

MORE SOFT MONEY MAY MEAN LESS OUTSIDE SPENDING

BY JEFF BRINDLE | 05/16/16 11:47am

The U.S. Supreme Court may hear a case that challenges the soft money (unlimited contributions) ban imposed on national political parties by the McCain/Feingold Reforms of 2002, officially known as the Bipartisan Campaign Reform Act (BCRA).

But first it will await a decision by a three judge panel convened by the District Court for the District of Columbia, which will rule in the matter of Louisiana v. Federal Election Commission (FEC).

A provision in McCain/Feingold permits any appeal to go directly to the Supreme Court.

The Louisiana Republican party is questioning the constitutionality of the Federal Election Campaign Act (FECA) provisions that regulate federal campaign finance activity by state and local parties.

The plaintiffs maintain that the contribution limits applicable under FECA to state and local federal activity are a violation of the First Amendment rights of free speech and assembly and should be upended.

Lifting the restrictions would relax contribution limits applicable to state party federal accounts. It would end the soft money ban on state accounts established by the national parties.

Federal campaign activity, funded out of federal accounts set up by state parties, involves advertising that supports or opposes federal candidates, get-out-the-vote efforts, voter identification tracking, voter registration, and generic party building.

Three reform groups, Democracy 21, Public Citizen, and Campaign Legal Center, filed an Amicus Brief supporting the ban on soft money use by political parties in federal elections.

Due respect should be extended to this view as being well intended. These groups and others have made significant efforts to improve the campaign finance system nationally and throughout the states.

However, in this case, it's a little like generals fighting the last war. The problem is not political parties but with the proliferation of independent, outside groups that have sprung up since the soft money ban on parties was imposed in 2002.

The Amicus Brief references “the close and unique relationship between parties and their candidates, which differentiates parties from other campaign spenders.” It suggests that this relationship “creates the threat,” presumably the threat is that of corruption.

Quite the contrary, in this day and age, it is the preponderance and outsized influence of often anonymous, independent groups that constitutes the threat to the electoral system, both nationally and in the states.

Political parties and candidates do have a “close and unique relationship.” They should. The parties are broad coalitions of people whose fundamental purpose is to get their candidates elected.

Further, political parties organize government at all levels and provide a guide to voting for the general public. They are accountable, regulated, and disclose their activities.

Placing obstacles between parties and their candidates defies common sense, especially when you have unregulated independent groups raising billions of dollars to influence elections and take control of campaigns away from parties and candidates.

Regarding the era prior to McCain/Feingold, Marjorie Randon Hershey, in “Party Politics in America,” writes “state and local parties, energized by money, became more involved in campaigns . . . soft money allowed the parties to play more of a role in the most competitive races than had been the case in more than a half century.

In Stronger Parties, Stronger Democracy: Rethinking Reform, a recent Brennan Center for Justice report, it states “Here we conclude that targeted measures to strengthen political parties, including public finance regulations, could help produce a more inclusive and transparent politics.

At the Brookings Institute Center for Effective Public Management, Raymond J. La Raja and Jonathan Rauch wrote “State party officials generally regard the 2002 Bipartisan Campaign Reform Act . . . as a serious blow. McCain/Feingold blocked national parties from raising large dollar contributions and sending them to the states, and it also imposed complex, federal restrictions on state parties’ fundraising and electioneering activities.”

For some years now this column has stressed the need to rebuild the party system here at home. Part and parcel of this effort would be to offset the growing influence of independent groups over New Jersey elections.

As has been noted repeatedly, independent groups outflanked the parties in the gubernatorial and legislative elections of 2013, \$41 million to \$14 million.

They made over a third of expenditures in the Assembly election of 2015, promise to spend millions more this year on three ballot questions, and are already gearing up for the 2017 gubernatorial and legislative elections.

If nothing is done in New Jersey, outside groups, which already have assumed many of the traditional roles played by the parties, will take complete control over political campaigns in the state, leaving only crumbs to be picked up by the parties and candidates themselves.

What the U.S. Supreme Court will ultimately decide in Louisiana v. FEC is unknown. Much depends on whether the late Justice Antonin Scalia's seat remains vacant, or if not, on the approach taken by the new Justice.

However, in the event the Court reverses McCain/Feingold's restrictions on state party federal accounts, it would be contributing toward rebuilding the parties nationally and at the state level, including in New Jersey.

Regarding New Jersey, such a favorable ruling toward political parties, along with additional reforms put forth in previous columns would effectively strengthen the state's accountable political parties, and do so at the expense of outside groups.

These reforms include raising the contribution limit, allowing parties the freedom to give to each other, excluding parties from Pay-to-Play, and allowing state parties to participate in gubernatorial campaigns.

James Madison, in Federalist Paper Number 10, acknowledged that there was no perfect way to "cure" faction, or the various interests in society. He did, however, suggest that in a large republic the ills of faction could be controlled.

If Madison were writing today, I would guess that he would be more concerned with controlling the ills to the electoral system wrought by independent groups than by established political party organizations.

The U.S. Supreme Court has the opportunity to contribute to the strengthening of the political party system by finding in favor of the Louisiana Republican Party.

Likewise, the Legislature has the opportunity to make headway against the ills of dark money groups by enacting legislation that strengthens the parties and requires disclosure by independent groups.

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.