Court gets free speech rulings mostly right

by The Detroit News

The U.S. Supreme Court this week issued two rulings on speech issues and got both cases mostly right, but could have done better.

Incredibly, in a nation whose fundamental charter contains the words "Congress shall make no law abridging the freedom of speech," it is a criminal offense for corporations, unions or interest groups such as Right to Life or the American Civil Liberties Union to speak freely in the form of paid advertising about the merits of a political candidate during the final days of an election campaign. Political advertising has long been held by the court to be protected speech. But the McCain-Feingold campaign finance reform act severely limits who can speak during a political campaign and when.

Rather than tossing out the act as it should have, the court in a 5-4 ruling struck down some provisions of the law that limit the ability of interest groups to weigh in with advertising 30 days before a primary and 60 days before a general election.

But the opinion leaves intact the bulk of McCain-Feingold, and that's a missed opportunity. Groups that want to run political ads still will be subject to lawsuits, and cases still will have to be decided ad by ad.

It would have been better had the court thrown out the entire act, which has been ineffective anyway in keeping money out of campaigns, and advised Congress to instead devote its attention to making sure that the sponsors of all political ads are promptly and fully identified to voters.

Those who hope to use money to influence an election will always find a path for their dollars. McCain-Feingold has failed to limit the amount of money spent on campaigns.

Disclosure is a more effective tool to protect the integrity of the political process and would better serve the interests of voters.

The court's other speech ruling dealt with a high school student's right to unfurl a 14-foot banner reading "Bong Hits 4 Jesus" at a school-sanctioned outdoor event. The high school principal asked the students to take the banner down. All but one cooperated. That student, Joseph Frederick, received a 10-day suspension, later cut to eight days by the school district.

The student sued, saying his First Amendment rights had been violated, and sought damages against the

principal, who contended the banner violated the district's anti-drug policies.

The high court rightly declined to second-guess the principal, but based its ruling on the evils of the banner's apparent pro-drug message. The issue is not what the banner said, but whether school officials have the right to impose reasonable restrictions on student behavior during school hours.

Students should have the right to express their views in a non-disruptive manner, as the court has held in previous rulings. But it's hard to see how flapping a 14-foot banner at a school event could be anything but disruptive, and that's where the court should have left things.

Court gets free speech rulings mostly right by The Detroit News