

Does Wisconsin Right to Life PAC v. Barland affect N.J. campaign finance laws?

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BY JEFF BRINDLE

COMMENTARY

Wisconsin Right to Life PAC v. Barland is another in a long line of cases stemming from the McCain/Feingold reforms of 2002.

Those reforms, formally known as the Bipartisan Campaign Reform Act (BCRA), barred independent expenditures within

30 days of a primary and 60 days of a general election.

The reforms also eliminated soft money donations to the national political parties.

Ever since McCain/Feingold was enacted, there have been a slew of legal challenges both at the federal and state levels, the latest of which is this one.

In this case, Wisconsin Right to Life challenged Wisconsin Statute 11.26 (4), which limited the amount individuals may contribute to state and local candidates, political parties, and political committees to a total of \$10,000 per calendar year.

In other words, the State of Wisconsin imposed an aggregate contribution limit on its citizens.

The Wisconsin Right to Life PAC is a political committee engaged in independent expenditures supporting or opposing the election of candidates for office in Wisconsin.

This PAC is a strictly independent expenditure committee that does not make contributions to candidates nor coordinate activities with them.

The lawsuit challenged the \$10,000 aggregate limit on contributions to groups that only engage in independent spending. It

does so on the grounds that the provision is a violation of the First Amendment.

Wisconsin Right to Life filed the lawsuit in the context of the 2010 general election. The group was seeking an injunction against the enforcement of the law in question but was initially denied the request by the district court.

A few months after the election, nine State Senators in Wisconsin were subjected to recall elections. As a result of the recall effort, Wisconsin Right to Life again asked the court to enjoin enforcement of 11.26 (4) so that it could collect unlimited contributions and participate in the elections.

Again, the request was denied and Wisconsin Right to Life appealed the matter to the United States Court of Appeals, Seventh Circuit.

Finding in favor of Wisconsin Right to Life, the Appeals Court based its decision on *Citizens United v. FEC* and stated that “Section 11.26 (4) is unconstitutional to the extent that it limits contributions to committees engaged solely in independent spending for political speech.”

This decision, dealing with Wisconsin campaign finance law, echoes the decision of the ninth Circuit Court of Appeals in *SpeechNow v. FEC*. That decision stated that contribution limits could not be applied to “independent expenditures only committees.”

So, does this latest decision endanger in any way New Jersey’s campaign finance system?

The short answer is that in all probability—no. However, it is a cautionary tale. It does suggest that we should be ever vigilant in keeping up with the latest round of legal challenges to once settled campaign finance law.

New Jersey law does not contain aggregate contribution limits. And while there is a limit of \$7,200 on contributions to political committees and PACs participating in New Jersey elections, these committees are not “independent expenditure only committees.”

They contribute directly to candidates and at times make in-kind contributions that are coordinated with candidate campaigns.

Groups and individuals who operate only independently are not subject in New Jersey to limits on contributions or

expenditures.

They do have to file as an independent expenditure but only if their advertisements contain the magic words “vote for or against,” or the equivalent thereof.

Therefore, it seems as if Wisconsin Right to Life v. Barland is not applicable to New Jersey law. It is applicable to states whose campaign finance laws impose contribution limits on independent expenditure-only committees.

Campaign finance laws nationally and at the state level are being constantly challenged on First Amendment grounds.

Because New Jersey’s laws are consistent with First Amendment protections and at the same time are underpinned by a solid foundation of disclosure, they should be in no danger from the fall-out from this particular decision.

Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission.

The opinions presented here are his own and not necessarily those of the Commission.