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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 Chairman Ronald DeFilippis

This month the Commission will be reviewing the 2012 Gubernatorial Cost Index Report.

The Cost Index Report is issued in fulfillment of the Commission's statutory responsibility to adjust for inflation the thresholds and limits pertaining to the Gubernatorial Public Financing Program.

The report also fulfills the requirement that the Commission adjust for inflation the thresholds applicable to non-gubernatorial candidates and committees.

Moreover, the report contains proposed adjustments to non-gubernatorial contribution limits as required by statute. While the gubernatorial contribution limits are adjusted automatically, it takes an act of the Legislature to adjust the non-gubernatorial limits.

Following the 1985 gubernatorial election, the Commission recommended that the various thresholds and limits be adjusted every four years by the Consumer Price Index (CPI). ELEC commissioners and staff were concerned that the thresholds and limits were being outdistanced by inflation, a situation that would eventually undermine the effectiveness of the program.

Two years later, in 1988, the Commission refined this proposal and developed a sophisticated formula for calculating campaign inflation. This proposal, contained in its first ever Gubernatorial Cost Analysis Report, combined the CPI index with a special inflation index for advertising costs.

This formula would be enacted into law when the Campaign Act was amended in 1989. Accepting the Commission's recommendations, the Legislature called for a quadrennial adjustment of thresholds and limits pertaining to the gubernatorial primary and general elections.

Beginning with the 1993 primary and general elections, ELEC, every four years would adjust the thresholds and limits using its very unique formula which takes into account general inflation in the New York/Philadelphia areas as well as inflation involving broadcast and print advertising.

The Gubernatorial Public Financing Program has been an integral part of gubernatorial elections in New Jersey since 1977. It has allowed candidates of limited means to run for governor and it has helped to eliminate undue influence from the process.

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Comments from the Chairman Ronald DeFilippis

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The exercise that the Commission will undertake this month represents the beginning of the gubernatorial election cycle involving the Public Financing Program.

Inflationary adjustments will be in place by January by virtue of the Cost Analysis Report which forms the basis of the regulations that will be proposed to officially adopt the changes.

Executive Director's Thoughts Jeff Brindle

A recent event in the Empire State could be a tipping point for super PAC engagement in New Jersey's congressional elections.

The Wall Street Journal reports that a new super PAC in New York "would be one of the first to focus specifically on congressional elections in a single state."

According to the Journal, the group is being formed by former New York Governor George Pataki. His organization filed papers with the Federal Election Commission and will introduce a website soon.

The group plans to raise in the seven figures and is aptly named "Tipping Point."

So can we expect the same in New Jersey?

If last year's legislative election is any guide, Garden State voters should expect a heavy dose of super PAC action this side of the Hudson.

New Jersey also has important congressional elections this year. The 2011 legislative elections witnessed seven independent, outside groups participating in the general election for State Senate and Assembly.

Because not all of these groups reported their activity, the full extent of their spending is not known. But we do know that at a minimum over \$1 million was spent by these organizations.

At least 10 independent groups spent at least \$13.7 million on the 2009 governor's race.

Whether super PACs and other outside groups will form solely to focus on congressional contests in New Jersey is unknown. But it's a sure bet that either national or New Jersey-specific groups will participate in federal elections.

Super PACs and other independent groups engaged only in federal contests are not obligated to file reports with ELEC. But here's the rub. Neither are they required to disclose their involvement in New Jersey local and state elections unless they expressly advocate for or against a candidate.

These groups by virtue of recent federal court decisions can raise funds in unlimited amounts and spend in unlimited amounts as long as they are independent expenditure only committees.

There is a remedy. These same court decisions also strongly supported disclosure.

So it is incumbent upon the Legislature to enact constitutionally protected registration and disclosure laws for these super PACs and other outside groups.

The handwriting is on the wall. Next year's gubernatorial and legislative elections promises to be a monster year for independent spending.

This activity will affect both parties and may have a real impact on the outcome of various contests.

It is in the public interest for legislation to be enacted that would disclose who stands behind these stealth groups, who contributes to them, and who is receiving their money.

If the heavy involvement by super PACs in this year's presidential election provides a clue, independent groups may well wield more influence than the candidates and parties themselves.

This column appeared on
[Campaigns & Elections](#) website on
May 31, 2012

Another letdown for Citizens United critics?

By: Jeff Brindle

Why the High Court is unlikely to reconsider its landmark decision.

A full court press is on to overturn Citizens United. But opponents of the landmark ruling are likely to be disappointed by the outcome.

Citizens United v. FEC was decided by the U.S. Supreme Court in January, 2010. The controversial decision lifted the ban on independent spending by corporations and unions and found the electioneering communication blackout period to be unconstitutional. However, the Court left in place the ban on direct monetary contributions to candidates and parties and strongly endorsed disclosure.

The attempt to have the Supreme Court reconsider Citizens United stems from a conservative group's challenge of a Montana law that bans corporate spending in Montana elections.

In American Tradition Partnership, Inc., (ATP) and Western Tradition Partnership, Inc. v. Steve Bullock, Attorney General of Montana, the Petitioners seek to overturn the Montana Corrupt Practices Act, which dates to 1912.

After being clarified by the Legislature in 1979, the law requires that corporations "make campaign contributions and expenditures by accounting for and disclosing them through a separate, segregated fund of voluntarily solicited contributions from shareholders, employees, and members."

In other words, if corporations want to participate in Montana elections, they have to do so through political action committees that disclose their fundraising activities.

The challenge to the law was first taken up by the Montana District Court which found the law to be unconstitutional. Subsequently, the Montana Supreme Court reversed the District Court's ruling and upheld the Corrupt Practices Act. American Tradition Partnership, et seq. is now petitioning the U.S. Supreme Court to hear the case on appeal.

Recently, it was announced that the Campaign Legal Center and several other groups, including representatives of 22 states and the District of Columbia, have filed Amici Briefs supporting Montana's law. The briefs ask the Court to either deny the appeal or reconsider its decision in Citizens United.

Arizona Senator John McCain, a long-time champion of more disclosure by independent campaign committees since one once hurt his presidential primary ambitions, is also filing an Amicus Brief supporting Montana's law.

While the intent of these groups may well be good, it is doubtful the High Court will take either course of action. If the Court refuses to review the Montana case by denying certiorari, it will be undermining its own precedent in Citizens United and add confusion at a time when campaign finance law already is topsy-turvy. It is even more unlikely that the Court will opt to reconsider and reverse its two-year-old decision in Citizens United.

Attention is being focused on Justice Kennedy as the swing vote. But this may be a fool's errand. Justice Kennedy has long been a foe of restrictions on campaign spending by corporations, having written the dissent in Austin v. Chamber of Commerce in 1990. That high court ruling refused to let the Michigan Chamber pay for a political ad directly from its corporate treasury and instead required the use of its PAC funds. Kennedy's early dissent became law when he wrote the majority opinion in Citizens United, which discarded the precedent set in Austin.

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In his brief in opposition to the challenge to the Montana statute, Attorney General and candidate for Governor Steve Bullock suggests that the separate, segregated fund—a PAC—is indistinguishable from the corporation. Secondly, he argues that independent spending can corrupt through the influence that money can bring to bear on the outcome of an election.

He states: “The [Montana Supreme] Court concluded that the distance between the accountable and transparent Montana politics of today and the dark days of Copper Kings confirmed rather than rebutted the People’s compelling interest in the Corrupt Practices Act, and that the state’s compelling interest remain.”

Thirdly, he argues that the ATP desires to operate in a stealth way through non-disclosure of its donors and spending. Bullock notes: “ATP’s undisputed purpose is to use the non-profit corporate form primarily to evade disclosure of funding sources that are themselves out-of-state (potentially off-shore) business corporations that seek to influence Montana elections anonymously.”

None of these arguments, however, are likely to sway the five conservative judges on the U.S. Supreme Court into reversing Citizens United. The argument that the PAC account is indistinguishable from a corporation may lack credence under existing law and is at odds with the Court’s interpretation of corporation in Citizens United.

The argument alleging a connection between spending and corruption is likely to be dismissed as well. Historically, the Court has ruled that First Amendment rights can only be abridged when there is a real threat of quid pro quo corruption, such as an agreement to accept a contribution in exchange for a vote on legislation or a contract. Contributions directly to candidates pose a greater risk of this threat and consequently are subject to tight regulation.

Since the Buckley v. Valeo ruling in 1981 and even more emphatically in Citizens United, the court has declared that the more indirect threat posed by independent political spending is not serious enough to curtail First Amendment rights through steps like contribution limits.

Finally, regarding stealth activity, the Court can simply respond that the remedy lies within Citizens United itself, which allows disclosure of donors to independent groups as well as expenditures. The Montana Legislature, in other words, can pass legislation to require registration and disclosure by these outside groups.

There is one small opening available to those who are hoping to see the Montana Corrupt Practices Act of 1912 upheld. It involves the Tenth Amendment and the right of states to regulate campaign financing vis-à-vis elections for state and local offices as they see fit. The Court could take this way out in the ATP case, stating that Citizens United applies to federal elections only, giving states greater latitude in regulating campaign financing.

However, the same possibility existed in McComish v. Bennett in June 2011, a case challenging Arizona’s public financing law, and the Supreme Court simply declared a key section of the program unconstitutional. So the chances of this happening seem pretty slim.

As long as the composition of the Court remains the same, laws like Montana’s Corrupt Practices Act are likely to be found unconstitutional and inconsistent with Citizens United.

Lou Solimeo "Profile" Associate Computer Technician

Louis Solimeo once was working for a bank in Vineland when he received an urgent call from a customer from Ipswich, Massachusetts.

He could have blown off the person and made them check with a local bank branch. Instead, he tried to resolve their issue from 370 miles away.

"I don't mind helping. I'll do whatever I can even if it's not my bailiwick," said Solimeo, who now works as an Associate Computer Technician at the NJ Election Law Enforcement Commission (ELEC).

"I just want to make sure people are happy. I get a kick out of that," he added.

Solimeo still gets a chance to display this helpful attitude in his current job. Only now, instead of dealing with bank customers, he answers computer questions from the public and ELEC staff in addition to helping maintain the agency's computer system.

He sometimes gives people his direct phone line and even has fielded frantic calls at home from campaign treasurers on weekends. "It's usually "I screwed this up. How do I fix it,"" he said.

Solimeo's patient, service-oriented approach exemplifies a tradition at the agency that sets it apart from other bureaucracies, private and public.

As for his computer background, it came more from his work than college experience.

Solimeo graduated with a bachelor's degree in journalism from Bradley College in Illinois. Around 1978, he began working as a reporter at a weekly newspaper in Camden County and stayed there until around 1983. While he enjoyed journalism, the job prospects weren't good at the time. So he took a job leasing copiers. That firm eventually bought a company that sold computers and he began developing expertise in the computer field as the industry grew rapidly.

He moved to a bank where he helped develop software when he wasn't processing loans.

While Solimeo admits he was never a math whiz, he was intrigued by computers from an early age. He was about 8 years old when his parents bought him a rudimentary computer and he found it fascinating. Like many people who end up in an information technology career, he also was mechanically inclined. He worked on his cars and had a knack for taking things apart and rebuilding them.

Solimeo's computer education intensified when he worked in succession for the now-defunct Computer City and CompUSA for several years. "I was like a kid in a candy store," he said, noting how he would buy outdated computers, disassemble them and then remake them. He also learned a lot about the growing field of computer networking, which is a part of his responsibility at ELEC.

After coming from a third computer company to ELEC, Solimeo in 2001 helped develop important ELEC software that manages the Gubernatorial Public Finance Program. He continues to help debug and maintain it.

In his spare time, he roots for the Philadelphia Phillies and Flyers. He also enjoys using his Nikon D-60 camera for family photos. He has two children.

Solimeo played competitive ice hockey for several years and still sometimes does some skating- on roller blades and on ice- though he no longer competes.

He is an avid fiction reader whose interests "run the gamut" and include works by authors Thomas Harris, Stephen King, JRR Tolkien, and Hunter Thompson.

TRAINING SEMINARS

Please provide the information requested below and return the **entire reservation form** to ELEC. Since space is limited, you must reserve a seat in order to attend. The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please select your choice **by circling one of the dates** below:

BUSINESS ENTITY PAY-TO-PLAY TRAINING	TRAINING DATE	TIME
Pay-To-Play Reservation Form*	June 22, 2012	10:00 a.m.
	September 14, 2012	10:00 a.m.
	November 16, 2012	10:00 a.m.

TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES	TRAINING DATE	TIME
Treasurer Training for Candidates Reservation Form**	September 11, 2012	10:00 a.m.
	September 24, 2012	10:00 a.m.
	October 2, 2012	10:00 a.m.

TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS	TRAINING DATE	TIME
Treasurer Training for Political Parties Reservation Form**	June 27, 2012	10:00 a.m.
	September 28, 2012	10:00 a.m.
	December 12, 2012	10:00 a.m.

R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING	TRAINING DATE	TIME
REFS Training Reservation Form**	July 25, 2012	10:00 a.m.
	September 19, 2012	10:00 a.m.
	October 3, 2012	10:00 a.m.

* You may mail the form back to ELEC, Special Programs Section, P.O. Box 185, Trenton, NJ 08625-0185 or you may fax the form to ELEC at (609) 292-4238. For directions, contact the Special Programs staff.

** You may mail the form back to ELEC, Compliance and Information Section, PO Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854. For directions, contact the Compliance and Information staff.

DATES TO REMEMBER

Reporting Dates

ELECTION	48 HOUR START DATE	INCLUSION DATES	FILING DATE
RUNOFF (JUNE)**	5/30/12		6/12/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		4/25/12 - 5/29/12	6/1/2012
20-day Postelection Reporting Date		5/30/12-6/29/12	7/2/2012
PRIMARY*** (90 DAY START DATE: 3/7/12)	5/23/12		6/5/2012
29-day Preelection Reporting Date		Inception of campaign* - 5/4/12	5/7/2012
11-day Preelection Reporting Date		5/5/12 - 5/22/12	5/25/2012
20-day Postelection Reporting Date		5/23/12 - 6/22/12	6/25/2012
GENERAL*** (90 DAY START DATE: 8/8/12)	10/24/12		11/6/2012
29-day Preelection Reporting Date		6/23/12 - 10/5/12	10/9/2012
11-day Preelection Reporting Date		10/6/12 - 10/23/12	10/26/2012
20-day Postelection Reporting Date		10/24/12 - 11/23/12	11/26/2012
RUNOFF (DECEMBER)**	11/21/12		12/4/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		10/24/12 - 11/20/12	11/23/2012
20-day Postelection Reporting Date		11/21/12 - 12/21/12	12/24/2012
PACS, PCFRS & CAMPAIGN QUARTERLY FILERS			
1st Quarter		1/1/12 - 3/31/12	4/16/2012
2nd Quarter****		4/1/12 - 6/30/12	7/16/2012
3rd Quarter		7/1/12 - 9/30/12	10/15/2012
4th Quarter		10/1/12 - 12/31/12	1/15/2013

* Inception Date of Campaign (first time filers) or from January 1, 2012 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2012 Runoff election is not required to file a 20-day postelection report for the corresponding prior election (May Municipal or General).

*** Form PFD-1 is due on April 12, 2012 for Primary Election Candidates and June 15, 2012 for Independent General Election Candidates.

**** A second quarter report is needed by Independent General Election candidates if they started their campaign before 5/9/2012.