Not so free speech

by UPI

It's bewildering that the Supreme Court's decision Monday to strike down a key provision of the McCain-Feingold campaign finance law is being hailed in some quarters as a victory for free speech. The speech in question is contained in broadcast ads, which can cost upward of several hundred thousand dollars a minute. This kind of speech is absolutely essential to winning elections, but it is free only if you can afford it, which is not only contradictory, but also profoundly undemocratic.

Chief Justice John G. Roberts Jr. wrote the 5-4 majority decision in a case brought by an organization called Wisconsin Right to Life. The group had been forbidden by the 2002 McCain-Feingold Act from running campaign radio commercials in the weeks immediately before the November 2004 election. The ads would have urged listeners to tell their two U.S. senators to not block President George W. Bush's judicial nominees.

Of Wisconsin's two senators, only one, Democrat Russ Feingold - by coincidence, one of the sponsors of the campaign finance reform act - was on the ballot that year.

The commercial was a so-called issue ad, one that does not focus on a candidate overtly but tries to influence attitudes about a given issue. But because these ads mentioned Sen. Feingold by name and were scheduled for broadcast within 60 days of a general election, they ran afoul of the reform act's prohibition against "corporate entities" naming candidates in issue ads in the crucial days immediately before an election.

The law's defenders said that the intent of Wisconsin Right to Life was less about stopping judicial filibusters than it was about defeating Feingold. The Court's majority rejected that argument, and set a new standard: Unless an ad expressly appeals for the election or defeat of a candidate, courts should err on the side of assuming it's truly an issue ad.

The ruling was hailed as a free speech victory by groups as divergent as the U.S. Chamber of Commerce and the AFL-CIO. Not coincidentally, both groups have plenty of money to spend on campaign advertising. With the court's ruling, organizations without such deep pockets won't be able to counter the big spenders.

For more than 30 years, the Supreme Court has conflated money with speech; absent a sea change in that position, or the adoption of publicly financed campaigns, candidates and causes with money will be able to speak louder, and more frequently, than those without.

The court made another curious free speech decision Monday, ruling that an Alaskan high school principal was within her rights when she suspended a student who'd held up a banner reading "Bong Hits 4 Jesus" as the

Olympic torch parade passed near their school in 2002. The court ruled that schools have an interest in controlling speech that can be interpreted to encourage drug use.

The student, Joseph Frederick, said the banner was a meaningless joke, intended only to get him on television. His lawyers argued that he wasn't actually in school at the time, and that there is some question whether he was even on school property. The court, again by a 5-4 majority, said the ruling was narrow and might not apply to political or other sorts of speech. Then again, ever since the Hazelwood School District school newspaper case in 1988, the courts consistently have granted school authorities broad authority over student speech. "Bong Hits 4 Jesus" suggests that not only are those powers too wide, but the court may be humor impaired.

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