ing the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy." [923]

The limitations on electioneering communication, however, soon faced renewed examination by the Court. In *Wisconsin Right to Life, Inc. v. Federal Election Comm'n* (WRTL I),[924] the Court vacated a lower court decision that had denied plaintiffs the opportunity to bring an as-applied challenge to BCRA's regulation of electioneering communications. Subsequently, in *Federal Election Commission v. Wisconsin Right to Life* (WRTL II),[925] the Court considered what standard should be used for such a challenge. Chief Justice Roberts, in the controlling opinion,[926] rejected the suggestion that an issue ad broadcast during the specified periods before elections should be considered the "functional equivalent" of express advocacy if the "intent and effect" of the ad was to influence the voter's decision in an election.[927] Rather, Chief Justice Roberts' opinion held that an issue ad is the functional equivalent of express advocacy only if the ad is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." [928]

Then came the case of *Citizens United v. FEC*,[929] which significantly altered the Supreme Court's jurisprudence on corporations and election law. In *Citizens United*, a non-profit corporation released a film critical of then-Senator Hillary Clinton, a candidate in the Democratic Party's 2008 Presidential primary elections, and sought to make it available to cable television subscribers within 30 days of that primary. The case began as another as-applied challenge to BCRA, but the Court asked for reargument, and, in a 5–4 decision, not only struck down the limitations on electioneering communication on its face (overruling *McConnell*) but also rejected the use of the antidistortion rationale (overruling *Austin*).

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[923] 540 U.S. at 206.

[924] 546 U.S. 410 (2006).

[925] 127 S. Ct. 2652 (2007).

[926] Only Justice Alito joined Parts III and IV of Chief Justice Roberts' opinion, which addressed the issue of as-applied challenges to BCRA. Justices Scalia (joined by Kennedy and Thomas) concurred in the judgment, but would have overturned *McConnell* and struck down BCRA's limits on issue advocacy on its face.

[927] The suggestion was made that an "intent and effect" standard had been endorsed by the Court in *McConnell*, which stated that "[t]he justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect." 540 U.S. at 206. While acknowledging that an evaluation of the "intent and effect" had been relevant to the rejection of a facial challenge, Chief Justice Roberts' opinion in WRTL II denied that such a standard had been endorsed for as-applied challenges. 127 S. Ct. at 2664–66.

[928] 127 S. Ct. at 2667.

[929] 558 U.S. ___, No. 08–205, slip op. (2010).