



# ELEC *tronic*

An Election Law Enforcement Commission Newsletter

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## Comments from the Chairman

**Eric H. Jaso**

New Jersey campaign finance law requires candidates to report to ELEC not only contributions, but also proceeds of loans, not only from banks but also from individuals (including the candidate himself).

The law allows candidates to obtain loans from banks and other lending institutions, but only if the loan is secured by the candidate's own assets, or has been guaranteed or co-signed by a third-party individual or entity.

If not, the loan would constitute a campaign contribution from the bank or lending institution to the candidate or committee, which is prohibited.

Under N.J.S.A. 19:34-45 banks are prohibited from making contributions. The statute reads in part:

No corporation carrying on the business of a bank . . . shall pay or contribute money or thing of value in order to aid or

promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

Any loan received by a candidate must be reported as a contribution by the person guaranteeing or co-signing the loan, whether that be the candidate or someone else.

Moreover, in guaranteeing or co-signing a loan to the candidate committee, the co-signer of the loan may only secure an amount up to the contribution limit applicable to the co-signer.

In other words, an individual, other than the candidate, may only guarantee a loan up to \$2,600. As with cash or in-kind contributions, the law imposes no limits on the size of a loan he or she is permitted to secure.

Sometimes candidates loan themselves money from their personal accounts, and their supporters can also extend loans to campaigns.

Again, funds received by a candidate or committee in this manner clearly be reported as loan proceeds. Otherwise,

the funds will be considered straight contributions, and the campaign will not be eligible to reimburse the lenders.

Candidates can lend themselves as much money as they desire. On the other hand, third party lenders must adhere to contribution limits.

While this issue is not discussed too frequently, it is not uncommon for candidates to underwrite their campaigns partly through loans, either from banks or from third parties.

As with everything else involving the field of campaign financing, it is important that campaigns and candidates keep detailed records of loans, and report them accurately and completely to ELEC as the law requires.

Loans, like cash and in-kind contributions, enable candidates to undertake effective and aggressive campaigns. The public has a right to know the sources of loans as well as those of contributions, and New Jersey Law, as implemented and policed by ELEC, preserves that transparency.

### "Furthering the Interest of an Informed Citizenry"

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## Executive Director's Thoughts

### Jeff Brindle

## Justice Kennedy Retirement may Leave Status Quo Intact on Campaign Finance Cases

Reprinted from [insidernj.com](http://insidernj.com)

Rumors persist that U.S. Supreme Court Justice Anthony Kennedy is planning to retire this summer.

If so, how will Justice Kennedy's departure affect the direction the Court has been taking regarding campaign finance law?

Probably not very much. President Donald Trump will likely nominate someone to the Court who would follow in the conservative footsteps of the late Antonin Scalia. The president already has replaced Scalia, a Trenton native, with another strong conservative, Neil Gorsuch of Colorado.

Justices Scalia and Kennedy pretty much voted in tandem on campaign finance cases. Thus a nominee in the mold of Scalia would leave in place a 5-4 majority whose guidepost has been the First Amendment.

Since 2006, the high court has issued a half-dozen opinions that rolled back many campaign finance restrictions primarily due to First Amendment concerns. Most notable was *Citizens United v. FEC (2010)*, which let corporations and unions spend unlimited sums on elections as long as they did not coordinate with parties or candidates.

Although Judge Gorsuch has not yet presided over a major campaign finance case, his record on the Tenth

Circuit provides a glimpse into his thinking.

In *Riddle v. Hickenlooper*, a case that involved disparate contribution limits for major and minor party candidates, Judge Gorsuch sided with the majority in finding this scheme unconstitutional.

Besides citing the equal protection clause, he added "the act of contributing to political campaigns implicates a 'basic constitutional freedom,' one lying 'at the foundation of a free society' and enjoying a significant relationship to the right to speak and associate—both expressly protected First Amendment activities."

In Justice Kennedy, we find a judge that has consistently relied on the First Amendment to rule on campaign finance issues. Long before *Citizens United* in 2010, Justice Kennedy was arguing that corporations had a First Amendment right to spend independently on political campaigns. He did so in the 1990 decision in *Austin v. Michigan Chamber of Commerce*.

In delivering the opinion of the Court in *Citizens United*, and in remaining steadfast in his reliance on the First Amendment, Justice Kennedy stated, "The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity."

Thus, it would appear that if President Trump has the opportunity to appoint a replacement for Justice Kennedy, the 5-4 breakdown on the Court in terms of campaign finance law will remain the same.

Though no campaign finance cases are imminent, the Supreme Court assuredly will be dealing with this statutory area in the future.

There have been some who have called for the High Court to reconsider *Citizens United*. It is highly doubtful that a Court majority comprised of two new members who are acolytes of Justices Scalia and Kennedy will reconsider the 2010 ruling.

Thus, the only way to undo *Citizens United* would be by amending the Constitution. Since this venerable document has been amended only 27 times in our 229-year history, the likelihood of undoing *Citizens United* is slim.

There is one looming constitutional area that the Court will be ruling on that may indirectly impact campaign financing.

Before the Court is *Gill v. Whitford*, which involves the issue of partisan gerrymandering. If the Court were to rule Wisconsin's legislative district map unconstitutional on the basis of partisan gerrymandering, it would all but be establishing a proportional electoral system.

A proportional electoral system for State legislative and congressional redistricting would increase the amount of money spent on elections, which in turn would inevitably lead to further challenges to campaign finance law.

Whether or not Justice Kennedy decides to retire this summer will have no bearing on the direction the Supreme Court decides to take on future cases involving campaign finance law.

With or without Justice Kennedy, the 5-4 split on the Court will remain and its decisions will continually be heavily influenced by the First Amendment rights of Free Speech and Assembly.

## ELEC HAS UPDATED OVERVIEW STATISTICS ON ELECTION FUND-RAISING AND SPENDING

ELEC maintains overall statistics on campaign finance activities related to past elections in New Jersey. Those statistics can be accessed at this website:

<http://www.elec.state.nj.us/publicinformation/statistics.htm>. The site now shows that candidates in the 2017 gubernatorial campaign directly spent nearly \$55 million, including \$34.5 million on the primary election and \$20.4 million on the general election. This does not include more than \$24 million spent by independent special interest groups or potential candidates who used political non-profit groups before the primary to boost their name recognition prior to formally declaring their candidacies or opting not to run.

For the first time, statistics are available for independent spending in New Jersey gubernatorial and legislative elections. More than \$47 million was spent in 2017 outside traditional party or candidates fund-raising committees. The third legislative district alone drew \$18.7 million in spending, including \$14.4 million by independent groups. No legislative district race in American history cost more, according to information available from the National Institute for Money in Politics. Since 2009 alone, \$114 million has been spent on state elections by independently of traditional committees. Also on the statistics page, the top-ten legislative races of all time has been updated to reflect the spending in the 2017 third district campaign. For the first time, the statistics page lists the top ten self-financed campaigns by New Jersey candidates. Soon, ELEC will be adding historic numbers for political action committees to the site.

### Independent Spending in New Jersey Gubernatorial and Legislative Elections 1977-2017

Year	Primary Election*				General Election				Both Elections			
	Gubernatorial	Legislative	Election Breakdown Unavailable	Total	Gubernatorial	Legislative	Election Breakdown Unavailable	Total	Gubernatorial	Legislative	Election Breakdown Unavailable	Total
1977					\$ 10,700			\$ 10,700	\$ 10,700			\$ 10,700
1981					\$ 14,600			\$ 14,600	\$ 14,600			\$ 14,600
1985					\$ -			\$ -				\$ -
1989					\$ 287,000			\$ 287,000	\$ 287,000			\$ 287,000
1993					\$ 326,000			\$ 326,000	\$ 326,000			\$ 326,000
1997												\$ -
1999						\$ 113,255		\$ 113,255		\$ 113,255		\$ 113,255
2001	\$ 4,899,191			\$ 4,899,191	\$ 1,883,928			\$ 1,883,928	\$ 6,783,119			\$ 6,783,119
2003						\$ 4,857		\$ 4,857		\$ 4,857		\$ 4,857
2005					\$ 407,748	\$ 3,476		\$ 411,224	\$ 407,748	\$ 3,476		\$ 411,224
2007						\$ 165,000		\$ 165,000		\$ 165,000		\$ 165,000
2009					\$ 14,080,168	\$ 15,999		\$ 14,096,167	\$ 14,080,168	\$ 15,999		\$ 14,096,167
2011						\$ 1,835,500		\$ 1,835,500		\$ 1,835,500		\$ 1,835,500
2012						\$ 299,049		\$ 299,049		\$ 299,049		\$ 299,049
2013	\$ 13,011,027	\$ 650,623	\$ 39,555	\$ 13,701,205	\$ 8,339,592	\$ 15,375,071	\$ 1,412,870	\$ 25,127,533	\$ 21,350,619	\$ 16,025,694	\$ 1,452,425	\$ 38,828,738
2015		\$ 927,561		\$ 927,561		\$ 10,908,983		\$ 10,908,983		\$ 11,836,544		\$ 11,836,544
2017	\$ 9,123,371	\$ 2,160,923		\$ 11,284,294	\$ 15,353,317	\$ 20,893,258		\$ 36,246,575	\$ 24,476,688	\$ 23,054,181		\$ 47,530,869
<b>Totals</b>	<b>\$ 27,033,589</b>	<b>\$ 3,739,107</b>	<b>\$ 39,555</b>	<b>\$ 30,812,251</b>	<b>\$ 40,703,053</b>	<b>\$ 49,614,448</b>	<b>\$ 1,412,870</b>	<b>\$ 91,730,371</b>	<b>\$ 67,736,642</b>	<b>\$ 53,353,555</b>	<b>\$ 1,452,425</b>	<b>\$ 122,542,622</b>

\*Gubernatorial Total includes spending to build name recognition before the official period.

**Highest All-Time Spending by Legislative District Ranked by Inflation Adjusted Totals**

Rank	District	Counties	Year	Democrats	Republicans	Independent Groups	Total Spending	Total Spending Inflation Adjusted	Winners
1	3	Gloucester/Salem/Cumberland*	2017	\$4,125,878	\$ 196,269	\$14,421,793	\$18,743,940	\$18,743,940	Democrats
2	4	Camden/Gloucester	2003	\$4,570,686	\$1,571,755		\$ 6,142,441	\$ 8,169,881	Democrats
3	12	Monmouth	2007	\$5,057,798	\$ 906,141		\$ 5,963,939	\$ 7,039,445	Republicans
4	1	Cape May/Cumberland	2007	\$3,605,195	\$1,370,577		\$ 4,975,772	\$ 6,618,128	Democrats
5	2	Atlantic**	2011	\$3,519,935	\$2,069,512	\$ 209,762	\$ 5,806,467	\$ 6,317,420	Split
6	38	Bergen/ Passaic	2013	\$2,713,003	\$ 976,179	\$ 2,221,136	\$ 5,910,318	\$ 6,209,085	Democrats
7	3	Gloucester/Salem/Cumberland	2003	\$3,943,220	\$ 605,083		\$ 4,548,302	\$ 6,049,563	Democrats
8	38	Bergen/ Passaic	2011	\$3,214,496	\$1,483,318	\$ 485,685	\$ 5,183,499	\$ 5,639,632	Democrats
9	2	Atlantic	2005	\$2,832,527	\$1,626,104		\$ 4,458,631	\$ 5,605,113	Split
10	3	Gloucester/Salem/Cumberland	2001	\$2,828,825	\$1,111,453		\$ 3,940,278	\$ 5,448,113	Democrats

\*As of November 2017, the race appeared to be the most expensive state legislative race ever nationally as well as in New Jersey.

\*\*Includes \$7,258 in spending by independent candidate

**Top Ten Self-Financed Campaigns\*\***

	Candidate	Party	Year	Office	Amount	Inflation Adjusted
1	Jon Corzine*	Democrat	2000	US Senate	\$ 60,198,967	\$ 86,230,301
2	Steve Forbes	Republican	1996	President	\$ 37,394,000	\$ 58,787,229
3	Steve Forbes	Republican	2000	President	\$ 38,675,038	\$ 55,398,960
4	Jon Corzine*	Democrat	2005	Governor	\$ 43,135,570	\$ 54,480,026
5	Doug Forrester	Republican	2005	Governor	\$ 29,927,189	\$ 37,797,902
6	Jon Corzine	Democrat	2009	Governor	\$ 27,460,000	\$ 31,572,018
7	Phil Murphy*	Democrat	2017	Governor	\$ 22,537,081	\$ 22,537,081
8	Frank Lautenberg*	Democrat	1982	US Senate	\$ 5,100,000	\$ 13,036,076
9	Doug Forrester	Republican	2002	US Senate	\$ 7,485,000	\$ 10,262,771
10	Tom MacArthur*	Republican	2014	House	\$ 5,000,000	\$ 5,209,664

\*Elected

\*\*Shows personal wealth spent on campaign, not total spending. For more information on the history of self-financed campaigns, see "White Paper No. 26- Legislative Elections 2013: Big Spending, Little Change Plus A History of Self-financing by Legislators and Others."

## Reporting Dates

	INCLUSION DATES	REPORT DUE DATE
<b>RUNOFF (JUNE) ** - JUNE 12, 2018</b>		
29-day Preelection Reporting Date	No Report Required for this Period	
11-day Preelection Reporting Date	4/25/2018 - 5/29/2018	6/1/2018
20-day Postelection Reporting Date	5/30/2018 - 6/29/2018	7/2/2018
48-Hour Notice Reporting Starts on 5/30/2018 through 6/12/2018		
<b>PRIMARY (90-DAY START DATE: MARCH 7, 2018)*** - JUNE 5, 2018</b>		
29-day Preelection Reporting Date	Inception of campaign* - 5/4/2018	5/7/2018
11-day Preelection Reporting Date	5/5/2018 - 5/22/2018	5/25/2018
20-day Postelection Reporting Date	5/23/2018 - 6/22/2018	6/25/2018
48-Hour Notice Reporting Starts on 5/23/2018 through 6/5/2018		
<b>GENERAL (90-DAY START DATE: AUGUST 8, 2018)*** - NOVEMBER 6, 2018</b>		
29-day Preelection Reporting Date	6/23/2018 - 10/5/2018	10/9/2018
11-day Preelection Reporting Date	10/6/2018 - 10/23/2018	10/26/2018
20-day Postelection Reporting Date	10/24/2018 - 11/23/2018	11/26/2018
48-Hour Notice Reporting Starts on 10/24/2018 through 11/6/2018		
<b>RUNOFF (DECEMBER)** - DECEMBER 4, 2018</b>		
29-day Preelection Reporting Date	No Report Required for this Period	
11-day Preelection Reporting Date	10/24/2018 - 11/20/2018	11/23/2018
20-day Postelection Reporting Date	11/21/2018 - 12/21/2018	12/24/2018
48-Hour Notice Reporting Starts on 11/21/2018 through 12/4/2018		
<b>PACS, PCFRS &amp; CAMPAIGN QUARTERLY FILERS</b>		
2 <sup>nd</sup> Quarter	4/1/2018 - 6/30/2018	7/16/2018
3 <sup>rd</sup> Quarter	7/1/2018 - 9/30/2018	10/15/2018
4 <sup>th</sup> Quarter	10/1/2018 - 12/31/2018	1/15/2019
<b>GOVERNMENTAL AFFAIRS AGENTS (Q-4)</b>		
2 <sup>nd</sup> Quarter	4/1/2018 - 6/30/2018	7/10/2018
3 <sup>rd</sup> Quarter	7/1/2018 - 9/30/2018	10/10/2018
4 <sup>th</sup> Quarter	10/1/2018 - 12/31/2018	1/10/2019

\* Inception Date of Campaign (first time filers) or from January 1, 2018 (Quarterly filers).

\*\* A candidate committee or joint candidates committee that is filing in a 2018 Runoff election is not required to file a 20-day postelection report for the corresponding prior election (May Municipal or General).

\*\*\* Form PFD-1 is due on April 12, 2018 for Primary Election Candidates and June 15, 2018 for Independent General Election Candidates.

Note: A fourth quarter 2017 filing is needed for Primary 2018 candidates if they started their campaign prior to December 7, 2017. A second quarter 2018 filing is needed by Independent/Non-Partisan General Election candidates if they started their campaign prior to May 9, 2018.

### HOW TO CONTACT ELEC

[www.elec.state.nj.us](http://www.elec.state.nj.us)

In Person: 25 South Stockton Street, 5<sup>th</sup> Floor, Trenton, NJ  
 By Mail: P.O. Box 185, Trenton, NJ 08625  
 By Telephone: (609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

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