



# INSIDER NJ

## Need For Election Transparency Remains Critical On Tenth Anniversary Of Citizens United

**JEFF BRINDLE** | January 29, 2020, 10:33 am | in [Edward Edwards](#)

What is good about the U.S. Supreme Court's decision in *Citizens United v FEC* is that it strongly upheld the right of Congress and the states to require disclosure of the names of political donors who pay for issue-oriented ads used to attack or promote candidates for public office.

Currently, no such disclosure is required in New Jersey.

What is bad about the January 21, 2010 *Citizens United* ruling is that it also aided in the growth of so-called dark money spending and, in New Jersey, hastened the decline in the political party system.

Now ten years old, the landmark opinion addressed several issues.

Four stand out.

First, the ban on corporate and union independent spending sustained in the 1990 decision *Austin v. Michigan Chamber of Commerce* was found to be unconstitutional.

Second, the communications black-out period contained in the Bipartisan Campaign Reform Act (BCRA), popularly known as McCain/Feingold, was declared an abridgement of free speech by the Court. Under the ruling, election ads independently financed by corporations and unions are now allowable at all times.

Third, the federal prohibition on direct contributions by corporations and unions was untouched by the decision, leaving the ban in place.

And fourth, as noted above, the justices strongly endorsed disclosure, upholding requirements that independent spenders in elections identify their donors as well as itemize their expenses.

Despite the U.S. Supreme Court's support for disclosure, it is up to Congress and the states to enact disclosure laws that would pass constitutional muster. Especially with regard to independent spending by federal Super PACs, 527 political organizations and 501(c)4 social welfare groups, all of which are exempt from contribution limits.

In New Jersey, it took almost ten years to enact legislation that would require non-profit groups engaged in issue advocacy and electioneering communications to disclose contributions above \$10,000 and expenditures larger than \$3,000 to the public.

Sponsored by state Senator Troy Singleton (D-7<sup>th</sup>) and Assemblyman Andrew Zwicker (D-16<sup>th</sup>), S-150 was signed into law by Governor Murphy in June 2019 after being approved 35-0 by the State Senate and 68-0 in the Assembly.

Almost immediately upon enactment, Americans for Prosperity (AFP) challenged the constitutionality of the law, primarily because it required disclosure for issue ads focused solely on legislation, not just on elections. AFP was joined by the Americans Civil Liberties Union (ACLU) and Illinois Opportunity Project in challenging the law.

Subsequently, a preliminary injunction halting the implementation of the law was issued by the United States District Court in Trenton. The injunction remains in place.

The Singleton/Zwicker legislation was precipitated by an intense growth in dark money spending in New Jersey over the last decade, accompanied by a significant decline in political party activity

While it is unfair to pin responsibility for this development fully on *Citizen's United*, it does bear a significant portion of the blame.

Even before *Citizen's United*, McCain/Feingold legislation in 2002 was an earlier catalyst for a giant surge in dark money spending in federal, state and even local elections.

Moreover, New Jersey's 2006 pay-to-play law provided an incentive for money to flow away from political parties to PACs and outside, dark money groups.

The convergence of these factors has led to an explosion of independent, outside group spending in New Jersey to the detriment of both transparency in elections and to the more accountable political parties.

The barrage of outside group spending began in earnest during the gubernatorial and legislative elections of 2013. In that election cycle, dark money groups spent \$40 million, easily eclipsing previous records.

Spending totals by these groups would continue to increase, at \$47 million during the 2017 gubernatorial and legislative elections. It climbed further to \$52 million during the 2018 congressional election in New Jersey.

It's a pretty good bet that the combination of a congressional election and a marijuana public question in 2020 will see independent spending records shattered again.

During the recent decade, outside group spending has become more frequent in New Jersey's local elections as well.

For example, this past November witnessed a ballot question and a school board election in Jersey City attract upwards of \$5.5 million in dark money spending.

This tally follows on the heels of \$176,116 in a 2013 Elizabeth school board race, \$251,629 in Jersey City's 2013 mayoralty contest, \$5.5 million in Newark's 2014 mayoralty election, and outside group involvement in Parsippany's 2015 primary election.

Independent spending organizations clearly have a First Amendment right to participate in elections. It is unfortunate, however, that disclosure often is lacking or non-existent due to current laws.

Further, it is regrettable that the rapid rise of outside groups and their growing influence over New Jersey's elections has been at the expense of more accountable political parties, and to a degree, candidates themselves.

For example, in the gubernatorial and legislative elections of 2017, state parties and legislative leadership party committees spent \$13.3 million against the \$47.5 million spent by outside groups. A decade earlier, party entities spent 42 times more than independent groups.

Also during 2017, county party organizations, once the heart of campaigns in New Jersey spent \$14.1 million, about half the \$27 million spent in 2003.

Even municipal party coffers have shrunk. In 2017, municipal party committees spent \$4.4 million, just 50 percent of what they spent 10 years earlier.

Without changes in the law that redirect the flow of money to accountable political parties and away from less transparent outside groups, this trend away from parties, and even candidate themselves, will only get worse.

While New Jerseyans await a final decision on S-150 by the District Court, it is hoped that if the legislation is deemed unconstitutional, efforts will be made to correct any deficiencies in the pending law. Hopefully, recrafted legislation will move forward to quickly bring sunlight and transparency to independent group activity in New Jersey elections.

Achieving expanded disclosure in New Jersey elections on the tenth anniversary of *Citizens United* and its strong pro-transparency ruling would be a welcome gift to Garden State voters.

*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.*