

Could New Jersey Feel Fallout from Bluegrass State Case?

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The U.S. District Court for the Eastern District of Kentucky recently found that contribution limits favoring Democratic and Republican legislative leadership committees are unconstitutional.

This ruling has the potential to impact New Jersey's election and campaign finance laws.

Under Kentucky statutes, the legislative campaign committees of the two major political parties are called caucuses.

Specifically, the law (KRS 121.105(3)(b)) restricts "caucus campaign committees" to the two major political parties- Republicans and Democrats.

This enabled each major party to establish a caucus campaign committee in each legislative chamber.

The Court found the law to be a violation of the Equal Protection Clause in that it allows each caucus committee to receive contributions in the amount of \$5,000, which is 150 percent more than can be given to minor party committees.

Minor party committees, which challenged the Kentucky law, are given the same status as political action committees (called permanent committees in Kentucky). PACs can accept only \$2,000 from contributors per year.

While the Kentucky law does not prevent the establishment of minor party caucus committees, the Court deemed the law unconstitutional on its face because it defines the caucus committee as pertaining to the two major parties only.

Similarly, four legislative leadership committees are established by statute in New Jersey. Under the Campaign Act each party leader within the State Senate and General Assembly is permitted to establish a leadership committee.

Under 19:44A-3(s) a legislative leadership committee "means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the

Speaker of the General Assembly or the Minority Leader of the General Assembly ... for the purpose of receiving contributions or making expenditures.”

The legislative leadership committees can accept contributions of up to \$25,000 per year from a variety of contributor types, limits that are higher than for most other committees.

Unlike Kentucky’s law, the state’s “Campaign Contributions and Expenditure Reporting Act” does not preclude a minor party from establishing a legislative leadership committee.

But as a practical matter, New Jersey law defining a political party all makes it very difficult for third party efforts to materialize into bonified, officially recognized political parties in New Jersey, thereby also preventing them from forming legislative leadership committees.

Under N.J.S.A. 19:5-1., in order for a group to be recognized as an official political party with the right to hold a primary election, the organization must “poll at any primary election for a general election at least 10 percent of the votes cast in the State for members of the General Assembly at the next preceding general election, held for the election of all of the members of the General Assembly.

In other words, in order for an organization to even be officially recognized as a political party, and even attempt to reach majority or minority status in the Legislature, it must be able to receive 10 percent of the vote for General Assembly statewide.

Only the Republican and Democratic parties have been able to accomplish this.

Both the Kentucky law, which the District Court deemed unconstitutional, and the New Jersey law, effectively limit legislative leadership committees and their higher contribution limits to the two major political parties.

And this is what makes the New Jersey laws potentially vulnerable depending on the outcome of the Kentucky case.

From this columnist’s point of view, it is hoped that District Court ruling is overturned and the Kentucky law, which benefits the major political parties, is ultimately found to be constitutional.

During the last decade, Democratic and Republican parties at all levels in the New Jersey have been hurt by fund-raising competition from outside, independent groups and the squeeze of 2006 pay-to-play reforms that sharply curtailed contributions from public contractors.

Numerous analytical press releases published by ELEC have documented this downward trend while also showing the rising fortunes of independent, often anonymous groups.

Legislative leadership committees, which are part of the “Big Six” party entity category, are essential to maintaining some level of party influence over elections and eventually, with legislative reforms, to strengthening the overall party system and offsetting independent groups.

The Kentucky decision presents a potential threat to those committees and its movement through the legal process bears watching.

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.

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