

Congressional races need greater transparency after Supreme Court's Citizens United decision



Thursday, 10 June 2010 |

20:25 |



BY JEFFREY BRINDLE

COMMENTARY

With the focus now squarely on the general election, the impact of Citizens United on New Jersey's Congressional races bears watching.

Last February the U.S. Supreme Court issued a broad ruling on campaign law. In

Citizens United v. Federal Election Commission, the Court addressed issues involving the broadcast of a documentary about Hillary Clinton.

Plans were to show the documentary within 30 days of the 2008 presidential primary, when Mrs. Clinton was a candidate.

The Federal Election Commission (FEC) concluded that the black out provision, Section 203 of the Bipartisan Campaign Reform Act (BCRA), applied to the documentary, therefore restricting the broadcast. The black out rule banned independent expenditures within 60 days of a general election and 30 days of a primary.

Citizens United challenged Section 203. The group also challenged the disclosure requirements in BCRA, otherwise known as McCain-Feingold.

Not only did the U.S. Supreme Court take up the case but went beyond it to address the issue of the ban in federal law on corporate and union spending generally.

The decision by the Court held that the ban on corporate and union spending rendered in the 1990 decision, *Austin v. Michigan Chamber of Commerce*, was unconstitutional.

Moreover, the blackout period in McCain-Feingold was ruled an abridgement of free speech, thereby allowing advertisements by independent groups which advocate the election or defeat of a candidate to be aired at any time.

Further, the federal ban on direct contributions by corporations and union was left in place.

Finally, disclosure was strongly favored by the Court as it upheld requirements that sources of spending, and even contributions, be identified.

The Court's decision made the need for disclosure laws more important than ever.

As soon as the decision was announced, many campaign finance experts throughout the country immediately jumped to the conclusion that the ruling would open the floodgates to out of control corporate spending on elections.

Individuals were genuinely concerned about intensified involvement by well heeled business interests and the influence their financial activity might buy.

To this point, there is little evidence that their predictions are coming true.

Instead of corporations increasing their activity, the data indicates that contributions by the business sector have actually dropped from two years ago.

During the most recent federal election cycle, political contributions by corporations to congressional candidates is down by five percent from 2008. The data, released by the Center for Responsive Politics, noted that in 2008 corporate involvement had increased by six percent over 2005.

T.W. Farnam reported in the Washington Post that the decline included activity by the financial sector, the oil and gas industry, and the transportation and construction sectors.

Interestingly, as noted in Politico, it has been the unions that thus far have responded more aggressively to Citizens United, having been much more engaged in the recent federal primary process than corporations.

AFSME and the AFL-CIO were heavily involved in using soft money to purchase T.V. ads in Pennsylvania and Arkansas Congressional and Senatorial elections.

The fact that the early data indicates reduced direct financial involvement in elections by corporations does not mean that corporations will not be spending heavily in this federal election, either nationally or in New Jersey.

It just means that corporate money will flow in a different direction.

Instead of spending directly on a candidates behalf, corporate, as well as union money, will probably be channeled through 527 committees. These 527 committees, which report under IRS rules, will then spend independently on behalf of candidates who take positions favorable to the corporate or labor interest.

In all probability, there will be heavy spending in Congressional races in New Jersey. However, it is doubtful that it will take the form of independent spending directly out of corporate coffers.

Rather an increase in 527 organization activity is likely during this federal cycle. Moreover, these groups will become more and more active as time goes by, even in state elections.

That's why the New Jersey Election Law Enforcement Commission (ELEC) has proposed that these committees be required to report their financial activity in a pre-election setting.

In this way the public will know who finances many of the advertisements that are broadcast prior to elections in New Jersey.

Jeffrey 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.