Bipartisan campaign reform act of 2002

Law

On March 27, 2002, the prohibition on the use of a specific form of organizational finances as contribution to political candidates and parties or to sponsor certain ads in the period prior to elections became law. This is known as the Bipartisan Campaign Reform Act of 2002 (BCRA), founded on the campaignfinancereform bills authored by Republican Senator John McCain and Democrat Senator Russ Feingold (Magarian, 2003).

The BCRA or McCain-Feingold law aimed at a more stringent regulation of the sources of funds used for electoral campaigns. It made illegal the use of softmoneyfrom corporate or private entities and labor unions for candidates and their machineries at the federal, state and local levels (Magarian, 2003). Prior to this law, organizations could donate an unlimited and unregulated amount of money for issue-based advocacy, increasing voter-turnout and party-building efforts coursed through the national political parties (Geiger, 2005).

Issue ads were allowed as long as they did not use words such as “ vote for” or “ do not vote for” and other words that expressly promoting or assailing certain candidates. As such, issue advocacy has in essence been lawfully used to campaign for a candidate as long as the magic words mentioned are absent in the content (BrennanCenter. org, 2008).

The BCRA reformed the use of soft money for broadcast issue-advocacy ads campaigns when it came up with as a qualifier for what is lawful issue-advocacy is known as electioneeringcommunication. According to the BrennanCenter. org (2008), this means ads that “ refer to a clearly identified candidate, and targets the candidate’s electorate”. The BCRA requires from

entities that conduct electioneering communications a disclosure of the sources of their funds and such ads can not be aired 30 days prior to a general elections and 60 days prior to a federal election (Independent. org, 2008).

The law also bans corporations and unions to donate for issue ads from their treasury fund, openly or expressly advocate for a candidate known as independent expenditures or to make direct campaign contributions (BrennanCenter. org, 2008). They are only allowed to do so through specially Political Action Committees (PACs) within these organizations which are allocated a segregated funding that can be used for independent expenditures and issue ads (BrennanCenter. org, 2008).

Further, the BCRA demands the full disclosure of the sources of solicited campaign funds that amount to more than $10, 000 annually or the identities of organizations and individuals that shelled an excess of $1, 000 (Cantor and Whitaker, 2004). It also increased the lawful limits on the total amount of “ hard money” that candidates and parties can turn out. The result was that corporations and other organizations as well as individuals drastically limited their donations to avoid the disclosure of their identities.

Corporate and other private organizations can and do work to influence the outcome of the electoral process through soft money spending in order to gain access to the candidate in the event that s/he wins (Geiger, 2005). Candidates also welcome contributions as these determine in part the number of votes they will get. With the BCRA restrictions, political parties resorted to the formation of political organizations.

Because they are independent, political organizations which may be corporate philanthropy, social welfare or charity organizations are beyond the scope of the current campaign law and can absorb undocumented amounts of money for issue ads. In the last elections, 527 political organizations generated more than $400 million in such funds where the biggest donors handed amounts within the $3. 9 million to $30 million range (Geiger, 2005). These affluent and motive-driven corporate and individual donors were also safe from the disclosure requirement.

However, the U. S. Supreme Court, in a narrow decision last year, allowed leniency on issue ads even within the 30-day or 60-day election period when it declared that ads may be exempted from the limitations set by the BCRA if they are determined as principally an exercise of thefreedom of speechunder the First Amendment rather than campaigning for or against a candidate (Independentsector. org, 2008).

The case in question involved the Wisconsin Right to Life Inc. anti-abortiongroup whose ad was prohibited from airing in 2004 as it fell within the mandated election period and because it mentioned the name of a state senator to act on a certain issue. The senator was running for reelection at that time but no mention was made of this in the ad. The Supreme Court emphasized public rights rather thancensorshipin their decision on the case (Independent. org, 2008).

Thus, corporate and labor organizations can take advantage on another gap to provide financial support for political campaigns of parties and candidates they favor even during election periods through issue ads similar to that

used by the Wisconsin Right to Life. The Federal Election Committee issued a ruling exempting organizations from the electioneering communications restrictions as a result of the Supreme Court Decision (BrennanCenter. org, 2008). However, the disclosure requisites provided for in the BCRA still applies in this case but independent-sector groups are active in supporting proposals that do away with this requirement (Independentsector. org).

List of References

- BrennanCenter. org (2008). The Impact of FEC v. Wisconsin Right to Life, Inc.
- on State Regulation of " Electioneering Communications" in Candidate Elections, Including Campaigns for the Bench. Retrieved 2 April 2008 from http://209. 85. 173. 104/search? q= cache: cSpDB4j7N64J: www. brennancenter. org/page/-/Democracy/Impact%2520of%2520WRTL %2520II%2520on%2520State%2520Regulation. doc+effect+of+the+BCRA+on+corporate+public+policy&hl= en&ct= clnk&cd= 1
- Cantor, J. E. and Whitaker, L. P. (2004). Bipartisan Campaign Reform Act of 2002: Summary and Comparison with Previous Law. Retrieved 2 April 2008
- Geiger, J. P. Preparing for 2006: A Constitutional Amendment for Closing the 527 Soft Money Loophole. William and Mary Law Review, 47. Retrieved 2 April 2008 from http://www. questia. com.
- Independentsector. org (2008). Public Policy: FEC Rule Allows Issue Ads with Disclosure. Retrieved 2 April 2008 .

- Magarian, G. (2003). Regulating Political Parties under a “ Public Rights” First Amendment. William and Mary Law Review, 44. Retrieved 2 April 2008 from http://www. questia. com.