

ARE INDEPENDENT COMMITTEES STILL REALLY INDEPENDENT IN THE TWITTER ERA?

BY JEFF BRINDLE | 06/09/16 11:39am

Two forces transforming modern campaigns are Super PACs and social media.

Super PACs now dominate the electoral landscape. They raise unlimited amounts of money and operate largely anonymously.

Social media provides tech savvy candidates with a less expensive way to communicate their message to supporters.

Social media also works in tandem with Super PACs. Candidates and Super PACs can talk to each other without running afoul of coordination rules.

For instance, CNN reported in November, 2014 that Republican party committees and outside groups shared polling information related to the 2014 elections via a Twitter account. Huffington Post reported that the Democratic party did something similar in 2012 by sharing advertising information through a Twitter account.

All they need to do is tweet and the fiction of independence on the part of Super PACs remains.

This perfect storm of Super PACs and social media has altered the electoral landscape significantly. It has relegated political parties to second class status and in many instances taken control of campaign messages away from candidates themselves.

This situation doesn't have to become the norm, however. While the Super PAC genie will not be fully put back in the bottle, there is every reason to believe the party system can be revived.

A major step toward party rehabilitation can be taken by the U.S. Supreme Court in hearing *Republican Party of Louisiana v. Federal Election Commission (FEC)*.

The case involves a challenge to the constitutionality of the ban on party soft money.

In explaining party building rules, Anthony Corrado and Thomas Mann wrote in *Party Soft Money*, "So in 1979 Congress authorized a circumscribed realm of unlimited party expenditures. But it did not sanction unlimited spending on activities designed to assist a particular candidate to federal office."

The FEC subsequently adopted regulations that liberally interpreted the 1979 amendment to federal campaign finance laws. Those rules would restore to the political parties their inherent role of supporting candidates, and, in turn, usher in a period of soft money.

Having realized that by the 1980's the obituary for political parties had already been written, Herbert Alexander, noted political scientist and member of the Kennedy Commission on campaign costs, celebrated the introduction of soft money.

He said: "Anybody who believes in the two-party system will say that to the extent that soft money is used to register votes and invigorate the parties, then it is a valuable, good use of money in the system."

After observing the positive impact soft money was having, political scientist Majorie Randon Hershey wrote, "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 a century."

Despite the positive impact of state and federal parties during this period, reformers, who opposed soft money and political parties as far back as 1984, understood the foreign money scandal in 1996 as a reason to push for the elimination of soft money.

Thus the foreign money scandal led to the enactment of the Bipartisan Campaign Reform Act (BCRA) in 2002.

BCRA had unintended consequences. It redirected soft money away from political parties to independent groups like Super PACs.

Between 2002 and 2010, the period prior to the much maligned Citizens United decision, there was more than a 1000 percent growth in independent group activity.

Not long after BCRA went into effect its provisions were challenged in court.

At first the pre-John Roberts Court upheld the strangle hold on political parties imposed by BCRA. But with the Roberts Court, decisions were taken that could be viewed as strengthening the political party system.

In *McCutcheon v. Federal Election Commission (FEC)*, 2014, the U.S. Supreme Court found aggregate contribution limits as applied to donations made to candidates, parties, and PACs, unconstitutional.

A provision in a Congressional appropriations bill in 2014 expanded party fundraising as well.

As a result of these measures candidates and political parties can jointly fundraise by creating numerous accounts.

This arrangement certainly has the potential for strengthening the political party system and offsetting somewhat the influence of independent groups like Super PACs.

But what it doesn't do is enhance disclosure. Multiple accounts make the tracking of money more difficult, hence less transparent.

So the solution to strengthening parties, drying up the money that goes to Super PACs, and enhancing disclosure is for the high court to take up Louisiana Republican and find the ban on soft money unconstitutional.

Both national and state parties, like New Jersey's, would be strengthened. And the influence of Super PAC, over the electoral system diminished.

National parties would distribute more money to state parties and the need to create multiple accounts would be lessened, bringing about more straight forward disclosure.

Now that campaign expenditures by outside groups are soaring, Twitter campaigns abound and McCutcheon has ended aggregate limits, there is less of an argument for limits on soft money than ever before.

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