



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

RALPH V. MARTIN  
Chair

PAULA A. FRANZESE  
Vice Chair

LYNNAN B. WARE  
Commissioner

SUSAN S. LEDERMAN, Ph.D.  
Commissioner

Respond to:  
P.O. Box 185  
Trenton, New Jersey 08625-0185

(609) 292-8700

Web site: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.  
Executive Director

JEFFREY M. BRINDLE  
Deputy Director

GREGORY E. NAGY  
Legal Director

JAMES P. WYSE  
Counsel

### PUBLIC SESSION MINUTES

April 4, 2001

Chair Martin, Vice Chair Franzese, Commissioner Ware, Commissioner Lederman, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

#### 1. Open Public Meetings Statement

Chair Martin called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 *et seq.*, adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 10:00 a.m. in Trenton, New Jersey.

#### 2. Approval of Public Session Minutes of February 21, 2001

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the Public Session Minutes of February 21, 2001.

Vice Chair Franzese acknowledged Commissioner Lederman's selection by the Public Interest Law Center of New Jersey as the recipient of the Eric Neisser Public Service Award.

#### 3. Selection of 2001 Gubernatorial Primary Election Debate Sponsors

The Commission proceeded to consider applications for sponsorship of 2001 gubernatorial primary election debates. Applications were submitted by:

- League of Women Voters of New Jersey Education Fund;
- News 12 New Jersey in association with The Star-Ledger and The Eagleton Institute;

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- New Jersey Network (NJN) and The New York Times; and,
- CN8 – The Comcast Network and New Jersey 101.5 Radio, with C-SPAN, Gannett Newspaper Group, The Philadelphia Inquirer, Brookdale Community College, and Network Telemundo.

According to Deputy Legal Director Nedda Massar, N.J.S.A. 19:44A-46c and N.J.A.C. 19:25-16.39 establish the following three criteria for sponsor eligibility:

- A sponsor must be unaffiliated with any political party or holder of or candidate for public office;
- A sponsor must not endorse any candidate in the pending primary election and must agree not to make any such endorsement until the completion of any debate sponsored by the organization; and,
- A sponsor must have previously sponsored one or more televised debates among candidates for statewide office since 1976, or be an association of two or more news publications or broadcasting outlets having between them a “substantial readership or audience in this State....”

Each of the four applicants indicated that they were unaffiliated with any political party or candidate for public office. They agreed not to make any endorsement in the 2001 gubernatorial primary election until the completion of any debate it is selected to sponsor. The League of Women Voters, News 12 New Jersey, and NJN have all sponsored televised debates since 1976 among candidates for New Jersey Statewide office. CN8 has advised staff that New Jersey 101.5 Radio is its debate co-sponsor and that it is associated with C-SPAN, the Gannett Newspaper Group, the Philadelphia Inquirer, Brookdale Community College, and Network Telemundo as broadcast partners. Staff recommended that CN8 and New Jersey 101.5 Radio be regarded as an association of two or more separately owned news publications or broadcasting outlets having among them a substantial readership or audience in New Jersey, and therefore that they satisfy the exception to the debate experience requirement pursuant to N.J.S.A. 19:44A-46c and N.J.A.C. 19:25-16.39(b).

Staff provided the Commission with a chart that summarizes information taken from each of the four applications concerning the following: proposed debate dates and times; broadcast plans; debate format, audience, and promotion plans; and financial support to underwrite the costs of the debates.

Chair Martin recognized representatives from the four applicants vying for sponsorship of debates. Each applicant summarized its respective proposal and responded to questions posed by Commissioners.

**(1) League of Women Voters**

Commissioner Ware asked if the League's plan included any proposal for rebroadcast.

Ms. Linda Munick from WPVI, Philadelphia said that there were no plans for rebroadcast but that the suggestion would be highly considered.

Commissioner Ware asked if the debate will be covered on any radio stations.

Ms. Munick stated that the debate will be available to any broadcaster.

Commissioner Ware asked about newspaper coverage.

Ms. Munick responded that the debate would not be co-sponsored by any newspaper but that past experience indicates that there will be substantial coverage by the print media.

Commissioner Lederman stated that WABC, New York and WPVI, Philadelphia are co-sponsors. "Is that correct," she asked?

H. Patricia Tieman, the League of Women Voters' chair, answered in the affirmative.

Commissioner Lederman asked about the number of households covered by WABC and WPVI.

Ms. Munick responded that there would be full coverage throughout the State.

Commissioner Lederman asked how the debates would be promoted.

Ms. Tieman said that the League will promote the debates through its local affiliates, through various press releases to daily newspapers, and through promotion on WABC and WPVI.

**(2) News Channel 12/The Star-Ledger and Eagleton Institute**

Vice Chair Franzese asked Mr. William Schlosser about debate coverage.

Mr. Schlosser stated that Channel 12 reaches about 1.5 to 1.7 million homes in Northern New Jersey through the tip of Ocean County. He added that the debate is available to any other broadcaster in New Jersey.

Commissioner Ware asked about specific plans for coverage in South Jersey.

Mr. Schlosser said that discussions are ongoing with Comcast in South Jersey.

Commissioner Ware asked if there were any plans for coverage by free or network television.

Mr. Schlosser said that there were no plans but that the debate would be made available to all media who wish to broadcast it.

Commissioner Lederman asked about the role of Eagleton Institute.

Mr. Schlosser indicated that one panelist would be from Eagleton, that the format of the debates would involve Eagleton, and that students would help in devising questions.

### **(3) NJN and The New York Times**

Commissioner Ware asked if NJN had partnered with any South Jersey newspaper.

Mr. William Jobes noted that NJN is associating itself with The New York Times, and that though not partnering with any South Jersey paper, the debate will be available to all newspapers.

Vice Chair Franzese asked if The New York Times will promote the debates.

Mr. Jobes stated that "house ads" will be placed in The New York Times.

Vice Chair Franzese asked how tickets will be allocated.

Mr. Jobes said that there is seating at NJN studios for 310 people and that tickets will be distributed to the media, to the League of Women Voters, Eagleton Institute, and the like, and to the State's political parties.

Commissioner Lederman asked about audience participation.

Mr. Jobes said there will be audience participation when called upon but that it will be orderly.

**(4) CN8 – The Comcast Network**

Commissioner Ware stated that while she has cable T.V. she is concerned that there are still many homes in New Jersey that do not have cable T.V.

Vice Chair Franzese asked whether CN-8 would screen questions.

Ms. Lynn Doyle stated that questions would be screened to maintain decorum and timeliness. She said, however, they would not be screened for content.

Executive Director Herrmann suggested that for promotional purposes the debates be listed in television programming guides.

A brief discussion followed in which the criteria for selection of sponsors was noted and the Commission stressed the importance of Statewide television coverage of the debates. The Commission proceeded to select the debate sponsors.

On a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission decided in the following manner:

Sponsorship of one each of the Republican candidates' debates was awarded to the League of Women Voters of New Jersey Education Fund with Channels 6 and 7 and to NJN and The New York Times. Sponsorship of one each of the Democratic candidates' debates was awarded to News 12 New Jersey, the Star-Ledger, and the Eagleton Institute and to CN-8 Comcast.

4. 2001 Primary Election Matching Fund Submissions and Issue Advocacy Organization Disclosure

**Donald T. DiFrancesco, Submission #1**

The public financing staff concluded its review of the first public matching fund submission filed by 2001 gubernatorial primary election candidate Donald T. DiFrancesco. On the basis of its review of the submission, public matching funds in the amount of \$676,100.00 will be deposited into the separate public funds account established through the Department of the Treasury.

Candidate DiFrancesco's March 12, 2001 first application for matching funds contained \$440,550.00 in net contributions submitted for match. Complete review of all items submitted for match resulted in ineligibility of 11 contribution items representing \$18,500.00. After subtraction of the ineligible items and the \$84,000 threshold amount of contributions which is not matched in the 2001 primary election, it was determined that \$338,050.00 was eligible to be matched at the 2:1 ratio. Applying the 2:1 ratio to the amount of funds eligible for match results in \$676,100.00 in matching funds for Submission #1. Staff will therefore certify to the Department of Treasury that the DiFrancesco campaign is eligible to receive \$676,100.00 in 2001 primary election matching funds.

It was also noted that Candidate DiFrancesco has filed a signed Statement of Agreement to participate in the 2001 primary election debates and documentation to establish that \$260,000 has been spent in the 2001 primary election. He has also filed form P-2 regarding an Issue Advocacy Organization Report.

**Donald T. DiFrancesco, Submission #2**

Deputy Legal Director Massar informed the Commission that Candidate DiFrancesco filed a second matching fund submission on March 26, 2001. She said that the public financing staff will conduct complete review of Submission #2 prior to certification of matching funds to the campaign.

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the report on 2001 primary election public matching fund submissions.

5. Complaint Filed by a Gubernatorial Candidate Pursuant to N.J.A.C. 19:25-16.48 Seeking Emergent Relief for an Alleged Violation of the Primary Election Expenditure Limit

Deputy Legal Director Massar reported that a complaint seeking emergent relief was received on March 27, 2001, from DiFrancesco for Governor, Inc., a 2001 primary election publicly-financed campaign, alleging violations of the Campaign Reporting Act, including violation of the gubernatorial primary election expenditure limit. The Respondents named in the complaint are the Irish Leader, McGreevey for Governor 2001, Inc., James J. Devine, Devine Media Enterprises, Inc., and Francis X. Smollon.

The allegations contained in the complaint are as follows:

**Count One**

A publication, the Irish Leader, produced and disseminated by Devine Media Enterprises, is not a *bona fide* newspaper and was produced in concert with the McGreevey campaign, in violation of N.J.A.C. 19:25-16.30, Coordinated expenditures, and the \$3.8 million primary election expenditure limit. Petitioner alleges that New Jersey voters and taxpayers are irreparably harmed by the publication and requests relief and imposition of the maximum penalty pursuant to N.J.S.A. 19:44A-21.

**Count Two**

The Irish Leader spent more than \$1,500 in an election promoting gubernatorial candidate James E. McGreevey and has failed to file reports with the Commission as a political committee.

**Count Three**

As a political communication, the Irish Leader did not include required political identification information.

**Count Four**

Alternatively, if the Irish Leader was not published in concert with Candidate McGreevey and was an independent expenditure, it was required to disclose that fact within the publication.

**Count Five**

The Irish Leader, Smollon, Devine, and Devine Enterprises made in-kind contributions in excess of the \$2,600 gubernatorial contribution limit.

A letter in opposition to the petition for emergent relief, dated April 2, 2001, from Paul P. Josephson, Esq., General Counsel and Treasurer of McGreevey for Governor 2001, Inc., was circulated to the Commissioners.

Chair Martin recognized Mr. Peter Sheridan, Counsel to the DiFrancesco Gubernatorial Campaign.

Mr. Sheridan stated that the Irish Leader was a blatant scheme to dress up a political publication as a newspaper. He noted that the publication contains several references and photos of Democratic Gubernatorial Candidate James E. McGreevey, including an article written by him about a recent trip to Ireland. Mr. Sheridan said that the publication contained references to other Irish Democratic candidates but none to any Republican public officials of note. Mr. Sheridan said that the publication of a phony newspaper unjustly enriches the McGreevey Campaign. He stated that the Irish Leader has no general circulation, has not been regularly distributed and that the content is not balanced.

Vice Chair Franzese stated that the regulatory standard for emergent relief is a demonstration of irreparable harm.

Mr. Sheridan indicated that the harm derives from the fact that the public funds cap is exceeded. He stated that when a cap on public funds is circumvented there can be no level playing field. He expressed the view that if the Commission fails to provide emergent relief there can be no level playing field in the gubernatorial contest.

Vice Chair Franzese stated that the regulation requires that specific reasons be presented as to why the Irish Leader will cause irreparable harm to the DiFrancesco candidacy.

Mr. Sheridan maintained that he would need discovery to ascertain specific reasons as to irreparable harm.

Vice Chair Franzese restated the fact that the regulatory standard is irreparable harm and suggested that if emergent relief were granted in this case it would open up the flood gates to future frivolous actions. She added that she did not consider Mr. Sheridan's complaint to be frivolous.

Mr. Sheridan said that irreparable harm stems from the fact that the publication of the Irish Leader permits Mr. McGreevey to spend more money than any other candidate.

Mr. Paul Josephson, Counsel to the McGreevey for Governor Campaign, asked to respond, stating that his response will focus on the procedural aspects of the complaint.

Mr. Josephson disputed the fact that the Irish Leader is an improper publication noting that it contains no advocacy or reference to any political objectives of Mr. McGreevey.

Mr. Josephson urged the Commission to deny emergent relief. He said the Commission could still investigate through the normal process. He added that the irreparable harm standard has no applicability because Candidate DiFrancesco is not running against Candidate McGreevey in the Democratic primary. Mr. Josephson noted that there is an exception in the political communication rule providing that the rule does not apply if there is no opposing candidate in the primary election. He therefore disputed whether Republican Candidate DiFrancesco has standing to challenge the actions of a Democratic candidate in the primary election.

Mr. Josephson concluded that the DiFrancesco petition does not meet the standards in the regulation for emergent relief.

6. Resolution to go into Executive Session

On a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss the procedural aspects of the complaint for emergent relief filed by DiFrancesco for Governor 2001, Inc.

7. Complaint Filed by a Gubernatorial Candidate Pursuant to N.J.A.C. 19:25-16.48 Seeking Emergent Relief for an Alleged Violation of the Primary Election Expenditure Limit

Upon returning to Public Session, on a motion by Vice Chair Franzese, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission denied the DiFrancesco for Governor 2001, Inc. petition for emergent relief pursuant to N.J.A.C. 19:25-16.48 based upon the procedural requirements of N.J.A.C. 19:25-16.48(b) which rule requires specific reasons for emergent relief including a showing of irreparable harm to a gubernatorial candidate in the primary election. The Commission found that the petition contained no specific showing of irreparable harm to DiFrancesco for Governor 2001, Inc., in the primary election, and advised that DiFrancesco for Governor 2001, Inc. may submit its allegations as a request for investigation to be considered in the ordinary course of Commission procedures.

8. Resolution to go into Second Executive Session

Upon returning to Public Session, on a motion by Commissioner Ware, seconded by Commissioner Lederman and passed by a vote of 4-0, the Commission resolved to go into Executive Session for purposes of approving the Executive Session Minutes of February 21, 2001.

9. Adjournment

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to adjourn at 12:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

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