

Pay-to-play election law reform would foster more competitive contests



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The November election witnessed a decrease in direct financial activity by State Senate and Assembly candidates.

This was predicted in a column last January.

Conversely, in that same column, it was predicted that independent, outside groups would increase their involvement in this year's legislative contest. And that happened too.

The 20-day Election Law Enforcement Commission (ELEC) reports showed legislative candidates reporting a little over \$45 million in contributions. They spent over \$38 million directly on their campaigns.

Therefore candidates for State Senate and Assembly raised 10 percent less than in 2007, the last time both houses were up for election. They spent 12 percent less than in the earlier contest.

Not surprisingly, a large proportion of the money raised and spent happened in the waning days of the campaign and in battleground districts.

For example, districts 2, 38, 7, 3 and 14 raised over \$5 million between the 11-day pre-election report and Election Day, or 59 percent of funds raised during that period.

At the same time, that direct financial activity by legislative candidates was slowing, the pace of independent spending was quickening.

Based on independent expenditure reports filed with ELEC, newspaper reports, or reports published by the groups themselves, it is estimated that about \$800,000 was spent on New Jersey's legislative campaigns by outside groups.

Groups from which information was gleaned include Better Education for NJ Kids Inc., Republican State Leadership Committee; American's Family First, NJ Family First and Environment NJ.

Two other groups, StrongNew Jersey and American's for Prosperity, participated in some form though no financial information is available.

In Virginia, for example, Americans for Prosperity reported spending \$300,000 on the State's legislative elections.

The spending figure of \$800,000 mentioned above is most certainly low. It is based on sketchy information. In all probability, as evidenced by spending reported in other states, independent expenditures in New Jersey exceeded \$1 million.

Most of the groups that spend independently with little or no disclosure are 527's and 501(c)'s; their spending will continue to climb as years go by. Certainly, we can expect significant involvement by outside groups two years from now when the State holds an election for governor.

The decline in direct spending by candidates and the increasing amounts spent by independent groups cries out for reform.

Lower financial activity by legislative candidates can in part be pegged to the bad economy. But more importantly the pay-to-play law has had a more direct influence over the downward trend.

Since pay-to-play went into effect in 2006, not only has financial activity by legislative candidates been on a downward spiral, but also spending at all levels of government (including parties) has been down as well.

Two years ago, in January 2010, the Election Law Enforcement Commission recommended reforms to a very confusing pay-to-play law. These reforms include simplifying the law to require one State law to apply across the board, an end to the fair and open loophole, greater disclosure by requiring any vendor receiving a public contract of \$17,500 to report contributions, and a modest increase in the contribution limit applying to contractors.

Because the Commission recognizes the expensive nature of campaigns in a State influenced by the New York and

Philadelphia media markets, it proposed a slight increase in the contribution limit for vendors which would still be way under the current \$2,600 limit applying to all other contributors.

At the same time, and even before the United States Supreme Court came out strongly for disclosure in Citizens United, the Commission proposed that 527 and 501(c) organizations be required to disclose their financial activity undertaken in the context of an election.

Without doubt, the Commission, in recognizing the complexity of pay-to-play, and in anticipating the uptick in independent expenditures, was prescient. More competitive elections, which pay-to-play reform would help foster, and disclosure of outside groups, would truly constitute meaningful reform.

Hopefully, the incoming Legislature will take up those proposals which serve the public interest.

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.