Amid weakening campaign finance laws, strengthen disclosure: Opinion

voting-booth.JPG
This op-ed contributor calls for the strengthening of disclosure rules for campaign contributions. Voting booths are pictured in this file photo. *(Patti Sapone/The Star-Ledger)*

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on June 22, 2014 at 5:00 PM, updated June 22, 2014 at 5:01 PM

By Jeff Brindle

Campaign finance law is in turmoil after a series of U.S. Supreme Court cases that have stripped away many government restraints over political fundraising.

Yet there is one area — disclosure — where the law remains largely intact and likely to remain that way.

That is why the bipartisan New Jersey Election Law Enforcement Commission continues to urge the Legislature to enact a state law requiring more disclosure by independent groups that now dominate the electoral landscape.

Since 2006, the Supreme Court has relaxed a ban on pre-election advertising by corporations and unions; overturned contribution limits in Vermont that it considered too low; declared that independent spending by corporations and unions not only is legal but cannot be limited; insisted publicly financed candidates cannot be given extra public funds just because they face wealthy candidates; and, most recently, swept away overall limits on how much contributors could give federal candidates and committees.

While some argue these changes eviscerated post-Watergate scandal campaign finance laws that mostly were adopted in the 1970s, the Supreme Court's majority insisted they were necessary to preserve First Amendment freedoms.

On the issue of disclosure, however, the nation's high court for decades has been consistent and supportive.

Even as the majority struck down a ban on corporate and union independent spending in the 2010 Citizens United v. FEC ruling, it strongly upheld disclosure by political contributors.

Said the majority: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

While the U.S. Supreme Court ruling in McCutcheon v. FEC case on April 2 drew fire because it ended federal aggregate contribution limits, the court majority once again promoted disclosure as a check on political corruption.

"Disclosure of contributions minimizes the potential for abuse of the campaign finance system. ... Disclosure requirements burden speech but — unlike the aggregate limits — they do not impose a ceiling on speech. ... With modern technology, disclosure now offers a particularly effective means of arming the voting public with information. ... Today, given the internet, disclosure offers much more robust protections against corruption."

In a recent summary of major campaign finance cases pending nationally, the Campaign Legal Center said lower courts have gotten the message.

"Political disclosure laws remain a target but have largely withstood attack. The First, Fourth, Seventh, Ninth, Tenth and Eleventh Circuits have all upheld strong disclosure laws applicable to independent spending following Citizens United."

An example is a ruling on May 20 by the Ninth Circuit Court of Appeals that upheld California's disclosure laws.

In Protect Marriage v. Bowen, the Ninth Circuit noted that the Supreme Court recognizes that disclosure serves three important governmental interests. Those interests were outlined decades ago in Buckley v. Valeo (1976), another landmark campaign finance case.

First, there is a governmental interest in informing the electorate about who is financing ballot measures and candidate elections. Second, disclosure requirements help preserve the integrity of the electoral process by deterring corruption. Finally, full transparency for donors helps expose violations of campaign finance laws.

The Supreme Court's firm stand on disclosure has never been more important.
In the 2012 federal elections, independent groups spent $311 million without disclosing their contributions — a total nearly 75 times higher than a decade earlier. Early reports on this year's congressional races indicate even more money may be spent without knowing the sources.

In the 2013 New Jersey legislative, gubernatorial and ballot elections, nearly $41 million was spent by independent groups. About $15 million occurred with zero disclosure by contributors — more than all spending in the 1985 gubernatorial election.

Legislation is pending in New Jersey that would halt this growing — and disturbing — trend, which leaves voters in the dark for no good reason.

Now is the time to pass it.

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.

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