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Pending 'Dark Money' Legislation Targets Groups That Truly Do Operate In Secret

JEFF BRINDLE • June 13, 2019, 3:28 pm

On Monday June 10, 2019, the Legislature again passed legislation that would require disclosure of contributions and expenditures by independent groups.

The vote was overwhelmingly in favor– 35-0 in the State Senate and 68-0 in the Assembly.

The Governor is expected to sign the legislation, which also has bipartisan sponsorship.

In the interim, groups opposed to this good government bill are still rallying in opposition to the legislation, which would bring greater transparency to governmental and electoral processes.

According to an article in the June 12, 2019 Star-Ledger by Matt Arco, “a coalition of more than 40 progressive groups, labor unions, and faith leaders made their case” against the legislation.

The article stated that the “coalition said the current measure is a direct attack on the progressive community and will have a chilling effect.”

With all due respect, I believe they will be proven wrong.

For one thing, the bill doesn't “target” any ideological group– progressive, conservative or otherwise.

What it does is require disclosure by a very specific type of fund-raising group that literally operates in the shadows.

These are “social welfare” non-profit groups organized under section 504c4 of the IRS tax code. While some are clearly organized to promote a special cause, many have noble-sounding names and hazy purposes. They no longer are required to divulge their major contributions even to the IRS, which approves their creation. Let alone the public.

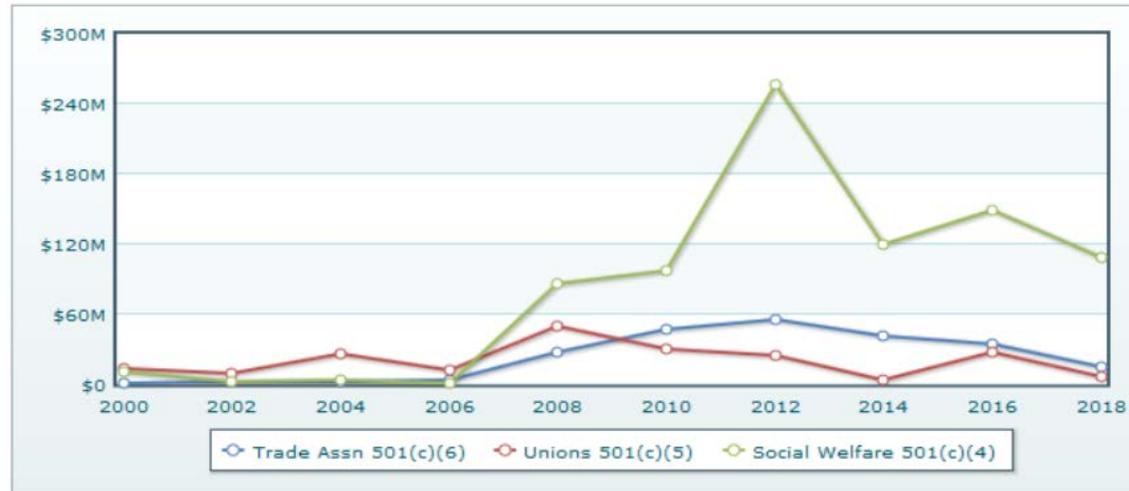
To be sure, C4 groups are not the only type of 501 non-profits that engage in political spending. There are also 501c5 groups, which include labor unions and agricultural organizations, and 501c6 groups, which include business leagues, chambers of commerce and real estate boards.

However, the fact remains that the vast majority of undisclosed spending at the federal level has been by 501c4 groups, according to the Center for Responsive Politics (see chart below).

501(c) Spending, Cycle Totals, by Type

View totals by:

Type of groups



Based by data released daily by the FEC. Last updated on March 26, 2019.

Most spending in New Jersey elections with zero donor disclosure also has been done by 501c4s.

For instance, Committee for Our Children's Future, a 501c4 group, spent a reported \$7.8 million prior to the 2013 gubernatorial election to promote incumbent Governor Chris Christie without disclosing one dime.

Nor did another 501c4 group, One New Jersey, which spent \$2.8 million attacking Christie during the primary.

S-150 sponsored by State Senator Troy Singleton (D-7th) and Assemblyman Andrew Zwicker, is a good faith, responsible effort to bring balance to New Jersey's electoral system. It recognizes the imbalance that has taken place in New Jersey elections by the rapid growth in independent group spending and the accompanying decline in activity by parties and even candidates themselves.

The legislation would require 501c4 groups to disclose the identity of donors making large donations of more than \$10,000 for the purpose of influencing elections, public questions, legislation or regulations in New Jersey, a provision that is reasonable and sound, designed to protect small donors, associational rights and First Amendment freedoms.

By an 8–1 majority in *Citizens United v. FEC* (2010), the U.S. Supreme Court spoke strongly in favor of disclosure.

"The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

The justices further stated: "Disclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' . . . and do not 'prevent anyone from speaking.'"

Keep in mind that under S-150, even 501c4 groups could continue to conceal the identities of donors who give less than \$10,000 for the specific purpose of influencing elections, public questions,

legislation or regulations in New Jersey. Until last year, they had to report to IRS all donors above \$5,000.

The threshold amount of \$10,000 for disclosing contributions was raised from \$300 for the specific purpose of shielding all but the truly big donors from disclosure. It protects small donors and those who pay membership fees and eliminates concerns about a chilling effect on political participation.

The original focus of ELEC was to obtain more disclosure by independent special interest groups like 501c4s that are clearly becoming the dominant force in New Jersey elections. There appears to be little opposition to this provision.

Earlier this year, legislators strengthened the proposal by requiring full disclosure, including donors, by groups that try to mobilize the public for or against pending legislation or regulations. This is called grassroots lobbying or “pure” issue advocacy as opposed to election-related issue advocacy, also known as electioneering.

Keep in mind that for decades, New Jersey has had mandatory donor disclosure for one type of issue advocacy – spending on ballot questions. Ballot questions essentially are legislative proposals ratified or rejected by voters, not legislators.

U.S. Supreme Court and lower courts have consistently upheld laws requiring full disclosure for ballot question committees.

If people have a right to know who is trying to influence ballot initiatives, why aren't they entitled to know who in particular is trying to push legislative initiatives through the legislature? Or trying to kill them? Traditional, person to person lobbying, is required to be reported by professional lobbyists, so why not high powered funded efforts to mobilize the public on behalf of legislative policies be disclosed on a more timely basis?

The latest version, S-150 recognizes the need to offset the growing influence of independent groups over elections and public policy in New Jersey and does so by requiring registration and disclosure of electioneering activity as well as issue advocacy, both of significant importance and influence in the Garden State.

S-150 is a strong piece of legislation that is in the best interest of the public by bringing sunlight and a certain balance to our electoral and policy processes.

If in the eyes of some the bill is not perfect, then it can be improved legislatively in the future or through the regulatory process.

But now is not the time to stand in the way of progress and halt the drive toward bringing greater openness to our electoral and governmental processes. The public deserves to have this legislation become law.

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.