United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5292 **September Term, 2003**

04cv01260

Filed On: September 1, 2004

[845786]
Wisconsin Right to Life, Inc.,
Appellant

v.

Federal Election Commission,
Appellee

BEFORE: Henderson, Rogers, and Garland, Circuit Judges

O R D E R

Upon consideration of the emergency motion for injunction pending appeal, the motion to expedite disposition, the combined opposition thereto, and the reply; the motion to dismiss appeal and the response thereto, it is

ORDERED that the motion to dismiss be granted.

This court's jurisdiction over this appeal, if it exists, must come from 28 U.S.C. § 1292 (2000). That statute vests the courts of appeals with appellate jurisdiction over "[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, *except where a direct review may be had in the Supreme Court*." Id. (emphasis added). Thus, whether this court has jurisdiction depends on whether the appellant may appeal directly to the Supreme Court from the three-judge court's denial of its request for a preliminary injunction. That inquiry is governed by 28 U.S.C. § 1253 (2000), which states that "*[e]xcept as otherwise provided by law*, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." Id. (emphasis added). Thus, whether the Supreme Court has jurisdiction over the appeal from the three-judge court's denial of the request for a preliminary injunction depends on whether another law provides an exception to the authorization of § 1253. The only law to which the appellant points is the Bipartisan Campaign Reform Act (BCRA) of 2002, § 403(a)(3), 2 U.S.C.A. § 437h note (West Supp. 2003), which states that "[a] *final decision in the action* shall be reviewable only by appeal directly to the Supreme Court of the United States." Id. (emphasis added). BCRA says nothing about judicial review of interlocutory orders and

thus does not "provide[] by law" that a party cannot appeal denials of such orders to the Supreme Court. Accordingly, because BCRA does not preclude Supreme Court review of the appellant's appeal, § 1253 permits it, and § 1292 thus does not authorize review by this court. It is

FURTHER ORDERED that the emergency motion for injunction pending appeal and motion to expedite disposition be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam