

States must enact Super PAC legislation requiring disclosure



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BY JEFF BRINDLE

COMMENTARY

Super PACs used to pretend they operated at arm's length from the candidates they support.

Not anymore.

Even before last week, no one seriously believed Super PACs were independent.

But it was nearly impossible to prove they coordinated their activities with candidates. You had to be a fly on the wall. Or at least had to own good eavesdropping equipment.

In recent days, however, the notion that Super PACs are independent has been rendered a total farce.

President Obama, who once denounced Super PACs, said he would permit members of the cabinet and senior aides to appear and raise money at their fundraising events.

Not to be out-done, Republican presidential primary contender Mitt Romney proclaimed that he would allow senior aides to attend events held by "Restore Our Future," the Romney Super PAC.

These cabinet members and advisors can ask donors for contributions of up to \$2,500 per election, or up to \$5,000 for the primary and general election.

The Wall Street Journal also reported that plans are being laid for members of Congress to appear at Super PAC fundraising events. So can presidential candidates be far behind?

Probably so, since the Federal Election Commission (FEC) has previously ruled that candidates can appear at Super PAC

events. And they can raise money.

Super PACs became part of the vernacular and began dotting the electoral landscape after the U.S. Supreme Court decision *Citizens United v. FEC* and the D.C. Circuit Court of Appeals decision in *SpeechNow.Org v. FEC*.

The legal theory was that as long as these PACs engaged only in independent spending, they could take contributions in unlimited amounts and spend as much as they like.

It turns out that theory was based on a faulty and extremely naïve premise.

To say that these groups are operating independently is preposterous on its face. Especially with the latest developments.

When you have cabinet members and campaign advisors attending Super PAC events and even raising money, there is no independence. What it amounts to is a slap in the face of the public, and an insult to our collective intelligence.

However ridiculous, it is the state of current law. And Super PACs at least are operating in compliance with it.

If there is one potential silver lining, it is that the *Citizens United* and *SpeechNow* cases both strongly supported the principle of disclosure.

The *SpeechNow* case allowed Super PACs to be unregulated in terms of spending and contribution limits, but nevertheless required that they register with the FEC and report their financial activity.

This approach isn't full-proof. In fact, many Super PACs are raising bundles from non-profit groups that currently aren't required to disclose their contributors. In those cases, the public still doesn't know the ultimate contributors.

Still, a little sunlight is better than none at all.

New Jersey voters should be concerned about Super PACs because they soon could be coming in droves. Under current state law, only those groups whose advertisements use the magic words, "vote for" or "against," or the equivalent thereof, are required to report as an independent expenditure committee. Groups can get around that by focusing solely on the positions candidates take on issues without explicitly mentioning the election.

For Super PACs and other groups that fail to expressly urge the election or defeat of candidates, there is no mechanism in

the state for them to register and thoroughly report their financial activity.

The stage is set for an invasion of outside, independent group activity that will adversely impact candidates of both political parties, and do so anonymously.

The potential for Super PACs and other groups to dominate not only the State's political parties, but also the candidates themselves, is very real.

That is why it is critically important for state officials to follow the advice of federal judges in Citizens United and SpeechNow. They should enact legislation that requires disclosure by Super PACs, as well as 527 and 501(c) non-profits, in a pre-election setting.

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