

IN THE SUPREME COURT OF THE UNITED STATES

No. 06M58

FEDERAL ELECTION COMMISSION, APPELLANT

and

SEN. JOHN MCCAIN, ET EL., INTERVENOR-APPELLANTS

v.

WISCONSIN RIGHT TO LIFE, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESPONSE OF THE FEDERAL ELECTION COMMISSION TO
APPELLEE'S MOTION TO EXPEDITE AND TO ADVANCE ON THE DOCKET

The three-judge district court in this case held that Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 91, is unconstitutional as applied to three broadcast advertisements that appellee Wisconsin Right to Life, Inc. (WRTL), proposed to run in 2004. BCRA § 203 bars the use of corporate treasury funds to finance any "electioneering communication," defined as a communication that refers to a candidate for federal office and is broadcast within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running. The

Federal Election Commission (FEC) has filed a notice of appeal from the district court's decision, as have individual Members of Congress who intervened as defendants in this case. WRTL has filed a motion to expedite the case and to advance it on this Court's docket so that it may be decided this Term.

BCRA § 203 applies only during the 30- and 60-day periods immediately preceding federal primary and general elections, and it will next have operative effect on December 15, 2007, 30 days before the Iowa caucus scheduled for January 14, 2008. If the Court notes probable jurisdiction and the case is briefed in the normal course and scheduled for oral argument in October 2007, it presumably would be feasible for the Court to render its decision before that pre-election window begins. Nevertheless, both the Commission and regulated parties may benefit if the Court were to hear argument and decide this case during the current Term.

In addition, it appears that, if the Court were to note probable jurisdiction on January 19, 2007, the case could be briefed and argued this Term without undue haste. If the Court were unable to act on the case until its February 16, 2007, Conference, then the FEC does not believe that expedition would be warranted because of the truncated briefing schedule that would be required to set the case for argument during the April sitting.

Accordingly, while the FEC does not agree with the schedule proposed by WRTL, the FEC supports a schedule that would permit the

case to be decided this Term in the event that the Court believes that it may act on jurisdictional statements at its January 19, 2007, Conference. Specifically, the FEC plans to file its jurisdictional statement on January 12, 2007 -- rather than on January 9, 2007, as WRTL has suggested. If WRTL is able to agree promptly that the Court should note probable jurisdiction -- a determination that already seems implicit in WRTL's unusual request, on behalf of an appellee, for expedited consideration of this case -- our understanding is that the jurisdictional statement could be considered at the Court's January 19, 2007, Conference.¹

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General

JANUARY 2007

¹ If this Court notes probable jurisdiction on January 19, 2007, the FEC respectfully suggests the following schedule for briefing and argument: appellants' briefs due February 23, 2007; WRTL's brief due March 23, 2007; reply briefs due April 18, 2007; and oral argument on April 25, 2007.