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Races for Congress feel super PAC influence

Michael Sean Winters | May. 29, 2012

This is the first election in which the Supreme Court?s Citizens United decision in 2010 will dramatically affect the funding of campaign efforts. In that case, the Court held that the First Amendment right to free speech meant that campaign finance laws could not bar corporations, unions or individuals from contributing unlimited sums of money to campaigns that were ?independent? of the official campaigns of candidates for federal office. Just as the 1976 Supreme Court decision in Buckley v. Valeo unintentionally created the first Political Action Committees, or PACs, in the nation?s history, Citizens United has given birth to new SuperPACs, organizations able to take unlimited sums of money.

?One of the most pernicious aspects of the Super PACs is that there is a lack of accountability for their advertisements,? E.J. Dionne of the Brookings Institution told NCR. ?Candidates have to answer for the ads they sponsor and pay for. But no candidate has to answer for the SuperPAC ads. So in a sense, the SuperPACs can do the dirty work in a campaign and the candidate, with faux innocence, can say, ?Oh, that's not my ad.? I think that because of the SuperPACs, 2012 may end up being the most vicious campaign we have seen in the television age.?

Certainly, Newt Gingrich and Rick Santorum might be inclined to agree. As soon as both men became competitive with Mitt Romney in the polls during the GOP primaries, SuperPACS that supported Romney dumped millions of dollars in negative advertising against them. In Iowa, at the beginning of December, Gingrich was polling at 33% of likely caucus-goers. Romney?s SuperPAC, ?Restore Our Future? bought $335,000 worth of ads the first week of December and Gingrich dropped to 27% in the polls. The next week, ?Restore Our Future? spent $779,000 in anti-Gingrich ads, and he dropped to 25%. In the next two weeks, ?Restore Our Future? dropped almost $1.4 million and Gingrich took only 13% of the vote on caucus night. Similarly, in the key states of Michigan and Ohio, Santorum started in the lead, only to see his lead evaporate as ?Restore Our Future? flooded the airwaves with negative ads. Romney won both states.

The one thing no one foresaw in the immediate aftermath of Citizens United was the emergence of Sheldon Adelson. The insanely wealthy casino owner pumped $20 million of his own money to single-handedly prop up Gingrich. It was not enough to offset the many deep pockets backing Romney?s ?Restore Our Future,? but it is interesting to speculate: What if Romney had slipped on the proverbial banana peel and Gingrich had won the GOP nomination. What would Adelson?s influence be? Could Gingrich ever deny him a policy preference? A federal contract or regulation that supported his business enterprise?

Looking towards the November election, however, the role of SuperPACS becomes cloudier, especially in the presidential race. While President Obama?s fundraising has outpaced that of Mr. Romney?s campaign ? Obama had $104 million cash-on-hand at the end of the first quarter of the year compared to Romney?s $10 million - GOP-related Super PACs have leveled the playing field by raising significantly more money than Obama?s SuperPAC. Reports indicate that several GOP SuperPACs are planning to spend around $400 million on the fall campaign.

The question is not whether a ton of money will be spent, but whether it will matter to Obama?s re-election effort. ?As a general matter, ads matter less in a presidential campaign than in a Congressional or Senate race, partly because there is a lot more news coverage of presidential campaigns and also because voters develop fairly strong views of presidential candidates over a long period,? says Dionne. It is difficult to imagine that voters do not already have strong views about Obama. It is more likely that Obama?s campaign will have better luck trying to portray Romney, who is less familiar to voters, in an unfamiliar light, just as George W. Bush succeeded in painting Sen. John Kerry as a flip-flopper before Kerry was able to effectively introduce himself to voters. Still, the 2004 race points to the lack of clear lines of causality between campaign spending and electoral effect: The most famous campaign ads of the 2004 cycle, the Swift Boat attacks on Kerry?s war record, gained currency as a news story. The ads themselves ? there were four in total- were shown on very few channels and only in three swing states, but they reverberated as a news story across the entire nation.

Where money may really make a difference is in key House and Senate races. Oftentimes a congressional candidate may be well known by the town of which she is the mayor, or the state senate district he represents, but completely unknown in the rest of the congressional district. An opponent can run a series of negative ads that fill in the gaps of knowledge in unflattering ways. In 2010, a largely unknown Democrat, Ami Bera, was challenging Republican Cong. Dan Lundgren, a prominent figure in California politics for 30 years. Bera proved to be a good campaigner and as the election neared, he had closed to within single digits in the polls. That is when Karl Rove?s group American Crossroads spent $680,000 in ads attacking Bera. Lundgren won. In a presidential race, $680,000 is a drop in the bucket. In a congressional races, it can make a big difference.

?The evidence that money actually influences congressional races is weaker than most people think, ?cautions Catholic University professor Matthew Green, an expert on Congress. ?There is a correlation between how much money a candidate spends and the odds of winning, but in many cases the winning candidate was strong in other ways that might have been enough to secure a victory. And losing candidates are often perceived as likely losers by potential contributors, so they aren't able raise very much money in the first place.? But Green agrees that Citizens United has changed the rules of the road in ways that are difficult to predict. For example, already, Missouri Sen. Claire McCaskill has been at the receiving end of more than $2.2 million in negative advertising from SuperPACs, and it is only May.

Green has looked closely at the 2008 spending by congressional candidates, before Citizens United. ?In close 2008 House races (these are defined as races in which the winner got 55% of the vote or less), the average amount spent by the winner was about 50% more than what the loser spent ($2.1 million versus $1.4 million),? Green notes. The figures he cites only include the amount spent by candidates, not by the two parties? campaign committees or other outside PACs. The possibility of introducing several millions of SuperPAC dollars in some key swing districts could well decide who controls the House and Senate next year.

Another interesting question is how the SuperPACs will spend their money. Most analysts predict that the Republican-leaning groups will emphasize television advertising, while union-based and Democratic-leaning groups will emphasize door-to-door organizing and Get-Out-the-Vote efforts. The field wars approach, as opposed to the airwaves wars, may be an instance of necessity proving the mother of invention: As many states have passed restrictive new voting laws, Democrats need to make sure that young voters and those most likely to lack a government I.D., such as poor, inner city voters who do not drive, are all registered to vote before election day.

Not everyone is hostile to Citizens United nor as fearful of its consequences. Notre Dame law professor Rick Garnett thinks the Supreme Court got the issue right in terms of the law, and that fears about corporate influence are misplaced. ?It is a mistake to blame the Citizens United decision for negative and otherwise unedifying campaigning, and also misguided to think that political speech should get less protection when it happens

through the corporate form,? Garnett argues. ?After all, no one really believes that ?corporations? are unprotected by the First Amendment. Could the government tell the Sierra Club it is not allowed to mail out electioneering pamphlets, or tell USA Today that it cannot editorialize on political matters? Political speech concerns things that matter and that people care about, and ? in a free society -- hard-hitting electioneering should not be remarkable.? Garnett believes there is nothing new about hard-hitting campaigns in American history and that there are already sufficient laws to prevent any campaign donors from exercising undue influence on elected officials.

There are some elections when no amount of money would make a difference. If Walter Mondale had a SuperPAC in 1984, he would have still lost to Ronal Reagan in a landslide. But, 2012 will not witness a landslide. The race for the White House and both houses of Congress look to be tight. There is, finally, only one thing that can keep the moneyed forces unleashed by Citizens United from buying this November?s election: The American voter must refuse to be bought.

[Michael Sean Winters writes about religion and politics on his Distinctly Catholic blog on the NCR website, at NCRonline.org/blogs/distinctly-catholic.]

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