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High Court Poised to Rewrite Spending Rules

By ADAM LIPTAK

WASHINGTON — A Supreme Court case concerning a quirky documentary critical of Hillary Rodham Clinton may result in a major overhaul of rules governing campaign spending by corporations, the court signaled Monday.

Rather than deciding the case, the only one the justices left unresolved before leaving for their summer break, the court asked for more briefs and a second argument, to be held on Sept. 9, almost a month before the start of the next term.

The parties were asked to offer their views on whether the court should overrule a 1990 decision, Austin v. Michigan Chamber of Commerce, which upheld restrictions on corporate spending to support or oppose political candidates, and part of McConnell v. Federal Election Commission, the 2003 decision that upheld the central provisions of the McCain-Feingold campaign finance law.

“The court is poised to reverse longstanding precedents concerning the rights of corporations to participate in politics,” said Nathaniel Persily, a law professor at Columbia. “The only reason to ask for reargument on this is if they’re going to overturn Austin and McConnell.”

If Judge Sonia Sotomayor, President Obama’s Supreme Court nominee, is confirmed by the Senate by then, the case will be the first one she hears.

The case involves “Hillary: The Movie,” a slashing political documentary released last year while Mrs. Clinton, now the secretary of state, was seeking the Democratic presidential nomination. The film was produced by Citizens United, a conservative advocacy group that is a nonprofit corporation.
The McCain-Feingold law bans the broadcast, cable or satellite transmission of "electioneering communications" paid for by corporations in the 30 days before a presidential primary and in the 60 days before a general election.

The law, as narrowed by a 2007 Supreme Court decision, applies to communications "susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate." It also requires spoken and written disclaimers in the film and ads for it, along with the disclosure of contributors' names.

Citizens United lost a suit against the Federal Election Commission last year and then withdrew plans to show its documentary on a cable video-on-demand service and to broadcast television advertisements for it. But the film was shown in theaters in six cities, and it remains available on DVD and online.

Several justices seemed sympathetic to the group's position that its First Amendment rights had been violated when the case was argued in March. The government said Congress had the power to ban political books, signs and Internet videos as long as they were paid for by corporations and distributed not long before an election.

The court could have ruled in favor of Citizens United in relatively narrow ways. Its decision to set the case down for reargument suggests that it is considering a much broader ruling, one that may allow unlimited spending from corporate treasuries for television advertisements and other communications to support or oppose candidates.

The Austin decision said campaign speech financed by corporations was suspect. "The corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form," Justice Thurgood Marshall wrote for the majority in 1990, "have little or no correlation to the public's support for the corporation's political ideas."

Shifts in court personnel since then, particularly the replacement of Justice Sandra Day O'Connor by Justice Samuel A. Alito Jr. in 2006, have substantially altered the court's attitude to campaign finance laws.

The Roberts court has struck down every campaign finance regulation to reach it, and it seems to have a majority prepared to do more. Indeed, last year, in Federal Election Commission v. Davis, Justice Alito, writing for the majority, said leveling the electoral playing field was not a matter for the courts or constitutional.
The Davis case struck down the “millionaire’s amendment,” which raised the donor limits for rivals of rich politicians who finance their own campaigns.

In his opinion, Justice Alito cited Justice Anthony M. Kennedy’s dissent in the Austin case. “The notion that the government has a legitimate interest in restricting the quantity of speech to equalize the relative influence of speakers on elections,” Justice Kennedy wrote in the passage cited by Justice Alito, is “antithetical to the First Amendment.”