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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

At its next meeting on April 9, the Commission has scheduled a public hearing to select a debate sponsor for the upcoming gubernatorial primary election.

But a funny thing happened on the way to the office. For the first time ever there are no sponsor applicants.

That's because there appears to be little chance that a debate will take place.

As of now only one candidate, Democrat Barbara Buono, has qualified for public funds. Republican Governor Chris Christie has opted to forego public funds in the primary. He has not decided whether or not he will participate in the gubernatorial public financing program in the fall.

Since two candidates need to qualify for public funds in order for a debate to be held, as of this juncture that seems a dim prospect.

To qualify to receive public funds in the primary, a candidate must raise and spend \$380,000 by April 1<sup>st</sup>, the last day for filing petitions to run in the gubernatorial primary.

In addition, a candidate must notify the Commission in writing of his or her intention to participate in the program. Moreover, candidates must agree to participate in two interactive debates.

Regarding the public financing debates, it is the Commission's responsibility to select an organization to sponsor the debates within 30 days of the March 15 deadline for receipt of sponsor applications. Thus, the April 9 public hearing.

Further, it is the Commission's statutory responsibility to determine the number of primary election debates for which each organization is responsible.

The Commission also determines the party affiliation of the candidates in each debate and provides each sponsor with a list of those candidates.

The law also requires that each sponsor submit a written calendar to the Commission containing the date, time, location, and plans for television and other media coverage.

Sponsors must also agree not to endorse any candidate for nomination in the pending primary election.

Despite the unprecedented circumstances of this year's gubernatorial primary, the Commission will, nevertheless, conduct its public hearing on debate sponsorship on April 9, 2013.

Though it appears there will be neither an applicant for sponsorship nor two participating candidates in either party's primary, the Commission will announce plans for a hurried process for recruiting, and selecting a sponsor if, in the unlikely chance, a second candidate qualifies for public funds.

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In the event there is a second qualifying candidate, and the Commission is unable to acquire a sponsor by April 9, the Commission will hold a second public hearing for the purpose of selecting a sponsor.

In the general election, the Commission will again go through the process of selecting a sponsor and establishing a time and date for the general election debates.

## Executive Director's Thoughts Jeff Brindle

*Reprinted from newjerseynewsroom.com*

Following the Citizens United ruling, numerous individuals expressed alarm over how the January 2010 decision would impact campaign finance law in New Jersey. Others, including me, tried to calm the waters by maintaining that the ruling would have little negative affect on the State's statutes.

Here is what I said in a January 26, 2010 New Jersey Newsroom column:

"... state campaign finance law is consistent with the federal ruling... it contains no outright ban on corporate or union giving... the court's decision is an argument in favor of the judicious way our elected officials have fashioned the Garden State's statutes."

So how have things turned out?

First, Citizens United allowed independent spending at any time, in any form, whether issue ads, or direct advocacy. Issue ads focus mainly on campaign issues. Direct advocacy ads actually urge voters to support or defeat candidates. The federal judges also upheld a long-time ban on direct contributions by corporations and unions. Finally, they strongly endorsed disclosure. In the aftermath of this controversial decision, other cases followed. And there are more to come.

SpeechNow, decided in March 2010 by the Ninth Circuit Court of Appeals in D.C., allowed unlimited contributions to independent groups and reinforced support for disclosure. It was Carey v. FEC, in refining the SpeechNow decision in August 2011, that ushered in the era of Super PACs. It permitted unlimited contributions to Super PACs, as long as the funds are used for independent expenditures only. These funds must be in a separate account, segregated from funds used to make contributions to candidates. Carey endorsed disclosure as well. It required Super PACs to divulge contributions and expenditures to the Federal Election Commission.

Now, there's a new challenge to federal campaign law before the Supreme Court. Will this case impact New Jersey? McCutcheon v. FEC challenges the federal aggregate, or overall, limits on how much an individual can give to all candidates and national party entities. Under federal law, individuals can contribute no more than \$123,200 every two years to federal candidates and committees. Of that amount, individual donors can give no more than \$74,600 to PACs and parties during the same period. Individual donors can give no more than \$48,600 to all candidates every two years. These limits are indexed for inflation.

While the suit does not challenge the federal limit of \$2,600 to individual candidates, it is possible the Court may address this issue as well. The D.C. Court of Appeals recently dismissed another lawsuit, James v. FEC, which did contest individual limits. It said that issue could be raised in the McCutcheon case. The McCutcheon case would not appear to pose a challenge to New Jersey's campaign finance law. Even if the Court strikes down the aggregate limits as violative of First Amendment rights (which I think it will), there is no impact on New Jersey statutes. The Legislature never enacted aggregate limits.

Regarding the Court striking down contribution limits in general, there is little chance of that happening. From Buckley v. Valeo in 1976 through Citizens United in 2010, the Court has consistently upheld contribution limits as constitutional. It reaffirmed that stance as recently as February 25, when it refused to take up U.S. v. Danielczyk, which challenged the century-old federal ban on corporate donations to candidates.

So despite the concerns expressed by many reasonable individuals, New Jersey campaign finance law should withstand Citizens United and subsequent federal cases like McCutcheon. Citizens United even could have a positive impact on New Jersey law.

The Commission has recommended that independent expenditure-only groups that participate in New Jersey elections be required to register and disclose their contributions and expenditures, whether or not they expressly support or oppose a candidate. Assemblyman Reed Gusciora (D-Mercer) has introduced legislation incorporating the Commission's recommendation.

Citizens United clearly indicated that while contributions and spending could not be limited to 527, 501(c)'s and Super PACs, these groups can be required to disclose their financial activity. Enacting this legislation would strengthen the State's campaign finance law and further enhance transparency in the electoral process.

## Advisory Opinion No. 01-2013

### Fund for Jobs and Growth on Independent Expenditures

The NJ Election Law Enforcement Commission (ELEC) has informed a Washington, DC-based group that it must abide by state contribution limits even if it engages in independent spending in this year's legislative races.

The reason is because it meets the definition of a political committee as set forth in the New Jersey Campaign Contributions and Expenditures Reporting Act (the Reporting Act).

Unlike other groups engaged in independent spending in New Jersey's elections, Fund for Jobs and Growth anticipates more than half of its fundraising would involve New Jersey races. Since fundraising for New Jersey's elections represents its major purpose, it fits the definition of a political committee under ELEC guidelines.

An organization that does not meet the definition of a political committee but spends more than \$1,400 in New Jersey on a communication that directly urges the election or defeat of candidates must disclose its spending as an independent expenditure.

The ruling related to Fund for Jobs and Growth is contained in the first advisory opinion of 2013. It was approved 2-1 at the March 19 meeting.

In February, attorneys for Fund for Jobs and Growth of Washington, DC notified the Commission that their group intended to make independent expenditures on communications explicitly urging the election of Democratic legislative candidates this year. The group is being organized as a political non-profit group under section 527 of the IRS code.

The lawyers posed two basic questions- would the group be required to register as a political committee, and, if so, would the committee be bound by the \$7,200 per election contribution limit set by state law for political committees.

The request was made in the wake of several court rulings since the 2010 *Citizens United v. FEC* case that contribution limits no longer can apply to committees that spend independently. *Citizens United* effectively struck down such limits by invalidating a 1947 law that restricted independent expenditures by corporations and unions.

While Commission members acknowledged the court trend, they said the agency has no authority to approve a special waiver of state contribution limits for political committees that only spend independently. Only the

Legislature or the courts can make that decision, they said.

The Reporting Act does not distinguish between a political committee that coordinates its expenditures with candidates and one that makes only independent expenditures.

"The Commission does not have the jurisdiction to declare the Reporting Act's contribution limits unenforceable or unconstitutional," said the advisory opinion, which was prepared by Legal Director Carol Hoekje. "The Commission further does not find that its statutory mandate permits it to carve out certain exemptions to the Reporting Act requirements based upon anticipated judicial or legislative actions."

It should be noted that existing law does exempt political committees that advocate or support ballot questions from contribution limits. The Supreme Court in 1978 declared that independent spending on ballot questions poses no risk of corruption and therefore should not be bound by contribution limits.

ELEC-endorsed legislation is pending that would require section 527 nonprofit groups like Fund for Jobs and Growth to report their contributions and expenditures to the Commission while exempting them from contribution limits.

The advisory opinion also notes that the Third Circuit Court of Appeals, which includes New Jersey, has not addressed the issues raised in the case, "nor has the United States Supreme Court issued a specific determination concerning the constitutionality of contribution limits for political committees making only independent expenditures."

"...the Commission concludes that the Fund's contemplated activity has as its major purpose the making of expenditures to support or defeat a candidate in a New Jersey election in 2013. The Fund's contemplated financial activity indicates that it will raise and spend \$2,400 or more in a 2013 New Jersey election to support or defeat a candidate. Therefore, the Fund will meet the definition of a political committee under the Reporting Act and Commission regulations," said the opinion.

Political committees are short-term committees that form for no more than one election year. They must abide by state contribution limits and, like other candidate committees, file regular disclosure reports with the Commission.

The advisory opinion is available in the legal resources section of ELEC's website: [www.elec.state.nj.us](http://www.elec.state.nj.us).

## Lobbying Spending 2012

A steep falloff in mass media spending in 2012 led to the lowest overall lobbying expenditures in New Jersey in five years, according to an analysis of annual lobbying reports released today by the New Jersey Election Law Enforcement Commission (ELEC).

Spending last year totaled \$56.6 million- \$17.5 million, or nearly 24 percent less, than the 2011 total.

**Table 1**  
**Total Spending by Lobbyists in New Jersey 2008-2012**

YEAR	EXPENDITURES	CHANGE-\$	CHANGE-%
2012*	\$ 56,596,056	\$(17,553,628)	-23.7%
2011	\$ 74,149,684	\$ 8,253,562	12.5%
2010	\$ 65,896,122	\$ 8,331,079	14.5%
2009	\$ 57,565,043	\$ 1,903,766	3.4%
2008	\$ 55,661,277	\$ 769,895	1.4%

\*Preliminary

"The most important factor in driving down lobbying activity last year was the lack of any riveting issue," said Jeff Brindle, ELEC's Executive Director. "This factor, more than anything else, explains why lobbying activity goes up one year and down the next."

"Economic conditions also may impact lobbying activity to some degree. But lobbying dramatically increased in 2011 when the economy was worse. That shows issues matter more," he said.

Brindle noted that figures for 2012 are considered preliminary because a few firms still have not filed their annual reports. "The size of the drop will remain massive, however, even after all reports are in," he said.

The main cause of the decrease is a large reduction in communications spending by the New Jersey Education Association.

"NJEA has long been one of the state's major lobbyists. But its spending – and overall lobbying totals- reached unprecedented levels in 2010 and 2011 due to major ad campaigns by the teachers union," said Brindle.

In those years, education was a highly contentious issue, with major budget cuts and several proposed changes to education laws. In response, the union ratcheted up its spending.

By contrast, the budget climate improved last year, and the Christie administration and NJEA worked together to develop a compromise bill on teacher tenure. "Not surprisingly, the association returned to a more normal level of spending," Brindle said.

**Table 2**  
**Lobbying Spending by NJ Education Association 2009-2012**

YEAR	NJEA COMMUNICATION EXPENSES	NJEA TOTAL EXPENDITURES	CHANGE \$	CHANGE %
2012	\$ 94,932	\$ 409,407	\$ 10,850,479)	-96%
2011	\$ 10,875,011	\$ 11,259,886	\$ 4,390,630	64%
2010	\$ 6,611,499	\$ 6,869,256	\$ 6,508,751	1805%
2009	\$ 41,983	\$ 360,505	NA	NA

With NJEA scaling back its communications spending, total communications outlays fell to less than \$2.2 million (see table 4)- the lowest point since 2005. The \$15.2 million total in 2011 was the largest expenditure ever on communications. The largest communications spender in 2012 was AARP NJ, which spent \$328,964.

Communication costs included printed materials, postage, telephone calls, faxes, receptions, direct mail pieces, newspaper advertisements and television and radio broadcasts.

**Table 3**  
**Top Ten Outlays for Communications by Lobbyists in 2012**

GROUP	2012 SPENDING
AARP NJ	\$ 328,964
Barnabas Health	\$ 166,149
NJ Hospital Association	\$ 161,098
Americans For Prosperity	\$ 142,843
Cammarano & Layton Partners LLC	\$ 104,865
NJ Education Association	\$ 94,932
NJ Chamber of Commerce	\$ 57,452
NJ Forward Corp	\$ 57,096
NJ Association of Realtors	\$ 54,000
NJ League of Municipalities	\$ 50,708

While communications spending showed the steepest decline last year, all major expense categories fell.

**Table 4**  
**Lobbying Expenses by Category**

EXPENSE CATEGORY	2011	2012*	CHANGE %
In-house salaries	\$ 37,078,791	\$ 34,502,078	-7%
Compensation to outside agents	\$ 16,582,152	\$ 15,410,184	-7%
Communications	\$ 15,187,336	\$ 2,162,739	-86%
Support personnel	\$ 2,661,624	\$ 2,320,129	-13%
Travel and lodging	\$ 697,221	\$ 586,510	-16%

\*Preliminary

A broad range of interest groups comprised the top ten lobbyists in 2012.

**Table 5**  
**Top 10 Special Interest Groups by Total Spending in 2012**

GROUP	2012 SPENDING
Public Service Enterprise Group	\$ 863,073
New Jersey Hospital Association	\$ 817,266
Honeywell International	\$ 756,000
Barnabas Health	\$ 753,473
Verizon NJ	\$ 668,716
AARP NJ	\$ 625,324
Prudential Financial Management	\$ 592,403
CSC Holdings LLC (Cablevision)	\$ 538,127
NJ League of Municipalities	\$ 495,089
NJ Business and Industry Association	\$ 490,480



The amount spent by lobbyists on “benefit passing”- gifts like meals, trips or other things of value- was flat at \$5,652. Lobbyists were reimbursed for \$1,505 of this amount. Benefit passing peaked in 1992 at \$163,375 and has fallen dramatically since that time.

**Table 6**  
**Total Spending on Benefit Passing Unadjusted for Reimbursements**

YEAR	TOTAL SPENT ON BENEFIT PASSING	CHANGE IN %
2012	\$ 5,652	-1%
2011	\$ 5,687	-24%
2010	\$ 7,476	-22%
2009	\$ 9,642	-57%
2008	\$ 22,360	-29%

The average number of lobbyists declined slightly from 936 to 929- a 1 percent drop and the lowest average since 2005. However, the number of clients reached a new all-time high- 2,077, a jump of 7 percent from 2011.

Lobbyists reported serving on 171 appointed seats on public authorities, boards and commissions. That number is down 2.8 percent from the year earlier. Some lobbyists serve on multiple boards.

While rankings could change once all firms file reports, seven of the top ten multi-client firms were the same in 2012 as in 2011.

**Table 7**  
**Top Ten Multi-Client Firms Ranked by 2012 Fees**

FIRM	2012 RECEIPTS
Princeton Public Affairs Group Inc	\$ 8,360,883
Public Strategies Impact LLC	\$ 6,091,892
MBI Gluckshaw	\$ 4,132,613
Kaufman Zita Group LLC	\$ 2,115,042
Gibbons PC	\$ 1,782,474
Riker Danzig Scherer Hyland & Perretti LLP	\$ 1,532,074
Optimus Partners LLC	\$ 1,301,600
Impact NJ LLC	\$ 1,227,866
Wolff & Samson Public Affairs LLC	\$ 1,064,500
Capital Impact Group	\$ 1,021,543

Spending by lobbyists also declined at the federal level, though by a much smaller percentage. The Center for Responsive Politics recently reported that federal lobbying fell 1.5 percent to \$3.28 billion in 2012, the lowest level since 2007.

The group attributed the downturn in part to the fact that presidential and congressional elections were held last year, “meaning little else was getting done.” The analysis also quoted a lobbying industry official who said the sluggish economy was another factor.

In at least one other major state, lobbying also was down in 2012. Lobbyists spent \$120 million in Florida last year- about \$7 million less than the previous year, according to Sunshine State News.

Summary data provided above should be considered preliminary and incomplete. It reflects reports received as of 5 pm on March 1, 2013. In New Jersey, lobbyists who raise or spend more than \$2,500 are required to file a report on February 15<sup>th</sup> that reflects activity from the prior calendar year.

Summary information about lobbyist activities in 2012 can be obtained at the following website: [http://www.elec.state.nj.us/publicinformation/gaa\\_annual.htm](http://www.elec.state.nj.us/publicinformation/gaa_annual.htm). Copies of annual reports also are available on ELEC’s website.

## Training Seminars

The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please visit ELEC's website at <http://www.elec.state.nj.us> for more information on training seminar registration.

<b>TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES</b>	
April 1, 2013	10:00 a.m.
April 18, 2013	10:00 a.m.
April 25, 2013	10:00 a.m.
September 10, 2013	10:00 a.m.
September 25, 2013	10:00 a.m.
September 30, 2013	10:00 a.m.
<b>TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS</b>	
June 20, 2013	10:00 a.m.
September 16, 2013	10:00 a.m.
December 11, 2013	10:00 a.m.
<b>R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING</b>	
April 2, 2013	10:00 a.m.
April 24, 2013	10:00 a.m.
April 29, 2013	10:00 a.m.
July 24, 2013	10:00 a.m.
September 11, 2013	10:00 a.m.
September 19, 2013	10:00 a.m.
October 2, 2013	10:00 a.m.

## Lobbying Reporting Dates

	<b>INCLUSION DATES</b>	<b>ELEC DUE DATE</b>
<b>Lobbying Quarterly Filing</b>		
1 <sup>st</sup> Quarter	1/1/13 – 3/31/13	4/10/13
2 <sup>nd</sup> Quarter	4/1/13 – 6/30/13	7/10/13
3 <sup>rd</sup> Quarter	7/1/13 – 9/30/13	10/10/13
4 <sup>th</sup> Quarter	10/1/13 – 12/31/13	1/10/14

## Reporting Dates

	INCLUSION DATES	REPORT DUE DATE
<b>School Board Election - 4/16/2013</b>		
29-day pre-election	Inception of campaign* - 3/15/13	3/18/2013
11-day pre-election	3/16/13 - 4/2/13	4/5/2013
20-day post-election	4/3/13 - 5/3/13	5/6/2013
48 Hour Notice Reports Start on 4/3/2013 through 4/16/2013		
School Board Candidates running in November should follow the General Election Schedule.		
<b>Municipal Election - 5/14/2013</b>		
29-day pre-election	Inception of campaign* - 4/12/13	4/15/2013
11-day pre-election	4/13/13 - 4/30/13	5/3/2013
**20-day post-election	5/1/13 - 5/31/13	6/3/2013
48 Hour Notice Reports Start on 5/1/2013 through 5/14/2013		
90 Day Start Date: 2/13/2013		
<b>Runoff Election** - 6/11/2013</b>		
29-day pre-election	No Report Required for this Period	
11-day pre-election	4/24/13 - 5/28/13	5/31/2013
20-day post-election	5/29/13-6/28/13	7/1/2013
48 Hour Notice Reports Start on 5/29/13 through 6/11/13		
<b>Primary Election*** - 6/4/2013</b>		
29-day pre-election	Inception of campaign* - 5/3/13	5/6/2013
11-day pre-election	5/4/13 - 5/21/13	5/24/2013
20-day post-election	5/22/13 - 6/21/13	6/24/2013
48 Hour Notice Reports Start on 5/22/13 through 6/4/13		
90 Day Start Date: 3/6/13		
<b>General Election*** - 11/5/2013</b>		
29-day pre-election	6/22/13 - 10/4/13	10/7/2013
11-day pre-election	10/5/13 - 10/22/13	10/25/2013
20-day post-election	10/23/13 - 11/22/13	11/25/2013
48 Hour Notice Reports Start on 10/23/13 through 11/5/13		
90 Day Start Date: 8/7/13		
<b>Runoff Election** - 12/3/2013</b>		
29-day pre-election	No Report Required for this Period	
11-day pre-election	10/23/13 - 11/19/13	11/22/2013
20-day post-election	11/20/13 - 12/20/13	12/23/2013
48 Hour Notice Reports Start on 11/20/13 through 12/3/13		
<b>PACs, PCFRs &amp; Campaign Quarterly Filers</b>		
1 <sup>st</sup> Quarter	1/1/13 - 3/31/13	4/15/2013
2 <sup>nd</sup> Quarter	4/1/13 - 6/30/13	7/15/2013
3 <sup>rd</sup> Quarter	7/1/13 - 9/30/13	10/15/2013
4 <sup>th</sup> Quarter	10/1/13 - 12/31/13	1/15/2014

\* Inception Date of Campaign (first time filers) or from January 1, 2013 (Quarterly filers).

\*\* A candidate committee or joint candidates committee that is filing in a 2013 Runoff election is not required to file a 20-day post-election report for the corresponding prior election (May Municipal or General).

\*\*\* Form PFD-1 is due on April 11, 2013 for Primary Election Candidates and June 14, 2013 for Independent General Election Candidates.

\*\*\*\* A second quarter report is needed by Independent General Election candidates if they started their campaign before May 7, 2013