

How the 2013 N.J. gubernatorial race will be different

Monday, 06 August 2012 10:45



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COMMENTARY

In at least two key ways, New Jersey's gubernatorial election next year has the potential for being different from any in the past.

First, there is likely to be a new record for a state election in the amount of money spent by independent, outside interest groups. Secondly, online technology also will be playing an ever-expanding role in New Jersey electoral politics just as it has in national campaigns.

New Jersey's past two elections- and more recent ones nationally- foreshadow the looming invasion by independent groups.

Last year's legislative contest witnessed \$1.3 million spent by outside groups in an attempt to influence the outcome of the election.

What's more, during the last gubernatorial cycle in 2009, independent expenditures by outside groups topped \$14 million.

Until now, independent spending has been the domain of 527, 501(c), and labor union groups. Now a new type of organization has emerged to augment, and in some cases supplant, the efforts of these earlier groups.

Super PACs are now dominating the electoral landscape. They were spawned by *SpeechNow v. FEC* and *Carey v. FEC*, two rulings by the D.C. District Court which followed the U.S. Supreme Court's decision in *Citizen United*.

Super PACs were major players in the recent presidential primary and the Wisconsin recall election.

Estimates are that approximately \$185 million has already been spent by Super PACs and other independent groups in the race for the presidency. The Wisconsin Democracy Campaign, an independent tracking group, estimates that more than \$31 million was spent by independent groups for and against the recall.

Both the activity in New Jersey and nationwide serve as a harbinger of things to come in next year's gubernatorial election.

But the potential for the proliferation of independent spending is not the only aspect of the campaign that will be different. Recent trends point to a significant increase in digital politics, or the use of online technology, in the next gubernatorial cycle.

The new digital politics may involve both the “air war” and the “ground war.”

Using the airwaves, online advertising can be used to reach a broad audience, which includes journalists, bloggers, and opinion leaders.

To help mobilize campaign troops for the ground game, the new digital politics includes using online technology to line up supporters and contributors, and for get-out-the-vote efforts.

Wholesale and retail politics meet the digital age.

Unquestionably, the tried and true methods of campaigning, TV, radio, newspaper, direct mail, and now perhaps digital billboard advertising, will continue to dominate.

However, a more data driven campaign is sure to make its appearance in New Jersey in 2013. The changes to the electoral landscape potentially brought about by independent groups and the new digital age underscore the importance of disclosure.

In the coming months it is particularly important for the Legislature to pass legislation that will require the disclosure by independent groups of their donors and their spending.

Currently, state law does not require disclosure by these groups unless they expressly support or oppose a candidate. And even in this case, only spending [not contributions] is required to be reported as an independent expenditure.

The U.S. Supreme Court in *Citizens United* strongly endorsed disclosure so the Legislature has every right to require registration and disclosure of contributions and expenditures by these groups.

Further, as the new digital age impacts New Jersey’s campaigns in a significant way, due diligence is required in terms of monitoring this new development and ensuring that timely and effective disclosure is accomplished.

This, of course, presents new challenges for the Election Law Enforcement Commission. To stay on top of these new developments it first requires an awareness of the issue, something the Commission is very much on top of.

The Commission continues to be cognizant of the ever changing nature of campaigns and it will be its responsibility to ensure that complete and thorough disclosure is the order of the day in the upcoming campaign.

Transparency is very important in elections, with the public interest very much served by a thorough and consistent scheme of disclosure, one that with the registration of independent, outside groups will be complete.

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.