriction on political advertisements was unconstitutional as applied to ads like the WRTL's. The Court reasoned that ads by corporations in support of a particular candidate were needed to reduce political corruption and public cynicism; “Issue ads which do not endorse a political candidate did not meet this criteria: 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.”

Legal experts believe the ruling in *F.E.C. v. Wisconsin Right to Life* effectively overturned part of the Court's ruling in *McConnell v. F.E.C.* (2003).



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QUESTIONS

1. What kinds of campaign regulations were put in place by the McCain-Feingold Act?
2. What kind of political advertisement did WRTL produce?
3. How did the Supreme Court rule in *F.E.C. v. Wisconsin Right to Life*?
4. The Court asserted that its was intended to “give the benefit of the doubt to speech, not censorship.” What did the Court mean by this?
5. The Supreme Court has ruled that a ban on corporate ads that name a particular candidate do not violate the First Amendment. Do you agree? Why or why not?



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ANSWERS

1. The McCain-Feingold Act, contained restrictions on campaign contributions as well as the broadcasting of “issue ads” in 60 days before an election.
2. Wisconsin Right to Life produced and paid for commercials urging viewers to tell their Senators to oppose the filibuster of judicial nominees.
3. The Supreme Court held that the McCain-Feingold Act’s restriction on political advertisements was unconstitutional as applied to ads like the WRTL’s.
4. The Court’s ruling was based on a presumption in favor of speech, and the reasoning that the First Amendment does not ban corporate or non-profit ads which name a candidate, while it does protect corporate-produced issue ads which do not name a candidate. Since the WRTL ad did not name a candidate, giving the ad and its producers “the benefit of the doubt” meant assuming that speech was protected by the First Amendment rather than not protected.
5. Accept reasoned answers. Some students may agree with Court, believing that allowing corporations—much wealthier than the vast majority of individuals—to fund and endorse candidates gives corporations too much power in the political process, and invites corruption if lawmakers and other officials feel beholden to corporations and may be inclined to support laws in their favor. Others may argue that corporations are simply groups of citizens (though the law treats them as separate entities) and they have First Amendment rights that should not be limited during elections.