wiley

NEWSLETTER

Wiley Rein Lawyers Mount Successful Challenge to West Virginia's Campaign Finance Laws

September 2011

On July 18, 2011, a federal judge in West Virginia agreed with Wiley Rein's key arguments in a challenge to the state's campaign finance laws. The decision in *Center for Individual Freedom v. Tennant*, Civ. A. No. 1:08-cv-00190 (S.D.W.Va.), follows nearly three and a half years of litigation that resulted in 166 pages of substantive opinions and led to two preliminary injunctions enjoining enforcement of various state campaign finance provisions.

Important rulings in Judge Thomas E. Johnston's recent opinion on summary judgment included the following:

- Portions of West Virginia's definition of "express advocacy" were unconstitutionally vague. Rather than using bright-line, objective tests to identify and regulate communications using express advocacy, West Virginia also attempted to regulate communications using a much vaguer standard - i.e., communications that were "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." Citing Supreme Court precedent, the district court found that use of the "appeal to vote" language as a freestanding test - without the presence of certain objective, limiting criteria - was constitutionally impermissible. This ruling will be important in addressing other similarly vague state laws.
- West Virginia failed to provide sufficient evidence or a satisfactory rationale for its regulation of non-targeted print media sources as electioneering communications. In particular,

Authors

Andrew G. Woodson
Partner
202.719.4638
awoodson@wiley.law

the court criticized the "sparse empirical data" offered by the state to support regulation of "non-targeted print sources like newspapers and magazines" as electioneering communications. This ruling confirms that government must justify expanding restrictions to additional media.

- The court rejected the state's effort to require broad-based disclosure of all persons who donate more than $1,000 over a certain time period to an organization that makes electioneering communications. The court observed that "requiring the disclosure of corporate or organizational contributors' personal information can be quite burdensome on those entities" and the "practical effect of requiring such expansive disclosure is not only to compel a flood of information, but a flood of information that is not necessarily related to the purpose the [law] purportedly serves: to provide the electorate with information as to who is speaking." Accordingly, the court limited an organization's disclosures to funds either (1) received in response to a solicitation requesting funds to be used for an electioneering communication or (2) specifically designated by the contributor for electioneering communications. This ruling confirms the constitutional sensitivity of disclosure burdens and cuts against positions being taken by Congressman Chris Van Hollen in pending litigation challenging the Federal Election Commission's decision to impose similar limits on federal disclosures.

The state has appealed Judge Johnston's ruling to the Fourth Circuit.