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FEC Partially Bans Soft Money Funding for Campaign Ads, Generally Following Wisconsin Right to Life Decision

Commissioner Weintraub Leads Agency Away from Gutting the Provision Altogether

WASHINGTON, D.C. – Public Citizen applauds Federal Election Commission (FEC) Chairman Robert Lenhard and Commissioner Ellen Weintraub for significantly reining in a potentially aberrant FEC rulemaking today on “sham issue ads.” The new rule at least partially preserves the ban on soft money funding for campaign ads in general. However, in accordance with the Supreme Court’s decision in *FEC v. Wisconsin Right to Life (WRTL)*, it also creates a large exemption for ads that are deemed, rightly or wrongly, as “genuine issue ads.”

Until last night, the FEC appeared poised to far exceed the scope of the Supreme Court’s ruling, a move that essentially would have gutted restrictions altogether on using corporate and union “soft money” to fund television and radio campaign ads immediately before an election.

Commissioner Weintraub circulated an alternative draft of the rulemaking containing a more reasonable revision of electioneering communications rules late last night. Chairman Lenhard later joined onto a version of Weintraub’s proposal. The FEC delayed its meeting today for several hours to fully absorb the proposal and finally approved it by a vote of 4-1, with Commissioner Hans von Spakovsky voting to oppose it.

“Public Citizen and other groups encouraged the FEC to closely hew to the *WRTL* decision,” said Joan Claybrook, president of Public Citizen. “Today, the commission recognized that ads are likely subject to the soft money restriction if they highlight an election or candidacy or a candidate’s qualifications or fitness for office.”

One of the key provisions of the Bipartisan Campaign Reform Act (BCRA), also known as the McCain-Feingold law, is to prohibit corporations and unions from using their treasury funds (“soft money”) to pay for broadcast advertisements that mention candidates within 60 days of a general election or 30 days of a primary election. Instead, these ads are supposed to be paid for by funds from individuals and PACs, and fully disclosed to the public.

“McCain-Feingold significantly reduced the corporate money flowing into campaigns, while much of the union money was diverted away from TV ads and into voter mobilization drives,” noted Laura MacCleery, director of Public Citizen’s Congress Watch program. “By no means did

soft money disappear, but it certainly was cut back. The Supreme Court, with its recent ruling, changed all that. ”

The Supreme Court’s *WRTL* ruling, issued earlier this year, reversed in part a 2003 decision by the Rehnquist Supreme Court that upheld nearly every aspect of the McCain-Feingold law. Under the new Bush-appointed Chief Justice John Roberts, the Supreme Court ruled that an exemption must be made to the law to allow for corporate funding of “genuine issue ads,” as opposed to campaign ads.

Had the FEC adopted its earlier proposal of exempting any ad that discussed an issue or legislation, nearly all TV and radio ads promoting or attacking candidates immediately before an election once again could have been paid for by money that is otherwise illegal in federal elections.

“Instead of crafting a narrow exemption, the FEC was about to adopt a sweeping exemption to allow corporate funding of almost any ad that even mentioned a political issue, whether or not the real intent of the ad was to affect candidate elections,” said Craig Holman, campaign finance lobbyist for Public Citizen. “This would have brought a new flood of sham issue ads back into federal elections.”

What we know about campaign advertising pre-BCRA, as discussed in the study “Buying Time 2000” by the Brennan Center for Justice, a nonpartisan public policy and law institute at New York University’s School of Law, is that most TV ads that depict candidates and air shortly before an election are intended to support or oppose the election of those candidates. Furthermore, 92 percent of these campaign ads also mentioned a political issue or legislation.

While this rule is the decent outcome from a devastating Supreme Court decision, voters should be aware that far more sham issue ads paid for by corporate interests are likely to overwhelm the airwaves in the upcoming election.