

NEW LOOPHOLE MEANS MORE ANONYMOUS CAMPAIGN CASH

BY JEFF BRINDLE | 02/09/16 3:15 pm

Limited Liability Companies (LLC's) are becoming the new vehicle for independent groups to hide their donors.

LLC's are structured in such a way as to limit the liability for damages against particular individuals or groups. Unfortunately, they also can be an easy way to make anonymous political contributions.

Until recently, LLCs were not a major issue in New Jersey campaigns.

New Jersey's campaign finance law requires members, or managers, of limited liability companies to disclose the contributions they make to candidates, political parties, and political action committees (PACs).

Unlike corporations, an LLC is not treated as a single entity. Instead, contributions made from company's funds must be allocated wholly, or in part, against individual members of the LLC.

Contributions derived from limited liability companies to candidates, parties, and PACs are therefore reported under New Jersey's Campaign Contributions and Expenditures Reporting Act.

A new threat is arising, however, because a growing number of federal Super PACs and other independent groups are becoming active in New Jersey elections. And when it comes to contributions by LLCs, current federal laws do not require the same level of transparency as those in New Jersey.

Even though independent groups like Super PACs, 501(c)4's and 527's have filing requirements at the federal level, either with the Federal Elections Commission (FEC) or the Internal Revenue Service (IRS), the increasing emergence of LLC's constitutes a major loophole in disclosure law.

All that has to be done is for an LLC to be hastily established and it becomes a vehicle for legal laundering of campaign cash from anonymous individuals to independent groups.

This new trend was first widely reported in 2011, when Restore Our Future, a super PAC promoting presidential candidate Mitt Romney, accepted \$1 million each from three LLCs. Federal complaints

were filed by pro-disclosure advocates, Campaign Legal Center and Democracy 21. To this point, neither the Federal Election Commission nor US Justice Department has taken action.

In 2013, the same groups filed a similar complaint against FreedomWorks for American, a Super PAC that received \$12 million from two LLCs shortly before the presidential election.

Use of LLCs continue to be an issue in this year's presidential campaign.

Just last week, the Wall Street Journal reported in a February 4, 2016 story by Rebecca Ballhaus that, "wealthy donors in the 2016 presidential election are increasingly using private companies to mask their donations to Super PACs, circumventing disclosure rules as they pour millions in difficult-to-trace cash into the campaign."

The article further states: "in 2015, more than 200 limited liability companies- whose disclosure requirements vary from state to state- donated almost \$11 million to super PACs backing six presidential candidates." While some states require LLCs to disclose their owners, "In many cases, it is impossible to determine owners based on their disclosures," adds the article.

While this type of activity has started in earnest at the national level, it now is becoming an issue at the state level.

According to a story by Brian Lyman in the Montgomery Advertiser on June 2, 2014, Alabama Foundation for Limited Government, an LLC, gave \$700,000 to a political action committee that then made contributions to legislative candidates.

A February 1, 2016 story by Politico reporter Matt Friedman indicated nearly half of \$3.2 million raised by a Super PAC named Coalition for Progress came from LLCs and other shell corporations.

Contributions by mystery LLCs also have become a major issue in neighboring New York state, where fundraising committees for Governor Andrew Cuomo, Attorney General Eric Schneiderman and other elected officials have been criticized for accepting contributions from LLCs.

Cuomo acknowledged the issue in his January 13, 2016 State of the State Message when he called for more disclosure by such donors. "The 'LLC Loophole' in campaign finance law has allowed special interests to circumvent both contribution limits and disclosure requirements," said a policy paper issued by the governor. Meanwhile, a bipartisan lawsuit has been filed in New York courts to try to close the loophole.

Disclosure of spending by independent groups in New Jersey elections already is weak. The emergence of limited liability companies as another player in the dark world of independent group campaign activity only makes the situation worse.

That's why it is important for the New Jersey Legislature to enact legislation that would require independent groups to follow the same rules as candidates and parties.

The Commission has proposed that independent groups disclose their contributions and expenditures and register with the Commission.

In light of the emergence of LLC's as participants in the political game, the law regulating independent groups should require LLC's that contribute to them to allocate contributions against members as is the case regarding their contributions to candidates, parties, and PACs.

The legislature also should consider strengthening the political parties by increasing the limits on contributions made to them, by allowing state parties to participate in gubernatorial elections, by exempting parties from pay-to-play contribution limits (though regular limits still would apply), and by loosening up federal account party building rules.

These changes, along with expanded disclosure for LLC contributions to independent groups, would both enhance transparency and offset the influence of independent groups over New Jersey's electoral process.

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.