



'We the People' Deserve to Know 'Who Pays' For Elections

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Do independent, outside groups, backed by special interests and wealthy individuals, undermine the principle of government by the people?

Similar to the U.S. Constitution, the preamble to the Constitution of the State of New Jersey establishes the philosophy of our State as it declares: "We The People of the State of New Jersey, grateful to Almighty God for civil and religious liberty which hath so long permitted us to enjoy, and looking to him for blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do and ordain and establish the Constitution."

Notice the phrase, "We The People" as well as the word "Constitution" are upper case, providing each special status.

Now putting "We The People" and "Constitution" together, and eliminating the wording between them, results in: "We The People . . . establish the Constitution." This arrangement makes it clear that in New Jersey the people are sovereign.

Over the past two decades, independent groups have spent an increasing amount of money attempting to influence the outcome of New Jersey elections. At the same time, many seek to keep the people in the dark in terms of their financial backers.

When these groups fail to disclose their contributions and expenditures, they are under-cutting the very heart and spirit of the State's Constitution- government by the people.

The growing influence of independent groups is turning government by the people into government by special interests and wealthy individuals. And we often don't even know the identities of those interests and individuals.

Special interest independent spending has grown exponentially over the last two decades. It has flooded New Jersey elections with money frequently disguised from the public yet nevertheless influential over the outcome of elections.

Compared to the 2005 gubernatorial election year, when there was just \$411,224 in independent spending on state elections, overall outside group spending of \$57.5 million in the 2021 New Jersey election represented an incredible increase of 13,884 percent.

While independent group spending has soared during this period, financial activity by political parties has declined. For example, in 2005 the two state parties, four legislative leadership committees and 42 county parties collectively spent \$38.7 million. By 2021, spending by those same party committees had dropped to \$30.3 million, a decrease of 22 percent from 2005.

This involvement by independent groups, and concomitant influence over elections, is not limited to statewide elections. Their financial war chests have been directed toward local elections as well. Local municipal party committees spending shrunk to \$4.4 million in 2017, half of their expenditures of ten years earlier. On the other hand, independent groups ratcheted up their spending locally.

Newark's 2014 mayoralty contest witnessed \$5.5 million spent by independent groups. A year before \$250,000 was spent by outside groups in Jersey City. During the previous decade, two related Washington D.C.-based super PACs have twice participated in Parsippany's elections.

This column, as well as previous columns, recognizes the First Amendment right of independent groups to participate in New Jersey elections. That doesn't mean that they should have an unfair advantage over candidates and political parties. Nor does it mean that they should drown out the voice of the people nor undermine the spirit of the State Constitution's founding principle of self-government, one that the people of New Jersey have freely chosen and established.

Political parties and candidates in New Jersey are highly regulated but independent groups are not. Yet, both have the same goal, to influence the outcome of elections and thereby public policy.

Parties are regulated even to the point of how they are organized, how their committee people are to be elected, when they are to meet, and how they are to disclose their financial activity.

Likewise, candidates are highly regulated in terms of how their finances can be used, limits on contributions, and disclosure.

On the other hand, independent groups are hardly regulated, except in circumstances when they expressly support or oppose a candidate; and then only are expenditures to be disclosed. Moreover, they are not limited in terms of contribution amounts as long as they are independent and there are no limitations on how their money can be used.

Thus, there is a structural imbalance in New Jersey's electoral system between candidates and parties on the one hand and independent groups on the other. Dark money groups have an advantage over more transparent and regulated candidates and parties.

Article IV, Section IV of the U.S. Constitution guaranteed in 1787 that every State "a republican form of government", meaning government minus a monarchy or aristocracy.

In modern times, special interest groups and wealthy individuals have used their campaign contributions and lobbying to become the new aristocracy.

Their power mushroomed after the McCain-Feingold legislation of 2002 ended unlimited contributions to national parties. This prompted many special interests to spend their money independently on elections instead of just sending checks to parties and candidates.

The trend accelerated after federal court rulings in *Citizens United v. FEC* (2010), which led to unlimited independent spending by corporations and unions, and *Speechnow.org v. FEC* (2010), which ruled that these new breeds of independent spending committees could accept unlimited contributions.

Though much has changed since 1787, with the nation progressively becoming more democratized, the danger presented by special interest, independent groups and super wealthy individuals to New Jersey's electoral system is real. Transparency can alter that by making these groups more accountable to voters.

The Governor and Legislature have an opportunity to address the issues presented by the new "aristocracy" by enacting legislation that would require disclosure of contributions and expenditures by special interest independent groups when they are engaged in elections and strengthening political parties; thereby reaffirming the constitutional principle of government by the people.

There is no better time than the present.

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