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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

In campaign finance circles there is much talk about the impact of outside, independent groups on elections. Most of this talk centers around 527 and 501(c) organizations. These organizations, established under IRS rules, are not subject to limits on contributions they have received nor are they restricted in terms of how much they can spend. These so-called issue advocacy groups operate independently of candidate campaigns and are not subject to disclosure rules unless they use the magic words "vote for" or "against" in their advertisements.

The seminal case, Citizens United, decided by the U.S. Supreme Court in 2010, paved the way for laws to be enacted that would require disclosure by these groups, thus enabling the voters to learn who is funding them and how much they, in turn, are spending to influence the outcome of elections.

In January of 2010 the New Jersey Election Law Enforcement Commission proposed that these outside groups be subject to reporting under the State's campaign finance laws. Subsequently legislation was introduced to do just that. To this point, however, the Legislature has not acted on those bills. So it seems organizations of this kind that participate in the upcoming legislative election will be immune to the requirements of disclosure. As long as they don't cross the line and expressly support or oppose a candidate or public question they can continue to function in a stealth way.

But all is not lost. There may indeed be those groups that will expressly support or oppose candidates, and at the same time do so independently. If so, those groups will be subject to reporting their expenditures to the Commission. It doesn't matter what type of organization it is, 527, 501(c), PAC or Political Committee; if the magic words are used the group is subject to independent expenditure reporting.

Here's how it works. An independent expenditure is defined under law as an expenditure made by an individual or corporation, candidate, political party committee, legislative leadership committee or political committee that supports or opposes a candidate and is undertaken without the cooperation or consultation with the candidate. The statute also includes independent efforts taken in the context of a public question. In the case of an individual or corporation the threshold amount that triggers the reporting of an independent expenditure is \$1,200.

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## Comments from the Chairman Ronald DeFilippis

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It is important to reiterate that disclosure requirements only kick in when an individual, corporation or political entity states explicitly that it supports or opposes a specific candidate or public question. Communications that do not contain this express language are not deemed to be independent expenditures under the law and are not subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act.

When spending by any of the entities mentioned above constitutes an independent expenditure, disclosure is required pursuant to the reporting requirements of the Act. In other words candidates and other political entities must report their independent expenditures on the dates applicable to them while individuals and corporations must report in the same way as a political committee. Candidates and political committees must file 29 and 11 days before an election and 20 days after. Other political entities file on a quarterly basis. All, however, are subject to the 48-hour notice requirement when independent expenditures fall after the 13<sup>th</sup> day before an election in the case of candidates, individuals and corporations or after the 31<sup>st</sup> day prior to an election in the case of the other political entities.

In the case of an individual or corporation making an independent expenditure of more than \$1,200 from his, her or its personal or corporate funds the filing is made on a form prescribed by the Commission and should contain the following information:

- The name and mailing address of the individual or corporation making the independent expenditure;
- The occupation of the individual and the mailing address of his or her employer; and
- An itemization of the expenditures, including the dates the expenditures were made, the names and addresses of the payees, the amount of each expenditure, and the total amount expended.

As noted above 48-hour notices are required to be filed for independent expenditures made immediately before an election. An individual or corporation making an independent expenditure in excess of \$1,200 between the 13<sup>th</sup> day prior to the election and the day of the election must file a report containing the same information as mentioned immediately above. This report must be made within 48 hours of making the expenditure and may be faxed to the Commission.

The reporting of independent expenditures in a timely manner helps the public to be informed about the amount of money that is spent independently of the candidates themselves. With outside groups having become such a major issue nationally and in some states, it is a sure bet that we will see this activity in New Jersey. While some of this activity by 527 and 501(c) committees may not be captured, it is important that independent expenditure activity by groups that expressly support or oppose candidates is disclosed.

## Executive Director's Thoughts Jeff Brindle

It's not too late.

There is a precedent for changing election-related laws shortly before an election.

In 1981 the rules were altered when the Legislature enacted the Open Primary Law.

This law prohibited party organizations from endorsing candidates in the primary. It prevented county party committees from granting the party line to selected candidates, thus denying them an important edge in the election.

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## Executive Director's Thoughts Jeff Brindle

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The law effectively wiped out the advantage then Paterson Mayor Pat Kramer had going into the gubernatorial primary and paved the way for the former Assembly Speaker, Thomas H. Kean, to lock-up the Republican nomination.

Kean then went on to win the governorship by a mere 1,700 votes over then Congressman James J. Florio. He subsequently became one of the most popular governors in New Jersey history.

A law that now needs to be enacted is one that would require disclosure by so-called issue advocacy organizations.

These are the 527 and 501(c) organizations that can raise contributions in unlimited amounts, spend in unlimited amounts, and avoid disclosure as long as they don't expressly support or oppose a candidate.

Under existing law, as long as one of these "stealth" organizations doesn't use the magic words "vote for" or "against" in their ads, they're free of any legal responsibility to disclose anything about themselves.

This needs to be changed and can be. Indeed, the Citizens United decision by the U.S. Supreme Court and the SpeechNow decision by the D.C. Court of Appeals, has given the green light to requiring disclosure by these organizations.

The Citizens United decision states, "The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech . . . . For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent to express advocacy."

In other words, the Court has given a hall pass to the enactment of laws that require disclosure of issue advocacy efforts conducted in the context of a campaign.

Disclosure need not be limited to those communications that contain the "magic words."

In January 2010, the New Jersey Election Law Enforcement Commission proposed that legislation be enacted to require 527 organizations to disclose their financial activity.

This proposal was subsequently amended to include 501(c) committees.

Not long after, on February 18, 2010, the Assembly Judiciary Committee called a public hearing to discuss the impact of the Citizens United case on New Jersey's campaign finance law.

At that hearing, I suggested that State officials may now want to explore mandatory reporting by issue advocacy groups.

Since that time several bills have been introduced that would require disclosure by these outside groups.

One, S-2379 (Buono), was moved out of the Senate State Government Committee last November. Since that time there has been no movement on it, or any other bill of its kind.

The issue came to the public's attention again recently with the announcement that a new 501(c)(4) group, One New Jersey, has formed. The organizers of this Democratic party-oriented group indicated that they are under no legal obligation to disclose their activities even though the organization will engage in issue advocacy and probably participate in the coming election campaign.

There have been a number of other outside groups that have participated in the electoral/governmental affairs of New Jersey, going as far back as the early 2,000s.

Last year, Reform New Jersey Now, a Republican issue advocacy group, formed to support the legislative agenda of the governor.

The group did disclose its financial activity voluntarily last December and its grassroots lobbying activity this past February.

In the process, however, it did receive criticism.

With the legislative elections looming it is a good bet that other independent groups on both sides of

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## Executive Director's Thoughts Jeff Brindle

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the political spectrum will be engaged in this pivotal contest.

If these groups are formed as 527 or 501(c) organizations they will have no legal obligation to disclose their activities.

The voters will be left in the dark. There will be no transparency in terms of who backs them financially, who they support or oppose, or how much money they spend doing it.

And that's a loss for democracy.

But, there is still time. The Legislature could pass legislation that would require stealth organizations to disclose their political activities.

And unlike the Open Primary Law, which, later in the decade, was ruled unconstitutional, this law would pass constitutional muster.

The U.S. Supreme Court has strongly endorsed disclosure.

## Theresa Lelinski Profile

### [Assistant Legal Director](#)

Before she began working for the New Jersey Election Law Enforcement Commission, attorney Theresa "Terri" Lelinski gained valuable experience as a clerk for Mercer County Assignment Judge Linda Feinberg.

"Judge Feinberg really put an emphasis on fairness and ethics," said Lelinski, who as part of her duties handled public information requests for the court and learned the importance of transparency in government.

Another experience helped prepare her for ELEC.

Lelinski got yelled at a lot by angry residents summoned to jury duty and others.

As part of ELEC's five-person legal staff, one of her main jobs is preparing complaints against candidates who violate the state's campaign finance laws.

Many are not happy when they learn they are facing fines.

However, "Here, it's actually a little calmer," said Lelinski.

Most candidates who initially react with anger over complaints usually calm down when staff attorneys help guide them through the process and see if there are mitigating factors that might lessen their fines.

Before attending college, Lelinski, who began working at ELEC in 2009, could hardly have imagined she would one day work for a state ethics agency. She didn't even know she would become a lawyer.

Both her parents were teachers before they retired. So was one of her grandmothers, as well as aunts, uncles and her sister-in-law.

But after obtaining a bachelor's degree in English at Lasalle University, Lelinski decided to attend Rutgers Law School in Camden. She acknowledges some of the classes were grueling. The best part, she said, was the analysis and research that were part of her legal training. That work also was good preparation for her duties at ELEC.

Lelinski never had much interest in politics and still doesn't. But she finds campaign finance law intriguing. "It's interesting to find out the reasons why we have these laws," she said.

As a lifelong Delaware Valley resident, she is an avid fan of Philadelphia sports teams, particularly the Phillies. In high school, she was a pitcher. "I've always been into sports," she said.

Much of her interest stems from her father, Joe, who coaches the Pennwood Middle School softball team and has had three undefeated seasons in the past four years. "I've learned everything from him," she said.

Lelinski serves as assistant coach, and expects one day she will take over the reins from her dad. She also provides private pitching and hitting instruction.

When she's not coaching, Lelinski enjoys reading historical fiction, particularly the revolutionary war and World War II, and young adult fiction like the Harry Potter series.

## TRAINING SEMINARS

The seminars listed below will be held at the Offices of the Commission, located at 28 West State Street, Trenton, New Jersey. Seminars are conducted at 10:00 a.m.

RSVP by mailing the form back to ELEC, PO Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854.

	DATE	DATE	DATE
<b>TREASURER TRAINING FOR CANDIDATES AND COMMITTEES</b> <a href="#">Treasurer Training Reservation Form</a>			
	9/12/2011	9/27/2011	10/3/2011
<b>TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS</b>			
	9/21/2011	12/14/2011	
<b>R-1 ELECTRONIC FILING SOFTWARE (REFS)</b> <a href="#">REFS Training Reservation Form</a>			
	9/14/2011	9/26/2011	10/4/2011
<b>PAY-TO-PLAY</b> <a href="#">Pay-to-Play Reservation Form</a>			
	*9/16/2011		
* Full			

## DATES TO REMEMBER

### Reporting Dates

	PERIOD COVERED	REPORT DUE DATE
<b>GENERAL ELECTION** - NOVEMBER 8, 2011</b>		
29-day pre-election	6/25/11 - 10/7/11	10/11/2011
11-day pre-election	10/8/11 - 10/25/11	10/28/2011
20-day post-election	10/26/11 - 11/25/11	11/28/2011
48 Hour Notice Reports Start on 10/26/11 through 11/8/11		
<b>PACS &amp; CAMPAIGN QUARTERLY FILERS</b>		
3 <sup>rd</sup> Quarter	7/1/11 - 9/30/11	10/17/2011
4 <sup>th</sup> Quarter	10/1/11 - 12/31/11	1/17/2012

\*\* Form PFD-1 is due on April 21, 2011 for Primary Election Candidates and June 17, 2011 for Independent General Election Candidates.

[Late and non-filing of reports are subject to civil penalties determined by the Commissioners](#)