

Jerry Fitzgerald English, Chair
 Peter J. Tober, Vice Chair
 Albert Burstein, Commissioner
 Amos C. Saunders, Commissioner
 James P. Wyse, Legal Counsel

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

Comments from the Chair Jerry Fitzgerald English

Since 1961 there has been a precipitous decline in voter turnout in New Jersey's gubernatorial contests.

To say the least, turnout for the State's recent gubernatorial elections has been less than desirable.

Election Day 1961 witnessed 73 percent of New Jersey's eligible voters casting ballots. Compare that percentage to the 49 percent of eligible voters who voted in the last two gubernatorial general elections, 2001 and 2005.

To be sure, there have been a couple of years in that period of time when voters turned out in respectable numbers. In the 1993 election, featuring Governor James J. Florio against Christine Todd Whitman, 65 percent of eligible voters cast ballots, for instance.

However, that's the last time turnout reached that high. Nothing like that or the 74 percent turnout in 1969, when William T. Cahill ran against Robert B. Meyner, has been seen since.

... Continued on page 2.

Inside This Issue

- 1 **Comments from the Chair**
- 1 **Seeking Transparency can be Confusing**
- 3 **Executive Director's Thoughts**
- 4 **The Status of Political Parties**
- 4 **Lieutenant Gubernatorial Debate and Gubernatorial Debate Dates: October 8th and October 16th**
- 5 **Commission's Corner**
 - **Tips for Candidates and Treasurers**
- 7 **Dates to Remember**
- 7 **ELEC Directors**

Seeking Transparency can be Confusing

In a recent article in "The Center for Public Integrity" magazine, Carolyn Ball, Associate Professor of Public Administration and Director of Graduate Programs at the University of Maine writes: "The words 'transparent' and 'transparency' are creeping into the public's vocabulary and into political and policy academic writing. Over the years, particularly in the aftermath of Watergate in the 1970's, new laws and administrative rules have given the public greater access to governmental information."

In other words, there has been an on-going desire on the part of the public, and an accompanying effort on the part of elected officials, to bring greater openness to government, and dare it be said, to elections.

Accomplishing this openness, however, this transparency, ironically has often meant enacting laws and regulations that on their face are comprehensive and complex.

Therefore, as has been the case with the Election Law Enforcement Commission, efforts are made by administrative agencies to reach out to the public to assure that laws and regulations undertaken in the spirit of transparency are understood.

An example of a regulation that is of importance in the area of campaign finance, and one that can be innocently overlooked, or misunderstood, is the Commission's political communication regulation.

The reason for the regulation, aside from being part and parcel of the effort to create openness, is to prevent municipal, county, or State tax payer money from being used to promote a candidate, either purposively or inadvertently.

Public funds, excluding statutorily established public financing programs, cannot be contributed to candidates. Depending upon the timeframe, expenditures from the public treasury for newsletters,

... Continued on page 2.

Comments from the Chair Jerry Fitzgerald English

Continued from page 1.

Scholars continually offer explanations for low voter turnout levels. These explanations include cynicism among the electorate, negative attack advertisements, too many elections, and a commuter-based society. They also involve concerns about inconvenient times for voting, a weakening political party system, and competition for the voter's interest.

It's not my intent, however, to provide explanations for low voter turnout but rather to point to the issue and represent the New Jersey Election Law Enforcement Commission (ELEC) in urging people to vote.

As you know, ELEC has been given the responsibility of supplying important information to the public regarding the financing of political campaigns of candidates, political parties, legislative leadership committees, and special interest PACs.

The information provided is an invaluable resource for voters. And the Commission makes every effort to bring it to the public in a way that promotes an informed electorate.

Through outreach efforts, the Commission's website, press releases, analytical reports, and other promotional efforts, such as ELEC-Tronic, the Commission's newsletter, and a public service announcement (PSA) initiative, the Commission is making every effort to let the public know what is available to them.

But just as in voting, it is up to the citizens to take advantage of ELEC's services and become informed about their elected officials and candidates.

It is hoped that not only will voters turn out this year in large numbers but that all those voting be informed about the issues and the candidates. Moreover, New Jersey for the first time is offering voters the opportunity to vote by mail. It remains to be seen whether this initiative increases voter turnout.

Seeking Transparency can be Confusing

Continued from page 1.

advertisements, etc. could be construed as benefitting a candidate, and therefore reportable as a contribution.

And this is how. N.J.A.C. 19:25-10.10 provides that a communication is political in nature if: 1) the target audience is comprised substantially of individuals eligible to vote for or against the candidate or candidates in question; and 2) the communication contains an explicit appeal to vote.

A communication can be deemed a political communication, however, even if it does not contain express advocacy—and here is how.

1. If the communication is made within 90 days of a any election involving the candidate;
2. The recipients are substantially made up of individuals eligible to vote for the candidate;
3. The communication refers to the governmental achievements or objectives of the candidate; and,
4. The communication is done with the cooperation or consent of the candidate.

If the foregoing criteria are met, then the candidate has a responsibility to report the cost of the communication as a contribution to his or her campaign.

One problem occurs when the individual or committee producing the communication has already made the maximum allowable contribution. In this case, there may be a contribution limit violation.

Another issue comes about when the expenditure is made by a governmental agency using public funds. The expenditure must be reported as a contribution. Public money, however, can not be contributed to candidates, and therein lies the problem.

This particular regulation is one that is frequently misunderstood by candidates and treasurers. It involves an issue that Commission staff struggles to inform political operatives about so that the ramifications are fully understood.

It is a provision that is important in terms of disclosure and transparency in elections, and one that goes to the heart of the public trust in government; that tax payer dollars are spent appropriately.

Executive Director's Thoughts

Jeffrey M. Brindle

A ruling by the federal appeals court for the District of Columbia found that independent expenditures by non-profit 527 groups cannot be restricted.

The appeals court decision in Emily's List v. Federal Election Commission foreshadows what many experts feel will be the approach the U.S. Supreme Court will take in Citizens United v. Federal Election Commission (FEC).

Emily's List is an organization established years ago for the purpose of supporting pro-choice women for political office. The organization sued to have the court reject the spending limits set by the FEC on 527 advocacy groups.

The FEC had ruled that groups like Emily's List would violate the Bipartisan Campaign Finance Reform Act (BCRA), better known as McCain-Feingold, if it spent soft money on electioneering. According to the FEC, only hard money may be used.

Soft money is made up of large, unlimited donations. Hard money derives from individuals and PACs and is subject to contribution limitations.

Undoubtedly, the finding of the three-judge panel is another in a string of decisions forecasting a much more unrestrictive campaign finance system.

A September 19, 2009 article in the New York Times had reporter David D. Kirkpatrick quoting Richard L. Hansen, a professor at Loyola Law School in Los Angeles, saying "'we are moving toward a deregulated federal campaign finance system, where money flows freely and perhaps only disclosure laws remain.'"

Fred Wertheimer, president of Democracy 21, states in the same New York Times article, "'this opinion, if it stands up, is going to make it harder to constrain the role of influence-seeking money in federal campaigns.'"

On the other hand, the District of Columbia appeals court decision maintained that the First Amendment protections apply to independent groups who have a right to spend freely in the context of elections provided they do not coordinate their efforts with candidates or political parties.

Writing for the three-judge panel, Judge Brett M. Kavanaugh stated "'and to the extent a nonprofit then spends its donations on activities such as advertisements, get-out-the-vote efforts and voter registration drives, those expenditures are not considered corrupting, even though they may generate gratitude from and influence with officeholders and candidates.'"

Granted, these decisions directly involve federal regulation of campaign finance issues. And New Jersey's law differs in many respects from federal law. For example, corporations and unions, subject to contribution limits, are not prohibited from making monetary and in-kind contributions to candidates. And there is no restriction on independent expenditures.

On the other hand, New Jersey does have a comprehensive pay-to-play law and does ban contributions from regulated industries. Regulated industries include banks, public utilities, and insurance companies.

In any event, it is important to keep a close eye on developments in the area of campaign finance, whether involving federal law or involving other states' laws.

Clearly, there is a perceptible shift in the winds of campaign finance regulation, ones which may reverberate not only at the federal level but throughout the states as well.

The Status of Political Parties

During the past two decades, the U.S. Supreme Court has taken a number of decisions that have helped to define the place of political parties in our electoral and constitutional systems.

The following are four of the most important of them, each in its own way establishing that political parties, though regulated to various degrees by states' regulation, nevertheless retain the same protections under the constitution as other private organizations and individuals.

In 1986 in Tashjian v. Republican Party of Connecticut, the court determined that the State of Connecticut could not prevent the State Republican Party from allowing registered independents from voting in the primary. This was favored by the Party and the court ruled in its favor.

Later, in Eu v. San Francisco County Democratic Central Committee the court, in 1989, determined that the State of California could not justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election is orderly and fair. Furthermore, the U.S. Supreme Court held as unconstitutional California's ban on party endorsements in a primary, and the State's law limiting the length of time a person could serve as state party chair. It also held as unconstitutional the requirement that the position of chair alternate between northern and southern California.

In California Democratic Party v. Jones in 2000, the court ruled proposition 198 unconstitutional. The proposition had established a blanket primary system for the State. The court said that the blanket primary system, which allows registered voters to switch from party to party within the same primary (vote in GOP primary for governor and in Democratic primary for senator, etc.) infringed upon a parties freedom of association.

Finally, in Federal Election Commission v. Colorado Republican Federal Campaign Committee the court found a ban on independent expenditures by political parties to be unconstitutional.

Lieutenant Gubernatorial Debate and Gubernatorial Debate Dates: October 8th and October 16th

[Lieutenant Gubernatorial Debate Thursday, October 8th, 2009 at 8:00 P.M.](#)

Live Television Broadcast on News 12 Cablevision, Comcast; and NJ 101.5 FM.

Sponsored by Leadership NJ with News 12 NJ, NJ 101.5 FM, and the Gannett New Jersey Newspaper Group.

[Gubernatorial Debate Friday, October 16th, 2009 at 7:00 P.M.](#)

Streamed live on FOX.com.

Broadcast on Television on Saturday, October 17th at 2:00 p.m. on WTXF-TV Channel 29 (Philadelphia) and on Sunday, October 18th at 12:00 noon on WWOR-TV Channel 9 (New York).

Sponsored by William Paterson University with WWOR-TV, WTXF-TV, Fox News, The Star-Ledger, The Record, and The Herald News.

The Commission's Corner

This Section is set aside for writings by Commissioners and staff.

Tips for Candidates and Treasurers

By Evelyn Ford, Compliance Director

Record Keeping Tips

The treasurer or deputy treasurer of a candidate committee is required to make and maintain a written record of all funds and contributions received, and all expenditures made by the committee, including non-monetary contributions. The candidate is required to take all necessary steps to insure that proper records are maintained.

Failure to keep records will subject candidates and treasurers to fines for lack of compliance.

For contributions, information that must be maintained includes the name and address of the contributor, the amount of the contribution, the date the contribution was received, the name of the account on which the contribution check was drawn, and, if the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer. This record-keeping information is required for all contributions, even those that are \$300 or less in the aggregate.

A partnership or limited liability entity is prohibited from making contributions in New Jersey. Therefore, if a contribution check is received from a partnership entity or from a limited liability entity, the following written information must be received and maintained by the campaign treasurer:

1. Written instructions concerning the allocation of the contribution amount to a contributing partner(s) or member(s);
2. A signed acknowledgment of the contribution from each contributing partner or member who has not signed the contribution check or other written instrument; and,
3. Contributor information for each contributing partner or member.

For expenditures, a written record of all expenditures, regardless of amount, is required to be made and maintained. This requirement includes the name and address of the recipient, the amount and date of the expenditure, and the purpose of the expenditure. The treasurer shall include as part of the record of each expenditure, a receipt, invoice, bill, or other documentation for each expenditure made from each campaign or additional depository. The treasurer is also required to make a record of which of the six enumerated categories of permissible uses of funds is applicable to the expenditure.

Expenditures made by credit card are also subject to record-keeping requirements. A committee purchasing goods or services by use of a credit card is required to make and maintain a record of the exact name or title of the owner of the card, and the name of the lending institution that issued the card; the date of the purchase; the name and address of the vendor from whom the purchase was made; the purpose of the purchase; and, the cost and description of the goods or services purchased.

All records must be kept for four years after the date of the election to which they relate, or for four years after the transaction to which the records relate occurred, whichever is longer.

... Continued on page 6.

The Commission's Corner

Continued

How to Label a Political Communication

All candidates and committees subject to New Jersey's Campaign Act are required to label a political communication with a political identification statement. This statement is known as the "Paid for by" notice that is seen on pamphlets, press releases, flyers, signs, and paid advertising printed in newspapers. The "Paid for by" is also heard during radio ads and television commercials.

So, what information is required to be part of the "Paid for by" notice? The "Paid for by" notice must contain the **name** and **address** of the committee, person, or group and must state that the committee, person or group financed or paid for the communication. Note that the name and address of a committee in the "Paid for by" notice must be the same information appearing on the certificate of organization and designation of depository filed by the committee. If the ad is run by a person or group, the name and address must be the same as the information listed in public records or in a current telephone directory.

Here are some examples of political identification statements:

"PAID FOR BY JOHN DOE FOR ASSEMBLY, 1234 MAIN STREET, ANYTOWN, NJ."

"PAID FOR BY THE ANYTOWN REPUBLICANS, 5678 MAIN STREET, ANYTOWN, NJ."

Remember

Candidates spending no money, or spending \$4,000 or less, still are required to file A-1 short form reports.

All About 48-Hour Contribution Notices Filed by Candidates for Election Day, November 3rd

What is a 48-hour contribution notice? A 48-hour contribution notice is a report of any contribution in excess of \$1,200 in the aggregate from one source received by a candidate just prior to the election. For this year's general election, the time period that will trigger a 48-hour notice begins on October 21st and lasts through and including election day. If your campaign receives a contribution meeting this threshold within this time period, a report must be filed with ELEC within 48 hours of its receipt. The ELEC form used by candidates and campaign committees is the Form C-1, and it is one of the few forms that can be faxed to ELEC. The contributor's name and address, along with the date of receipt and the amount of the contribution is some of the information required on the form. If the contributor is an individual, the contributor's occupation and the name and address of the contributor's employer is also required.

Form C-1 can be electronically filed after obtaining a registration number and PIN, or a paper copy can be printed from ELEC's website at www.elec.state.nj.us.

Dates when Reports Disclosed to Public Pertaining to Election Day, November 3rd and for PACs Filing Third Quarter Reports

October 7, 2009	Gubernatorial reports, 29-day pre-election, 2009 General Election
October 8, 2009	Legislative and local reports, 29-day pre-election, 2009 General Election
October 16, 2009	3rd quarter reports, Legislative Leadership Committees and State Political Party Committees
October 22, 2009	3rd quarter reports, Continuing Political Committees, local Political Party Committees , and campaign committees filing quarterly reports
October 27, 2009	Gubernatorial reports, 11-day pre-election, 2009 General Election
October 28, 2009	Legislative and local reports , 11-day pre-election, 2009 General Election

Dates to Remember

● Election Day - November 3, 2009 ●

GENERAL ELECTION			
Who Files	What Report	When	Period Covered
Candidates, Political Committees, and Independent Expenditures	29-day pre	October 5 th	June 20 th through October 2 nd
	11-day pre	October 23 rd	October 3 rd through October 20 th
	20-day post	November 23 rd	October 21 st through November 20 th
QUARTERLY			
Who Files	What Report	When	Period Covered
Political Parties, Legislative Leadership, Committees, PACs/CPCs, and Future and Past Candidates	Third Quarter	October 15 th	July 1 st through September 30 th
	Fourth Quarter	January 15 th	October 1 st through December 31 st
48-HOUR NOTICES			
Who Files	What Report	When	
Candidates, Political Committees, and Independent Expenditures	Contributions and/or Expenditures exceeding \$1,200	October 21 st through November 3 rd	
48-HOUR NOTICES			
Who Files	What Report	When	
Political Parties, Legislative Leadership Committees, and PACs/CPCs	Contributions and/or Expenditures exceeding \$1,200	From October 1 st through November 3 rd	
LOBBYIST QUARTERLY			
Who Files	What Report	When	Period Covered
Governmental Affairs Agents (lobbyists)	Third Quarter Fourth Quarter	October 13 th January 11 th	July 1 st through September 30 th October 1 st through December 31 st

ELEC Directors

Jeffrey M. Brindle	Executive Director
Carol L. Hoekje	Legal Director
Evelyn Ford	Compliance Director
Carol Neiman	Director of Information Technology
Amy F. Davis	Director of Special Programs
Linda White	Director of Lobbying
Leonard Gicas	Director of Review & Investigation
Todd J. Wojcik	Director of Campaign Financing
Steven M. Dodson	Director of Finance & Administration