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Need to Deter Corruption Shapes ELEC Laws

JEFF BRINDLE | October 19, 2022, 09:56 am | in [Caucus Room](#)

Scandal often precedes reform.

The New Jersey Election Law Enforcement Commission (ELEC) itself owes its existence to scandal, corruption at the national level coinciding with corruption in New Jersey.

Even as fallout continued from the national 1972 Watergate break-in, the Cahill administration, in March 1973, found itself riddled with allegations of corruption.

Governor Cahill himself was never implicated personally yet some high up officials and political allies were convicted of crimes, ultimately leading to the Governor's defeat.

Ironically, the cloud of corruption drove Governor Cahill and the Legislature to enact the 1973 Campaign Contributions and Expenditures Reporting Act.

On April 23, 1973, a Time magazine article recounted the efforts of U.S. Attorney Herbert Stern, whose office alone had indicted 67 New Jersey officials on corruption charges since 1970.

The next day, Cahill signed into law the bill creating ELEC.

A little more than a year later, Democratic Governor Brendan T. Byrne and the Legislature enacted the nation's first Gubernatorial Public Financing Program, which became effective in the 1977 gubernatorial election.

The effort to enact a statute governing campaign financing can be traced to the Election Law Revision Commission, established in 1964. Even though the initial report dealt with the issue of paper ballots, calling for an end to their use in New Jersey, a subsequent report in 1970 addressed the issue of disclosure of campaign financing information.

Interestingly, it was an old, largely ignored statute that caused the Law Revision Commission to push for enactment of legislation that related to campaign financing.

The old law imposed limits on expenditures that candidates were permitted to make, a provision that had little support on the Revision Commission or in the Legislature.

In endorsing the repeal of expenditure limits, subsequently deemed unconstitutional in the seminal Supreme Court decision *Buckley vs Valeo* (1976), the Revision Commission stated, "The public's right to such information (as a candidate's view) is vital, and to that end candidates, parties, and political committees are justified in spending money to convey their message."

While the Revision Commission opposed expenditure limits, it did recognize the importance of disclosure to diminish public cynicism.

In order to achieve the goal of disclosure, the Revision Commission proposed: 1) A campaign finance system with stringent disclosure requirements on the financing of campaigns at every level of government and; 2) the establishment of the Election Law Enforcement Commission (ELEC). The Revision Commission opposed contribution limits though the U.S. Supreme Court has consistently upheld contribution limits in First Amendment cases before it.

The "Campaign Contributions and Expenditures Reporting Act" became law April 24, 1973. Next year marks the 50th anniversary of the Commission.

In its original form, the law required candidates and political committees to disclose the source of campaign contributions as well as expenditure information, all to be enforced by ELEC.

The original Campaign Finance Law had derived from recommendations put forth by the Revisions Commission, with an impetus provided by the atmosphere of political corruption in the early 1970s.

More recent scandals led to further changes. Legislation incorporating recommendations of the so-called Rosenthal Commission, which was set up in the wake of both lobbying and campaign finance scandals, was enacted in 1993. For the first time, the new law imposed contribution limits on all candidates and committees.

Controversy involving the awarding of the state's vehicle inspection contract prompted several executive orders and laws aimed at discouraging Pay-to-Play abuses- exchanges of political contributions for lucrative contracts. The first executive order took effect in 2004.

Since that time, a significant transformation has taken place in terms of politics and the electoral system. The emergence of independent, so-called "Dark Money" groups have upended New Jersey's politics and elections; the result of the Bipartisan Campaign Reform Act (BCRA) in 2002 and facilitated by the Supreme Court's Citizens United v FEC decision in 2010.

Over the past two decades, independent groups have spent millions of dollars attempting to influence the outcomes of gubernatorial, legislative, congressional, and even local elections in New Jersey.

These groups have significantly outdistanced political parties and candidates in financial activity, living by different rules that benefit them to the disadvantage of the parties and candidates.

Because independent groups are not subject to contribution limits, while parties and candidates are subject to those limitations, the independent organizations have come to dominate electoral politics in New Jersey.

They can play by different rules that make them less or even entirely unaccountable to the public. This increases the potential for scandal.

To remedy this situation as well as to update the state's campaign finance law, a bipartisan effort has been put forth by Senate President Nicholas Scutari (D-22th legislative district) and Senate Minority Leader Steven Oroho (R-24th legislative district) in the form of proposed legislation known as the "Election Transparency Act" (S-2866).

The legislation, which stalled in the Assembly in June, would require much needed disclosure of independent group financial activity, strengthen political parties, increase contribution limits to account for almost two decades of inflation, and strengthen and simplify pay-to-play by moving New Jersey closer to one state pay-to-play law to apply across the board at all levels of government.

The proposal would also strengthen pay-to-play by establishing a pay-to-play database within the Commission.

The bill adheres to recent rulings by the U.S. Supreme Court that uphold disclosure and contribution limits while supporting the adjustment of contribution limits to account for inflation. It is hoped that the Legislature will finish the job and enact the bipartisan “Elections Transparency Act.”

While there is no scandal to precede the current effort to reform campaign finance law in New Jersey, it is important that campaign finance law be brought up to date to address changes in the electoral system such as weakened political parties, outdated contribution limits, and increasingly dominant independent groups. It is also important to reform campaign finance law to address current, modern-day realities, most notably the growing influence of independent groups.

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The opinions presented here are his own and not necessarily those of the Commission.

