

Super PAC disclosure needs N.J. legislation

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BY JEFF BRINDLE

COMMENTARY

Super PACs are rapidly becoming the Leviathan that is swallowing up the electoral landscape.

Supposedly independent, they are anything but. While they now are actively supporting and opposing candidates, the next step may be to serve as fundraisers for candidates.

Super PACs are the latest manifestation of a campaign finance landscape that has been unsettled since the enactment of McCain/Feingold in 2002.

Two recent court decisions, one by the D.C. Circuit Court of Appeals in *SpeechNow v. FEC*, and one by the D.C. Federal District Court in *Carey v. FEC*, set the stage for the formation of these latest groups.

In particular, *Carey v. FEC*, permitted federal PACs to raise money in unlimited amounts as long as this soft money was only used for independent expenditures.

These independent spending-only committees, now known as Super PACs, are required to disclose their activities, but as long as they do not coordinate or consult with candidates, they are otherwise unrestricted.

To say, however, that these Super PACs are independent is misleading at best.

Campaign strategists aligned with the candidates in the Republican Presidential primary are heading up Super PACs that in some cases are outspending the campaigns themselves.

And President Obama, once critical of Super PACs, now has unleashed members of his cabinet to help raise money for a Super PAC supporting his re-election.

It's even been suggested that the state of the law would allow candidates themselves to attend Super PAC events and help raise money.

So is it far fetched to think that the next activity of the Super PACs is to serve as fundraisers for the candidates themselves?

Campaign finance lawyer Jason Torchinsky, who served as Deputy General Counsel to the Bush-Cheney campaign, thinks not.

In Campaigns and Elections magazine, Torchinsky said, “I almost see a really effective route for Super PACs to spend independently to help candidates raise money. I haven’t seen any of them actually do it yet. But if you can spend independently and say 'Vote for Marc Elias', why can’t I ask people to give money to Marc Elias?”

Robert Lenhard, former Chairman of the Federal Election Commission, agreed, saying, “There’s a little bit of that out there, but there’s not too much. I do think it’s an opportunity for people to have an impact.”

While the focus of Super PACs and other outside, independent groups is now on the presidential campaign, New Jersey is sure to be one of their next stops since important gubernatorial and legislative campaigns loom next year.

Independent groups already have displayed their considerable — and growing — clout in recent state elections.

Last year independent groups spent at least \$1.3 million on the legislative contest. And during the 2009 gubernatorial contest, almost \$14 million in independent spending by outside groups took place.

Even bigger spending could happen next year.

That is why it is important for the Legislature to move legislation that will require registration and disclosure by Super PACs and other outside groups.

Registration and disclosure, by virtue of Citizens United and the aforementioned decisions, are constitutional.

There is no better time than now for the Legislature to bring about this much needed reform.

***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.*