

Wiley Rein Reaches Settlement; Pennsylvania Campaign Finance Laws Cover Only Spending for “Express Advocacy” Communications

September 2007

Wiley Rein election lawyers and the Pennsylvania Attorney General's office have reached a settlement in a case filed on behalf of the Center for Individual Freedom. Under the terms of the stipulated judgment, signed by United States District Court Judge Anita Brody of the Eastern District of Pennsylvania on August 18, both parties have agreed that Pennsylvania campaign finance laws bar corporations from spending funds for express candidate advocacy, but do not bar corporations from engaging in issue advocacy that might otherwise refer to a political candidate.

The U.S. Supreme Court's 1976 *Buckley* decision held that restrictions on spending for independent speech had to be precise, objective and narrow. The Court limited vague identification of regulated spending, such as "in connection with an election," to include only "express advocacy," which is sometimes called the "magic words" test. While the Supreme Court's 2003 *McConnell* decision allowed Congress to regulate a new category of speech because the statute's detailed definition of "electioneering communications" drew a bright line that was at least as precise and objective as the "express advocacy" standard, *McConnell* did not eliminate the "magic words" test for use in those instances where the laws in question were as vague as were found in *Buckley*.

Despite *McConnell*, many states continue to include vague standards and definitions in their campaign finance statutes. Pennsylvania, for example, defines regulated speech as including spending "in connection with the election of any candidate or for any political

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

purpose whatsoever," or "for the purpose of influencing the outcome of an election." In those instances, the *Buckley* "magic words" test or "express advocacy" standard should still govern. The stipulated judgment that Wiley Rein reached with the Pennsylvania Attorney General's office expressly declares that Pennsylvania law will be limited to include only spending on "express advocacy" as defined in *Buckley*.