



State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

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Chair

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Vice Chair

ALBERT BURSTEIN  
Commissioner

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### PUBLIC SESSION MINUTES

May 20, 2008

Chair English, Vice Chair Tober, Commissioner Burstein, Legal Counsel Wyse, and Senior Staff were present.

#### 1. Open Public Meetings Statement

Chair English 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 11:00 a.m. in Trenton.

#### 2. Approval of Public Session Minutes of April 15, 2008

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the Public Session Minutes of April 15, 2008.

#### 3. Executive Director's Report

##### A. National Campaign Financing News

Executive Director Herrmann announced that on April 22, 2008, the U.S. Supreme Court considered a challenge to Section 319 of the Bipartisan Campaign Financing Reform Act (BCRA) of 2002 also known as the McCain-Feingold law. He stated that this section often referred to as the "Millionaire's Amendment" is triggered when a candidate for the House of Representatives spends more than \$350,000 in personal funds. According to the Executive Director, the candidate's opponent is then allowed to accept larger contributions than the law would normally allow. Executive Director Herrmann noted that an opponent under the amendment is permitted to receive maximum contributions from individuals at triple the normal level, \$6,900 instead of \$2,300. The Executive Director said that the challenger is arguing that the "Millionaires Amendment" violates First Amendment and Equal Protection Rights. He mentioned that it is expected that the court will rule in July.

B. Staff Activities

Executive Director Herrmann reported that the Center for Governmental Studies in California will soon be publishing two studies on public financing in New Jersey. The Executive Director indicated that one will deal with the Gubernatorial Public Financing Program and the other with the 2007 Clean Elections Pilot Project. According to Executive Director Herrmann, Special Programs Director Amy Davis and he have been providing technical assistance. It was noted by the Executive Director that the Center's staff will be footnoting ELEC's March report on the 2007 Pilot Project. He was told that the report was "really helpful" to the Center in writing its study.

C. Pay-to-Play Disclosure Data

Executive Director Herrmann informed the Commission that on April 7, 2008, Director Davis and her staff released ELEC's second annual tally of business entity filings under the State's Pay-to-Play Disclosure Law. He said that the Commission's data at this point for calendar year 2007 shows that 1,669 businesses had 21,414 contracts with New Jersey governmental entities and that the value of these contracts was \$5.4 billion. According to the Executive Director, ELEC statistics also revealed that the businesses made \$15.2 million in campaign contributions. Heather Taylor of the Citizens Campaign told the Star-Ledger that ELEC's disclosure efforts were "a useful tool."

D. Legislative Budget Hearings

Executive Director Herrmann advised the Commission that on April 17, 2008, Deputy Director Brindle, Director of Finance and Administration Steven Dodson, and he attended the Assembly Budget Hearing for the Department of Law and Public Safety, of which the Commission is an "in-but-not-of" agency. He noted that four days later, on April 21, 2008, they also attended the Senate Budget hearing on the department accompanied by Commissioner Burstein. The director thanked the Commissioner for attending the hearing and adding his support.

Executive Director Herrmann stated that ELEC received one written question from the Office of Legislative Services (OLS) about the Commission's increasing responsibilities and decreasing resources. He indicated that the staff response highlighted the heavy additional workload resulting from the unfunded Pay-to-Play Disclosure Law of 2006 and the Ethics Reform Package of 2004, which included the Pay-to-Play Prohibition Law, the ongoing Clean Elections Program, and the most expansive Lobbying Law in the nation. The Executive Director mentioned that it also related that only 69 of ELEC's intended 90 positions were filled and that the recommended \$750,000 in budget cuts might endanger computer maintenance and the purchase of necessary supplies. Executive Director Herrmann advised the Commission that at the Senate Hearing he also responded to an oral question from Senator Philip Haines about the effects of more work and less money on the Commission. The Executive Director reiterated the staff's written response to OLS and emphasized the importance of ELEC's work as a governmental ethics agency.

E. Legislative Developments

Executive Director Herrmann informed the Commission that on May 8, 2008, he testified before the Senate State Government Committee on S-115 (Weinberg), which requires lobbyists to report on notices of representation payments by governmental clients. According to the Executive Director, the bill also requires that the Commission make such notices “easily available for public inspection through [ELEC’s] Internet site.” Dr. Herrmann told the Committee that he would review this legislation with the Commissioners at their next meeting. During his testimony, Executive Director Herrmann mentioned that ELEC might have a concern with getting an additional computer task at a time when its information technology budget was scheduled for a quarter of a million dollar reduction that could endanger maintenance of the entire computer system. Executive Director Herrmann suggested to the Commissioners that ELEC in the current budget climate needs to be very careful about accepting additional unfunded responsibilities. The Executive Director said that the bill was unanimously released.

F. Impact of Staff Shortages

Executive Director Herrmann reported that the Commission has position numbers from the Department of Personnel for 19 vacancies, eight of which are funded vacancies. He reminded the Commission that in January the staff offered one of these positions, Assistant Legal Counsel, to an applicant but has not yet received permission to hire her. He added that the filling of the other seven funded vacancies is uncertain because of budget reductions and the ongoing hiring freeze. Executive Director Herrmann advised the Commission that because of the large number of vacancies, ELEC only has three of six lawyer positions filled, one of four report reviewers, and nine of 15 compliance officers. He stated that the shortage of attorneys will continue to hurt the Commission’s legal work, including the ability to process civil prosecutions. Moreover, he said, the report reviewer vacancies are eroding ELEC’s ability to review reports in a useful timeframe and to correct technical filing errors before they lead to more serious problems. Executive Director Herrmann added that the lack of compliance officers is undermining the Commission’s efforts to:

- answer candidate and treasurer filing questions on the phone or in person,
- conduct filer training sessions,
- support the media,
- comply with OPRA requests, and
- provide technical experts for the many trials prosecuting ethics law violators.

Executive Director Herrmann commented that he has spoken with numerous officials in the Administration and the Legislature about the Commission’s staffing and funding situation. By way of good news, Executive Director Herrmann reported that on May 9, 2008, the Administration announced to the Senate Budget and

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Appropriations Committee a recommended restoration of \$500,000 to ELEC's operating budget, thereby offsetting the originally suggested cut to the budget of \$750,000. The Executive Director stated that with the restoration, ELEC would regain its lost computer and supplies funding as well as having the fiscal resources to fill the Deputy Legal Director position, the Assistant Legal Counsel position, and a Compliance Officer position. Executive Director Herrmann cautioned, however, that the Commission will still have \$250,000 less than it had in the last fiscal year and many needed positions unfilled while the hiring freeze continues. He said, moreover, that the \$120,000 cut to the Gubernatorial Public Financing Program's administration budget still stands, and that Fiscal Year 2009 remains a very difficult year for the Commission's fiscal and personnel resources.

G. Felice Fava

Executive Director Herrmann reported that Special Programs analyst Felice Fava left the staff this month for a position in the private sector. He was a key member of the Special Programs Section and will be greatly missed. The Executive Director advised that the Section, which is responsible for administrating the Pay-to-Play laws as well as Clean Elections, will now be down to three persons instead of a full complement of four. He indicated that the vacancy will place an additional strain on ELEC's depleted staffing.

H. Summer Meeting Schedule

- June 17, 2008 at 11:00 a.m. in Trenton;
- July 15, 2008 at 11:00 a.m. in Trenton; and,
- August 19, 2008 (if needed) at 11:00 a.m. in Trenton.

Chair English, noted that Mr. James A. Carey, Jr. is now overseeing the Authorities Unit and that Assistant Counsel Joseph Neal from his staff is in attendance. The Chair thanked the Governor for his support in restoring part of the Commission's budget. She noted, however, that the Commission is still in the need of a fourth Commissioner.

Chair English, in following up upon Executive Director Herrmann's report on staff shortages, suggested that staff make the case for a hardship exemption to the hiring freeze. She asked whether or not it would be helpful to pre-emptively start this process now with regard to regular staff and public financing staff or wait until the budget is settled.

Executive Director Herrmann suggested that ELEC wait until the budget process is completed. The Commission asked the staff to prepare a memorandum for the next meeting outlining the needed positions. Dr. Herrmann again thanked the Commissioners for their continuing support of ELEC's budget and personnel concerns.

4. Additional Language for Proposed New Rules on Debate Sponsor Changes

Staff recommended for the Commission's consideration the following additional language for the proposed new rules at N.J.A.C. 19:25-15.52A Notification to Commission of change in debate plans (Proposed New Rule), which were presented at the March Commission meeting, and further described at the April meeting. The section now reads:

(a) An organization or organizations selected pursuant to N.J.A.C. 19:25-15.51 to sponsor a gubernatorial general election debate shall provide written notification to the Commission within 48-hours of any change made in the plans or arrangements for the debate submitted on the application pursuant to N.J.A.C. 19:25-15.50(c), (d) or (e). Such written notification shall include the reason for each change. A selected sponsor may use a facsimile transmission to the Commission at (609) 292-4238 for the limited purpose of filing this notification.

(b) The Commission shall review any change submitted pursuant to (a) above and notify the organization or organizations whether or not the change is approved. The Commission's determination shall be based upon the degree to which the changes vary from the original approved application and the nature of the changes, including but not limited to whether or not such changes:

1. are within the control of the sponsor;
2. affect the interactive nature of the debates; or
3. compromise the ability to maximize outreach to the voting public.

The added language is underlined.

Chair English suggested a technical change to the suggested rules, indicating that the word sponsor in (b)1. should be plural.

Vice Chair Tober reiterated his concerns expressed at the April meeting. He said that he questioned the practical applicability of this new language. He asked, what action can the Commission really take if a change is made? Vice Chair Tober said that as a practical matter the Commission would not be able to find a replacement, thereby jeopardizing the holding of a debate.

Commissioner Burstein stated that the Commission could simply require the sponsor to follow the original plan. He opined that any change should be substantial commenting that the word "materially" might be added to subsection (b) following the word "vary."

Commissioner Burstein recommended that in subsection (a) language be added clarifying that a fax transmission should include information identifying the transmitter, and the date and time of the transmission.

Chair English invited members of the public to comment.

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Legal Director Hoekje noted that once the proposal is published, the public will receive formal notice with a written comment period as well as a public hearing.

Chair English recognized Professor Ingrid Reed, Director of the New Jersey Project at the Eagleton Institute of Politics. Ms. Reed said that she applauded the Commission's effort to provide standards for debate sponsorship but that the Commission needs to be flexible. Ms. Reed stated that most importantly, the Commission should consider the extent of coverage of the debate provided by the sponsor. She said that reaching a wide audience was important and that the debate be held at least three weeks before the election. Ms. Reed indicated that the Commission should also take into account the number of times the debate will be re-shown and whether or not it will be made available on the Internet.

Chair English asked if Professor Reed cared to discuss Clean Elections.

Professor Reed stated that the Commission was very important to Clean Elections. In fact, she said, those supporting the project may look to the gubernatorial program as a model for conducting debates. Professor Reed noted that there is no civic entity saying that it is important to voters to hear the views of candidates in a debate format and not in a 30-second sound bite. Professor Reed said that what ELEC has done in the past has served as a civic standard, a civic model. Ms. Reed stated that because voters pay for election administration, candidates have a responsibility to debate.

In terms of Clean Elections specifically, Professor Reed said that the Eagleton Institute has formed a citizens task force. She said that Eagleton is preparing a Clean Elections report which looks at the six states having clean elections programs. In the chapter on New Jersey, she said, ELEC's report is referenced extensively. Professor Reed suggested that despite the State's budget woes, now was not the time to discontinue Clean Elections.

Executive Director Herrmann acknowledged Professor Reed's support for the restoration of ELEC's budget.

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission approved the proposed rule with Commissioner amendments.

5. Resolution to go into Executive Session

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission resolved to go into Executive Session to discuss anticipated litigation, which will become public as follows:

- A. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public not later than seven business days after mailing to the named respondents.

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- B. Investigative Reports of possible violations, which reports will not become public. However, any complaint generated as the result of an Investigative Report will become public not later than seven business days after mailing to the named respondents.

6. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz