



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

THOMAS H. PROL
Chairman

RYAN PETERS
Commissioner

NORMA R. EVANS
Commissioner

JON-HENRY BARR
Commissioner

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PUBLIC SESSION MINUTES

November 21, 2023

Chairman Thomas H. Prol, Commissioner Norma R. Evans, Commissioner Jon-Henry Barr, Commissioner Ryan Peters, Legal Counsel Edwin R. Matthews, Acting Executive Director Joseph Donohue, Acting Legal Director Amanda Haines, Compliance Director Stephanie Olivo, Review and Investigation Director Shreve Marshall, Finance and Administration Director Christopher Mistichelli, Assistant Legal Counsel Ben Kachuriner, Information Technology (IT) Director Anthony Giancarli, and IT Specialist Lou Solimeo were present. Legal Administrator of Review and Investigation Theresa Lelinski and IT Specialist Elias Amaya participated via Zoom.

A court reporter was available to record the proceedings.

The Public Session Minutes will be available online on the Commission's website at: <http://www.elec.state.nj.us>.

Chairman Prol convened the meeting at 11:05 a.m. in Trenton and explained meeting procedures.

1. Open Public Meetings Statement

Chairman Prol 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. It was also posted on the Commission's website.

Pledge of Allegiance.

2. Approval of Public Session Minutes for October 17, 2023

On a motion by Commissioner Barr seconded by Commissioner Evans, and passed by a vote of 3-0, the Commission approved the Public Session Minutes for October 17, 2023. Commissioner Peters abstained because he was absent on October 17, 2023.

3. Appointment of Acting Executive Director

On a motion by Commissioner Peters seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission approved the appointment of Joseph W. Donohue as Acting Executive Director.

4. Acting Executive Director's Report

Acting Executive Director Donohue thanked the commissioners for naming him acting executive director.

The Acting Executive Director reported that final totals for the 2023 legislative general election spending won't be available until April 2024. All 120 legislative seats were at stake. He reported that independent election spending by special interest groups already has topped \$17 million. Nearly all the funds went to seven of the 40 legislative districts that were viewed as the most competitive. He mentioned that the largest spending in one district was the 11th in Monmouth County. Combined candidate and independent spending already are projected to exceed \$8.8 million. It seems likely to end up among the top five costliest legislative races in state history. Additionally, he said the \$17 million-plus independent spending total is unlikely to surpass the general election record of \$26.6 million in 2017. This year's total is the second highest since 2011, which featured the first significant wave of independent spending in New Jersey legislative races. The total in 2011 was just \$1.8 million.

Acting Executive Director Donohue mentioned that during and after the election, there has been talk of whether there is a need for potential amendments to the Elections Transparency Act (ETA), either in the lame duck session or in next year's 221st session.

He said one issue that arose during the election is the fact that groups organized specifically as independent expenditure committees do not have to report last minute campaign finance activity in the final 13 days of the election.

While not ready concede the need for changes, the Senate President, who co-sponsored the new law, recently said "we have to make an analysis of the election as it transpired" under the new law.

The Acting Executive Director updated the Commission concerning a bill to try to stop sexual harassment in campaigns. He said that an article on October 27, 2023 by NJ Advance Media published an investigation of allegations of rape and sexual misconduct in New Jersey political campaigns. He mentioned that in response to questions, the Assembly Speaker said he would consider making a second attempt to enact legislation to try to end such abuses, which also have been alleged in the past. He said that an earlier bill in 2021 won Senate approval but stalled in the state assembly. It would have cost \$2 million to create an Office of Discrimination and Harassment Prevention within ELEC. He stated that it is not clear whether a pending bill might become law during the impending lame duck session, or if lawmakers would seek passage in the new two-year session that begins January 9, 2024.

Acting Executive Director Donohue praised staff after a highly challenging year. He said 2023 was the most turbulent in ELEC's 50-year history. He mentioned that ELEC's legal director of nearly nine years left in March. During weeks of public debate leading up to the eventual enactment of a major new campaign finance law on April 3, ELEC was in the spotlight almost daily and took its share of hits. Three former commissioners resigned, and four new commissioners arrived. In October, the executive director, who served 14 years, retired. The acting Executive Director said that despite all these changes, ELEC's staff reacted with professionalism, resilience, and flexibility. He said he is convinced ELEC

remains one of the best agencies of its kind in the nation and compares well to all public agencies in the state.

Chairman Prol thanked acting Executive Director Donohue for his report and said he appreciates the history and what he brings to help us do our job better.

Legal Counsel Matthews then submitted a proposed 2024 meeting schedule to the Commission for approval.

5. 2024 Commission Meeting Schedule

On a motion by Commissioner Peters seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission approved the 2024 Commission Meeting Schedule as follows:

January	16, 11:00 a.m.
February	20, 11:00 a.m.
March	19, 11:00 a.m.
April	16, 11:00 a.m.
May	21, 11:00 a.m.
June	18, 11:00 a.m.
July	16, 11:00 a.m.
August	20, 11:00 a.m. (if necessary)
September	17, 11:00 a.m.
October	15, 11:00 a.m.
November	19, 11:00 a.m.
December	17, 11:00 a.m.

6. Proposed Readoption of Commission Regulations with Amendments

Acting Legal Director Haines presented the Sunset readoptions with amendments. She said every seven years the Commission is required to examine its regulations to determine if they are necessary, reasonable, and proper for the purpose for which they are promulgated. She explained that as a part of that process, these are the 50 proposed readoption amendments. Thirty of those amendments were modified to conform to the Elections Transparency Act, which was enacted April 3, 2023.

Chairman Prol asked Legal Counsel Matthews to explain the promulgation process.

Legal Counsel Matthews said that the proposed draft regulations are first approved by ELEC, then sent to the Office of Administrative Law where they will be published in the New Jersey Register (N.J.R.). He said there is an open comment period and hearing before the rules become ready for final adoption. After adoption by the Commission, the proposal is published in the N.J.R. and the regulations are final. The process is expected to take about six months. The regulations would expire in July 2024 without adoption.

Commissioner Peters noted that the proposed regulations do not implement the full Elections Transparency Act. He said he presumed it was to ensure they did not expire.

Acting Legal Director Haines responded in the affirmative. The acting Legal Director explained that existing ELEC regulations need to be readopted by July 19, 2024. The readopted regulations will have to be amended again and proposed for readoption around June or July to apply inflation adjustments

to contribution limits and enforcement-related thresholds. All new sections of the Elections Transparency Act would be folded into this second and final wave of regulations. The delay will give legal staff more time to analyze issues the new statutory requirements may have caused during the 2023 elections and how they fit within the agency's existing regulatory framework. The schedule as it exists now ensures that final adopted regulations will be in place by December 2024 before the gubernatorial election year begins in January 2025.

Commissioner Peters asked whether the staff could do the entire redraft of regulations all at once instead of doing them in two parts.

Acting Legal Director Haines explained that the inflation cost index report slated to be done by acting Executive Director Donohue won't be available soon enough to meet the readoption deadline.

Compliance Director Olivo said she also believes the new sections of the Elections Transparency Act should be part of the readoption process. It would be less confusing to the regulated community and more accurately reflect the ETA's mandates.

Compliance Director Olivo expressed particular concern over the omission of new "housekeeping" accounts that can be created only by state and county political committees. These groups are now able to accept an extra \$37,500 annually for these new accounts from political donors- a total of \$112,500 per year. No other fund-raising committee can accept more than \$75,000 per year.

Commissioner Peters asked whether there would be a tradeoff if the regulations were tabled a month or two to try to include the omitted sections of the ETA.

Assistant Legal Counsel Ben Kachuriner said pushing the timeline back one or two months can be done though any delay makes things trickier because of the need a public comment period, a public hearing and rule publication schedules.

Commissioner Peters said he thinks a delay would be worthwhile if it doesn't disrupt the timeline and makes the regulations better.

Commissioner Barr asked whether ELEC regulations in the past have been challenged through litigation.

Acting Legal Director Haines said that hasn't happened though there have been cases where the agency has been directed by the court to do rulemaking after the fact.

Barr said he hoped taking a little extra time to rework the regulations might help reduce the chance of litigation.

Chairman Prol said the agency's number one priority should be preventing the existing regulations from expiring.

Commissioner Evans said she would be fine with a month delay if it didn't seriously disrupt the timeline.

Chairman Prol said the Commission would revisit the regulation readoption at its December 19, 2023 meeting.

Chairman Prol expressed his appreciation to the staff for its dialogue about the issue. He said it was a healthy discussion that reflected the need to expose things to the crucible of the deliberative process.

7. Public Comments

No members of the public.

Chairman Prol stated that the meeting is close for public comment.

8. Chairman Prol Read Resolution Authorizing an Executive Session

Whereas, there exists a need to hold an Executive Session for the purpose of discussing the following matter/matters, which fall within the exceptions to the Open Public Meetings Act, N.J.S.A. 10:4-12 et seq. to wit.

Matter/Matters (OPMA Exception)

- Discussion of Executive Session Minutes for October 17, 2023;
- Final Decision Recommendations for Non-Filer Complaints;
- Daniel's Law; and,
- Personnel Matter.

Whereas, it is unknown at this time when such discussion to take place in Executive Session may be disclosed to the public.

Now Therefore Be It Resolved by the Election Law Enforcement Commission as follows:

1. This Executive Session Meeting of the Election Law Enforcement Commission shall be closed to the public for discussion of the aforesaid referenced matters.
2. The matters discussed during this Executive Session Meeting shall be disclosed to the public at such time when reason for discussing and acting on same in Executive Session shall no longer exist.

On a motion by Commissioner Peters, seconded by Commissioner Evans, and passed by a vote of 4-0, the Commission resolved to enter Executive Session to discuss anticipated litigation and current litigation, which will become public as follows:

- A. Final Decision Recommendations in complaint 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.
- B. Matters under current litigation, the substance of discussions of which will not become public in order to protect the attorney-client privilege and the deliberative process. However, any litigation in which the Commission is currently a party is a public matter and will become public subject to the above limitations and privileges.

Return to Public Session

Chairman Prol stated that the following items were discussed in Executive Session:

- Discussion of Executive Session Minutes for October 17, 2023;
- Final Decision Recommendations for Non-Filer Complaints;
- Daniel’s Law; and,
- Personnel Matter – Executive Director Position.

9. Approval of Executive Session Minutes for October 17, 2023

On a motion by Commissioner Evans seconded by Commissioner Barr, and passed by a vote of 3-0, the Commission approved the Executive Session Minutes for October 17, 2023, as amended by Commissioner Barr. Commissioner Peters abstained as he was absent on October 17, 2023.

10. Final Decision Recommendations for Non-Filer Complaints

On a motion by Commissioner Peters, seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission adopted 13 Final Decision Recommendations for Non-Filer Complaints in the following matters:

- 2017 General Election: 1. Grillo;
- 2019 Primary Election: 2. Rossell, 3. Mikulski II, 4. Friis, 5. Preto;
- 2020 Primary Election: 6. Jackowski, 7. Foley, 8. Reynolds;
- 2022 Municipal Election: 9. Abreu; and,
- 2022 Primary Election: 10. Gioffre, 11. Marsala, 12. Correa, 13. Vargas.

11. Public Comments

No members of the public.

12. Adjournment

On a motion by Commissioner Barr, seconded by Commissioner Evans, and passed by a vote of 4-0, the Commission resolved to adjourn the meeting at 1:35 p.m.

Respectfully submitted as true
and correct,

Joseph W. Donohue
Acting Executive Director