

United States District Court
District of Columbia

<p>Wisconsin Right to Life, Inc. <i>Plaintiff,</i></p> <p>v.</p> <p>Federal Election Commission, <i>Defendant.</i></p>	<p>Civil Action No. 04-1260 (DBS, RWR, RJL)</p> <p>THREE-JUDGE COURT</p> <p>Oral Argument Requested</p>
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**Plaintiff’s Motion to Reinstate, Order Supplemental Briefing on,
and Expedite Cross-Motions for Summary Judgment**

Wisconsin Right to Life, Inc. (“WRTL”) moves this Court to **(1)** reinstate the cross-motions for summary judgment previously filed by WRTL and the Federal Election Commission (“FEC”); **(2)** order a single supplemental memorandum of twenty-five pages from each party to be filed within ten calendar days of this Court’s order reinstating the summary judgment motions; and **(3)** expedite consideration of this case. Counsel for WRTL has consulted with FEC counsel by telephone and email concerning this motion, and the FEC objected to this motion in the following language:

We have received your draft motion to reinstate. Although we are willing to discuss the possibility of seeking expedition from the court, we believe your motion is premature and we would not agree to the briefing schedule you propose. We therefore oppose your motion.

Email from David Kolker to Richard Coleson (Jan. 23, 2006).

Statement of Points and Authorities

1. In an Order filed May 10, 2005 (Docket #49), this Court dismissed this case with prejudice and denied the fully-briefed cross-motions for summary judgment as moot.

2. The United States Supreme Court on January 23, 2006, issued a per curiam Bench Opinion vacating this Court's judgment and holding that *McConnell v. FEC*, 540 U.S. 93 (2003), did not preclude as-applied challenges to the electioneering communications prohibition at 2 U.S.C. § 441b: "[i]n upholding § 203 against a facial challenge, we did not purport to resolve future as-applied challenges." *See Attachment 1* (Bench Opinion).

3. In the Bench Opinion, the Court remanded the case "for the District Court to consider the merits of WRTL's as-applied challenge in the first instance."

4. The parties have already fully briefed cross-motions for summary judgment, so that the most expeditious way to consider the merits of this case is to reinstate those motions, to be considered as to their arguments on the merits.

5. Supplemental briefing should be permitted to allow the parties to further develop their arguments on the merits, but in light of the necessary expedition, *see infra*, this briefing should be limited to one memorandum of twenty-five pages to be filed simultaneously no later than ten days from the date of the order approving such briefing.

6. Expedition is essential in this case as mandated by Congress. In the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Congress specified that in reviewing constitutional challenges, such as the present one, "[i]t shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket

and to expedite to the greatest possible extent the disposition of the action and appeal.” BCRA § 403(a)(4), 116 Stat. at 114.

7. Now that the Supreme Court has recognized that there may be as-applied constitutional protection for some genuine issue advertisements, it is necessary to determine with the greatest expedition whether grassroots lobbying as carefully defined and/or WRTL’s specific advertisements have such constitutional protection.

8. This is an election year, and electioneering communication prohibition periods will begin running shortly across the nation. While Wisconsin’s prohibition period won’t begin until August 13, 2006, this is a case of national importance in light of the fact that this is the only court in the nation that can presently hear challenges to the prohibition, and prohibition periods begin in February for Illinois and Texas; in April for Arkansas, Idaho, Indiana, Kentucky, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, and West Virginia. *See* FEC, 2006 *Electioneering Communications Periods*, www.fec.gov/info/chargs_EC_dates.shtml. This Court and, if necessary, the U.S. Supreme Court need to provide appropriate guidance to WRTL and the public as to fundamental constitutional rights before these prohibition periods occur again.

9. The U.S. Supreme Court recognized the need for expedition, deciding the first issue of this case in less than a week after oral argument.

Wherefore, WRTL respectfully requests this Court to **(1)** reinstate the cross-motions for summary judgment previously filed by WRTL and the FEC; **(2)** order a single supplemental memorandum of twenty-five pages from each party to be filed within ten calendar days of this Court’s order reinstating the summary judgment motions; and **(3)** expedite consideration of this

case.

Oral argument on the cross-motions for summary judgment is requested. LcCvR 7(f).

WRTL requests that this hearing be expedited and advanced on the calendar to the greatest extent possible.

Respectfully submitted,

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