

Update on BCRA

November 2003

On September 8, 2003, the United States Supreme Court heard four hours of argument in the case of *McConnell v. FEC*, in which the Senator and some 70 other plaintiffs are challenging the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA). The case is on special statutory appeal from a special three-judge panel of the U.S. District Court for the District of Columbia.

The lower court split along various lines on the many constitutional issues presented by BCRA. In short, the District Court ruled that the 30/60-day ban on corporate issue ads ("electioneering communications") around elections was unconstitutional, but upheld the backup, and much broader, prohibition on corporate issue ads. The court also upheld some of the political party soft money restrictions as they related to speech supporting or opposing a federal candidate. Nevertheless, the District Court stayed its opinion pending the appeal to the Supreme Court.

In the Supreme Court, Ken Starr, Floyd Abrams, Bobby Burchfield, Larry Gold and Jay Sekulow argued for the plaintiffs while Solicitor General Ted Olsen, Deputy Solicitor General Paul Clement and Seth Waxman argued for the defendants and intervenors. Counsel encountered heated questioning from the Justices, but little insight could be gleaned as to the views of the Chief Justice or Justice O'Connor, both of whom are considered by the press to wield the pivotal votes in the case.

It is not known when the Supreme Court will issue a ruling in *McConnell v. FEC*. Corporations, political parties, PACs, labor unions and candidates hope that an opinion will issue before mid-December so that the regulated community will know the law of the land at least 30 days before the first Presidential caucus—in Iowa on January 19.

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Wiley Rein & Fielding LLP represents Senator McConnell, as well as the Chamber of Commerce, the National Association of Manufacturers and the Associated Builders & Contractors in this case.