

# Wiley Rein Election Law Lawyers Keep Pennsylvania Issue Ad on the Air

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November 7, 2007

On Friday, November 2, Wiley Rein Election Law attorneys and Caleb P. Burns beat back an effort by the Pennsylvania Attorney General and Commonwealth Secretary to force a client's issue ad off the air.

The ad, sponsored by the , said that a Pennsylvania judge had a record of being tough but fair in dealing with criminals and asked viewers to sign an on-line petition thanking her. The judge was running for election to the Pennsylvania Supreme Court, but the ad did not mention the election or identify the judge as a candidate.

Wiley Rein previously had obtained a federal court ruling that Pennsylvania's law did not restrict such ads unless they contained explicit words that expressly advocated the election or defeat of a clearly identified candidate. The Pennsylvania authorities brought suit in Commonwealth Court, arguing that standard should not be strictly applied and that the ad's request for "thanks," made just before an election, was the functional equivalent of advocating a vote. The state judge ruled that the Pennsylvania authorities had failed to make the clear showing necessary to obtain an injunction forbidding speech.

Before the state court hearing, Wiley Rein had filed papers with the federal court seeking further relief. The Center for Individual Freedom expects to pursue the federal case to make crystal clear its right to run similar issue ads in the future.

"The state court suit was doubly flawed," said Mr. Kirby. "First, the federal action established an objective bright-line standard to guide speakers that the state sought to change into a fuzzy subjective test. Second, under the First Amendment, no court has any business issuing a preliminary injunction forbidding speech on public issues

## Related Professionals

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## Practice Areas

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and officers."