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Money talks -- but whose?

Hawaii and other states feel the multimillion-dollar push of outside political forces

By Lee Catterall

POSTED: 01:30 a.m. HST, Oct 31, 2010

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INTRODUCTION

Huge amounts of money from the mainland -- most of it in the form of negative ads -- have been spent on the election in the 1st Congressional District following a U.S. Supreme Court ruling that allows unlimited expenditures by political action committees...

The vast spending at the federal level resulted from the high court's decision in January that corporations are allowed to make unlimited political expenditures by the First Amendment's protection of free speech.

Going into this weekend, such organizations spent more than \$2.4 million on ads in the U.S. House race between Republican U.S. Rep. Charles Djou and Democratic candidate state Sen. Colleen Hanabusa.

Some states have reacted by requiring that organizations purchasing such political ads disclose the sources of their money, but that requirement is absent from federal or Hawaii law.

Ability to force them to disclose their donors has been blocked in Congress, but disclosures have been required by some states since the Supreme Court decision. Common Cause urges that such a measure be enacted by Hawaii's upcoming Legislature.

A historic U.S. Supreme Court ruling and combative races at the top of Hawaii's election ticket have produced an avalanche of campaign advertising bought with mainland dollars, with the animosity possibly extending to legislation battles at the state and federal levels.

More than \$2.4 million has been spent this year on Hawaii's Congressional District 1 race independent from candidates' campaigns. More than \$1.5 million of it was spent on media ads aimed at benefiting Democratic candidate state Sen. Colleen Hanabusa -- nearly all of it in

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the form of negative ads about incumbent Republican U.S. Rep. Charles Djou, according to federal filings tracked by the Sunlight Foundation Reporting Group. More than \$583,000 from political action committees has been used to buy ads supporting Djou or criticizing Hanabusa.

The hefty amount of outside dollars is one worry, the tenor of the ads is another.

"I am rather appalled by the negativeness, the distortions," says Jean Aoki, election and legislative liaison for the League of Women Voters in Hawaii. "Honestly, if I were a candidate, some of the things said about the opponent would distress me."

The outburst of political money, the origins undisclosed, was allowed by a U.S. Supreme Court ruling in January that government may not ban political spending by corporations as well as labor unions in candidate elections. The ruling – Citizens United v. Federal Election Commission – does not disturb bans on direct contributions to candidates but allows corporations to buy ads on their own or through independent organizations.

Earlier this month, as a result of that decision, U.S. District Judge J. Michael Seabright ruled that Hawaii's law limiting the amount of contributions to political action committees violates the high court's ruling. Seabright pointed out that the 1976 Supreme Court, in Buckley v. Valeo, had "concluded that preventing corruption or the appearance of corruption are the *only* legitimate and compelling government interests thus far identified for restricting campaign finances." Other issues in the Hawaii lawsuit are pending in federal court.

Predictions that the Supreme Court's ruling would have major political consequences have come true. Corporations have chosen political party committees as their favorite method of affecting political election outcomes. The Democratic Congressional Campaign Committee has spent \$1.27 million on ads criticizing Djou. The National Republican Congressional Committee has spent \$342,030 on anti-Hanabusa ads while American Crossroads, founded by former George W. Bush campaign architect Karl Rove and dubbed the "shadow Republican National Committee," has shoveled nearly \$180,000 into the effort.

In Hawaii's gubernatorial race, Hawaii Democrats have filed a complaint with the state Campaign Spending Commission accusing Lt. Gov. James "Duke" Aiona's campaign of coordinating \$816,000 in advertising and brochures bought by the Republican Governors Association on Aiona's behalf.

While an independent committee is allowed to spend money on its own to endorse and oppose candidates, the candidates are not allowed to coordinate with PACs.

"In theory, it's supposed to be independent expenditures, so they're not coordinated at all," says Nikki Love, executive director of Common Cause in Hawaii.

The issue of political expenditures by corporations has been heated for more than a century. "Fat cat" contributions prompted congressional enactment of the Tillman Act in 1907, banning contributions from corporations and national banks to federal candidates.

Following the Watergate scandal in the 1972 election, Congress imposed limits on contributions to candidates and political parties and spending by candidates. Four years later, the Supreme Court ruled, in Buckley v. Valeo, that campaign spending by candidates is political speech protected by the First Amendment. And in 1996 the court ruled that political parties cannot be denied the right to make unlimited expenditures on behalf of congressional candidates as long as they do so independent of candidates' campaigns. The high court in the case brought by Citizens United determined that corporations and organizations receiving corporate money share that First Amendment right.

"In the long run," Aoki says, "I would expect that Buckley must fall. Speech cannot be money."

However, today's Supreme Court is hardly about to backtrack on its landmark ruling in January or the decisions that led to it. The next best approach for the public, Love said, is to require that the source of contributions to the political action committees be disclosed.

"We will be pushing for more transparency," Love said, made necessary by the political expenditures made in Hawaii this year from other states. "If we had really great records of who was behind this, who was doing it, it supposedly would stop the negative ads."

Some states, including Minnesota, responded quickly to the Citizens United ruling by requiring that organizations receiving money from donors disclose who the contributors are.

The effectiveness of such transparency was demonstrated in August, when Minneapolis-based Target Corp. was pressured into apologizing for its \$150,000 donation to a pro-business group backing a Republican gubernatorial candidate who opposed gay marriage. Public knowledge of the donation had spawned a boycott and petition against Target.

In June, the U.S. House passed a bill known as the DISCLOSE Act – for Democracy Is Strengthened by Casting Light on Spending in Elections – that would require corporations, unions and other special interests to disclose the donors that bankroll political advertisements. The bill passed along party lines, with Hawaii's Democratic U.S. Rep. Mazie Hirono voting for it and Djou casting his vote against.

Djou said the proposal "strikes at the core of our Constitution's freedom of speech" and has "numerous carveouts for unions and select special interests."

A Senate filibuster blocked the bill in September and it probably is dead for the year.

Love said a similar bill may be in the offing at the state level, citing the Target case as evidence of its effectiveness. "Maybe there's change in behavior in keeping records open," she said.



"In theory, it's supposed to be independent expenditures, so they're not coordinated at all."

Nikki Love
 Executive director,
 Common Cause in Hawaii

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