

08-205 CITIZENS UNITED V. FEDERAL ELECTION COMMISSION

DECISION BELOW:2008 WL 2788753

LOWER COURT CASE NUMBER: 07-2240

QUESTIONS PRESENTED:

1. Whether all as-applied challenges to the disclosure requirements (reporting and disclaimers) imposed on "electioneering communications" by the Bipartisan Campaign Reform Act of 2002 ("BCRA") were resolved by McConnell's statement that it was upholding the disclosure requirements against facial challenge "for the entire range of electioneering communications' set forth in the statute." Mem. Op. I, App. 15a (quoting *McConnell v. FEC*, 540 U.S. 93, 196 (200)).

2. Whether BCRA's disclosure requirements impose an unconstitutional burden when applied to electioneering communications protected from prohibition by the appeal-to-vote test, *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652, 2667 (2007) ("WRTL II"), because such communications are protected "political speech," not regulable "campaign speech," *id.* at 2659, in that they are not "unambiguously related to the campaign of a particular federal candidate," *Buckley v. Valeo*, 424 U.S. 1, 80 (1976), or because the disclosure requirements fail strict scrutiny when so applied.

3. Whether WRTL II's appeal-to-vote test requires a clear plea for action to vote for or against a candidate, so that a communication lacking such a clear plea for action is not subject to the electioneering communication prohibition. 2 U.S.C. § 441b.

4. Whether a broadcast feature-length documentary movie that is sold on DVD, shown in theaters, and accompanied by a compendium book is to be treated as the broadcast "ads" at issue in *McConnell*, 540 U.S. at 126, or whether the movie is not subject to regulation as an electioneering communication.

JURISDICTION NOTED 11/14/2008

ORIGINAL ARGUMENT 03/24/2009

<http://www.court.gov/arguments/Term2008/08-205.pdf>

ORDER OF 06/29/2009

THIS CASE IS RESTORED TO THE CALENDAR FOR REARGUMENT.
THE PARTIES ARE DIRECTED TO FILE SUPPLEMENTAL BRIEFS
ADDRESSING THE FOLLOWING QUESTION: FOR THE PROPER DISPOSITION
OF THIS CASE, SHOULD THE COURT OVERRULE EITHER OR BOTH AUSTIN
V. MICHIGAN CHAMBER OF COMMERCE, 494 U.S. 652 (1990), AND THE PART
OF MCCONNELL V. FEDERAL ELECTION COMM'N, 540 U.S. 93 (2003), WHICH
ADDRESSES THE FACIAL VALIDITY OF SECTION 203 OF THE BIPARTISAN
CAMPAIGN REFORM ACT OF 2002, 2 U.S.C. §441b?

EXPEDITED BRIEFING SCHEDULE

THE CASE IS SET FOR ORAL ARGUMENT AT 10 A.M., WEDNESDAY,
SEPTEMBER 9, 2009.