



Making the Case for Political Fraud

by Richard W. Rahn

CAMPAIGN PLEDGES BROKEN COULD LEAD TO DONOR LAWSUITS

If a political candidate asks you for a donation with a promise that he or she will do some specific act if elected and then fails to do so, should you be able to sue for fraud?

If a contractor offers to build a new deck on your home within a specific time period and then fails to do, so you can sue for nonperformance. Excuses that his competitors were not cooperating, or that all of his workers did not show up, or he wanted to take a vacation, would probably not persuade the judge.

It is well understood that many salespeople and political candidates engage in puffery about what their product does or what they are going to do. But when does puffery go so far as to become fraud?

The first President Bush famously made the statement: “Read my lips, no new taxes,” which he repeated many times. Polls showed that many people voted for him based on his no-new-taxes pledge, and that his defeat for re-election was largely a result of his renegeing on that important pledge. President Obama assured the American people many times that his Obamacare legislation

would allow you to “keep your own doctor” and reduce insurance premiums. These and his other falsehoods cost his party dearly in the subsequent elections. Both President Bush and President Obama could have kept their word or not made the promises if they had so chosen.

Both House Speaker Paul Ryan and Senate Majority Leader Mitch McConnell said many times that they and their Republican colleagues would repeal Obamacare, provide tax cuts and tax reform, and avoid future budget crises by “following regular order.” For years, they claimed the reason they could not get anything done, even though they controlled Congress, was because Mr. Obama would veto their good deeds. They promised if the American people gave the Republicans control over both the executive branch and Congress, things would be done — and on time.

The Congressional Budget Act gives Congress a specific timetable for passing both the budget and appropriation bills — all of which were supposed to be passed by June 30. The congressional leadership is responsible for meeting those dates — which they have failed to do. The errant committee chairmen have not been removed or otherwise disciplined. Rather than demanding that Congress stay in session until it got back on its own promised time schedule, the leadership irresponsibly allowed it to go on vacation.

Most economists and business people correctly believe that properly structured tax reform and rate reduction will speed up economic growth, job creation and real growth in wages. Every week that Congress dawdles means that many families unnecessarily suffer while members of Congress preen and frolic.

If you were a donor to the Republican Congressional Campaign Committee and made your contribution on the explicit promise by Mr. Ryan and others in the leadership that they would comply with the Budget Act (i.e., regular order), should you not have a right to sue to get your money back on the basis of fraud? If the Republican leadership argues that the failure to fulfill their promise was not fraud, then they can only claim incompetence or irresponsibility.

A candidate would have no contractual obligation to a voter or donor to build a swimming pool in the voter’s neighborhood because that would cross the line of providing a specific benefit in exchange for a vote or donation and would be considered a bribe. An elected official accepting bribes for private purposes violates his or her public trust. However, in *State v. Newton*, the Louisiana Supreme Court interpreted an antibribery statute to exclude certain promises, such as a “platform promise of better government,” lower taxes or welfare reform is not considered bribery when made to a general group of voters.

The tort of deceit occurs when “one who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon [and thus] is subject to liability to the other.” Many politicians engage in the tort of deceit, but trying to determine damages to a particular voter or donor is often nearly impossible. Most members of Congress have said they are in favor of “tax reform,” but each has his or her own definition of reform as do voters. Trying to hold a member of Congress legally accountable for not passing a voter’s definition of tax reform would be hopeless. But holding a campaign committee legally responsible for its promise to make sure it meets its legal obligations to those from whom it is raising money, when its party has a majority and control should be doable.

Donors should consider explicitly making it known that if certain promises are not kept, they will sue to get their money back. The promises would have to be conditioned on the party having control, and be narrowly specific, and would not fall under the definition of bribery. A few winning suits brought by aggrieved donors should have the salutary effect of diminishing the number of unfulfilled promises — and have the positive side-effect for members of Congress by increasing their approval numbers due to better performance.

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<http://www.washingtontimes.com/news/2017/aug/14/campaign-pledges-broken-could-lead-to-donor-lawsuit/>