Glossary of Terms for Listening to Citizens United Case

**Citizens United Glossary**

There are lots of concepts, cases, and parts of laws discussed in the oral argument in **Citizen’s United.** The back and forth discussions between the Justices and the lawyers for the various sides, usually fully illuminate the concepts and so on. This glossary covers some major things discussed so you can be aware of them before you start listening to the oral argument or reading the transcript. These items are not in any particular order.

**BCRA** Bipartisan Campaign Reform Act as known as McCain-Feingold, 1 Republican and 1 Democrat Senator who were sponsors.

**BCRA 203** Restricts Unions and corporations from making electioneering communications 60 days before a general election and 30 days before a primary election.

**WRTL** Wisconsin Right To Life Case- Non profits can do ads within 30 or 60 day periods before a primary or general election if they are not an electioneering communication. **Electioneering Communication** , normally means an ad that says vote for or against a candidate. In this case it was “call Senator so and so and tell him notto filibuster.” The ad was not “express advocacy.”

**MCFL v FEC** Massachusetts Citizens for Life MCFL, a non profit corporation, could spend money supporting and opposing candidates in its voters guide as long as money did not primarily come from corporate donations and MCFL’s primary purpose was education not campaign activity.

**AUSTIN v. MICHIGAN CHAMBER OF COMMERCE** Upheld against free speech claim holding that Michigan Chamber of Commerce could not make independent expenditure in support of a local candidate.

**FIRST NATIONAL BANK OF MASS v BELLOTTI** law prohibiting corporations from spending money in a referendum election violate corporate rights to free speech

**Snowe Jeffords** Allows non profits 501(c)(4) corporations to make electioneering communications as long as they use only individual contributions. Also has some identity disclosure requirements

**Express advocacy** Using the magic words “vote for”, “vote against”, “elect” or similar words

**Electioneering Communication** Targeting a federal candidate during one of the prohibited periods

**Functional Equivalent** WTRL problem. Is ad telling people something they might consider to be bad about their senator and then telling them to call him to stop behavior really the functional equivalent of saying vote against that senator.

**Strict Scrutiny**

Test Supreme Court uses to determine if a restriction on speech violates the 1st Amendment. (And 14th Amendment if it is a state law) It has two parts:

1. Basis of law is a compelling interest

Possible compelling interests for limiting contributions and expenditures in elections

 A. Corrupt donations

 B. Appearance of corruption

 C. Leveling playing field – anti distortion interest

 D. Protecting corporate shareholders

2. Law is narrowly tailored

 A. It could be overly broad e,g. includes big and little corporations when little corporations need not be regulated by such a law

 Includes both for profit and non profit corporations when really needs only cover for profit corporations

 B. Limits all expenditures all the time, when it might work better to limit expenditures say 30 days from election not those made 6 months out.

**Poison Pill** Putting an amendment on a bill that will result in getting bill voted down by a majority of legislators.

**As Applied v Facial Unconstitutionality** Facially unconstitutional means the law itself violate the constitution no matter how it is applied**. As Applied** means the law is only unconstitutional as applied to these particular facts.

**Overbreadth** Law includes more situations, things etc than it needs. For instance, if a law applies to both non profit and for profit corporations, it might be unconstitutional with regard to non-profits. As a result the law might be struck down for overbreadth.

**Wellstone Amendment** applied BCRA to all incorporated non profits