

# IRS takes aim at 501(c) election donors



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**BY JEFF BRINDLE**

## **COMMENTARY**

If you are a big donor to a 501(c) organization involved in an election, the IRS may be looking at you.

That's right. As the New York Times reported recently, the Internal Revenue Service is about to plunge into the murky

waters of campaign finance.

A story by Stephanie Strom noted that the IRS has "sent letters to five donors ... informing them that their contributions may be subject to gift taxes depending on whether the donations exceeded limits under the tax laws."

The donors are suspected of making large, secret contributions to 501(c)(4) groups involved in the 2008, and perhaps 2010, federal election campaigns. For those making multiple gifts, there is a lifetime exemption covering \$5 million in gifts. That exemption is dropping to \$1 million in 2013. Taxes must be paid on gifts exceeding \$13,000 from an individual and \$26,000 from couples.

The gift tax issue is important because it could make wealthy donors reluctant to contribute through these groups because they won't be able to leave as much to their heirs.

The IRS, in a statement, denied that a wider net is being cast and that "the examinations are not part of a broader effort looking at donations to 501(c)(4)'s".

Whether by design or coincidence the enhanced scrutiny of big donors who support independent groups comes on the heels of faltering efforts by Congress to pass legislation requiring disclosure by these non-profits and other outside groups.

Moreover, it comes after information was leaked to the press that a presidential executive order is in the offing that will

impose pay-to-play restrictions on vendors who receive federal contracts.

Groups on both sides of the political spectrum used these non-profits and have resisted efforts to have their activities disclosed. Therefore, their contributions and expenditures remain largely anonymous.

In the most recent congressional election in 2010, spending by outside groups reportedly amounted to roughly \$300 million. A significant portion of that amount, \$132 million, was spent during the final weeks of the campaign. More than \$123 million of the \$300 million was donated anonymously, usually to the most competitive races.

It is undeniable that these groups are having an increased influence over the political process. Yet, unlike the political parties, their activities remain largely hidden from the public.

In commenting on outside group involvement in New Jersey, I wrote in a previous column that “there is every reason to believe that New Jersey will experience this activity in this very important contest for control of the Legislature.”

And now, in the weeks immediately before the primary election, there is every indication that groups spanning the political divide, from business, to labor, to ideological organizations, are gearing up for this important contest.

And just like at the federal level, the election-related activity of 527 and 501(c) groups will go unreported in New Jersey.

The voters will be uninformed about the donors to these outside groups as well as to their overall activities.

In January of 2010, and again in its most recent annual report, the New Jersey Election Law Enforcement Commission called for the enactment of legislation that would mandate the disclosure by 527 and 501(c) organizations.

Legislation to that effect has been introduced but to this point has seen little movement.

Despite the lack of movement, there is every reason to believe that it is in the best interest of the public for these groups to disclose. It is in the best interest of these groups as well.

So far, outside groups are winning the battle against disclosure. But they still could lose the war.

Widely overlooked in the hysteria over the Citizen’s United decision is the fact that the Supreme Court came out strongly on the side of disclosure. This position was reinforced in *SpeechNow* and in the Eighth Circuit decision *Minnesota Citizens*

Concerned for Life v. Swanson.

Now the IRS may potentially close the spicket on the flow of money to these groups by imposing gift taxes on large donations. Further, a presidential executive order will compound the effect by reducing the amount of money in the process.

Transparency in our electoral process is critical. And so is having enough money to effectively participate in election-related activity.

For these reasons, both for good government, and for the ability of outside groups to exercise their First Amendment rights, it would behoove these organizations to support efforts to require disclosure of their activities.

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