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ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

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U.S. Supreme Court Poised

Two recent decisions of the U.S. Supreme Court have chipped away at the Bipartisan Campaign Reform Act (BCRA).

Better known as McCain-Feingold, the Court has modified one provision and upended another.

Now perhaps the Court is poised to strike down or at least modify a major section of the law dealing with political advertising by corporations. What's more, it may challenge Congress' authority to regulate campaign spending by corporations.

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Comments from the Chair Jerry Fitzgerald English

In this economic climate, elected officials throughout New Jersey are struggling with difficult budgetary choices.

These include cutting or eliminating popular and effective programs. They involve raising taxes and fees and in some instances, layoffs.

Those impacted by employee reductions include fire and police personnel, building inspectors, and health care providers to name a few.

State employees, for their part, have been spared large scale layoffs. That's because they agreed to a wage freeze and involuntary furloughs.

So concern for fellow workers and their families has not been without sacrifice.

Along with a freeze on salaries, State employees are required to take a total of ten unpaid furlough days before the end of Fiscal Year 2010.

If anyone doubts it, this is a significant bite out of an individual's paycheck. It amounts to a four percent pay cut on top of a wage freeze.

Without doubt, many of our State government workers are finding it difficult to make ends meet.

Despite the circumstances, public employees continue to conduct themselves professionally while delivering necessary, often critical services.

I can personally attest to this fact. As Chair of the New Jersey Election Law Enforcement Commission (ELEC), I have experienced first hand the professionalism of the Commission's staff.

I am sure this can be said of State government employees in general.

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U.S. Supreme Court Poised

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What impact any such far reaching opinion may have on New Jersey's regulation of corporations through the Campaign Act and pay-to-play statutes remains to be seen.

But it demands close watching.

In 2007 the Court, in Federal Election Commission v. Wisconsin Right to Life modified Section 203, or the electioneering communications provision of BCRA, to allow the prohibition of corporate political advertising only in cases in which there was no doubt about support for or opposition to a federal candidate.

Then in 2008, the Court declared Section 319 of BCRA, the Millionaires' Amendment, unconstitutional. Extending First Amendment protection to self-funded candidates, the Court struck down the provision that had tried to level the playing field between independently wealthy candidates and all others.

Now in the fall the Court is expected to decide a case brought by Citizens United, a conservative group out of Virginia, against the Federal Election Commission (FEC).

Citizens United had produced a documentary movie about then Democratic presidential candidate Hillary Rodham Clinton.

The FEC indicated that Section 203 of BCRA, which requires disclosure by corporations and bans political advertising by corporations within 60 days of a general election and 30 days of a primary, applied to Citizens United as a non-profit corporation and to its movie.

In addition to reviewing the case at hand, the Supreme Court has asked for additional briefs addressing Section 203 in general and a decision in an earlier case decided in 1990, Austin v. Michigan Chamber of Commerce.

The Court in Austin upheld the authority of Congress to regulate campaign spending by corporations.

Depending on how the Court decides, there could be major rumblings throughout the community of regulators overseeing campaign financing at the federal level, and by implication, throughout the states as well.

Comments from the Chair Jerry Fitzgerald English

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Whether impacted by staff shortages, wage freezes, or involuntary furloughs, ELEC's staff continues to provide top notch services to its constituent public.

The Commission enforces the Campaign Act, the Lobbying Disclosure Law, the Pay-to-Play Law, and administers the Gubernatorial Public Financing Program.

Moreover, ELEC has responsibility for overseeing the campaign financial aspects of every candidate for office in New Jersey, ranging from those for fire district commissioner to governor.

The Commission ensures that political party committees, legislative leadership committees, and PACs disclose their financial activity to the public.

And finally, in this very critical year when the Assembly is up for election and there is, for the first time in the State's history, an election for Lieutenant Governor, ELEC is a central player in providing information to the public.

Because of dedicated employees none of these functions have suffered.

From the receptionists, who still answer the phone when the public calls to our clerical and professional staff, the public's work is carried out with diligence.

It is only human for staff to feel let down over current conditions. I am sure there is worry and concern. But none of that has interfered with the job that ELEC's staff does day in and day out.

It is my impression that government workers have taken a bad rap in recent years. And, I think it is patently unfair. Though public employees never seem to get the credit they deserve they sure do get the blame, often for things beyond their control.

From my days as Commissioner of Environmental Protection during the Byrne Administration to my current role as Chair of ELEC, I have nothing but praise for the vast majority of State employees and for those who have dedicated their lives to public service.

And to the ELEC's employees, specifically, I can only say thank you. Your professionalism and sense of responsibility is admirable.

I am continually awed by your diligence, dedication, and long careers in public service.

Executive Director's Thoughts

Jeffrey M. Brindle

The Election Law Enforcement Commission provides many important services to the public.

Aside from its responsibilities of enforcing the campaign financing laws, regulating lobbyists, administering the Gubernatorial Public Financing Program, and administering pay-to-play disclosure, a primary responsibility is to bring information to the public.

This information involves the disclosure of contributions and expenditures taken in and spent by candidates for public office ranging from fire district commissioner to governor.

It also includes financial activity by political parties, legislative leadership committees, PACs, and political committees. Lobbyists also provide information about their activities, both on a quarterly basis and annually in terms of their finances.

What is often overlooked, though, is a very important function of the Commission, namely the enforcement of these various disclosure laws. The Commission routinely issues fines each year to violators and discloses information concerning these enforcement actions on its website.

However important enforcement is, it is still disclosure of the activities of the various players in New Jersey's electoral system that is of paramount importance to the public.

In this time of open public distrust of government and cynicism toward those in public office, there is nothing more critical than transparency. The Commission is central to shedding light on the process and bringing transparency to the electoral process.

But, while the Commission works hard at bringing this about, it can only be at its most effective if citizens are aware of ELEC and the services that are at their finger tips.

This is why as Executive Director one of my priorities is to enhance public awareness of the Commission, the important role it performs, and the services the public can take advantage of.

I am continually frustrated when I meet someone new, they ask me what I do, and their response is either a blank look or "oh you handle voting machines, etc."

This has to change. To that end, we have begun publishing this monthly newsletter. We are looking forward to utilizing other multi-media technologies to highlight services provided by ELEC.

But, that's not all. In the near future, we will launch an outreach effort that will include training seminars in North, Central, and South Jersey, to eventually culminate with sessions in all 21 counties.

Moreover, the Commission will attempt to coordinate with various organizations hosting events in order to highlight the services provided by ELEC and to provide additional training for candidates and treasurers.

These initiatives are the start of an effort to heighten the profile of the Commission and to inform the public of the services available to it through our offices. In this time of public dismay over government, the Commission, and its work, is central to restoring that trust so important to a well functioning society.

We are looking forward to utilizing other multi-media technologies to highlight services provided by ELEC.

ELEC Directors

Jeffrey M. Brindle..... Executive Director
 Carol L. Hoekje Legal Director
 Evelyn Ford Compliance Director
 Carol Neiman Director of Information Technology
 Amy F. Davis..... Director of Special Programs
 Linda White Director of Lobbying
 Leonard Gicas..... Director of Review & Investigation
 Todd J. Wojcik..... Director of Campaign Financing
 Steven M. Dodson.... Director of Finance & Administration

The Commission's Corner

This Section is set aside for writings by Commissioners and staff.

Pay-to-Play in Brief

By [Amy Davis, Director of Special Programs](#)

In recent years, there have been several pay-to-play prohibition and disclosure laws passed in New Jersey in attempt to stop the practice of exchanging campaign contributions for the award of public contracts. Affected by the new laws are State contracts in excess of \$17,500, State redevelopment agreements, and no-bid Legislative, County and Municipal contracts over \$17,500. Before a contract is awarded, the business entity must disclose to the contracting entity whether contributions have been made. If certain political contributions in excess of \$300 have been made that are prohibited, the business entity will not be eligible to receive the contract.

Once a business entity successfully receives a public contract, it must not make certain contributions during the contract term. If a prohibited contribution is made by a business entity with a State contract, the business entity must report it to the State Treasurer. The business may cure it if it requests and receives a refund from the contribution recipient within 30 days. There is no cure for contributions made within 60 days of a gubernatorial election.

Business entities with Legislative, County and Municipal contracts must report any prohibited contribution to ELEC and can cure the act if they request and receive the refund within 60 days. Business entities that do not adhere to the prohibition laws may face debarment from receiving future public contracts and a monetary penalty up to the value of its contract. In some cases, the contribution recipient may also be fined for receiving a prohibited contribution from the business entity.

Since one of the State pay-to-play laws passed allows counties, municipalities, boards of education and fire districts to enact their own pay-to-play laws, the Commission strongly advises each business entity to contact the contracting entity to inquire if they have their own law or whether they follow State law before making any contribution.

Business Entities that receive \$50,000 or more in public contracts are also required to electronically file an annual statement with ELEC disclosing public contracts received and contributions made during

the calendar year. The statement is due by March 30th and reports activity for the previous calendar year. The annual statements can be viewed on the Commission's website and searches for contract and contribution information are available.

Gubernatorial and Lieutenant Governor Public Financing Debates

Between September 22nd and October 23rd

DATES TO BE ANNOUNCED SOON.

Subscribe to ELEC Pay-to-Play Electronic Notices

The Commission's pay-to-play subscription will allow the Special Programs staff to quickly notify subscribers of important news and filing information.

See the Pay-to-Play section of the Commission's website to subscribe.

Debate Sponsors Selected

At its July 21st meeting, the Commission selected sponsors for the upcoming public financing debates involving qualifying candidates for governor and lieutenant governor.

Because New Jersey and Virginia are the only states holding gubernatorial elections in November, there will be much media focus on these contests.

The public financing debates play a key role in educating the public about the views of principal contestants in this very important election.

By law, gubernatorial candidates participating in the public financing matching funds program are required to take part in two ELEC sanctioned debates.

Likewise, their lieutenant governor candidates are required to participate in one ELEC sponsored debate.

Candidates for governor who opt not to participate in the Public Financing Program, but who otherwise would qualify by raising and spending \$340,000 on their campaigns are eligible to take part in the debates.

The debates are required to be held between September 22nd and October 23rd, with the lieutenant governor debate, by law, the middle of the three.

In total, seven potential sponsors submitted applications to hold the ELEC sanctioned debates. Most indicated a willingness to sponsor both the gubernatorial and lieutenant governor debates, while one specified an interest in sponsoring the lieutenant governor debate only.

After a lengthy discussion, which included questioning of sponsor applicants by Commissioners and staff, the Commission narrowed the choice to three applicants for gubernatorial debate sponsorship and one for lieutenant governor debate sponsorship.

In the end, the Commission selected William Patterson University in conjunction with WWOR-TV (Channel 9), WTXF-TV and Fox News to sponsor one of the gubernatorial debates. The second applicant to be selected was New Jersey Network (NJN) in conjunction with the [Philadelphia Inquirer](#) and the Gannett New Jersey newspaper group.

Selected to sponsor the lieutenant governor debate was Leadership New Jersey in conjunction with News 12 New Jersey, NJ 101.5 FM, and the Gannett newspaper chain.

The Commissioners were delighted with the interest shown for sponsoring the debates by so many well qualified groups and wish to thank each and every applicant organization for its concern for the gubernatorial electoral process in New Jersey.

Daggett Advisory Opinion

At its July 21st meeting, the Commission continued its consideration of an advisory opinion request submitted by the gubernatorial campaign of independent candidate Christopher J. Daggett.

The Commission first considered this request at its June meeting. The Commission at that time postponed a final determination pending further review.

The Daggett request concerned the question of how to report transactions stemming from the sale of merchandise when the transaction would not result in any profit for the campaign.

The campaign anticipated selling items such as tee shirts and buttons at cost. The campaign views the sale of such merchandise as a means of promoting information about the candidate.

During the June meeting, the Commissioners had acknowledged that the sale of *de minimis* items such as buttons could present record keeping issues for campaigns but that compliance with contribution limits has been a historical concern for ELEC.

In analogous situations, such as how to deal with the purchase of tickets to a fundraising dinner, the Commission has instructed that the entire price of the ticket should be reported as a contribution and that the cost of the fundraising event should be reported as an expenditure by the campaign.

Upon further consideration, the Commission, in issuing Advisory Opinion No. 1-2009, determined that all receipts from the sale of items must be reported as contributions and all money spent by the campaign to purchase merchandise must be reported as expenditures.

Since the Daggett campaign has qualified for public funds, the Commission added that receipts derived from the sale of the items described by the campaign would be eligible to be matched on a 2:1 basis. However, it cautioned that public funds may not be used for transactions involving a fundraising aspect.

The full text of the advisory opinion is available on the Commission's website.

Don't Overlook the Assembly Election

With attention riveted on the race for governor it's easy to forget about the other statewide contest this fall—the General Assembly.

All 80 members of the Assembly will face challengers this November. The Senate is not up for election (except for two special elections), leaving Assembly candidates alone to stand before the voters.

Regarding the financing of these campaigns it will be interesting to observe if patterns detected in 2005 continue.

White Paper No. 19, [The 2005 Assembly Election: New Trends on the Horizon?](#) revealed that fundraising increased between 2003 and 2005, but at a much more modest pace than in the past.

Between 2003 and 2005, Assembly receipts increased by a mere five percent from \$23.5 million to \$24.7 million. In previous Assembly election cycles dating to 1983, the rate of increase varied between 30 percent and 68 percent.

There was also noted a change in contributor patterns. Political parties were less dominant than in recent years. At the same time the percentage of contributions from PACs increased to 19 percent, the most since 1987. And contributions from candidates rose to 18 percent. The percentage of individuals and business contributions dropped.

It is interesting to note that White Paper No. 20, [Legislative General Elections 2007: An Analysis of Trends in State Senate and Assembly Elections](#) reinforces the findings presented in the report on the 2005 election.

In the 2007 Senate and Assembly election there was an identical increase of only five percent in receipts and a similar contributor mosaic displayed.

Both papers partially attributed the changes that were occurring to recent pay-to-plays laws, which effectively were changing the contributor mosaic as well as dampening enthusiasm for making contributions.

The first report from Assembly candidates (as well as all candidates) is the 29-day report, due October 5th. Perhaps as early as that observation can be made as to whether these trends are continuing.

For a detailed analysis, see White Paper No. 19 and 20, available on line at www.elec.state.nj.us.

It's Illegal

It is illegal for a candidate, candidate committee, continuing political committee, political party committee, or legislative leadership committee, (or treasurer of these entities) to accept a currency contribution exceeding \$200.

The Campaign Contributions and Expenditures Reporting Act requires the maker of a currency contribution to provide a written record to the committee or treasurer which contains pertinent information about the contribution and the contributor.

It is a violation of the campaign financing laws and criminal statutes to conceal the true identity of a contributor. As an example, it is illegal for an individual to distribute money to several persons with the intent that those persons in turn use that money to make political donations.

ELEC Employees Required to Take Unpaid Furlough Days

The agreement reached between the Administration and the CWA regarding involuntary furloughs involves all employees of the Commission.

Though the Commission by statute is an independent agency and is in-but-not-of the Department of Law and Public Safety, its employees are subject to the rules, procedures, and guidelines pertaining to all employees of the executive branch.

Thus, each ELEC employee will be required to take ten furlough days. Two of these days are mandatory for all executive branch employees, the day after Thanksgiving and Lincoln's birthday. One of the days has already been taken in May.

Therefore, it is up to each employee to select seven more days, with three of them being in calendar year 2009.

It is important to note that employees will not be out on the same day. The administration of furlough days will be handled by ELEC directors and by Anita Vaingankar, ELEC's Personnel Officer. They will be handled in the same way as are vacation and administrative days.

As the result, services will not be interrupted and there will be no change in filing dates, which are the key to disclosure.

Dates to Remember

GENERAL ELECTION			
Who Files	What Report	When	Period Covered
Candidates, Political Committees, and Independent Expenditures	29-day pre	October 5 th	June 20 th through October 2 nd
	11-day pre	October 23 rd	October 3 rd through October 20 th
	20-day post	November 23 rd	October 21 st through November 20 th
QUARTERLY			
Who Files	What Report	When	Period Covered
Political Parties, Legislative Leadership, Committees, PACs/CPCs, and Future and Past Candidates	Third Quarter	October 15 th	July 1 st through September 30 th
	Fourth Quarter	January 15 th	October 1 st through December 31 st
48-HOUR NOTICES			
Who Files	What Report	When	
Candidates, Political Committees, and Independent Expenditures	Contributions and/or Expenditures exceeding \$1,200	October 21 st through November 3 rd	
48-HOUR NOTICES			
Who Files	What Report	When	
Political Parties, Legislative Leadership Committees, and PACs/CPCs	Contributions and/or Expenditures exceeding \$1,200	From October 1 st through November 3 rd	
LOBBYIST QUARTERLY			
Who Files	What Report	When	Period Covered
Governmental Affairs Agents (lobbyists)	Third Quarter	October 13 th	July 1 st through September 30 th
	Fourth Quarter	January 11 th	October 1 st through December 31 st

In-House Training Seminars

Candidates and treasurers can receive training at ELEC’s offices on the following dates and times:

TREASURER TRAINING
September 15 th and September 30 th at 10:00 a.m.
TREASURER TRAINING FOR PARTIES AND PACs
October 1 st at 10:00 a.m.
ELECTRONIC FILING
Electronic filing is encouraged for all candidates but is mandated for gubernatorial, Senate, and Assembly candidates raising or spending in excess of \$100,000 in an election.
September 10 th and September 23 rd at 10:00 a.m.