



## 2004 Reform Package Had Big Impact on Campaign Finance and Lobbying Laws but One Reform Might Now be Unconstitutional

**JEFF BRINDLE** | June 25, 2021, 9:55 am | in [Edward Edwards](#)

From time-to-time, reform movements have taken hold in New Jersey as they have in many jurisdictions of democratic persuasion.

One such time happened in 2004, when a package of 22 bills, referred to as “Restoring the Public Trust,” passed the Legislature and was signed into law by then-Governor Jim McGreevey.

A key architect of the reform package was then-Assembly Majority Leader Joe Roberts, who will be featured in an interview on ELEC’s website next month. The interview is part of the Commission’s “Oral History of the Commission Project.”

Soon after he shepherded the reform package into law, Roberts, a Democrat who represented the 5<sup>th</sup> Legislative District (Camden County), became Assembly Speaker. He retired from the Legislature in January 2010 after serving nearly 23 years in the Assembly.

Included among the reform initiatives was the 2005 Clean Elections Pilot project, several amendments to the state lobbying law, including grassroots lobbying disclosure, and tight pay-to-play contribution restrictions on public contractors.

Importantly, one bill sponsored by Roberts provided an extra appropriation of \$2 million for ELEC, raising the Commission’s budget slightly to more than \$5 million for the first time.

The increase in the Commission’s budget enabled the Commission to carry out its new responsibilities and allowed for ELEC to continue as one of the top agencies of its kind in the nation.

It also helped fortify the agency against a number of lean state budgetary years that included some cuts. It took 15 years before the Commission’s budget again exceeded \$5 million. Despite having a flat budget for more than a decade, the Commission showed that it could continue to be successful during tough times.

The reform package overall led to many improvements in campaign finance and lobbying laws. However, one reform that in 2004 seemed necessary and worthwhile may in retrospect be counter-productive and even unconstitutional.

Such is the case with a provision in the anti-pay-to-play bill that banned inter-party transfers of money between county political parties between January 1 and June 30 of each year. This effectively banned county organizations from donating to each other during the primary.

When the ban went into law, it may have made some sense. From the standpoint of good government reformers, this prohibition might help prevent “wheeling,” or the circumvention of contribution limits by wealthy donors who could spread money around to various county party organizations.

Instead, the ban may have contributed to the demise of the party system in New Jersey by making fund-raising even more difficult. That, in turn, has enabled independent, dark money groups to fill the void by expanding their influence over the state’s elections.

Perhaps most importantly, the curb on transfers between county parties may well be unconstitutional.

In *Missouri Ethics Commission, et al., v. Free and Fair Elections Fund (2018)*, the Eight Circuit Court of Appeals found unconstitutional a Missouri law that banned transfers between political actions committees (PACs).

In New Jersey, county parties are similar to PACs since they are ongoing fund-raising committees that report on a quarterly basis.

In its ruling, the Eight Circuit Court noted:

“The (Missouri Ethics) Commission asserts that additional disclosure requirements would not help the *public* to track the source of donations that are commingled with the rest of a PAC’s funds and shuttled through a series of other PACs before reaching a candidate. But even assuming the Commission is correct about the difficulty of tracking funds, the argument is self-defeating: If disclosure laws will not help the public discern who gave money to whom, then we are hard pressed to see how a candidate would identify an original donor to create a risk of *quid pro quo corruption*.”

The Eighth Circuit had upheld an earlier decision by the United States District Court for the Western District of Missouri-Jefferson City, which found the law “unconstitutional on its face under the First Amendment and unconstitutional as applied to Free and Fair Elections.”

In response to the lower court decisions, the State of Missouri asked the U.S. Supreme Court to review the question of whether the Missouri law banning contributions between PACs was a violation of the First Amendment.

At least one other circuit, the 11<sup>th</sup> district in 2016, has upheld PAC-to-PAC bans as constitutional. But the U.S. Supreme Court on March 15, 2019, denied the petition for certiorari in the Missouri case, thus leaving the Eighth Circuit ruling in place.

Citing its ruling in *Citizens United v FEC (2010)*, the high court said: “This Court’s most recent caselaw makes clear that the State has no (or very little) interest in regulating contributions between PACs because they present no risk of quid pro quo corruption.”

Thus, in denying certiorari, and thereby implicitly questioning the constitutionality of Missouri’s law, it can be assumed that the Supreme Court would rightfully question a similar law in New Jersey that bans county political parties from inter-party transfers.

If it is unconstitutional to restrict PAC-to-PAC transfers, whether made to PACs that contribute to candidates or spend independently, why is it not unconstitutional to restrict county party-to-county party donations?

Is there a greater risk of quid pro quo corruption when a county political party, which is more accountable under the law than a special interest PAC or independent group, gives to a sister party than when a PAC gives to another PAC?

In today’s post-*Citizens United* world, wealthy donors can easily spread money around among independent groups, which face no contribution limits, few restrictions other than to not coordinate with candidates or parties, and often conceal their donors (hence, the name dark money).

Wouldn’t they be less inclined to give to county parties, which are subject to contribution limits, special restrictions like the county primary transfers and full disclosure requirements? It seems so since county party fund-raising in 2020 was 75 percent less than 2003, the peak fund-raising year during the last two decades.

The political party system in New Jersey is on life support. While a seemingly small step, repealing the ban on county party primary transfers, along with other party-related reforms recommended by ELEC, would help restore the influence of county parties in our electoral and governmental processes while perhaps offsetting the clout of dark money groups.

*Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission.*

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