

Thank you very much for inviting me here today.

If I may I would like to take this time to discuss the state's Pay-to-Play law and what many would call its unintended consequences.

Four years ago I became Executive Director of the New Jersey Election Law Enforcement Commission, better known as ELEC.

Since that time it has been my aim to achieve two goals.

First, to make ELEC better known throughout the state.

Second, to improve ELEC's standing with the Legislature.

Improved name recognition would enhance compliance with the laws. It would also insure that ELEC's legislative proposals would be heard.

A good relationship with the Legislature, in turn, would help pave the way for our recommendations to be adopted; if not immediately than in time.

We have been undertaking this effort in a commonsense way by urging changes that both make sense and are workable in practice.

As a former municipal chairman and candidate for Assembly, I know it can be difficult to comply with complex laws.

And the Pay-to-Play law has proven to be difficult to comply with.

I also know that well intentioned reforms can have unintended consequences.

And this law has had unintended consequences.

The Pay-to-Play law needs to be changed.

It is overly convoluted. The law contains too many layers of authority, making it difficult to understand and comply with.

It needs to be simplified and strengthened.

As the novelist Balzac said, "Laws are spider webs through which big flies pass and little ones get caught."

This describes pay-to-play.

The big flies circumvent it and the little ones throw up their hands and stop being involved.

Neither is good for the electoral system.

The Pay-to-Play law works like this.

Or let me put it another way. I'm going to attempt to explain it.

A business that has been awarded a state contract is required to disclose its contributions to the State Treasurer.

This has to be done prior to ten days of the contract going into effect.

A business awarded a legislative, county, or municipal contract has a similar obligation, only contributions must be disclosed to the Legislature, or the applicable county or municipality.

In addition, any business that receives more than \$50,000 worth of public contracts statewide is required to report its contributions and public contracts to ELEC annually.

The report must be filed by March 30.

The law bans businesses from receiving a contract of more than \$17,500 if it made a contribution of more than \$300.

The ban involves the 18-month period prior to the contract being awarded and for the term of the contract.

Prohibitions apply to all candidates, officeholders, and political parties that have any involvement with the decision to grant a contract.

There is, however, an exemption for contracts awarded during times of emergency.

These are the restrictions that apply to state contracts and to contracts awarded by municipalities and counties operating under the state Pay-to-Play law.

But what happens if a local government entity doesn't want to be subject to state law?

In this case, local governments have two options:

- 1) They can write their own ordinance; or
- 2) They can invoke the fair and open provision.

The law allows counties, municipalities, county and municipal authorities, boards of education and fire districts, to pass their own pay-to-play ordinances or rules.

At last count 176 municipalities, school districts, and authorities have done so.

Seven counties have adopted their own ordinances.

The law also permits local governments to invoke the “fair and open” provision. This loophole is available to them if they would rather not enact their own ordinance.

Fair and open simply allows municipalities and counties to get out from under state law if they publicly advertise their bidding process.

When they do this none of the features of the state Pay-to-Play law apply, including the \$300 contribution limit.

This “fair and open” provision applies to local authorities, boards of education, and fire districts as well as municipalities and counties.

Added to these exemptions are executive orders that have further clouded the issue, adding more layers of complexity onto the law.

If I can sum up.

The law:

- 1) applies to all state contracts;
- 2) the law exempts contracts awarded under emergency circumstances;
- 3) the state law sometimes applies to local government entities;
- 4) municipalities and counties can enact their own ordinances; hundreds have;
- 5) local governments can invoke the fair and open provision; and
- 6) various and sundry executive orders apply in certain circumstances.

In other words, we have a law that is difficult to untangle yet one that can cause a business to forfeit a public contract, even in the middle of performing the contract, if the business, a partner, or a spouse, inadvertently makes a contribution of \$300.

Though well intended, this law has had unintended consequences.

Here are some.

Number One – Instead of making our campaign system more transparent it has done the opposite.

Contributions are now harder to track. And as has been said by others: “money is the mother’s milk of politics.”

There is less disclosure, not more.

Number Two – The law has forced many business people to withdraw from political participation.

I can’t tell you how many people have told me: I can’t figure out the law so I just don’t give anymore.

This fact is evidenced through the drastic decline in fundraising by candidates and political parties.

Unfortunately, these are the very-same entities that are the most accountable to the public.

Since 2006, when the law went into effect, spending by candidates and parties has declined by more than 50 percent.

Number Three – Where did the money go?

It went to two places. Both not subject to pay-to-play.

First – political action committees, or PACs, have been established by party operatives.

These party operatives have set up PACs as totally separate from the political parties.

PACs are not subject to pay-to-play restrictions. They constitute a legal way for businesses to circumvent the Pay-to-Play law.

With a wink and a nod contractors make contributions to these groups, thereby gaining the same kind of influence that they would if they gave to candidates or parties directly.

Only pay-to-play doesn't apply.

Both parties have done this. It's been bipartisan.

Naturally this makes it more difficult to track the flow of money. The public is left in the dark in terms of the intent of pay-to-play, which is to connect the dots between contributions and contracts.

Second – Independent, outside groups have practically taken over politics in New Jersey.

Over \$38 million was spent by Super PACs and others in this year's legislative and gubernatorial election.

That's six times what was spent by the state parties and four legislative leadership committees.

These independent groups have become surrogate political parties. They are assuming the traditional roles played by the parties. They are getting out the vote, registering voters, providing strategy, and conducting polls.

And of course they are spending heavily on radio, TV, and direct mail.

Independent groups are emasculating the parties, which throughout our history have been the staple of American politics.

These groups operate in the dark. Most are unregulated and are not required to disclose their contributors or, in some cases, their spending.

These groups often do not operate in a responsible way. Instead they relieve the candidates and parties of doing the dirty work of personal attacks.

With names like “Fund for Good Government” or “For Your Future” it is difficult for the general public to connect them to a candidate or political party.

Now I’m not laying this all at the feet of the Pay-to-Play law. The trend started nationally with the McCain/Feingold reforms in 2002. It then sped up following the Citizens United case in 2010.

But undeniably a lot of contractor cash has flowed to these groups rather than to candidates and parties.

Why? Because these groups are not subject to pay-to-play.

Finally, Number Four – I’m sure you are familiar with the Birdsall case.

It centered around Birdsall executives allegedly laundering money through their employees, who in turn made \$300 contributions to various public officials and parties.

A number were indicted. This scheme was an alleged illegal attempt to skirt the Pay-to-Play law in an effort to secure public contracts.

Thus, this very complicated law has resulted in businesses either withdrawing from political participation or attempting legally or illegally to skirt the law.

Is there anything to be done about this?

We think so.

First, the Commission has put forth a plan to amend the law.

Our proposals have largely been supported by Governor Christie and have been incorporated into a bill introduced by State Senator James Beach.

Here is the plan.

1. Enact one state law that applies at all levels of government;

2. Abolish the fair and open loophole;
3. Require any business that receives a contract of \$17,500 to disclose the contract and contributions made; and,
4. Increase the contribution limit applying to public contractors from \$300 to \$1,000.

These straight forward changes will simplify the law and make it understandable to all.

They would eliminate a loophole that makes a mockery of the law.

They would strengthen disclosure and enhance transparency.

And they would help to return fundraising prowess to accountable parties and candidates by increasing the contribution limit to \$1,000.

This limit is less than 50 percent of the limit applying to non-contractors.

Second, in an op-ed piece I suggested that the Legislature form a commission along the lines of the Rosenthal Commission in 1993 to determine ways to strengthen the political parties and offset the influence of PACs and independent groups.

Third, outside groups should be made to disclose their contributors and their spending.

Under Citizens United, the U.S. Supreme Court came out strongly for disclosure.

So there is not a problem constitutionally in getting these groups to disclose.

It just depends on the will of the Legislature.

By requiring disclosure by these groups, in combination with the pay-to-play reforms, public contractors and others will begin to send money back to the parties and candidates, offsetting the influence of these groups.

At the very least these steps should be undertaken to improve pay-to-play, to bring greater transparency to the process, and to avert a scandal that surely is looming as the electoral process is more and more turned over to these anonymous groups.

So in conclusion.

I want to thank you again for inviting me here today and allowing me to speak about New Jersey's Pay-to-Play law and my strong belief that it needs to be simplified and made stronger through disclosure.

It has been a pleasure.

I know that what all of you do is critical to the health and welfare of the communities you serve.

From what I know you do an exemplary job fulfilling these demands and in carrying out your responsibilities in a fiscally and environmentally responsible way.

Thank you again.