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Differences Aside In How We Get There, All Agree On Need For More Disclosure

JEFF BRINDLE • May 14, 2019, 2:16 pm

Recently, legislation was passed with overwhelming support by the Legislature that would require greater disclosure by independent, outside groups.

This legislation (S-1500/Singleton/A-1524/Zwicker), would compel 501c-4 and 527 Super PAC organizations, which have spent tens of millions attempting to influence elections in New Jersey in recent years, to report contributions and expenditures made in connection with electioneering and policy advocacy.

The legislation, which won near-unanimous, bipartisan support, would enhance transparency over elections and lobbying in the State.

Since 2010, the New Jersey Election Law Enforcement Commission (ELEC) has pushed for greater public accountability by these independent groups, which have increased their election spending exponentially over the last decade. When they get involved in political campaigns, they should be treated the same as political parties, political committees, PACs, and candidates in terms of disclosure requirements. Equally, groups that spend heavily to influence public policy, a provision added to ELEC's original proposal by the Legislature, should disclose their activity to the public.

Yesterday (May 13, 2019), Governor Phil Murphy conditionally vetoed the legislation, stating that the bill needs to be strengthened to eliminate loopholes and improve transparency.

It is hoped that we can work with the Governor and Legislature to get this legislation back on track. All parties agree on the key tenets of the legislation. Hopefully, the issue can be resolved for the purposes of enhancing transparency over our electoral and policy processes.

As a long–time supporter of the legislation, however, it is important to offer the following observations about some looming concerns.

Since the campaign reforms of 1993, candidates and officeholders have been prohibited from being chair persons or treasurers, etc. of political parties. They have been barred from participating in political committees or PACs.

There is good reason for this prohibition. It prevents the circumvention of contribution limits that apply to candidates. S-1500/A-1524 merely extends this restriction to independent groups, again preventing candidates and officeholders from getting around contribution limits that apply to them.

A legitimate concern was expressed in the conditional veto involving limited liability corporations (LLC's) or other corporate forms. In other words, that a loophole in the law might exist, allowing LLC's,

etc. to avoid registering and disclosing as an independent group. This concern exists because the definition of an independent group includes only the word “person” and fails to include “corporation.”

While the Campaign Act does not define “person,” the word “person,” as defined in[Text Wrapping Break]Title 1 – N.J.S.A. 1:1-2, the general definition of New Jersey statutory’s code, does include corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals.

Therefore, “person” in S-1500/A-1524 should be interpreted broadly and include such corporate forms as LLC’s. We believe LLC’s would come under the law.

The bill includes a section which provides comprehensive procedures for determining whether or not an independent group has coordinated with a candidate and therefore endangers its independent status, which permits the group to receive contributions in unlimited amounts. This provision is actually stronger than exists in current regulations that require disclosure of independent expenditures by groups that expressly support or oppose candidates.

Governor Murphy expresses concern that independent expenditure committees would be able to avoid disclosure simply by coordinating with a candidate. However, if a group coordinates with a candidate, it would become a political committee and have more stringent registration and disclosure requirements. Also, as a political committee, the entity would have to comply with contribution limits.

On another key issue, under current lobbying law, any “person” spending $2,500 communicating directly with the public, i.e. grassroots, issue advocacy, is required to file an annual financial report with the Commission. This law has been in effect since 2004 and has never been challenged.

Under the current law, there already is disclosure of contributions if donors specifically gave money for grassroots advocacy. In practice, few groups have disclosed donors under this provision. But it has happened. The vetoed bill would require grassroots advocacy groups to disclose all contributions solely for expenditures made specifically in New Jersey. The bill also would require issue advocacy to be disclosed to the public on a more timely basis– quarterly, not just annually.

Regarding the constitutionality of the legislation, clearly most new disclosure laws have been challenged in court largely because there are legal advocacy groups set up to wage such challenges. Similar groups exist to defend the same laws.

Even as federal judges have scaled back other campaign finance restrictions during the last decade, virtually all new disclosure laws have been upheld by the U.S. Supreme Court and lower federal courts.

From 1976, in *Buckley v. Valeo*, through *Citizens United*, *Speech Now*, and *Carey*, disclosure has won support. In two recent cases, *Human Life of Washington v. Brumsickle*, a case which involved ballot measure disclosure laws, and *Delaware Strong Families*, which involved a voter guide published by a 501-c-3 charity, disclosure was upheld by the U.S. Supreme Court by the Court declining to review the cases decided by their respective Circuit Courts of Appeals.

S-1500/A-1524 requires electioneering activity by independent groups to be disclosed beginning with January of the year of the election. This provision is the same as in Vermont law, which was upheld by the 2nd Circuit in *Vermont Right-to-Life Inc. v. Sorrell*.

The Governor’s conditional veto suggests that independent expenditure committees be added to the State’s Pay-to-Play law and that recipients of large-scale tax credits and other subsidies be subject to disclosing their contributions to ELEC.

Strengthening Pay-to-Play is a good suggestion and one supported by the Commission. However, recommendations such as these are better suited to legislation that would comprehensively reform the State's tangled Pay-to-Play law rather than included in the so-called "Dark Money" bill.

S-1479 (Singleton) and A-3462 (Zwicker) are identical bills which call for an overhaul of Pay-to-Play laws, even containing the Governor's recommendation that contractors receiving $17,500 or more disclose their contributions.

Finally, using the regulatory process, ELEC can allay concerns over improper interference with organizations that undertake SOLELY voter registration drives.

However, it is important that get-out-the–vote, registration, research, polling, etc. paid for by independent groups be included in the bill because these groups have assumed many of the traditional roles played by political parties and undertake more than just commercial advertising.

It is important state officials not lose the momentum that has developed to address the issue of disclosure by independent groups. ELEC stands ready to work with the administration and the Legislature to secure this critical legislation.

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.