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New Jersey Pay-to-Play Laws: No 'Field of Dreams'

JEFF BRINDLE • September 03, 2019, 1:37 pm

In the 1989 movie "Field of Dreams", farmer Ray Kinsella (played by Kevin Costner) hears a mysterious voice as he walks through his Iowa cornfield: "If you build it, he will come."

At the same time, Ray envisions a baseball field built on part of his land. Though his wife Annie has doubts, and despite mounting financial problems, Ray plows ahead and builds the field.

Months later, legendary player Shoeless Joe Jackson appears to Ray. He later returns with former teammates who were banned from baseball as the result of the 1919 Black Sox Scandal.

They are thrilled to play baseball again.

Following several plot twists, the movie ends with Ray reconciling with his father and welcoming hundreds of visitors who descend upon the Iowa cornfield.

Now considered one of the greatest American cinematic fantasies ever and featuring one of the most famous lines in film history, the movie is adored by most fans and chosen by the Library of Congress for the National Film Registry in 2017.

Major League Baseball even plans to celebrate the movie next year by arranging for the New York Yankees and Chicago White Sox to play a game in a newly built field in Dyersville, Iowa.

While "Field of Dreams" had a happy ending, the same cannot be said of well-intentioned reforms made to the New Jersey electoral "playing field" in the form of a Pay-to-Play law enacted in 2006

Unlike the baseball film, pay-to-play restrictions have driven some major players away from the field and hamstrung the game of politics in the state.

Pay-to-Play reform helped spur consequences not intended by good faith reformers, most notably the dismantlement of the political party system in New Jersey and the simultaneous emergence of independent, outside groups.

In this 2006 "Field of Dreams" law, a business is banned from receiving a public contract of more than \$17,500 if it makes a contribution of more than \$300 during the 18-month period prior to the awarding of the contract and for the duration of the contract.

The limit on donations applies to candidates, officeholders, and political parties that are involved in the decision to grant a public contract.

Unfortunately, the state's Pay-to-Play law is fraught with loopholes, difficult to understand because of its complexity, and therefore hard to enforce.

Municipal and county governments, as well as other local entities such as school boards and authorities, have the option to be subject to state law or to be exempt from it.

There are two ways for local government entities to avoid being subject to state law.

First, local entities can enact their own Pay-to-Play ordinances, which can be weaker or stronger than state law. Adding to the complexity is the fact that local ordinances frequently change as new administrations assume office.

Second, local government entities can invoke the “fair and open” provision. This provision allows municipal and county governments to avoid state law by simply publicly advertising their bidding process.

In either case, the \$300 contribution limit does not necessarily apply. Over 176 municipalities and counties have adopted their own plans. Many others invoke the “fair and open” provision.

Unfortunately, this well-meaning reform has had multiple consequences.

As the result of an inadvertent \$300 contribution, the law may cause economic hardship to both the business and the community. This small donation will cause the business to forfeit its public contract and to discontinue work, this in the middle of performing the contract.

Moreover, this convoluted law has either discouraged participation in politics by business people fearful of violating the law or caused them to seek ways to legally circumvent it.

Perhaps most alarming is the impact the 2006 Pay-to-Play law has had on the overall electoral system in New Jersey.

First, it has made some contributions harder to track and led to less accountability. As more contractors donate to political action committees (PACs) or independent groups instead of political parties, the perceived link between a donation and a public contract is more difficult or even impossible to trace.

Second, and most importantly, the Pay-to-Play law shares responsibility for weakening the political party system in New Jersey and ushering in the era of influence by less accountable independent groups.

The Pay-to-Play law is not solely responsible for the decline in accountable parties. Independent spending by special interest groups shot up after the 2002 *McCain/Feingold* federal law banning unlimited contributions to national parties. It increased even more after the 2010 *Citizens United v. FEC* ruling by the U.S. Supreme Court, which allowed unlimited independent spending by corporations and unions.

Funding decreases to political parties and the emergence of independent groups in New Jersey came soon after the 2006 pay-to-play law took effect.

In the last two gubernatorial elections, 2013 and 2017, and the last congressional election, independent groups spent \$168 million compared to barely half that much by political parties.

Because of the ramifications wrought by Pay-to-Play, the law, while not needing to be undone, it does need to be changed.

For several years, the Election Law Enforcement Commission has recommended changes that would make the law more understandable and enforceable while at the same time help to restore the party system and balance the out-sized influence of independent groups.

The proposal calls for one state law to apply at all levels of government, an end to the “fair and open” provision, and a requirement that would enhance disclosure by requiring any business that receives a contract of \$17,500 or more to disclose their contribution.

Moreover, the proposal calls for PACs to be included under Pay-to-Play and parties to be excluded, for the contribution limit to be increased to \$1,000, and for contractor contributions to independent groups to be disclosed.

This commonsense reform would strengthen the Pay-to-Play law by making it more understandable and enforceable, promote New Jersey's economy, help strengthen political parties, and heighten disclosure. Hopefully the Legislature will take these commonsense reforms under consideration.

And get more players back on New Jersey's electoral ballfield.

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.