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## **Ban On “Electioneering Communications” Tossed By Supreme Court**

*Jeffrey Gee*  
*gee@fhhlaw.com*  
*703-812-0511*

The U.S. Supreme Court has struck down a long-standing ban on corporate spending on political advertising, as well as a related portion of the McCain-Feingold campaign finance reform act that prohibited “electioneering communications” by corporations and unions in the days leading up to an election. This is welcome news to broadcasters and others in the media business as the decision is widely predicted to introduce a new pool of buyers of political advertising time.

The case arose, oddly enough, from a documentary movie about Hillary Clinton. The film, released in the thick of Ms. Clinton’s 2008 run for the presidential nomination, was – how can we say this delicately? – brutally critical of Ms. Clinton. Its producers wanted to broadcast ads for the film, but were concerned such ads might be deemed “electioneering communications” and, therefore, might violate the law. Accordingly, they took the matter to court, and the rest is now history.

The Supreme Court’s decision, which affirms the First Amendment rights of corporations and unions, involves (among other political advertising laws) the McCain-Feingold Act, more properly referred to as the Bipartisan Campaign Reform Act of 2002 or “BCRA”. In relevant part, BCRA prohibited “electioneering communications” by corporations and labor unions. Specifically, BCRA barred such entities from directly spending money on broadcast, cable or satellite communications that (a) referred to clearly identified candidates within 60 days of a general election or 30 days of primary election and (b) reached 50,000 or more persons. The Court found that that restriction (and earlier cases upholding bans on corporate political speech) amounted to unconstitutional censorship based solely on the identity of the speaker.

Although the Court’s decision greatly expands the free speech rights of corporations, it does *not* lift all restrictions on political advertising. Corporations are still prohibited from making contributions directly to the campaigns of political candidates (although Political Action Committees, or “PACs”, may still do so). Moreover, the Court specifically upheld BCRA’s disclaimer and disclosure requirements (the spoken and textual announcements of who is responsible for an ad and whether it was authorized by any

candidate). Also untouched by the decision are BCRA's "stand by your ad" announcement and certification requirements that federal candidates must meet to qualify for lowest unit rates.

Nevertheless, for broadcasters facing a down advertising market, the positive effect of the Court's decision may be considerable. Corporations and labor unions are now permitted to spend money directly from their treasuries on ads that support or oppose political candidates and ballot issues. This greatly expands the market for the upcoming mid-term election season and brings in players with even deeper pockets than PACs and candidate committees. Perhaps just as important, the corporate/union advertisements that the Supremes have now declared to be legal would not ordinarily be "uses" subject to lowest unit rate limitations. In other words, the rates that stations could charge the newly-liberated corporate/union advertisers would *not* be subject to the LUC caps to which ads directly sponsored by candidates (*i.e.*, "uses") are subject.

Links to a complete copy of the 183-page decision (with various concurring and dissenting opinions) can be found on our blog ([www.CommLawBlog.com](http://www.CommLawBlog.com)).