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ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625
www.elec.state.nj.us (609) 292-8700 - Toll Free Within NJ 1-888-313-ELEC (3532)

Directors:

Jeffrey M. Brindle
 Joseph W. Donohue
 Carol L. Hoekje
 Amy F. Davis
 Carol Neiman
 Linda White
 Todd J. Wojcik
 Steven M. Dodson

Comments from the Chairman Ronald DeFilippis

With this edition being the first newsletter of 2011, I thought I would take this opportunity to set forth our plans for the New Year.

But let me first mention what won't change.

The Commission has long maintained a strong reputation for responsiveness to the public.

Unusual for this day and age, the Commission has clung to the old fashioned notion that the public still likes it when a real person answers the phone.

So at the Commission our experienced receptionists still answer the phones and direct citizens to the appropriate staff member to get answers. This gives the public the assurance that their concerns will be heard and responded to. This will not change.

Another feature that will not change is the service provided to candidates and treasurers and all other interested parties by our able Compliance staff.

The responsiveness of our Compliance staff members, combined with their expertise, has consistently resulted in a compliance rate among filers of over 90 percent.

Moreover, our policy of quickly responding to citizens who file complaints with the Commission regarding violations of campaign finance law will remain unchanged as well.

Our Investigative and Legal staffs will continue to evaluate complaints in a fair and neutral manner.

Finally, the Commission will continue to provide an extensive array of information involving campaign finance, lobbying, and pay-to-play to the public via its award winning website.

Now on to goals for 2011.

During the past year, the Commission was the recipient of an award citing its website as the best official government website in New Jersey. The award was presented by the Documents Association of New Jersey.

ELEC's computer staff does not plan to rest on its laurels, however. In the coming year, efforts will be made to make the site even more user-friendly and comprehensive in terms of information provided.

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Comments from the Chairman Ronald DeFilippis

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Another effort being undertaken concerns electronic filing of lobbyist reports. Staff is working to create the hardware and software components to make electronic filing available for both quarterly and annual filings by 2012.

By eliminating "legalese," our compliance manuals are being simplified in order to make compliance with campaign finance law as pain free as possible.

Candidate and treasurer training will be enhanced in the New Year as well. In addition to in-house and off-site training, Compliance staff, in conjunction with Information Technology staff, is planning to introduce instructional video training. Thus, interested individuals will be able to train on-line, listening to an instructional video.

Certainly, enforcement of the various laws under ELEC's jurisdiction is a very important responsibility of the Commission.

While the Investigative and Legal staffs are limited in number every effort is being made to aggressively prosecute violations of campaign finance, lobbying, and pay-to-play laws.

As a Commission we will be reviewing procedures to determine how the enforcement process can be made even more effective than it already is.

During the past year and one-half, the Commission has been working hard to enhance the profile of the agency.

Through analytical press releases, the newsletter, effective use of you-tube, publications on blogs and magazines, and pursuit of legislative reforms, the Commission has made significant strides toward making the public more aware of its important mission.

These efforts will not cease and will be enthusiastically pursued in the New Year.

Executive Director's Thoughts Jeff Brindle

We have never witnessed a period like this in the area of campaign financing.

Since Watergate, the trend has been toward increased regulation of the size, timing, and type of federal campaign donations.

Now we are moving in the opposite direction though there is one encouraging sign – the nation's top court remains committed to disclosure.

The last hurrah for reformers came in 2002. It was then that the Bipartisan Campaign Reform Act (BCRA) was enacted.

This measure, known as McCain/Feingold, prohibited political party committees from accepting unlimited donations, or soft money. It also banned corporate and union sponsored "electioneering communications" within 30 days of a primary and 60 days of a general election.

Though initially the U.S. Supreme Court in McConnell v. FEC upheld most provisions of the Act, since that time there has been a systematic chipping away of BCRA.

The 2007 ruling, FEC v. Wisconsin Right to Life, Inc., is a case in point. In it, the U.S. Supreme Court overturned the "electioneering communication" provision in BCRA, except when an ad called for election or defeat of a specific candidate.

Then, just a year later, the millionaires' amendment was found unconstitutional in Davis v. FEC. This provision applied a higher contribution limit to contributions to federal candidates who were opposed by self-financed candidates spending more than \$350,000.

Next came the eye-opening decision of 2010, in Citizens United v. FEC. While upholding the ban on direct monetary contributions by corporations and unions, the Supreme Court found unconstitutional the ban on independent spending by these entities.

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Executive Director's Thoughts Jeff Brindle

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In a further blow to McCain/Feingold, the Court deemed the blackout period in the Act an infringement of First Amendment free speech rights.

In a bow to transparency, however, the decision strongly favors disclosure, a position the Court would again defend in refusing to hear an appeal of SpeechNow v. FEC later in the year.

The Ninth District D.C. Appellate Court in SpeechNow allowed for unlimited contributions to independent, outside groups, but upheld the right of government to require disclosure of their financial activity.

Thus, the decades long trend toward regulating in this area is being reversed. In the Court's view, First Amendment protections outweigh regulatory needs in the context of elections.

Soon the high court will take up another case, CAO v. Federal Election Commission. If recent history is any guide, another key provision of McCain/Feingold may be struck down.

Under current federal law, the national political party committees are limited to contributing \$5,000 to federal candidates and spending \$42,100 in coordinated expenditures.

To spend unlimited amounts, the parties must spend independently of their own candidates. Furthermore, owing to McCain/Feingold restrictions, the parties cannot take in unlimited soft money, only hard money subject to FEC contribution limits.

In the CAO case, the Republican National Committee (RNC) maintains these restrictions create a wedge between the party and their own candidates, places them at a disadvantage in relation to outside groups, and constitutes a violation of their First Amendment rights of free speech and association. In particular, the RNC wants the removal of restrictions on coordinated expenditures.

This legal challenge not only involves BCRA but reaches all the way back to Buckley v. Valeo, the 1976 Supreme Court case that first authorized Congress to place restrictions on coordinated expenditures. The latest case holds the real possibility of further undoing established regulatory practice in this area.

So what does this mean for policy makers in New Jersey? First, policy makers should be cognizant of the reformist "trail of tears" displayed in recent court decisions.

Secondly, they should push ahead with strengthening disclosure laws. Disclosure has been strongly endorsed by the Supreme Court.

And third, policy makers should be careful to not go too far in banning certain contributor activity, or placing too stringent limitations on contributions.

Contribution limits that are reasonable, not too high nor too low, are preferable. Moreover, strong disclosure laws pertaining to campaign finance, lobbying, and pay-to-play are a necessity of good government.

Reforms such as requiring 527 and 501(c) groups to disclose election related activity, and the simplification, standardization, and strengthening of pay-to-play, should be pursued.

However, in pursuing and crafting reform legislation, it is important for policy makers to keep in mind the new reality enveloping campaign finance issues, namely court decisions that are loosening regulatory restrictions in this area.

By being mindful of this new direction, law makers can insure that New Jersey's strong disclosure laws, whether campaign financing, lobbying, or pay-to-play, will withstand potential constitutional challenges.

**The above article by Jeff Brindle appeared in
NewJerseyNewsroom.com on December 20, 2010**

White Paper No. 21

School Elections Campaign Financing: An Update

Spending on local school elections more than doubled during the past decade even as fundraising for other types of elections lagged or even declined, according to a new analysis by the New Jersey Election Law Enforcement Commission.

Spending on local school campaigns during the past decade totaled \$9.6 million - up 125 percent from the \$4.3 million spent during the 1990s, according to White Paper Number 21, School Elections Campaign Financing: An Update.

On average, nearly \$1 million was spent per year from 2000 through 2009. This compares to an average of \$427,123 from 1990 through 1999.

By comparison, spending was up just 10 percent for state Assembly candidates during the decade and down more than 70 percent for both state parties during the same period.

"While overall spending on school elections remains relatively small compared to other types of campaigns, the rate of growth remained steady during the last decade," said Joe Donohue, ELEC's Deputy Director and author of the study.

"Clearly, plenty is at stake in local school districts, particularly in a period of budget shortfalls and demands for reform. It shouldn't be too surprising that these elections are drawing increased interest," said Donohue.

Even though spending was up compared to the earlier decade, the pace did slow slightly from the 159 percent increase in the 1990s.

During the past two decades, the least overall spending took place in 1992- just \$175,912. The most occurred in 2009, when \$1,365,683 was pumped into local school elections.

One reason spending on local school elections has continued relatively unabated may be because few school districts have adopted pay-to-play laws, which have greatly reduced the amount of funds being generated from public contractors for other types of campaigns. The contractor loophole appears to have been closed by recently adopted Department of Education regulations forbidding school board members from awarding contracts to firms that made recent political donations

Another factor is a major increase in local school election spending by the New Jersey Education Association. The school employees union spent \$3.7 million during the decade through its NJEA School Elections Committee. That is more than triple the estimated \$1.1 million spent by the union on local school elections during the 1990s.

It is also about 36 percent of the \$10.2 million total spent on school elections between 2000 and 2010. Numbers for 2010 are preliminary because the union's local political committee has not yet submitted its final report.

The NJEA School Elections Committee is separate from the NJEA PAC, which contributes primarily to state elections.

A comparison of spending from both decades found that direct mail remains, by far, the largest outlay during school elections, followed by outdoor communications and election-day activities.

The latest ELEC research report is an update to White Paper Number 15, School Board Campaign Financing. Both are available by contacting ELEC at 609-292-8700, or on its website at <http://www.elec.state.nj.us/aboutelec/whitepapers.htm>.

Citizens United v. FEC

By Jeff Brindle, Executive Director

In June I wrote: "a recent U.S. Supreme Court decision could give independent political groups even greater power over campaigns by enabling them to bury candidates in advertising blitzes they can't control."

Stated another way, Citizens United and a subsequent decision by the U.S. Court of Appeals for the District of Columbia, SpeechNow.org, set the stage for outside groups to assume greater influence over campaigns than political parties.

The door already had been pushed ajar by the Bipartisan Campaign Reform Act (BCRA), or McCain/Feingold, in 2002. But the recent court decisions pushed the door open all the way.

And by virtue of this year's federal election it looks like the time has arrived more quickly than expected.

According to The Campaign Finance Institute (CFI), non-party outside groups are estimated to have spent \$280.2 million in this year's federal election campaign.

This figure dwarfs the \$186 million spent by political parties.

While the strength of outside groups has been steadily growing, this is the first election that they have out-performed political parties.

For example in 2006, political parties outspent outside groups by three to one and in 2008 by almost two to one.

The same is happening in New Jersey, at least in federal races. In the thirteen House contests, independent spending by outside groups reached \$1.3 million. Political party spending amounted to \$1.2 million.

What has happened since 2008 makes the point even more clear. In those Congressional elections the parties outspent outside groups by \$6.2 million to \$1.6 million.

These statistics demonstrate the dramatic shift in influence that is taking place both nationally and in federal elections in New Jersey.

While most activity by independent groups has been directed toward federal contests, there is ample reason to believe that similar activity will occur in state elections, perhaps as soon as the legislative elections next year.

The independent, outside groups are those committees organized under IRS rules. They are the 527 groups and the 501(c) organizations.

The 527 groups operate primarily to accept donations and make expenditures in the context of elections. The 501(c) organizations are tax exempt and can participate in elections as long as electioneering is not their main activity.

But when a 501(c) committee raises five million dollars and spends two million on electioneering, that's pretty substantial.

It goes without saying that these outside groups now hold an advantage over candidate and party committees in that contributions to them are unlimited. 501(c) groups can even conceal their donors from the public.

These facts have virtually enabled them to take the lead role in campaigns. They can make media buys earlier than candidates because they can raise more funds more quickly. Though candidates have available to them the lowest prices for advertising, these rates and time slots can be preempted by early ad buyers. In the heat of a campaign 527 and 501(c) groups can squeeze out candidate ads and monopolize air time.

These groups are increasingly getting involved in other traditional campaign areas as well, such as get-out-the-vote, voter registration, polls, and telemarketing.

Clearly recent court decisions permit these outside groups to be fully engaged in political activity, to accept corporate and labor contributions, to spend independently, and to accept contributions in unlimited amounts.

But the court decisions do not protect anonymity of donations nor do they protect these committees from disclosing how their money is spent.

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Citizens United v. FEC

By [Jeff Brindle, Executive Director](#)

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In fact both the Citizens United decision and the SpeechNow.org decision uphold disclosure and the authority of government to require these groups to register.

Last January, in approving priority legislative recommendations for reform, the Election Law Enforcement Commission, called for 527 committees to disclose their financial activity.

Since that time legislation has been introduced both in the Assembly and State Senate to require disclosure by 527 groups and 501(c) organizations as well.

These bills include S-2379 (Buono) and A-3497 (Huttle) as well as S-2076 (Scutari) and A-2595 (Greenstein).

The call for outside groups to disclose their activity is not new. In fact ten years ago, at a hearing in 2000 at Drew University, former Governor Tom Kean urged the enactment of legislation that would require "stealth" PACs to disclose their donors and their spending.

The former Governor stated, "I don't believe there's a place in democracy for people who hide in the dark."

That still holds true today.

The above article by Jeff Brindle appeared in [NewJerseyNewsroom.com](#) on November 30, 2010

Darlene Kozlowski "Profile"

[Assistant Data Entry Supervisor](#)

Darlene Kozlowski first learned the value of frugality from her late grandmother, Jennie.

ELEC's Assistant Data Entry Supervisor drives a 1988 Mitsubishi Mighty Max. She dries her clothes on a line. The South Jersey resident keeps the heat low enough that her daughter sometimes complains.

"When a person gets frostbite, that's when the heat goes on," she typically responds, kiddingly.

Because of her own thriftiness, she is sometimes surprised when she sees the large political donations people make. "It amazes me how people have so much money to give," she said.

During her 14 years at ELEC, Kozlowski has had a first-hand look at many of the campaign donations reported to the Commission.

She has keyed into the computer and checked information on tens of thousands of campaign donors. "We try to make sure everything is accurate," she said. "There's a lot to go over to make sure all the numbers add up."

Kozlowski also is responsible for updating the Commission's searchable database each day with new batches of contribution data, helps process lobbying reports, helps provide registration and pin numbers to candidates who want to file reports electronically and performs many other duties. Her responsibilities cause her to interact with personnel throughout the Commission, which she enjoys.

"Everybody's nice. For such a diverse group of people, they all get along really well. Everybody tries to help each other," she said.

Kozlowski came to ELEC after working at a private telecommunications firm for five years.

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Darlene Kozlowski "Profile"

Assistant Data Entry Supervisor

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She was born in Philadelphia but raised in Miami, Florida before returning to New Jersey in the 1970s.

In her spare time, she gardens and reads books. Her favorite author: Clive Cussler. She also spends plenty of time on home improvement projects. For her next big project, she plans to install new tiles on her living room floor.

She also loves animals. She has a seven-year-old Labrador retriever mix named Layney and an 11-year-old Silkie Terrier named Tyson.

Kozlowski said her bargain-hunting really paid off when she went into a second-hand store one day about six years ago and bought a tan, straw-filled, nine-inch long teddy bear for 50 cents.

It turned out to be a classic Stieff toy doll made around the turn-of-the-century. Its value- about \$750. "I was called cheap before the recession. Now I find it's cool to be frugal," Kozlowski said.

Legislative Election Year

This year both the State Senate and Assembly are up for election. Of course, even more focus will be paid to legislative elections this year because of redistricting.

The deadline for the new legislative district map to be drawn is April 1st. At that time, we should know the configuration of the 40 districts that will be in place for the next 10 years.

During the course of the primary and general elections, the Commission will be keeping the public abreast of financial activity in these important contests.

Seminar Training Dates

Seminars are conducted at 10:00 a.m. at the Commission's offices at 28 West State Street, 8th floor, in Trenton.

Treasurer Training for Candidates and Joint Candidates Committees

March 23, 2011

April 4, 2011

April 20, 2011

May 3, 2011

May 18, 2011

September 12, 2011

September 27, 2011

October 3, 2011

Treasurer Training for Political Party Committees and PACs

March 30, 2011

June 30, 2011

September 21, 2011

December 14, 2011

Electronic Filing Training (REFS)

April 5, 2011

April 26, 2011

May 5, 2011

May 17, 2011

July 27, 2011

September 14, 2011

September 26, 2011

October 4, 2011

DATES TO REMEMBER

Reporting Dates

	PERIOD COVERED	REPORT DUE DATE
FIRE COMMISSIONER - FEBRUARY 19, 2011		
29-day pre-election	Inception of campaign* - 1/18/11	1/21/2011
11-day pre-election	1/19/11 - 2/5/11	2/8/2011
20-day post-election	2/6/11 - 3/8/11	3/11/2011
48 Hour Notice Reports Start on 2/6/11 through 2/19/11		
SCHOOL BOARD ELECTION - APRIL 27, 2011		
29-day pre-election	Inception of campaign* - 3/26/11	3/29/2011
11-day pre-election	3/27/11 - 4/13/11	4/18/2011
20-day post-election	4/14/11 - 5/14/11	5/17/2011
48 Hour Notice Reports Start on 4/14/11 through 4/27/11		
MUNICIPAL ELECTION - MAY 10, 2011		
29-day pre-election	Inception of campaign* - 4/8/11	4/11/2011
11-day pre-election	4/9/11 - 4/26/11	4/29/2011
20-day post-election	4/27/11 - 5/27/11	5/31/2011
48 Hour Notice Reports Start on 4/27/11 through 5/10/11		
RUNOFF ELECTION** - JUNE 14, 2011		
29-day pre-election	No Report Required for this Period	
11-day pre-election	4/27/11 - 5/31/11	6/3/2011
20-day post-election	6/1/11-7/1/11	7/5/2011
48 Hour Notice Reports Start on 6/1/11 through 6/14/11		
PRIMARY ELECTION*** - JUNE 7, 2011		
29-day pre-election	Inception of campaign* - 5/6/11	5/9/2011
11-day pre-election	5/7/11 - 5/24/11	5/27/2011
20-day post-election	5/25/11 - 6/24/11	6/27/2011
48 Hour Notice Reports Start on 5/25/11 through 6/7/11		
GENERAL ELECTION*** - NOVEMBER 8, 2011		
29-day pre-election	6/25/11 - 10/7/11	10/11/2011
11-day pre-election	10/8/11 - 10/25/11	10/28/2011
20-day post-election	10/26/11 - 11/25/11	11/28/2011
48 Hour Notice Reports Start on 10/26/11 through 11/8/11		
PACS & CAMPAIGN QUARTERLY FILERS		
1 st Quarter	1/1/11 - 3/31/11	4/15/2011
2 nd Quarter	4/1/11 - 6/30/11	7/15/2011
3 rd Quarter	7/1/11 - 9/30/11	10/17/2011
4 th Quarter	10/1/11 - 12/31/11	1/17/2012

* Inception Date of Campaign (first time filers) or from January 1, 2011 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in the 2011 Runoff election is not required to file a 20-day postelection report for the 2011 Municipal election.

*** Form PFD-1 is due on April 21, 2011 for Primary Election Candidates and June 17, 2011 for Independent General Election Candidates.

[Late and non-filing of reports are subject to civil penalties determined by the Commissioners](#)