

Regarding 00-168

Jan. 6, 2012

I write in support of the FCC proposal that broadcasters be required to record online the information about who has purchased political advertising on their stations and how much has been spent. This is not simply a procedural question but part of a First Amendment principle. Let me explain.

As one who teaches about First Amendment freedoms, I have spent considerable time over the years thinking, reading and teaching about how money can sometimes be “speech” when it is being spent to support a political candidate or position. Thus, I have some sympathy for Supreme Court decisions that have upheld this principle. I believe the primary kind of speech the Framers intended to protect in the First Amendment was political speech, and money has increasingly become a part of that speech.

However, I also have sympathy for the other side of the argument: that allowing unlimited expenditures gives too much power to groups with big money and disadvantages those without. In other words, sometimes protecting the free expression of the individual can do some damage to the “whole,” which should be another concern in a democracy where every citizen is valued.

The mitigating factor, I believe, may be thorough and timely disclosure of who is spending what and on whose behalf. If the citizens *know* who is behind the advertising, they will be able to form opinions that take this into account instead of being swayed simply by fancy rhetoric.

This requires that people pay attention, of course, but nobody ever said democracy should be as easy as falling off a log. Furthermore, the news media – both traditional and new – ought to be able to make the facts of political spending easily available and in a thorough and timely manner. That kind of reporting is part of their basic charge in a democracy.

And here’s where the recommended requirement comes in. If the tools are available to make disclosure “easily available,” it seems nearly criminal not to use them. Democracy always benefits by transparency, and this case is certainly no exception.

Broadcasters are already required to record all political advertising money they take in and to do so in a timely manner. But placing those reports in a file cabinet in the office is hardly making the information easily accessible. Resisting the efforts to make them available online looks suspiciously like a head-in-the-sand wish that the new, intrusive Internet world would just go away and leave things the way they always have been. Ain’t gonna happen.

Might there be some downsides to broadcasters if they make political spending available online? Sure. Nothing is totally without cost. But the benefits to the people these broadcasters are supposed to be serving far outweigh the costs in this case. It is essential that this recommendation become a requirement.

Sincerely,

Charlyne Berens
Professor and associate dean