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# ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

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## Comments from the Chair

### Jerry Fitzgerald English

#### Proposals for Legislative Reforms

For the first time, the Election Law Enforcement Commission decided to prioritize proposals for legislative reforms that are designed to improve the regulation of campaign financing, lobbying, and Pay-to-Play. Seven priority recommendations are contained in this year's Annual Report and were the subject of articles run in various newspapers and blogs.

The fact that the legislative proposals have been prioritized reflects the proactive stance taken by the Commission. Several legal challenges are pending nationally that could influence campaign finance law in New Jersey. Moreover, Pay-to-Play and lobbying, particularly at the local level of government, continue to be topics of considerable interest.

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In the next several issues of the newsletter we will deal with each priority recommendation individually. In this way the public can become better acquainted with the Commission's proposals as the process moves forward, hopefully toward enactment. Therefore, this column will deal with the Commission's recommendation involving the Pay-to-Play law.

The current Pay-to-Play law is very confusing. Because of the "Fair and Open" provision at the local level of government a different set of rules may apply at the local level than at the State level.

"Fair and Open" allows municipal and county governments to forego the Pay-to-Play rules provided bids are publicly-advertised.

Compounding this situation is the fact that the current Pay-to-Play law allows for municipalities and counties to pass their own ordinances "as long as they are consistent with the theme of Pay-to-Play." This phrase has caused confusion in terms of whether local ordinances are to be more restrictive or can be less restrictive than State law.

Finally, besides State law and over 50 local ordinances, executive orders have been issued dealing with contracting at the State level.

While the Pay-to-Play law has clearly worked to reduce money going directly to candidates and party entities, the law has proven very complicated. It is not easily understood or explained, and in some ways has led to the circumvention of not only the law itself but of general contribution limits. When this happens, transparency suffers.

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## Comments from the Chair

### Jerry Fitzgerald English

#### [Proposals for Legislative Reforms](#)

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That's why the Commission has made a recommendation for reform of the Pay-to-Play statute in a way that would continue to carry out the law's goal of protecting the integrity of not only the electoral process as it applies to campaign finance but of the public procurement process as well. The recommendation standardizes and simplifies the process, eliminates a loophole, and strengthens and enhances disclosure. It does so in the following ways.

First, under the Commission's proposal there would be one State Pay-to-Play law that would apply to contractors receiving public contracts at both the State level as well as the local level. Current law allows for municipalities and counties to adopt their own ordinances that could be either more restrictive or less restrictive than the State law. In light of the concern for public corruption in New Jersey and the public's desire to end favoritism relative to the public bidding process, it is entirely understandable that local officials would enthusiastically embrace the idea of passing their own ordinances. Unfortunately, this has led to a myriad of different rules that has resulted in confusion and frustration.

One strong State law which emphasizes disclosure would go far toward ending the confusion and enhancing compliance with the law.

Second, the Commission has endorsed the idea that the "Fair and Open" loophole that applies to contracting at the local level be closed. Under current law if a municipality or county advertises publically for bids on a contract and has in place its own procedures for awarding said bids the Pay-to-Play law is not applicable. In other words, the \$300 contribution limit to candidates and other local entities under the State Pay-to-Play law does not apply.

Third, the recommendations call for a strengthening of disclosure. In order for vendors to be required to disclose their public contracts and contributions, they must have received more than \$50,000 in public

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## Executive Director's Thoughts

### Jeff Brindle

#### [New Jersey Congressional Races](#)

With the focus now squarely on the general election, the impact of Citizens United on New Jersey's Congressional races bears watching.

Last February the U.S. Supreme Court issued a broad ruling on campaign law. In [Citizens United v. Federal Election Commission](#), the Court addressed issues involving the broadcast of a documentary about Hillary Clinton.

Plans were to show the documentary within 30 days of the 2008 presidential primary, when Mrs. Clinton was a candidate.

The Federal Election Commission (FEC) concluded that the black out provision, Section 203 of the Bipartisan Campaign Reform Act (BCRA), applied to the documentary, therefore restricting the broadcast. The black out rule banned independent expenditures within 60 days of a general election and 30 days of a primary.

Citizens United challenged Section 203. The group also challenged the disclosure requirements in BCRA, otherwise known as McCain-Feingold.

Not only did the U.S. Supreme Court take up the case but went beyond it to address the issue of the ban in federal law on corporate and union spending generally.

The decision by the Court held that the ban on corporate and union spending rendered in the 1990 decision, [Austin v. Michigan Chamber of Commerce](#), was unconstitutional.

Moreover, the black out period in McCain-Feingold was ruled an abridgement of free speech, thereby allowing advertisements by independent groups which advocate the election or defeat of a candidate to be aired at any time.

Further, the federal ban on direct contributions by corporations and union was left in place.

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## Comments from the Chair

### Jerry Fitzgerald English

#### Proposals for Legislative Reforms

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contracts Statewide in any given year. When they exceed that threshold amount they are required to file a report with the Commission at the end of March. The Commission would like to end that threshold and instead require every public contract over \$17,500 to be subject to disclosure. Contribution information would also be subject to reporting. This change would greatly increase transparency over the procurement process and allow the public to observe any relationship between contributions and the awarding of contracts.

Finally, The Commission would like to see the Legislature consider raising the contribution limit above \$300. While the Commission is mindful of the concern over money in politics it also realizes that in order for there to be competitive elections, candidates must be able to raise enough money to get their message to the voters. With the cost of media advertising in New Jersey this is particularly important. The \$300 limit is a bit too low for a State like New Jersey. The Legislature may consider raising the limit to \$1,000. These range from \$2,600 to \$37,000, depending on the type of donor and the receiving committee while still keeping it well below the level applicable to everyone but those bidding for public contracts. A higher limit will help immunize the law from any First Amendment—based court challenges inspired by the current U.S. Supreme Court.

Any increase in the contribution limit would be more than offset by the enhanced disclosure proposed by the Commission.

The recommendations made by the Commission represent a commonsense approach toward dealing with the important issue of Pay-to-Play. It standardizes the law, makes it understandable, strengthens disclosure and fosters greater transparency, and makes the law easier to enforce. It is hoped that the Legislature will be receptive to the Commission's proposal.

## Executive Director's Thoughts

### Jeff Brindle

#### New Jersey Congressional Races

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Finally, disclosure was strongly favored by the Court as it upheld requirements that sources of spending, and even contributions, be identified.

The Court's decision made the need for disclosure laws more important than ever.

As soon as the decision was announced, many campaign finance experts throughout the country immediately jumped to the conclusion that the ruling would open the floodgates to out of control corporate spending on elections.

Individuals were genuinely concerned about intensified involvement by well healed business interests and the influence their financial activity might buy.

To this point, there is little evidence that their predictions are coming true.

Instead of corporations increasing their activity, the data indicates that contributions by the business sector have actually dropped from two years ago.

During the most recent federal election cycle, political contributions by corporations to congressional candidates is down by five percent from 2008. The data, released by the Center for Responsive Politics, noted that in 2008 corporate involvement had increased by six percent over 2005.

T.W. Farnam reported in the Washington Post that the decline included activity by the financial sector, the oil and gas industry, and the transportation and construction sectors.

Interestingly, as noted in Politico, it has been the unions that thus far have responded more aggressively to Citizens United, having been much more engaged in the recent federal primary process than corporations.

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## Executive Director's Thoughts

Jeff Brindle

[New Jersey Congressional Races](#)

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AFSME and the AFL-CIO were heavily involved in using soft money to purchase T.V. ads in Pennsylvania and Arkansas Congressional and Senatorial elections.

The fact that the early data indicates reduced direct financial involvement in elections by corporations does not mean that corporations will not be spending heavily in this federal election, either nationally or in New Jersey.

It just means that corporate money will flow in a different direction.

Instead of spending directly on a candidates behalf, corporate, as well as union money, will probably be channeled through 527 committees. These 527 committees, which report under IRS rules, will then spend independently on behalf of candidates who take positions favorable to the corporate or labor interest.

In all probability, there will be heavy spending in Congressional races in New Jersey. However, it is doubtful that it will take the form of independent spending directly out of corporate coffers.

Rather an increase in 527 organization activity is likely during this federal cycle. Moreover, these groups will become more and more active as time goes by, even in state elections.

That's why the New Jersey Election Law Enforcement Commission (ELEC) has proposed that these committees be required to report their financial activity in a pre-election setting.

In this way the public will know who finances many of the advertisements that are broadcast prior to elections in New Jersey.

**The above article by Jeff Brindle appeared in [NewJerseyNewsroom.com](#) on June 10, 2010.**

## Permissible Uses of Campaign Funds

[By Evelyn Ford, Compliance Director](#)

In 1993, several laws were passed affecting campaigns for public office in New Jersey. One of those laws addressed the permissible ways in which a candidate could use his or her campaign funds. What follows is an outline of the various ways in which campaign funds can be used by the candidate and treasurer.

Campaign funds may be spent in the following six ways: the payment of campaign expenses, the making of donations to certain charitable organizations, transmittal to another candidate or committee, the payment of overhead and administrative expenses, the pro rata repayment of contributors, and the payment of ordinary and necessary expenses of holding public office. Each of the six categories is discussed below.

### 1. The Payment of Campaign Expenses

Campaign funds may be used for the payment of campaign expenses which are not considered to be for the "personal use" of the candidate or other person associated with the campaign. The payment of campaign expenses includes paying for or leasing items or services used in connection with an election campaign. Campaign expenses do not include those items or services which may be reasonably considered to be for the personal use of the candidate, or any person that is associated with the candidate.

- a. The Payment of a Salary or Fee-The payment of a salary or fee for services used in connection with an election campaign is a permissible use of campaign funds. A candidate may pay a salary or fee to a family member who has established or who controls the committee, provided that the salary is for bona fide services and does not exceed the fair market value. A candidate cannot receive a salary from his/her candidate committee.

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## Permissible Uses of Campaign Funds

By Evelyn Ford, Compliance Director

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- b. Expenses for the Use of a Vehicle-Expenses for the purchase or lease of a vehicle for campaign or officeholding travel may be paid out of campaign funds, provided that the vehicle remains an asset of the committee and the candidate or officeholder reimburses the committee at fair market value for any travel with that vehicle which was not necessitated by campaign or officeholding duties.

A candidate may receive reimbursement for the use of his or her own vehicle. The candidate must provide the committee with accurate and complete written records of the date the vehicle was used, the departure and arrival location of the travel, the mileage, and the purpose (either travel for campaign or travel for officeholding duties). Furthermore, the rate of reimbursement to the candidate or officeholder may not exceed the rate permitted by the New Jersey Department of Treasury for compensating Executive Branch employees for use of personal vehicles or the rate provided by the Internal Revenue Service for deduction of business travel mileage.

### 2. Donations to Charity

A candidate committee may make donations to any charitable organization described in section 170(c) of the Internal Revenue Code of 1954, as amended or modified, or non-profit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except any charitable organization of which the candidate or a member of the candidate's family is a paid officer, director, or employee or receives compensation for goods or services provided to the organization. A member of the candidate's immediate family means the candidate's spouse, child, parent, or sibling, and the child, parent, or sibling of the candidate's spouse.

### 3. Contributions to Others

A candidate committee may make contributions to other New Jersey candidates, candidate committees, joint candidates committees, political committees, continuing political committees, legislative leadership committees, or political party committees.

### 4. Payment of Overhead Expenses

A candidate committee may pay overhead and administrative expenses related to its operation.

### 5. Pro Rata Repayment of Contributors

Especially in the context of "winding down" and closing out a campaign fund, a candidate may repay contributors on a pro-rata basis. Contributors of \$300 or less may be excluded from repayment.

### 6. Ordinary and Necessary Officeholding Expenses

As mentioned previously, candidate committees may make expenditures for the ordinary and necessary expenses of holding public office. "Ordinary and necessary expenses of holding public office" are expenses that reasonably promote or carry out the responsibilities of a person holding elected public office.

No campaign funds may be used, however, for expenses arising from the furnishing, staffing, or operation of an office used in connection with the officeholder's official duties as an elected public official. "Furnishing," means purchasing or leasing furniture, equipment, or other appointments that are physically situated at an office facility used in connection with the officeholder's official duties as an elected public official. "Staffing" means paying a salary or fee as compensation to any person for performing duties to assist the officeholder in carrying out the officeholder's duties as an elected public official. "Operation" means paying rent, utility or maintenance expenses incurred for an office facility used in conjunction with the officeholder's official duties as an elected public official. An officeholder may lease or purchase office furniture or equipment for his/her residence, if the office furniture or equipment are used in conjunction with the officeholder's duties.

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## Permissible Uses of Campaign Funds

By Evelyn Ford, Compliance Director

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Provided that costs are not paid for by the State of New Jersey or any political subdivision of the State, the following are examples of permissible ordinary and necessary expenses of holding public office:

- a. Costs of communications to constituents, including:
  - 1) the production, circulation, and postage of newsletters, mailings, or other written materials for officeholding duties;
  - 2) the sponsorship or holding of a seminar or other meeting to be attended by constituents;
  - 3) the making of donations to charitable or non-profit organizations or activities that promote the welfare of constituents, such as the sponsorship of a neighborhood sports team;
  - 4) the framing of honorary resolutions for constituents; and,
  - 5) the nominal purchase of memorial or get-well gifts, flowers, party favors, or similar items for constituents or other persons involved in the execution of the officeholder's duties.
- b. The purchase of items, including:
  - 1) a portable telephone, including a telephone in the vehicle used by the officeholder for official travel;
  - 2) signs indicating the location of the office used by the officeholder for carrying out official duties whether or not such signs are situated on the premises;
  - 3) janitorial supplies and other consumables for the office used in connection with the officeholder's official duties, and funding of a "petty cash" account; and,
  - 4) newspapers, magazines, or other periodicals used in connection with carrying out officeholding duties.

- c. Costs of dues for membership in educational organizations related to officeholding duties and costs of registration and attendance at conferences or seminars attended in connection with officeholding duties. These costs include the reasonable expense of travel, lodging, and other subsistence.
- d. Costs of travel when performing officeholding duties, provided that the travel is not undertaken for any purpose resulting in a personal or financial benefit to the candidate or officeholder.

Finally, campaign funds can be used to pay for reasonable legal fees and expenses, the need for which arises directly from and related to the campaign for public office or the ordinary and necessary expenses of holding public office. For example, campaign funds can be used to pay for litigation related to a recount proceeding or an election contest or from the defense of a civil action or administrative proceeding alleging a violation of the Campaign Act. However, it is not permissible to use legal fees for expenses for the defense of a candidate or officeholder who is the subject of a criminal inquiry or criminal investigation, or the defense of a criminal indictment or other criminal proceeding. It is always a good idea to contact the staff of the Commission to obtain help in determining whether or not campaign funds can be used in any scenario not directly outlined in the law.

Officeholders are encouraged to contact ELEC when questions regarding the permissible use of campaign funds arise. In many instances staff provides answers to permissible use questions but at times an advisory opinion request of the Commission is necessary.

For information on requesting an advisory opinion go to [www.elec.state.nj.us](http://www.elec.state.nj.us) or call Toll Free within New Jersey **1-888-313-ELEC (3532)**.

## Advisory Opinion No. 01-2010

This Advisory Opinion Request was submitted on behalf of Friends of Wolfe for Assembly.

Assemblyman Wolfe was required to interrupt his vacation to return to Trenton for an important vote on pension reform.

The Assemblyman, a Deputy Republican Leader, indicated that he was expected to be present at voting sessions. He stated that his vacation plans were made prior to any announcement of the special session of the Assembly. In other words, there was no voting session scheduled for the period of time in which the Assemblyman planned his vacation.

In his request, Assemblyman Wolfe asked whether or not it would be permissible to use campaign funds to reimburse the cost of returning to Trenton from Albuquerque, New Mexico in order to be present at the voting session. The reimbursement would also include the cost of returning to Albuquerque to resume his vacation.

Assemblyman Wolfe inquired as to the applicability of N.J.A.C. 19:25-6.7 ordinary and necessary expense of holding public office.

The Commission determined that N.J.A.C. 19:25-6.7 did apply to the situation and that Assemblyman Wolfe could reimburse the cost of the round-trip originating from Albuquerque from his campaign fund.

## Kim Key "Profile" Senior Compliance Officer

Kim Key is one of the "go-to" people at the New Jersey Election Law Enforcement Commission.

"I go where the need is," said Key, who began part-time at ELEC in 1982 at the age of 16. "I do pretty much everything," said the long-time Mercer County resident.

As a Compliance Division employee, she checks and helps organize candidate reports. She helps train candidates and treasurers. She works with agency lawyers in preparing cases. She searches for any political donations made by judges or their spouses for the State Judiciary's Advisory Committee on Judicial Conduct, which investigates allegations of unethical judicial conduct.

Perhaps most importantly, she provides informational assistance to law enforcement agencies, including the State Division of Criminal Justice, the FBI and the U.S. Attorney's Office.

Part of that assistance includes testifying in federal court. At times she can spend up to an hour on the stand testifying about campaign finance reports filed with ELEC.

She admits she gets a little nervous, but also finds the experience fascinating.

"It can be frightening. But it is interesting to see the system," she said.

"The bottom line is you go in there, you tell the truth, you answer the questions and you are done."

Key said she likes working at ELEC in part because of the variety of work assignments and because she gets to do that work with minimal interference. "They let you do your job. They are not on top of you. They let me do what I know how to do," she said.

As a mother of three sons, Key said she has little time for hobbies. She does like reading mysteries when she gets the chance.

## DATES TO REMEMBER

2010 REPORTING DATES		
RUNOFF ELECTION JUNE 15, 2010		
PERIOD COVERED	REPORT DUE DATE	
29-day pre-election	*No report required	
20-day post-election	6/2/10 – 7/2/10	July 6, 2010
GENERAL ELECTION NOVEMBER 2, 2010		
PERIOD COVERED	REPORT DUE DATE	
29-day pre-election	6/26/10 – 10/1/10	October 4, 2010
11-day pre-election	10/2/10 – 10/19/10	October 22, 2010
20-day post-election	10/20/10 – 11/19/10	November 22, 2010
48 Hour Notice Reports start on 10/20/10 through 11/2/10		
PACs & CAMPAIGN QUARTERLY FILERS		
PERIOD COVERED	REPORT DUE DATE	
2 <sup>nd</sup> Quarter	4/1/10 – 6/30/10	July 15, 2010
3 <sup>rd</sup> Quarter	7/1/10 – 9/30/10	October 15, 2010
4 <sup>th</sup> Quarter	10/1/10 – 12/31/10	January 18, 2011

\* A candidate committee or joint candidates committee that is filing in the 2010 Runoff election is not required to file a 20-day post-election report for the 2010 Municipal election.

Late and non-filing of reports are subject to civil penalties determined by the Commissioners

## TREASURER TRAINING FOR CANDIDATES AND COMMITTEES

Seminars are conducted at 10:00 a.m. at the Commission's offices at 28 West State Street, 8 <sup>th</sup> floor, in Trenton.	
Treasurer Training Seminars for Candidates and Joint Candidates Committees:	Treasurer Training Seminars for Political Party Committees and PACs:
Monday, September 13	Monday, September 27
Wednesday, September 29	Thursday, December 9