Social Networking & Blogging Sneaks into a Supreme Court Opinion

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The epic United States Supreme Court opinion on campaign finance reform sneaked in a passage on social networking and Free Speech. The opinion is over 100 pages long, with Concurring and Dissenting opinions, so this is by no means a comprehensive review of Justice Kennedy's majority opinion.

Justice Kennedy stated:

> Rapid changes in technology — and the creative dynamic inherent in the concept of free expression — counsel against upholding a law that restricts political speech in certain media or by certain speakers. See Part II-C, supra. Today, 30-second television ads may be the most effective way to convey a political message. See McConnell, supra, at 261 (opinion of SCALIA, J.). Soon, however, it may be that Internet sources, such as blogs and social networking Web sites, will provide citizens with significant information about political candidates and issues. Yet, § 441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. See 2 U.S.C. § 441b(a); MCFL, supra, at 249. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.
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> *Citizens United v. Fed. Election Comm'n,* 2010 U.S. LEXIS 766, at *91-92 (U.S. Jan. 21, 2010).

The United States Supreme Court went on to overrule the law, stating, "…the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." *Citizens United,* at *93.

The extended passage is purely dicta in the Majority Opinion, but it highlights the fact the United States Supreme Court is keenly aware of social networking websites. It is a matter of time before there is an opinion where a reference to Twitter or Facebook is part of a controlling opinion and not merely dicta.