

Seventh Circuit Invalidates “Dizzying Array” of Wisconsin Campaign Finance Laws

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The U.S. Court of Appeals for the Seventh Circuit recently invalidated several key provisions of what the court called a “dizzying array of statutes and rules” governing campaign finance in Wisconsin, thereby bringing the state's law closer in line to federal law. The ruling, which was issued in a lawsuit brought by Wisconsin Right to Life and its state PAC, holds that groups are not required to register and report as political committees unless they have as their primary purpose sponsoring express advocacy communications. The ruling also clarifies that only “magic words” and their functional equivalent may be considered express advocacy.

Under the preexisting Wisconsin law, any group or entity that makes disbursements for express advocacy in excess of \$300 per year must register as a political committee and file recurring reports itemizing all of its contributions and expenditures of more than \$20 per year. By regulation, the express advocacy communications triggering the registration and reporting requirements include not only “magic words” of express advocacy such as “vote for,” “vote against,” “support,” “defeat,” as well as communications “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate,” but also any communications made within 30 days of a primary or 60 days of a general election that mention a candidate and “support[] or condemn[]” the candidate's public record or issue positions.

The Seventh Circuit invalidated the last part of the regulation treating as express advocacy any communications made within the 30- and 60-day windows referencing candidates, holding that this was inconsistent with several U.S. Supreme Court decisions. Additionally, the Seventh Circuit ruled that even if groups exceeded the statutory \$300 express advocacy threshold for registering and reporting as a political committee, they could not be forced to do so unless they also have express advocacy as their major purpose. The “major purpose” doctrine has been interpreted in several prior federal court decisions to mean that a group's expenditures on express advocacy exceed half of its total spending.

The Seventh Circuit's decision also confirmed that Wisconsin's statutory prohibition against corporate-funded independent expenditures is unconstitutional—a prohibition that the state already had agreed to discontinue enforcing after the U.S. Supreme Court's decision in *Citizens United*. On top of that, the Seventh Circuit ruled that a lengthy disclaimer requirement for ads run by “voluntary committees” is unconstitutional as applied to radio ads that are 30 seconds or shorter.

But, the Seventh Circuit did not strike down all of the provisions challenged by Wisconsin Right to Life. It upheld a requirement that independent expenditure sponsors swear to an oath that their spending is not coordinated with any candidate. Wisconsin Right to Life also challenged a requirement that political committees report within 24 hours all contributions of \$500 or more and expenditures of \$20 or more that are received or made during the last 15 days before an election. Since the state legislature had recently lengthened the reporting deadline to 48 hours, the court ruled that this challenge was moot.