

Political funds skirt rules

As regulators clamp down on 527 groups, other nonprofits draw donors for ads

By Michael Riley
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To Mike Melanson, manager of Democratic Rep. Mark Udall's U.S. Senate campaign, the two ads attacking his boss that were launched by an independent issue group last week seemed to be coordinated with the state Republican Party, a blatant violation of federal campaign laws.

How else could you explain the fact that two days before the ads were launched, Walt Klein, who works for Udall's Republican rival, was at a Boulder event making what to Melanson then seemed like an obscure point about a Udall bill allowing U.S. companies to drill off Cuba? Klein attacked the proposal as a benefit to American enemy Fidel Castro.

"That's a spin that is too uncannily similar to what the commercials came out with," Melanson said.

But Rick O'Donnell, a Republican who unsuccessfully ran for Congress last year, said that in 2006, it was the Republicans who were being hammered by independent groups that looked to them like thinly veiled arms of the Democratic Party.

"It's a prime example of the pot calling the kettle black," O'Donnell said. "Maybe they're just upset that the Republicans are finally learning."

The mutual frustration underscores the fact that despite apparently clear-cut rules governing what "independent issue groups" can do to sway campaigns, proof of violations is slippery and effective enforcement rare.

In fact, as federal regulators have tried to clamp down on 527's — the independent group of choice in the last two campaign cycles, named for the tax code under which they file — a new variant is fast gaining popularity: a specialized nonprofit called a 501(c)4.

As long as they are funded only with individual donations, 501(c)4's can spend unlimited funds and run ads endorsing specific candidates. But the possibility of controlling those groups is even less than with others, some experts argue, largely because the agency mostly responsible for their oversight is the IRS, which isn't built to enforce campaign laws.

Enforcement can be tough

And if the current spat over attack ads in Colorado shows anything, it's that in the real world, even the most basic regulations covering independent groups can be very tough to enforce — starting with the requirement that those groups can't coordinate messages with parties or their candidates.

Democrats see a suspicious web of relationships. The group that produced the Udall attack ads, Common Sense Issues Inc., is headed by Colorado Springs political consultant Patrick Davis. Davis is a longtime Republican political operative who, in 2002, was Western political director for the National Republican Senatorial Committee when he helped with Wayne Allard's Senate campaign, which was headed by Dick Wadhams, currently chairman of the Colorado Republican Party.

Two years later, Davis was political director for the NRSC, helping out on the Senate run of Pete Coors. Among the consultants working for Coors was Walt Klein, currently campaign head for Udall's Republican rival for Colorado's open Senate seat, Bob Schaffer.

Those links raise "serious questions whether Schaffer has illegally coordinated its attacks with a supposedly independent group," according to a statement by the Democratic Senatorial Campaign Committee.

Davis, Klein and Wadhams all say there has been absolutely no coordination. Mark Grueskin, a Colorado attorney who represents Democrats on campaign law issues, tends to agree, noting that Klein and Wadhams are both smarter than to think running ads 11 months before the vote will be effective.

"I have a lot of regard for a number of operatives on that side of the aisle, and maybe as much as anything, that (the timing of the ads) says there was no coordination, because this was really a dumb move," Grueskin said.

Problems go back years

Moreover, Republicans can point to examples from previous campaigns that appeared even more egregious.

In 2004, for example, Jim Jordan, presidential candidate John Kerry's campaign manager, left the campaign and immediately became a consultant to the Media Fund, a major Democratic 527 that ran ads experts say greatly helped Kerry.

"Unless you have a smoking gun, an e-mail or something, you complain and say it's unfair and looks funny, but there isn't much more to do," said Republican O'Donnell, who now heads the Acton Foundation in Texas.

What's worrying to many watchdog groups is that efforts at campaign finance reform such as the 2002 McCain-Feingold law — meant to constrain the role of money in politics — hasn't achieved that goal at all. The money always seems one step ahead of the regulation.

In 2006, 527's poured \$429 million into ads and other activity meant to affect elections, according to OpenSecrets.org, including donations by some individuals that topped more than \$5 million. Compare that with the \$2,100 an individual donor was allowed to give any single campaign.

Colorado Democrats seemed to figure this out before Republicans. Of the top 10 donors nationally to 527 groups, two — Tim Gill and Pat Stryker — gave a combined total of at least \$2.5 million last year. No Colorado Republican made the list.

Money flees tougher rules

But as the Federal Election Commission has gotten tougher on 527's — more tightly constraining their activities — much of that money this year is expected to shift to 501(c)4's. That designation was originally intended for "social welfare groups" that want to educate the public and lobby on issues. But a Supreme Court decision in June found that corporations and nonprofits can run certain "grassroots issues" ads within 60 days of a general election, something that had been banned by the McCain-Feingold law — and 501(c)4's have taken off.

An official with the Service Employees International Union, which has spent millions to support Democratic causes, recently filed to create one of the nonprofits, while major Republican donors recently created a 501(c)4 called Freedom's Watch. One of the nonprofits, called Americans for Fair Taxation, has already spent \$2.5 million to promote its agenda of creating a national sales tax to replace all other federal taxes.

No deduction, more privacy

Experts say that these groups see big advantages in the new status.

Donations to 501(c)4's are not tax deductible, but in return, the donors' names aren't public record, allowing major donors to have a huge impact on races without the disclosure requirements of 527 groups. The groups can endorse candidates, and there is no limit to the money they can spend on ads and other activity, as long as they can show that education about an issue, rather than expressed advocacy for a candidate, constitutes the majority of their activity.

But because 501(c)4's aren't required to make regular FEC filings, the regulatory body that will mostly make that determination is likely to be the IRS, according to Steve Weissman, policy director of the Campaign Finance Institute.

The problem with that, he said, is that the IRS has very little capacity to serve as a watchdog of political groups and the way they spend their money.

"There is no effective regulation with these groups, even though campaign finance laws are established to prevent corruption or the appearance of corruption," Weissman said.

"The least you could say is that the lack of disclosure from any of these groups is something that can easily give the appearance that there are secret people supporting candidates and that they will be indebted to people and we don't know who they are."