

# Citizens United decision not changing much in New Jersey



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**BY JEFF BRINDLE**

## **COMMENTARY**

After the Citizens United v. Federal Election Commission (FEC) ruling in January by the U.S. Supreme Court, there were predictions that the landmark ruling would unleash a torrent of new independent campaign spending.

The decision allowed corporations and unions to spend unlimited sums independently and found unconstitutional a 60-day "blackout" period on independent general election campaign ads that had been imposed by the Bipartisan Campaign Reform Act of 2002, best known as McCain-Feingold. At the same time, it upheld a federal ban on direct contributions by corporate and union to candidates, and came out strongly in favor of disclosure.

Shortly after, I wrote a column that made this prediction: "The decision [Citizens United] is almost certain to drive up spending in the congressional elections this fall. The freedom granted corporations and unions to spend independently in federal elections will be manifested in 13 congressional races."

So far, it hasn't turned out that way, at least not in the Garden State. There's no evidence that the ruling has had a dramatic impact yet on New Jersey races. Nationally, there is mixed evidence and the verdict remains out.

The election remains a week away, and independent spending sometimes occurs at the last minute. But the information available to date shows that independent spending in New Jersey's congressional races actually is down from two years ago.

According to data compiled by the Center for Responsive Politics, a Washington-based group that closely tracks the flow of federal campaign dollars, outside groups spent \$7.7 million in New Jersey congressional districts in 2008. That total has

dropped to \$1.5 million — an 80 percent reduction.

The numbers are even smaller when you omit independent expenditures by committees controlled by parties, primarily the Democratic Congressional Campaign Committee and the National Republican Congressional Committee. Not counting party contributions, independent groups sank \$1.5 million into 2008 campaigns. That compares to \$1.3 million this year — an 18 percent decline.

One thing that is significant- even though independent spending is down, it still is a larger percentage of overall spending in New Jersey congressional races compared to two years ago- 5.8 percent versus 5.4 percent. So candidates are depending more on outside expenditures.

If Citizens United is having a major new impact on elections, it is being felt outside of New Jersey. If you tally up independent spending in ALL 13 NEW JERSEY RACES, the total ranks behind 70 INDIVIDUAL CAMPAIGNS across the nation, according to Center for Responsive Politics data. Clearly, the most heavily targeted districts are elsewhere.

But it is more than just the January court ruling that is having an impact on congressional races. The growth in Stealth PACs actually took off after McCain-Feingold outlawed unlimited "soft money" contributions to the National Party Committees.

In 2002, when the bill became law, the Center for Responsive Politics estimated outside money at just \$27.3 million. That total grew to \$200 million in 2004, and reached a peak of \$302 million in 2008.

So far this year, the group estimates more than \$229 million has been spent on top of direct candidate spending,

The Campaign Finance Institute, another Washington-based non-profit that studies campaign finance trends, comes up with even larger totals for outside spending since it looks beyond just spending that, by law, has to be reported to the Federal Election Commission and Internal Revenue Service (IRS). It develops "best estimates" by also examining tax filings, annual reports and media interviews.

It believes outside spending surged from \$223 million in 2006 to \$397 million in 2008. So clearly the trend began well before the Citizens United case. Even so, the court case may have helped accelerated the pace of spending. Campaign Finance Institute thinks independent spending for 2010 federal races will top \$564 million. "Super-PACs" such as American

Crossroads have suddenly emerged on the scene and, together, they are outspending the national parties.

What isn't known is whether corporations are giving more money directly to federal campaigns, or simply increasing the amounts they give to intermediaries like the Chamber of Commerce, which is spending heavily this year. "Rather than seeing new money, it is at least theoretically possible that money is simply moving from one activity to others closely related: old wine in new bottles."

"Money that used to be spent on non-reportable (but candidate-specific) issue advertising might now be used more overtly for politics without changing the total," it added. "We . . . cannot yet know how much of the increase stems from Citizens United."

There is one noticeable difference this year: Republican groups are heavily outspending Democrats. In other recent elections, spending was relatively even. ". . . Democratic groups are on a path toward spending about 10 percent more than in 2008 while Republican groups seem to be up 70 percent," said a recent analysis by the Institute.

Another clear trend has developed over several years. Far more election funding is being raised through 501(c) groups that report to the IRS and do not have to disclose their donors.

According to the Institute, 501(c) groups spent less than \$60 million in 2004 elections. Other nonprofit groups that do disclose donors to the IRS and are primarily set up for campaigns, known as 527 political committees, spent \$426 million the same year.

By 2008, spending by 501(c) groups had jumped to \$200 million- about the same as 527 committees. This shift seems to be accelerating this election season and it means voters will be even more in the dark about who specifically is bankrolling campaigns.

It almost seems national campaigns have come full circle.

Most forget that it was large, secret donations to national elections in the early 1970s that led to the more than three-decade campaign finance reform effort that has been trying to maximize information about political donors for voters.

Getting back to New Jersey, independent spending also appears to be missing in three special state elections for legislative seats this November. The 5th, 14th, and 31st legislative districts are holding elections to fill State Senate and Assembly

vacancies.

Candidates in these districts have reported raising \$2.1 million and spending over \$1.4 million. So far, no independent expenditures have surfaced. In 2007, a non-profit group formed a political action committee and spent \$28,247 to oppose an Assembly incumbent in the 14th district.

Despite the dearth of independent spending this year, it is likely that what is happening nationally eventually will come to New Jersey elections.

That is why last January the New Jersey Election Law Enforcement Commission proposed that 527 which now report only to the IRS be required to disclose their contributions and expenditures if they are made in the context of an election. The same logic applies to 501(c) groups that participate directly in campaigns.

At the same time that the U.S. Supreme Court, in Citizens United, found the federal ban on independent expenditures by corporations to be unconstitutional, and the blackout period restricting spending by outside groups to be equally in violation of the First Amendment, the Court did strongly endorse disclosure.

The judges on the nation's high Court seem to recognize that the public needs to be kept informed about who is behind efforts to influence the electoral process in New Jersey and elsewhere.

Certainly, citizens have a right to form organizations and participate in elections. But the voters have a right to know who is paying for those elections. Transparency is crucial to democracy.

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***The opinions presented here are his own and not necessarily those of the Commission.***