

Enhance transparency by changing N.J. PAC requirements



Wednesday, 25 August 2010 |

17:14 |



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COMMENTARY

It has been said that while reforms are often necessary and to the benefit of the public they sometimes have unintended consequences.

The Election Law Enforcement

Commission's (ELEC) recent analysis

of special interest PAC activity underscores this point. It showed that the level of special interest PAC activity involving New Jersey elections returned to late 1980's, early 1990's levels.

What's behind this? White Paper analyses published by the Commission over twenty years suggest that reforms enacted first in 1993 and again in 2005 have something to do with it.

From 1985 to 1989, for instance, a period of political party weakness, financial activity in legislative elections by PACs ranged from 18 percent to 20 percent.

There were a number of factors that contributed to the decline of once powerful party organizations, particularly at the county level.

Among the factors were: court decisions in the 1960's that apportioned legislative districts on a one-person-one-vote basis rather than county lines; increased suburbanization, decreasing voter turnout; and the Open Primary Law enacted in 1981.

It was then that political action committees became more influential in New Jersey elections and political party organizations simultaneously grew weaker, in some ways becoming anemic.

This growth in PAC activity was short lived, however. A U.S. Supreme Court decision in 1989, *Eu vs. San Francisco*

Democratic Central Committee, began the process of rehabilitating political parties in New Jersey.

The Supreme Court, in *Eu*, declared California's Open Primary Law, similar to New Jersey's in prohibiting parties from any involvement in primary elections, to be unconstitutional.

In New Jersey, though, what really caused a change in the electoral dynamic were the comprehensive reforms enacted in 1993.

While numerous reforms were enacted as part of the 1993 Reform Package, most instrumental in changing the electoral landscape was the introduction of contribution limits that pertained to non-gubernatorial candidates, political parties, PACs, and other committees.

In enacting the reforms, the Legislature designed a contribution limit scheme that advantaged the political party committees over all others, including the PACs.

This single reform revived the political party system in New Jersey, once again making the county party organizations extremely powerful. State parties were empowered as well, along with legislative leadership committees that were formally established under the new law.

In a study by the Commission in 1997, it was pointed out that "there is a repartyization process underway in New Jersey and that an integral part of this process is the greatly strengthened role of the county party organizations in the campaigns of their candidates."

To be sure, as political parties were strengthened, PACs receded into the background, often constituting as little as nine percent of legislative contributions.

But as shown in the recently released analysis of special interest PAC activity in the State, the pattern is changing once again.

Pay-to-Play reform enacted in 2005 is in part, at least, responsible for this change, which has resulted in a growth in PAC activity that exceeds even the levels reached in 1989.

Though the Pay-to-Play laws have had the desired affect of reducing overall financial activity in elections in New Jersey, they have led to an uptick in PAC activity, accounting for 22 percent of contributions to Assembly candidates in 2009.

Moreover, Pay-to-Play reforms have contributed to an increase in the total number of PACs operating in New Jersey. Many of the newly formed PACs which have been established following the enactment of Pay-to-Play have seemingly been created as appendages of the political party committees.

The danger in this development is that it hampers the public's ability to follow the money, thus hurting transparency, and makes the contribution limits and the Pay-to-Play Law more susceptible to being circumvented.

ELEC has proposed a remedy for this developing situation. Under current law, two individuals who plan to spend \$4,900 in New Jersey elections on an ongoing basis may register as a PAC.

This is too easy. One solution is to do as the Federal Election Commission does; increase the number of individuals required to form a PAC to nine. This would allow for truly serious PACs to form.

The Commission recognizes that under First Amendment speech and associational rights, citizens have a right to be involved in politics and to join together in forming PACs.

However, the ease by which PACs are formed under current New Jersey law should not be used to undermine disclosure or to get-around contribution limits and Pay-to-Play restrictions. While it has been noted that at times well meaning and worthwhile reforms result in unintended consequences, this proposal, as it stands, is one that would suit the public well, enhancing transparency and making it more difficult for those who would do so to game the system.

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