

Funding for New Jersey's Legislative Campaigns will Continue to Stutter Without Outside Help

JEFF BRINDLE • January 21, 2011, 16:40

The upcoming election for State Senate and Assembly raises several questions.

How will the new legislative district map look? Will the reapportionment process place any two incumbents in the same district, forcing a primary contest? And, of course, which party will benefit from the redrawn district lines?

Interesting questions, but ones that can't be answered yet.

One aspect of the coming campaign does lend itself to making a prediction – how the campaign will be funded.

First, direct fundraising and spending by legislative candidates themselves will continue to stutter. Why? The State's pay-to-play law has inhibited fundraising in the previous three legislative elections.

Overall spending, though, may well increase over past levels. And if it does it will be due to the emergence of outside, independent groups operating in New Jersey.

The 2009 election for Assembly witnessed a 26 percent decrease in receipts by Assembly candidates and a 28 percent drop in their expenditures compared to the prior campaign.

Based on the 20-day post-election reports filed with the Election Law Enforcement Commission (ELEC), Assembly candidates raised \$18 million and spent \$15.8 million. In 2005, a similar election year, during which there was an election for Governor and Assembly, candidates for the lower House raised \$24.4 million and spent \$22 million.

This downward trend was first noted in two ELEC White Papers, the first analyzing the Assembly election of 2005 and the second analyzing the Senate and Assembly election of 2007.

What both showed was a distinct break from past legislative fundraising patterns. Election cycles had always shown significant increases, but now the rate of increase had slowed to just 5 percent.

Legislative General Elections 2007: An Analysis of Trends in State Senate and Assembly Elections, White Paper Number 20, states: “. . . candidates for the State Senate and Assembly in 2007 raised \$50.4 million, which represented a five percent increase over 2003, . . . In the same way that previous elections for Legislature set new records for contributor activity, so too did this one. There was, however, one difference . . . financial activity grew at a much more modest pace than between previous election intervals.”

The explanation for the more modest increase in 2007 and the substantial decrease in Assembly financial activity in 2009 was placed at the doorstep of the pay-to-play reforms, effective in 2006.

There is a direct connection between the effective date of the reforms and the reduction in financial activity by legislative candidates.

This trend should continue this year.

But that doesn't mean that overall spending in this year's election won't be substantial. Given the growth of outside 527 and 501(c) groups spawned by McCain/Feingold and the Citizen's United case, there is every reason to believe that New Jersey will experience this activity in this very important contest for control of the Legislature.

State contests last year, including those for the Legislature, show the trend is spreading fast.

In North Carolina, the Associated Press reported that outside groups spent \$1.7 million and “targeted more than 20 incumbents” seeking reelection to the Legislature.

The Wisconsin Democracy campaign estimated that \$20 million was spent by outside groups to influence contests in Wisconsin.

And Free Press columnist Brian Dickerson asserted that hundred of thousands of dollars were spent by outside groups in Michigan to influence the race for governor.

In the Iowa judicial elections, the New Jersey Law Journal reported that “well-funded antigay-marriage groups poured more than \$1 million, most of it raised out-of-state, into a targeted campaign to remove three justices because they joined in a 2009 unanimous ruling that the State Constitution required recognition of same-sex marriages.”

In last year’s congressional races, outside groups nationally spent at least \$280 million, according to the Campaign Finance Institute. And non-profit groups also participated in New Jersey’s own governor’s race in 2009.

All these trends suggest that New Jerseyans should expect significant involvement by independent groups in this year’s legislative elections.

The First Amendment allows for participation in the electoral process by all groups. It was reinforced by the U.S. Supreme Court’s decision in *Citizen’s United*, which makes it easier for unions and corporations to spend money on elections. However, the judges in *Citizens United* also strongly endorsed disclosure.

With a potential wave of independent spending heading towards New Jersey, the Legislature should move to require disclosure of the campaign activity of outside, independent 527 and 501(c) groups of all ideological and economic persuasions. *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.