



State of New Jersey

THOMAS H. PROL
Chairman

RYAN PETERS
Commissioner

NORMA R. EVANS
Commissioner

JON-HENRY BARR
Commissioner

ELECTION LAW ENFORCEMENT COMMISSION

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JOSEPH W. DONOHUE
Acting Executive Director

STEPHANIE A. OLIVO
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Legal Counsel

PUBLIC SESSION MINUTES

December 19, 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, Legal Administrator of Review and Investigation Theresa Lelinski, Assistant Legal Counsel Ben Kachuriner, Information Technology (IT) Director Anthony Giancarli, IT Specialist Lou Solimeo, and Executive Secretarial Assistant Elbia Zeppetelli were present. 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 11:01 a.m. in Trenton and explained meeting procedures.

First Public Session

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. Addition to Agenda Materials in Executive Session

On a motion by Commissioner Peters seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission voted to add an additional agenda item to discuss litigation in the following matter.

- New Jersey Republican State Committee, Inc., Vincent Polistina and Christopher Del Borrello v. Jersey Freedom, Eric Peterson, John Does 1-10 and XYZ Corporations 1-10.

3. Approval of Public Session Minutes for November 21, 2023

On a motion by Commissioner Evans seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission approved the Public Session Minutes for November 21, 2023.

4. Acting Executive Director's Report

Acting Executive Director Donohue reported that no legislation moved so far in the lame duck session to revise the Elections Transparency Act (ETA) or to try to deter sexual harassment in campaigns. He said he will keep an eye on the legislative agenda.

The Acting Executive Director updated the Commission on spending for the 2023 legislative election. He said that combined spending by legislative general election candidates and independent groups totaled \$70 million, the second largest ever unadjusted for inflation and fifth in today's dollars. He noted peak spending occurred in 2017 race at nearly \$90 million in today's dollars. Total spending in the 11th district was just under \$10 million for one district, making it the third most expensive legislative district race ever. Statewide, Democrats had a huge fundraising edge at almost \$52 million versus \$18 million for Republicans. This includes candidate and independent spending. The race featured the most independent groups ever, 27 so far.

He said he already has been asked whether the 2023 election was more transparent due to the new law enacted in April 2023. He said transparency is hard to quantify in a way that easily allows year-by-year comparisons. Several recent state elections featured heavy spending by independent groups, which were not required to disclosure their contributions under previous law. However, many of them did so voluntarily though they could have easily changed strategy and ended such disclosure since it was not statutorily required. Now it is. Some independent groups provided fuller disclosure in their reports compared to earlier years. There was more disclosure of small contributions since the disclosure threshold was lowered from \$300 to \$200. Also, there was more disclosure for last-minute contributions and expenditures since the threshold was lowered from \$1,900 to \$200 by the new law.

The Acting Executive Director informed the Commission that Compliance Director Olivo was only the second ELEC staff member to attend an annual conference of the Council on Governmental Ethics Laws (COGEL) in the past decade. The 2023 conference was held in Kansas City, MO.

Compliance Director Olivo stated that she was requested to speak at the COGEL conference on changes mandated by on Elections Transparency Act, including major revisions in disclosure requirements for public contractors. She also spoke about procurement lobbying and grass-roots lobbying. She said the conference was very informative and a great chance to learn what similar disclosure agencies are doing in other states and Canada. She said she hopes ELEC sends more staff members to future conferences.

Acting Executive Director Donohue said that the next Commission meeting is scheduled for January 16th.

Chairman Prol noted some members of the public were signed up to speak. He said he appreciated press coverage about the new law because it sheds light on important facets of the public discussion about it. He also welcomed testimony by members of the public, saying their input helps Commission members do their jobs better. Chairman Prol said the Commission intends to be out front

and have its collective fingerprint on issues related to the new law. It wants to be part of the public discussion in a non-partisan manner and with transparency being its guide-star.

5. 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)

- New Jersey Republican State Committee, Inc., Vincent Polistina and Christopher Del Borrello v. Jersey Freedom, Eric Peterson, John Does 1-10 and XYZ Corporations 1-10.

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 Barr, 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.

Second Public Session

On a motion by Commissioner Barr, seconded by Commissioner Evans, and passed by a vote of 4-0, the Commission voted to seek to join the pending litigation in Atlantic County as an amicus party.

Chairman Prol commented that the motion is to make an application to the assignment judge in Atlantic County to appear as amicus curiae, friend of the court, in New Jersey Republican State Committee, Inc., Vincent Polistina and Christopher Del Borrello v. Jersey Freedom, Eric Peterson, John Does 1-10 and XYZ Corporations 1-10.

6. Proposed Regulations with Amendments

Acting Legal Director Haines presented the proposed adoption of regulation with amendments. She introduced a legal memorandum regarding the Sunset regulations pursuant to N.J.S.A. 52:14B-5.1 and N.J.A.C. 19:25. The memorandum states that the rules are to remain in effect for no more than seven years unless re-adopted in a rulemaking procedure, known as the Sunset process. As a result of the Elections Transparency Act, L. 2023, c. 30 (ETA), numerous existing regulations require amendments to be consistent with the Campaign Act. Without re-adoption, Chapter 25 will expire on July 19, 2024. At the November 21, 2023 meeting, the Commission determined to delay consideration of the sunset proposal until the December 19, 2023 meeting to explore the possibility of adding housekeeping accounts and independent expenditure committees to the proposal. Staff consulted with the Office of Administrative Law for clarification about rulemaking requirements when provisions of the enabling statute have been amended. The Office of Administrative Law confirmed that the Commission has discretion as to when it proposes regulations to implement statutory changes. Amendments implementing housekeeping accounts created by N.J.S.A. 19:44A-10.2 have been added to the draft proposal. Staff will continue to draft independent expenditure committee regulations over the next few months, with the anticipation of including the provisions in the cost index proposal in 2024.

If the Commission approves the proposed re-adoption with amendments, staff will file the proposal on January 4, 2024 with the Office of Administrative Law for publication in the New Jersey Register (N.J.R.). The proposal will be published in the N.J.R. on February 5, 2024.

Chairman Prol said the Commission welcomes public and media participation in the rule adoption process. He said the members are trying to make the Elections Transparency Act mean what it says.

On a motion by Commissioner Barr, seconded by Commissioner Peters, and passed by a vote of 4-0, the Commission voted to approve the proposed re-adoption of Commission regulations with amendments.

7. 2022 Non-Filer Complaints

Acting Legal Director Haines informed the Commission that 55 non-filer complaints for the 2022 general election had been released to the website on December 13, 2023.

8. Public Comments

On a motion by Commissioner Barr, seconded by Commissioner Evans, and passed by a vote of 4-0, the Commission voted to open the meeting for public comment.

The following individuals provided public comments:

- Antoinette Miles – NJ Working Families Alliance;
- Sandra Matsen – League of Women Voters of NJ;
- Lesley Buckle – NJ Working Families Alliance;
- Jason Sena, Esq. – General Counsel to the NJ Republican State Committee;
- Vincent Polistina – State Senator, Atlantic County; and,
- Michelle Brunetti – Reporter, AC Press.

Chairman Prol explained that the Commission was asked to join the NJ Republican State Committee v. Jersey Freedom, et al. case as a friend of the court to provide the institutional perspective of an agency statutorily charged with enforcing New Jersey campaign finance laws for five decades. Court approval is needed for amicus status. ELEC does not have party status except that it serves as an amicus, a friend of the court, to offer the Court guidance with its experience and knowledge, its deep bench and to provide input into understanding past pattern and practice, and its interpretation of the new law.

On a motion by Commissioner Barr, seconded by Commissioner Evans, and passed by a vote of 4-0, the Commission voted to close the meeting to public comments.

9. 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 November 21, 2023;
- Consent Orders and Final Decisions 48-Hour Notice Violations.

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 Barr, 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.

Third Public Session

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

- Executive Session Minutes for November 21, 2023; and,
- Consent Orders and Final Decisions 48-Hour Notice Violations.

10. Approval of Executive Session Minutes for November 21, 2023

On a motion by Commissioner Evans seconded by Commissioner Barr, and passed by a vote of 4-0, the Commission approved the Executive Session Minutes for November 21, 2023.

11. Consent Orders and Final Decisions 48-Hour Notice Violations

On a motion by Commissioner Barr, seconded by Commissioner Peters, and passed by a vote of 4-0, the Commission adopted 11 Consent Orders and Final Decisions 48-Hour Notice Violations in the following matters:

- Item 1. ELEC v. Iron Workers Local 399 PAC and Michele Foy (Treasurer), C-T 0000 0006 33-Q2021
- Item 2. ELEC v. International Brotherhood of Electrical Workers Committee on Political Education and Gino Pasqualone (Treasurer), C-T 0000 0050 33-Q2021
- Item 3. ELEC v. Local 102 IBEW PAC and David Fiore (Treasurer), C-T 0000 0148 44-Q2021
- Item 4. ELEC v. District Council of Northern NJ Association of Bridge, Structural & Ornamental Iron Workers PAC Fund and Raymond V. Woodall (Treasurer), C-T 0000 0049 33-Q2021
- Item 5. ELEC v. Sheet Metal Workers Local 27 PAC Fund and Christopher W. George (Treasurer), C-T 0000 0041 33-Q2021
- Item 6. ELEC v. IBEW Local Union 400 PAC Committee and James P. Moran (Treasurer), C-T 0000 0147 44-Q2021
- Item 7. ELEC v. Sheet Metal Workers Local 25 Political Action League and Calvin Brooks (Treasurer), C-T 0000 0076 44-Q2021
- Item 8. ELEC v. Local Union #164 IBEW COPE Fund and Valentine McHale (Treasurer), C-T 0000 0124 44-Q2021
- Item 9. ELEC v. Laborer's Local 472 PAC and Tony Oliveira (Treasurer), C-T 0000 0139 44-Q2021
- Item 10. ELEC v. Blue PAC and John F. Fuller (Treasurer), C-S 0000 0002 33-Q2021
- Item 11. ELEC v. Local 322 Committee for Political Education and Kurt Krueger (Treasurer), C-T 0000 0016 33-Q2021

Chairman Prol said the Commission needed again to enter executive session. Following the retirement of former Executive Director Jeff Brindle in October, the Commission received quite a few applicants in response to a public notice and planned to interview finalists during the closed session without taking any final action.

12. 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)

- Executive Director Position – Interviews.

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 conduct interviews for the executive director position.

- A. Personnel matters concerning the hiring of executive director, which will become public upon appointment of such position.

Fourth Public Session

13. Adjournment

Without any objections the Commission adjourned the meeting at approximately 4:15 pm.

Respectfully submitted as true
and correct,

Joseph W. Donohue
Acting Executive Director