

'Stealth' political action groups must be required to disclose their financial activities



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BY JEFF BRINDLE

COMMENTARY

In June I wrote: "a recent U.S. Supreme Court decision could give independent political groups even greater power over campaigns by enabling them to bury candidates in advertising blitzes they can't control."

Stated another way, Citizens United and a subsequent decision by the U.S. Court of Appeals for the District of Columbia, SpeechNow.org, set the stage for outside groups to assume greater influence over campaigns than political parties.

The door already had been pushed ajar by the Bipartisan Campaign Reform Act (BCRA), or McCain/Feingold, in 2002. But the recent court decisions pushed the door open all the way.

And by virtue of this year's federal election it looks like the time has arrived more quickly than expected.

According to The Campaign Finance Institute (CFI), non-party outside groups are estimated to have spent \$280.2 million in this year's federal election campaign.

This figure dwarfs the \$186 million spent by political parties.

While the strength of outside groups has been steadily growing, this is the first election that they have out-performed political parties.

For example in 2006, political parties outspent outside groups by three to one and in 2008 by almost two to one.

The same is happening in New Jersey, at least in federal races. In the thirteen House contests, independent spending by outside groups reached \$1.3 million. Political party spending amounted to \$1.2 million.

What has happened since 2008 makes the point even more clear. In those Congressional elections the parties outspent outside groups by \$6.2 million to \$1.6 million.

These statistics demonstrate the dramatic shift in influence that is taking place both nationally and in federal elections in New Jersey.

While most activity by independent groups has been directed toward federal contests, there is ample reason to believe that similar activity will occur in state elections, perhaps as soon as the legislative elections next year.

The independent, outside groups are those committees organized under IRS rules. They are the 527 groups and the 501(c) organizations.

The 527 groups operate primarily to accept donations and make expenditures in the context of elections. The 501(c) organizations are tax exempt and can participate in elections as long as electioneering is not their main activity.

But when a 501(c) committee raises five million dollars and spends two million on electioneering, that's pretty substantial.

It goes without saying that these outside groups now hold an advantage over candidate and party committees in that contributions to them are unlimited. 501(c) groups can even conceal their donors from the public.

These facts have virtually enabled them to take the lead role in campaigns. They can make media buys earlier than candidates because they can raise more funds more quickly. Though candidates have available to them the lowest prices for advertising, these rates and time slots can be preempted by early ad buyers. In the heat of a campaign 527 and 501(c) groups can squeeze out candidate ads and monopolize air time.

These groups are increasingly getting involved in other traditional campaign areas as well, such as get-out-the-vote, voter registration, polls, and telemarketing.

Clearly recent court decisions permit these outside groups to be fully engaged in political activity, to accept corporate and labor contributions, to spend independently, and to accept contributions in unlimited amounts.

But the court decisions do not protect anonymity of donations nor do they protect these committees from disclosing how their money is spent.

In fact both the Citizens United decision and the SpeechNow.org decision uphold disclosure and the authority of government to require these groups to register.

Last January, in approving priority legislative recommendations for reform, the Election Law Enforcement Commission, called for 527 committees to disclose their financial activity.

Since that time legislation has been introduced both in the Assembly and State Senate to require disclosure by 527 groups and 501(c) organizations as well.

These bills include S-2379 (Buono) and A-3497 (Huttle) as well as S-2076 (Scutari) and A-2595 (Greenstein).

The call for outside groups to disclose their activity is not new. In fact ten years ago, at a hearing in 2000 at Drew University, former Governor Tom Kean urged the enactment of legislation that would require "stealth" PACs to disclose their donors and their spending.

The former Governor stated, "I don't believe there's a place in democracy for people who hide in the dark."

That still holds true today.

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