



By Mandating



Transparency, The NJ Legislature Can Protect the Gubernatorial Election

New 'outside' groups are under no obligation to say where their money comes from or how it's spent.

By **Jeff Brindle**, December 23, 2011 in **Opinion**

While NJ Spotlight is on winter hiatus, we've asked some of the state's thought leaders to share their opinions and expertise with our community. We'll be back, rested and ready, next week.



Hard to believe but the next election for governor is just two years away.

So let this column be the first to speculate about what will distinguish this election from ones in the past.

Of course, some things won't change. The Gubernatorial Public Financing Program will again be a staple of this election. This program provides matching funds to qualifying candidates of limited means and works to eliminate even the appearance of undue influence over the gubernatorial process.

By matching two public dollars to every dollar raised, candidates who qualify for the program can receive millions of public dollars to help them get their message to the voters. Considered a model for other states, the program has existed since the 1977 election. It has permitted individuals to be elected to the state's highest

office who otherwise may not have been able to raise adequate funds to compete effectively.

So in this regard, New Jersey serves as the standard bearer for the conduct of gubernatorial elections. The program will continue to be the thread that connects to the past.

What will be different in the next election, however, will be the emergence of independent, outside groups. Their increased involvement makes the need for our strong public financing program even greater.

The New Jersey legislature can prevent these groups from having unfettered and often anonymous influence in the next gubernatorial election. But in order to do so, it needs to act this year and pass legislation making the actions of these groups transparent to the public.

What groups we are talking about? Among them are 527 nonprofits, which are permitted to participate in campaigns and only report twice per year to the IRS. These include organizations such as the Republican and Democratic Governor's Associations, as well as other political nonprofits. Other third-party groups involved in the political process include those that fall under the 501c4 tax code. These groups may not have politics as a primary purpose, but they can be involved in campaigns and are not required to disclose their financial activity publicly. Falling under this umbrella are such groups as the National Rifle Association, One New Jersey, and Better Education for New Jersey Kids, Inc.

Finally, there are now national super PACs that can establish separate accounts, one of which can accept unlimited donations and spend unlimited amounts. The super PACs often receive soft money contributions that they don't disclose. The rise of the super PACs was spurred by the U.S. Supreme Court's landmark Citizens United decision, which allows unlimited corporate and union contributions to political activities.

The fact that 527's, 501(c)'s, and super PACs loom over the next election is evidenced by the 2009 gubernatorial election, the recent legislative elections, and trends nationally.

Two years ago the Democratic and Republican Governors Associations, as well as labor unions, all participated independently in the gubernatorial general election. Millions were spent.

In this year's legislative elections, it is estimated that more than \$800,000 was spent by independent groups to influence the outcome of the contest.

These organizations include the Republican State Leadership Committee, America's Families First, Environment New Jersey, Americans for Prosperity, Strong New Jersey, and New Jersey Family's First.

But the most telling barometer of what is to come is what has been happening nationally.

In last year's congressional elections, the Center for Responsive Politics estimates that independent groups spent \$305 million to influence the outcome of House and Senate contests. That was a new high for these organizations, whose spending can only be estimated, because many groups are not required to disclose their financial activity.

Although the growth of super PACs may have been due to the Citizens United decision, outside spending's real culprit was the Bipartisan Campaign Reform Act (BCRA), otherwise known as McCain-Feingold. The growth in the number of these organizations, and their spending, greatly accelerated following the Reform Act's passage. It was a case of unintended consequences: tightening up fundraising requirements on candidates and political parties forced money to go elsewhere in the process.

In 2002, the year the bill became law, the Center for Responsive Politics estimated that independent spending reached \$27.3 million. Just two years later that total grew to \$200 million, and by 2008 to \$302 million.

Thus, during the two-year span following the enactment of McCain-Feingold, independent spending increased by 633 percent. In the years preceding Citizens United, 2002 to 2008, outside spending nationally increased by over 1,000 percent.

Contrast these figures to the amount estimated to be spent in 2010 following Citizens United. Independent groups are believed to have spent close to \$305 million, a hefty sum but representing only a slight increase over 2008.

So, McCain-Feingold is primarily responsible for the rapid growth in 527 and 501(c) groups acting as independent agents in election contests. Specifically, by prohibiting unlimited soft-money contributions to national parties, McCain-Feingold opened the door for money to flow into independent groups.

Unlike the political parties, however, which were required to disclose the sources and amounts of soft money, outside groups could receive contributions in unlimited amounts. Many do so anonymously.

So the unintended consequence of the reform was to greatly magnify the influence of 527's, 501(c)'s, and now super PACs, all at the expense of transparency.

For New Jersey it means the likelihood of an enhanced presence of outside groups in the upcoming gubernatorial election in 2013.

Some will be formed here. Others could come from outside the state.

So the question becomes: how can the state's electoral system protect itself from this massive new influence?

First, as proposed by the Election Law Enforcement Commission two years ago, the legislature should enact laws that would require disclosure of financial activity by these groups -- whether or not they use the magic words, "vote for or against" in their ads, or their "functional equivalent."

The Supreme Court sanctioned such reporting in Citizens United, which strongly endorsed disclosure. The public deserves such transparency.

Second, the Gubernatorial Public Financing Program will continue to serve as a bulwark against the intrusion of independent, outside groups and will ensure the citizenry that candidates have adequate funds to run effective campaigns not unduly influenced by these outside organizations.

James Madison, in Federalist Paper Number Ten, recognized that factions were inevitable. He said that a system of government must be established, not to cure faction, but to control it.

In the same way, independent organizations as a part of the electoral landscape seems inevitable. The best we can do is find ways to control them and make them more transparent.

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.

copyright © 2010-2011, njspotlight. all rights reserved.