

# Time to demand election transparency from 'issue advocacy groups'



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**BY JEFF BRINDLE**

## **COMMENTARY**

It's not too late.

There is a precedent for changing election-related laws shortly before an election.

In 1981 the rules were altered when the Legislature enacted the Open Primary

Law.

This law prohibited party organizations from endorsing candidates in the primary. It prevented county party committees from granting the party line to selected candidates, thus denying them an important edge in the election.

The law effectively wiped out the advantage then Paterson Mayor Pat Kramer had going into the gubernatorial primary and paved the way for the former Assembly Speaker, Thomas H. Kean, to lock-up the Republican nomination.

Kean then went on to win the governorship by a mere 1,700 votes over then Congressman James J. Florio. He subsequently became one of the most popular governors in New Jersey history.

A law that now needs to be enacted is one that would require disclosure by so-called issue advocacy organizations.

These are the 527 and 501(c) organizations that can raise contributions in unlimited amounts, spend in unlimited amounts, and avoid disclosure as long as they don't expressly support or oppose a candidate.

Under existing law, as long as one of these "stealth" organizations doesn't use the magic words "vote for" or "against" in their ads, they're free of any legal responsibility to disclose anything about themselves.

This needs to be changed and can be. Indeed, the Citizens United decision by the U.S. Supreme Court and the SpeechNow decision by the D.C. Court of Appeals, has given the green light to requiring disclosure by these organizations.

The Citizens United decision states, "The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech ... For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent to express advocacy."

In other words, the Court has given a hall pass to the enactment of laws that require disclosure of issue advocacy efforts conducted in the context of a campaign.

Disclosure need not be limited to those communications that contain the "magic words."

In January 2010, the New Jersey Election Law Enforcement Commission proposed that legislation be enacted to require 527 organizations to disclose their financial activity.

This proposal was subsequently amended to include 501(c) committees.

Not long after, on February 18, 2010, the Assembly Judiciary Committee called a public hearing to discuss the impact of the Citizens United case on New Jersey's campaign finance law.

At that hearing, I suggested that State officials may now want to explore mandatory reporting by issue advocacy groups.

Since that time several bills have been introduced that would require disclosure by these outside groups.

One, S-2379 (Buono), was moved out of the Senate State Government Committee last November. Since that time there has been no movement on it, or any other bill of its kind.

The issue came to the public's attention again recently with the announcement that a new 501(c)(4) group, One New Jersey, has formed. The organizers of this Democratic party-oriented group indicated that they are under no legal obligation to disclose their activities even though the organization will engage in issue advocacy and probably participate in the coming election campaign.

There have been a number of other outside groups that have participated in the electoral/governmental affairs of New

Jersey, going as far back as the early 2,000s.

Last year, Reform New Jersey Now, a Republican issue advocacy group, formed to support the legislative agenda of the governor.

The group did disclose its financial activity voluntarily last December and its grassroots lobbying activity this past February.

In the process, however, it did receive criticism.

With the legislative elections looming it is a good bet that other independent groups on both sides of the political spectrum will be engaged in this pivotal contest.

If these groups are formed as 527 or 501(c) organizations they will have no legal obligation to disclose their activities.

The voters will be left in the dark. There will be no transparency in terms of who backs them financially, who they support or oppose, or how much money they spend doing it.

And that's a loss for democracy.

But, there is still time. The Legislature could pass legislation that would require stealth organizations to disclose their political activities.

And unlike the Open Primary Law, which, later in the decade, was ruled unconstitutional, this law would pass constitutional muster.

The U.S. Supreme Court has strongly endorsed disclosure.

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