Political Speech on Public Issues

- Even non-media corporations have free speech rights under the First Amendment. The rights of corporations in terms of political speech include:
  - The right to circulate referenda and acquire signatures to petition the government
    - Certain state restrictions on this right, like limiting signature gatherers to registered voters, has been declared unconstitutional
  - The right to advertise in favor of or against a law or proposal
  - Freedom from compelled speech
    - Utilities cannot be forced to disseminate messages they oppose.
    - Ad agencies cannot be forced by ISPs to deliver online or email content.
      - Although, compelled funding by beef producers of a beef marketing program was allowed when the Dept. of Agriculture required it.
Elections

• Corporations’ support of candidates in political campaigns can be, and is, heavily regulated.

• Federal Election Campaign Act
  – This prohibits any corporation or organization from contributing to the election of a political candidate.
    • This simply led to companies giving “soft money” for “issue” ads rather than directly to the candidate.
  – In 2002, Congress passed the BRCA, which prohibited many contributions to national political parties.
    • Though, soft money in the form of contributions to private organizations is still allowed.

• Other federal and state rules also limit the extent to which private companies can finance political candidates and campaigns in many different areas.
Protected Political Speech by Corporations

• Issues, Organization and Voter Registration
  – Corporations may advertise regarding issues, etc.
    • However, they may not mention a candidate by name, whether positively or negatively
    • As discussed earlier, contribution bans to national parties upheld

• Political Action Committees (“PAC”)
  – These exist in many industries and are often funded by corporations running businesses in the industry to promote the industry or issues relevant thereto.
    • To a large extent, what are often referred to as the “lobbyists” are PAC agents or employees
  – Limits on what a PAC can say are very likely to be unconstitutional as a violation of the First Amendment.
Limitations on Political Action Committees

• Solicitation of funds
  – Corporate PACs can only solicit donations from members of the corporations in the PAC and their families, etc.

• Contributions
  – PACs are limited in terms of how much they can contribute to a candidate, including:
    • $5,000 per candidate per election;
    • $15,000 per year to national political parties;
    • Unlimited amount in “soft money” to other organizations.
  – PACs are also limited in terms of how much they can receive from individuals.

• Expenditures
  – There is no limit to how much a PAC can spend.
    • There used to be a limit, but the Supreme Court declared the limit unconstitutional!
Communications by Corporations

• A corporation may only use corporate funds to advocate something to its own employees and their families.

• Disclosure
  – PACs and candidates must register with the FEC.
  – They also must keep accurate records of contributions.
    • There are some exceptions where there is a good reason to keep this information quiet – like to avoid retaliation, etc.
  – They also must disclose sources of funding that advocates a candidate for office.

• The Supreme Court ruled that a ban on anonymous campaign literature being disseminated was unconstitutional.
Political Candidate Broadcasting

• These rules generally apply only to over-the-air radio or TV stations.

• Equal Opportunity Rule
  – Broadcasters who provide airtime for legally qualified candidate(s) must afford equal opportunity to be heard for the opponent(s).
  – This is most relevant to selling spots for commercials.

• What is a qualified candidate?
  – The candidate must have announced the intention to run for office;
  – The candidate must be qualified to hold the office; and
  – The candidate must qualify for a place on the ballot OR have publicly started a write-in campaign.

Public Communications Law Lecture 8

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The Requirements of the Equal Opportunity Rule

• Time Requirements
  – Equal time must be offered to all candidate(s), and it must be offered at reasonably equivalent time slots.
  – Substantial compliance will be enough when technical issues make it impossible or impractical to afford truly equal time.

• This rule applies only when the candidate(s) is using the time
  – Such as an appearance by the face or voice of the candidate
  – An issue spot that attacks or defends the positions of a candidate does not qualify for this rule.
  – However, this applies to whenever a candidate is on TV, even when not in an election capacity.
    • e.g., a Ronald Reagan movie
Shows Exempt From the Equal Opportunity Rule

- **Newscasts**
  - If the program is a bona fide news program covering a candidate’s actions that are news, the rule doesn’t apply.

- **News Interviews**
  - Regularly scheduled about current events;
  - Controlled by journalists or broadcasters; and
  - Be based on newsworthy events or issues.

- **On the spot coverage of newsworthy events**; e.g.,
  - State of the union address
  - Press conferences by politicians already holding office
  - Debates
    - Minor candidates have no inherent right to appear in debates and cannot use this rule because they are excluded.
Limits on Broadcasters

• Censorship
  – In the air time allocated to candidate(s) under the Equal Opportunity Rule, the broadcaster may not censor (at all) what the candidate(s) says.

• Advertising Rates
  – The broadcasters must charge the candidate(s) only their lowest general rates; & there are other rules limiting the rates for these spots.

• Access
  – Broadcasters cannot simply deny access to all candidates to satisfy the Equal Opportunity Rule.
  – Federal law requires stations to allow reasonable access to certain types of candidates, in terms of selling them ad spots. The access must also be in reasonable time slots.
    • However, the broadcasters need not disrupt their already sold spots to accommodate candidates.
The “Fairness Doctrine”

• Until 1987, federal law required radio and TV stations to:
  – 1) devote time to discussion of public issues; and
  – 2) to present contrasting views on controversial issues.
• This did not require exactly equal treatment of each side of an issue but did require some discussion of both sides.
• The rule was fraught with Constitutional issues and was eventually scrapped in 1987. However, some similar rules do exist:
  – Zapple Rule: Supporters of opposing candidates must be given approximately equal airtime during election campaigns.
  – Other rules, such as the personal attack and political editorial rules, have been eliminated or found unconstitutional.
Lobbying

• Lobbying means contacting politicians with a group’s concerns through:
  – Personal meetings with the politicians; or
  – Public awareness campaigns (“grass roots” lobbying).
• Lobbying is constitutionally protected free speech, but it may be regulated. The regulations include:
  – Lobbying Disclosure Act of 1995
    • This requires registration of most lobbyists as long as they spend more than certain amounts in contacting government officials.
    • Public officials and many media members are exempt from the registration requirement.
  – Foreign Agents who are lobbying the US government have certain registration requirements as well.