

Campaigns & Elections

Is Citizen's United Really to Blame for the Spending?

The real catalyst for outside spending wasn't Citizen's United, says one campaign finance pro....



Photo: Reuters/CORBIS

It is time to recognize that the Bipartisan Campaign Reform Act (BCRA), otherwise known as McCain-Feingold, was a failure.

Last year, when the U.S. Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, it was accused of opening up the floodgates to a deluge of spending by corporations. But the “sky is falling” hysteria over that ruling obscures the real culprit.

Spending by independent groups, many believed to be funded by corporate donors, did not start with *Citizens United*. The growth in the number of these organizations, as well as their spending, began even before McCain-Feingold, and greatly accelerated after its passage.

Not only did McCain-Feingold spawn the rapid rise in activity by outside groups, but it sparked many legal challenges to once-settled campaign finance law.

Worse yet, it enabled outside groups to expand their influence by shifting most of the large so-called “soft money” contributions previously given to political parties and openly disclosed to many independent groups that keep their donors secret.

One of the main purposes of McCain-Feingold was to check the influence of a then small but growing group of so-called “stealth” PACs that were secretly sponsoring televised campaign ads before its enactment. The early presidential primary ambitions of one of the law’s sponsors, Sen. John McCain, were thwarted in part because of such ads.

Ironically, the law did just the opposite. Today there are far more ads being sponsored by anonymous contributions than before the law was passed. In a recent analysis, Public Citizen found that among the outside groups that sponsored election ads in the 2010 federal elections, only 34 percent disclosed their contributors. In 2004, the disclosure rate was 97.9 percent.

Two provisions in McCain-Feingold have had the most impact on the electoral landscape. The law banned soft money (unlimited contributions) to the national political parties and prohibited corporate and union communications within 30 days of a primary and 60 days of the general election.

The soft money ban resulted in the flow of campaign dollars being rechanneled from national parties to independent committees, often with less disclosure. The blackout provision served as a catalyst for legal challenges.

Rather than being given to the national political parties, which represent a broad coalition of people and interests, the soft money dollars went to independent groups with narrow interests. Unlike the national parties, these groups aren’t as accountable. Soft money might have been a potentially corrupting influence, but at least the public knew where it was coming from.

Instead of resulting in more transparency and accountability, the law has resulted in less. Prior to McCain-Feingold, the public knew the identity of soft money donors, which gave the two national parties a record \$458 million in 2002 before the practice was outlawed.

Many of these same donors are still making contributions to outside groups. But now the public is often left in the dark.

In 2000, spending by outside groups on election-related activity totaled just \$51 million, according to the Center for Responsive Politics. Last year, in 2010, spending by outside organizations reached a new high of \$305 million.

One difference is that about \$137 million, or about 45 percent, of the outside spending was undisclosed due primarily to the soaring use of non-profits that report only to the IRS. The anonymous contributions were 25 times the 2006 level, according to Bloomberg News.

Many of the lawsuits the law spawned have targeted the very foundation of the campaign finance regulatory system, including key sections of McCain-Feingold itself.

Five have reached the U.S. Supreme Court since 2006 and campaign finance advocates lost all five. While not all of these decisions have had the dire impacts feared by critics, these and other lower court rulings have created chaos for both candidates and regulators, not to mention the public cost of defending against the lawsuits.

Fortunately, the courts, including the U.S. Supreme Court, have strongly upheld the principle of disclosure.

The original crusade that began in the 1970s to regulate and disclose the money that influences elections was not wrong. Both Republicans and Democrats should fear a return to pre-Watergate dark ages, which would be a serious blow for democracy. In fact, to avoid that outcome, we should be requiring all outside groups to promptly and completely disclose the sources of their contributions before each election.

But when Congress undertakes reform in the campaign finance field, it needs to seriously weigh the potential consequences, both short-term and long-term. In the case of McCain-Feingold, that didn't happen.

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