

Requiring disclosure of campaign funding groups in N.J. is in the public interest



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BY JEFF BRINDLE

COMMENTARY

Citizens United received more attention than any decision by the U.S. Supreme Court in recent memory.

What drew the attention and raised the hackles of reformers was the Court's lifting the longstanding ban on corporate

and union spending. By overturning the ban on independent spending in federal elections, the Court undid the restriction sustained in the 1990 decision *Austin v. Michigan Chamber of Commerce*. In *Austin*, the Court determined that Congress had the authority to ban spending by corporations and unions.

It also found that the blackout provision in the Bipartisan Campaign Reform Act (better known as McCain-Feingold) was unconstitutional. The blackout rule prohibited corporate or union communications within 30-days of a primary and 60-days of the general election. The decision did, however, keep in place the ban on direct monetary contributions to federal candidates by corporations and unions.

The reaction to the decision was swift and almost universally damning. Even President Obama, in his State-of-the-Union Address, took the unprecedented step of criticizing the Court in the presence of the justices.

Not only did it seem as if the Supreme Court let the sky fall but also it appeared that the justices had abandoned all reason.

Consensus opinion held that the decision would open the floodgates to out of control spending by corporations and unions. In truth, the floodgates had already been opened in 2002 by McCain/Feingold, which ended up diverting large "soft money" contributions from national parties into independent political committees. Citizens United just opened these floodgates wider.

Since the decision, the drum beat of criticism has not ceased. Countless articles have been written decrying out of control spending by independent organizations backed by corporate and union dollars. But what has been lost in what some would term a hysterical reaction to Citizens United is the fact that the Supreme Court came out strongly for disclosure.

In February 2010, the Assembly Judiciary Committee held a public hearing on the high Court ruling on New Jersey's campaign finance law. At the hearing, I testified that "the justices strongly favored disclosure, upholding requirements that sources of spending be identified."

Additionally, the testimony held that the "decision... made the need for strong disclosure laws more important than ever." In the year-and-a-half since the decision was rendered, those statements about the Court's strong support for disclosure have been born out.

In a recent article in the New York Times, Adam Liptak wrote: "An often overlooked part of Citizens United decision actually upheld disclosure requirements."

He stated further that "Lower courts have embraced the ruling, with at least nine of them relying on Citizens United to reject challenges to disclosure laws..." Liptak made the further point that "none of this means that existing disclosure laws are necessarily adequate. But if they are not, the fault lies with Congress and State legislatures, not the Supreme Court."

And there's the rub. There is much wringing of hands in New Jersey and elsewhere over the emergence of 527 and 501(c) issue advocacy organizations. 527 groups only report their donors twice annually to the IRS. 501(c) groups never do.

These outside groups potentially could be a factor in this year's legislative elections and assuredly will be involved in the gubernatorial election two years from now.

But as it stands now, their donors and their spending will be anonymous unless they expressly call for the election on defeat of a candidate. And they are not likely to do that.

The Legislature has it within its power to require disclosure by these outside groups. Citizens United paved the way for that.

While it is too late now to change the law prior to this year's legislative contest, there is nothing to stop lawmakers from

Requiring disclosure of outside groups is certainly in the public interest. As the Supreme Court said “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”

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.