A horrible ruling

by the Milwaukee Journal Sentinel

The U.S. Supreme Court on Monday, in an opinion on so-called issue ads, has done more than potentially gut a key provision of the McCain-Feingold campaign finance law. The court imperils a measure pending in the state Assembly that would make such ads in state campaigns subject to disclosure and spending rules that candidates they attack must abide by.

The 5-4 ruling came in a case involving Wisconsin Right to Life. About three years ago, the anti-abortion group wanted to run ads urging voters to contact Sen. Russ Feingold and Wisconsin's other Democratic senator, Herb Kohl, over the issue of President George W. Bush's judicial nominations.

But the group wanted to do this within two months of an election in which Feingold was seeking re-election. McCain-Feingold prohibits corporations and unions from using their treasuries for ads that mention federal candidates 60 days before a general election (30 days before a primary).

The campaign finance law did this because it was clear that these types of ads were, in fact, electioneering, on the attack even if they didn't say "vote for" or "vote against." And the timing of the Wisconsin Right to Life ads makes clear that blocking Feingold's re-election, not merely swaying views on judicial nominations, was the group's target.

In the opinion, Chief Justice John Roberts wrote, "Where the First Amendment is implicated, the tie goes to the speaker, not the censor."

OK, but no one was being censored. Wisconsin Right to Life was free to run the ads through a political action committee. This, however, would have required that it comply with spending and disclosure rules governing PACs. The court struck a blow not for free speech but against transparency.

Cleaning that up on the state level was the intent of Senate Bill 77, approved by the state Senate in May. It would require that 60 days prior to an election, those behind issue ads reveal themselves and how much they are spending. It would require that any money used for these ads come only from regulated sources and within limits.

The Supreme Court ruling now gives opponents ammo to block the measure in the Assembly.

The good news is that two of the five concurring justices in this opinion, including the one who wrote it, are

not saying that the prohibition on these ads is always unconstitutional, which would have overturned a 2003 Supreme Court opinion. That means the Federal Election Commission should issue guidelines on what precisely constitutes an explicit campaign ad.

Our fear is that the ruling, no matter the FEC interpretation, will open the floodgates for unfettered attack ads funded by corporations and unions just before an election. It's a bad day for democracy.

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