

AdvertisingAge®

Supreme Court Ruling Will Put Political Ad Spending 'on Steroids'

Corporate Speech, Technology, Media Industry Factor in Decision

*By Ira Teinowitz
January 21, 2010*

WASHINGTON (AdAge.com) -- The U.S. Supreme Court in a 5 to 4 decision dealt a major blow to campaign finance limits today, potentially opening the floodgates for additional political ad spending by corporations, unions and special interest groups.

"I think it takes an already bulked up [election season] and puts it on steroids," said Evan Tracey, president of TNS Media Intelligence's Competitive Media Analysis Group, which tracks campaign finance spending. He suggested the decision's biggest impact could be on last-minute spending in major races. Campaign finance advocates said the court's decision could also fuel more spending across the board.

Tim Kay, director-political strategy at National Cable Communications, said there would be no doubt about increased spending, but that's not necessarily a good thing. In a statement, he said that the boost to overall spending "will clutter the airways, hampering the ability of the candidates to define themselves and their opponents. This decision makes it even more important to be smart and targeted with your money -- particularly candidates with limited resources."

President Barack Obama condemned the ruling and said he intended to work with Congress to pass legislation.

"With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics," the president said in a statement. "It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans."

"I am instructing my administration to get to work immediately with Congress on this issue. We are going to talk with bipartisan Congressional leaders to develop a forceful response to this decision. The public interest requires nothing less."

The court's majority overturned two key elements of campaign finance law: the ban on corporations using their own money to engage in political activity, and the blackout period that prevents certain groups from spending money on ads within 60 days of an election. The court ruled today such limits violate the First Amendment.

The court majority continued to support a requirement for disclosure of support.

"When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought," said Justice Anthony M. Kennedy in the majority decision. "This is unlawful. The First Amendment confirms the freedom to think for ourselves."

Media issues

Technological advances and the size of today's media corporations were both considered in the ruling.

While current laws prevented most for-profit corporations from directly entering the political fray, for-profit media corporations were a glaring exception. "All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech," but, he pointed out, previous regulation "exempts some corporations but covers others."

On the subject of technology, he wrote: "We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech."

"Modern-day movies, television comedies or skits on YouTube.com might portray public officials or public policies in unflattering ways," wrote Mr. Kennedy. "Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation [was involved]. Governments are often hostile to speech but under our law and tradition, it seems stranger than fiction for our government to make this political speech a crime."

The court majority also included Justices Clarence Thomas, Samuel Alito Jr., Antonin Scalia and Chief Justice John Roberts. Chief Justice Roberts and Justice Alito filed a joint concurring opinion. Justice Antonin Scalia filed a separate concurring opinion.

Justice John Paul Stevens, writing the dissent, warned about the decision's impact.

"The court's ruling threatens to undermine the integrity of elected institutions across the nation," he wrote.

He called the idea that the First Amendment prevents imposing a deadline on the activity "profoundly misguided." He also questioned the majority's view that corporations have to be treated similarly to individuals.

The ruling came in a case brought by Citizens United, a conservative Republican group. During the 2008 election the group produced a documentary on Hillary Clinton titled "Hillary: The Movie" contending she was unfit to serve and sought to support its plan to make the film available as a download from cable companies, with ads supporting the film's release. Citizens United argued that while the film was supported by corporate interests, the ads didn't violate campaign finance rules.

Aside from TNS's Mr. Tracey, groups supporting campaign-finance limits predicted the decision would lead to major increases in spending.

Dissenters call it a 'disaster'

"This decision allows Wall Street to tap its vast corporate profits to drown out the voice of the public in our democracy," Common Cause President Bob Edgar said in a statement and at a press conference today. He called for Congress to act to fix federal finance limits.

Democracy 21 President Fred Wertheimer called the ruling a "disaster for the American people and a very dark day for the Supreme Court."

"Today's decision is the most radical and destructive campaign finance decision in Supreme Court history," he said. "The decision will unleash unprecedented amounts of corporate 'influence-seeking' money on our elections and create unprecedented opportunities for corporate 'influence-buying' corruption."

At a news conference today, the groups predicted the ruling would unleash corporate spending on campaigns and would likely also apply to labor unions.

Meanwhile business groups praised the ruling.

"Today's ruling protects the First Amendment rights of organizations across the political spectrum, and is a positive for the political process and free enterprise," said Robin Conrad, exec VP of the U.S. Chamber of Commerce's National Litigation Center.