

Government Accountability Board

State of Wisconsin

212 E. Washington Ave., Third Floor • Madison, WI 53703 • gab@wi.gov • (608) 266-8005 • Help Desk (608) 261-2028 • <http://gab.wi.gov>

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FOR MORE INFORMATION, CONTACT:
Reid Magney, 608-267-7887

Statement Regarding Wisconsin Supreme Court Decision in Campaign Finance Case

MADISON, WI – On Tuesday, November 30, the Wisconsin Supreme Court agreed to hear an original action lawsuit challenging the constitutionality of new campaign finance rules which regulate campaign advertising and other political communications.

“We look forward to a full airing of the issues in this case,” said Kevin J. Kennedy, director and general counsel of the Wisconsin Government Accountability Board, which promulgated the rules at issue in the case based on the U.S. Supreme Court decisions in *Wisconsin Right to Life v. FEC* and *Citizens United v. FEC*. “We also look forward to a resolution of all the litigation in this area so candidates, organizations, and the public may benefit from greater certainty in Wisconsin’s campaign finance rules.”

In its order, the Court set dates for the parties in *Wisconsin Prosperity Network, et al. v. Myse, et al.* to file legal briefs, and scheduled oral arguments for March 9, 2011. The Court also granted permission for the Wisconsin Education Association Council (WEAC) to intervene in the case.

The administrative rule, known as GAB 1.28, was approved in March 2010 after nearly two years of study and public hearings by the Government Accountability Board. It was submitted to the Legislature, which had the power to block the rule but permitted the rule to take effect.

Shortly after the rule went into effect on August 1, 2010, it was challenged in two separate federal lawsuits: *Wisconsin Club for Growth, Inc., et al. v. Gordon Myse, et al.* and *Wisconsin Right to Life Committee, Inc., et al. v. Gordon Myse, et al.* Those were followed by a petition from the Wisconsin Prosperity Network Inc. and other plaintiffs asking for permission to file a lawsuit directly with the Wisconsin Supreme Court. The Supreme Court initially agreed to consider whether to accept the case, and in August issued an order enjoining the Government Accountability Board from enforcing GAB 1.28. The federal lawsuits are currently on hold, pending resolution of the Wisconsin Supreme Court case.

The Wisconsin Department of Justice is representing the Government Accountability Board.

In promulgating the proposed amendments to GAB 1.28, the Board sought to use a common-sense test in determining whether an ad has a “political purpose,” or is truly an “issue ad” and

not subject to regulation. Under both the previous and the amended versions of the rule, an ad is subject to regulation if it contains express language encouraging people to vote for or against a clearly identified candidate for political office. Both versions of the rule define such express advocacy by the use of certain specified terms, such as “vote for,” “elect,” or “defeat,” or the functional equivalents of those terms.

The amended version of the rule, which is currently enjoined pending the outcome of the case in the Wisconsin Supreme Court, would also permit the regulation of numerous campaign-type ads sponsored by independent groups that do not use the language of express advocacy identified in the rule, but that nonetheless are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” In contrast, the previous version of GAB 1.28, which is currently in effect under the terms of the Court’s injunction, only permits the regulation of ads that contain such language of express advocacy.

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