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In the Shadow of Citizens United:

Economic Interests & Direct Democracy

 In 2010, a Supreme Court Decision completely changed how campaigns are financed. Citizens United v. FEC gave way to the creation of the SuperPAC. The majority of studies look at how SuperPACs have influenced candidate election. However, what is the impact that SuperPACs have on direct democracy and the initiative process?

Direct Democracy and the initiative process has a rather short history in the United States. South Dakota was the first state to have direct democracy in 1898. Many states adopted direct democracy during the progressive era. A total of 24 states have adopted the initiative process, the most recent was Mississippi in 1992 (Initiative, 2012).

Over the years, states have created their own mixture of direct democracy. They include referendums, recalls, and initiatives (Direct Democracy, 2011). An initiative enables citizens to create a law that was approved by the citizen, not the legislature. This sometimes included constitutional amendments. Further, there are two types of initiatives: indirect and direct. A direct initiatives goes straight to the ballot for the people decide. An indirect initiative must pass through legislature before it may go on the ballot.

Secondly, a referendum exists: legislative and popular referendum. The legislative is where the voters are asked to approve something vs. the popular where the referendum is put on the ballot at the request of the people (Initiative, 2012). Lastly, there is the recall. Recall is procedure where the people may call upon for a public official to be removed from office. This procedure has not be used very often because the majority of officials will resign before the process goes too far along.

Although the requirements for placing on a ballot varies from state to state, most states have the general outline of a “preliminary filing of a proposed petition with a designated state official, review of the petition for conformance with statutory requirements and, in several states, a review of the language of the proposal, preparation of a ballot title and summary, circulation of the petition to obtain the required number of signatures of registered voters, usually a percentage of the votes cast for a statewide office in the preceding general election, and submission of the petitions to the state elections official, who must verify the number of signatures” (Initiatives, 2011). After it has been placed on the ballot, it must pass the majority of the people’s vote. Before the creation of SuperPACs, there was not a lot of opportunity for corporations to get involved in the initiative process. However, the creation of the SuperPACs is a story worth looking at.

It all started when the PAC, Citizens United created a documentary that was meant to wound Senator Clinton’s presidential race and encouraged voters not to support her campaign. However, under PAC rules, they can not create advertisements on a particular candidate, they can only focus on the issues. The Federal Election Committee (FEC), came out to the PAC and told them they were not allowed to create such an advertisement. Citizens United refused to make any changes. This resulted in the FEC and Citizens United battling in the Supreme Court. After a lengthy battle, the Citizens United won the case and SuperPACs were born.

SuperPACs can do what PACs can not and so much more. SuperPACs may raise unlimited amounts of money from corporations, associations, and individuals. But they must report every one of their donors to the FEC on a monthly or semiannual basis. They can do virtually almost anything with that money except give money directly to the candidate that they support. But they may spend their money to advocate for their candidate as long as they do not coordinate in any way. However, there are numerous ways to get around the act of coordinating without coordinating. The majority of SuperPACs are not below that.

Using a single state study on the state of Florida, the effect of SuperPACs and initiatives were examined. Looking at initiatives that made it to the ballot from 2000-2016, the sponsors of the initiatives were studied. During the years 2000-2009, the average of economic interests sponsoring an initiative was 1.4 (Milita). After Citizens United (2010-2016), there was zero initiatives sponsored by the economic interests.

In the state of Florida, economic interests do not appear to be using the initiative process as often as they did before Citizens United. It could be because economic interests are finding that they are able to influence more efficiently through campaign contributions and lobbying the legislature.

Implications for further research has many different possible paths. First, only one state was examined in this study. This state also uses the initiative process relatively low compared to other states such as California. For further research, it would be beneficial to compare the use of initiatives in high as well as low use states.

References

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