

The IE Mess: How we got here and why political parties should be the backbone of our system

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When the playbook for this year's election for governor and legislature is evaluated, it will reveal an outsized role played by outside, independent groups.

At latest count, more than \$35 million has been spent by independent groups attempting to influence the election.

This activity is bipartisan with Democratic and Republican groups spending on the gubernatorial contest as well as the legislative one, especially in so called targeted districts. More than three years ago, the Election Law Enforcement Commission began tracking the trend in the growth of independent groups at the national level and in various state elections.

In 2009, New Jersey gubernatorial and legislative elections attracted \$14 million in independent dollars.

This figure, in addition to the trend line indicated nationally and in various state contests, led to the prediction that \$25 million would be spent by outside groups in this year's election. As the election unfolded the prediction was upped to between \$30 and \$35 million.

The actual total is higher!

Most observers point to the U.S. Supreme Court decision in Citizens United as the catalyst for the growth in outside group activity. It permits corporations and unions to participate in federal contests as long as the activity is independent.

While not denying that Citizens United helped this trend along, it has been my position that the growth in outside group involvement began in earnest following the enactment of McCain/Feingold in 2002.

This reform restricted political party fundraising, encouraging instead the flow of money to be redirected to outside groups and away from the parties.

In fact between 2002 and 2008, prior to Citizens United, independent spending soared by over 1000 percent.

The issue of responsibility aside, the fact is independent spending has sucker punched New Jersey. From statistics gathered thus far, involvement by independent groups in this year's legislative and gubernatorial elections is unprecedented.

But what is more striking is its impact on the state's political party system. In fact these anonymous groups have assumed the role of surrogate parties, assuming many of the functions traditionally the domain of the political parties.

The two state political parties and the legislative leadership committees have spent about \$6 million, or five percent of total spending.

But here is the kicker. Independent group spending thus far is more than \$35 million- nearly six times more than the so-called "Big Six" political party committees!

The influence that these groups potentially have over the conduct and outcome of legislative and gubernatorial elections is of great concern.

But just as important is the impact these groups are having over political parties, which by law are highly regulated and thus more accountable to the public than outside groups.

Whether the public is enamored with political parties or not, political parties have been and should be the staple of our political system.

They represent broad coalitions of people rather than special interests. They contest elections, organize government, and provide voters with a guide to how to vote.

As noted above, they are more accountable to the public, subject to contribution limits and disclosure, serve as the people's conduit to government, are more regulated, and much more transparent.

So what can be done to remedy the situation?

At the federal level the solution is to strengthen the parties by reforming McCain/Feingold by eliminating or at least easing, the ban on soft money. At the same time, party officials should face stiffer penalties if they engage in corrupt behavior to obtain large contributions.

Also the parties should be allowed to resume their traditional function of coordinating activity with their candidates. Finally, aggregate contribution limits on party entities should be ended.

By redirecting the flow of money to the parties and away from independent groups the imbalance that now exists would be reset.

In turn this would begin to impact independent group activity at the state level as well.

In terms of New Jersey, a good starting place would be for the Legislature to pass legislation based upon ELEC's proposal to require registration and disclosure of contributions and expenditures by these groups, even if they do not expressly support or oppose a candidate.

There is no question of the constitutionality of such an approach because Citizens United came out strongly for disclosure.

Finally, the Legislature might form a commission along the lines of the Rosenthal Commission in 1993 to determine ways to strengthen the parties and simultaneously offset the influence of independent groups. To do nothing in the face of a barrage of unfettered spending by outside groups will eventually undermine the very campaign finance system that has served New Jersey so well.

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.