



BOARD URGED TO REGULATE ISSUE ADS CRITIC SAYS RULES WOULD INFRINGE ON FREE SPEECH

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In what one advocate calls the biggest potential campaign finance reform in three decades, the state's government watchdog agency will review a recommendation Thursday to regulate thinly veiled campaign spots known as issue ads.

"This is certainly the best opportunity we've had" to subject issue ads to rules requiring the disclosure of donors, said Jay Heck, executive director of Common Cause in Wisconsin.

But Mike Wittenwyler, a lawyer who represents groups that pay for issue ads, said regulations by the Government Accountability Board would effectively bar those ads and infringe on free speech.

"It would be a prohibition on free speech," Wittenwyler said. "It would be a prohibition of First Amendment discussion of issues."

The board is unlikely to take action Thursday, said member William Eich of Madison. But it will discuss a proposal by board lawyer Jonathan Becker to regulate issue ads.

Such ads, used by corporations, some unions and advocacy groups, address a public policy issue and don't expressly urge a vote for or against a particular candidate. But they generally air only within weeks of an election and usually mention a candidate by name.

The U.S. Supreme Court has upheld their legality. They are not regulated by the state and don't have to disclose the names of the individuals or groups who pay for them.

Proponents say the corporations, unions and advocacy groups that buy the ads are exercising their First Amendment rights to free speech. Critics say issue ads are the equivalent of candidate-sponsored campaign ads and that the names of the people or groups that pay for them should be disclosed, as they are with candidate-sponsored ads.

Proposed regulations\The proposal to be considered by the board Thursday would regulate ads that discuss:

- * The qualities, character or fitness of a candidate.
- * A candidate's stand on an issue.
- * A candidate's record.
- * A candidate's supporters or opponents.
- * Campaign ads run by or on behalf of a candidate or a candidate's opponents.

The proposal would have to be approved by the Legislature. Wittenwyler said the groups he represents would likely sue to overturn any such rule.

The board's consideration of regulating issue ads comes after the ads were prominent in a nasty Supreme Court election in April and as advocacy groups gear up to spend millions of dollars on ads in the presidential campaign and for Legislative races.

Of the estimated \$6 million spent on the Supreme Court race in which Burnett County Circuit Judge Michael Gableman defeated incumbent Justice Louis Butler, \$4.2 million was spent by advocacy groups on issue, according to the Wisconsin Democracy Campaign.

Wisconsin Manufacturers & Commerce, the state's business lobby, spent \$1.8 million on issue ads in the race, the most of any group, according to the Democracy Campaign. Most of its ads supported Gableman and opposed Butler.

The Greater Wisconsin Committee, a liberal group, spent nearly \$1.5 million, the Democracy Campaign said, mostly to support Butler and oppose Gableman.

Reviewing all rules\The Legislature created the government watchdog agency last year by merging the former ethics and accountability boards. Among the board's tasks this year has been to review all rules and regulations relating to ethics, elections and campaign finance.

In March the board, made up of six retired judges, voted to consider regulating issue ads.

Becker's proposal is the first concrete recommendation the board will consider.

Becker was not in the office Tuesday. But in a memo to the board, he said it has the authority to regulate issue ads so long as the regulation comports with previous Supreme Court decisions. He said a 2007 high court decision allows for the regulation of issue ads to prevent corruption or the appearance of corruption.

Because state Supreme Court justices are being faced with calls to recuse themselves from cases involving groups that sponsored issue ads, the board is legally justified to regulate issue ads "to prevent the appearance of corruption," Becker wrote in the memo.

But Buchen dismissed the argument.

"Wouldn't you first try to ban lawyers from contributing to judges' campaigns?" he said. "Nearly every lawyer who practices before the Supreme Court donates to judges."

Wittenwyler said the Legislature, not the board, is the government body that can lawfully regulate issue ads. And, he said, "The Legislature has made a conscious decision in the last several legislative sessions not to enact bills that would regulate these ads."