



*State of New Jersey*

## ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

ALBERT BURSTEIN  
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### PUBLIC SESSION MINUTES

October 25, 2005

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Davis, Counsel Wyse, and Senior Staff were present.

#### 1. Open Public Meetings Statement

Chair English 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.

The meeting convened at 11:00 a.m. in Trenton.

#### 2. Approval of Public Session Minutes of September 13, 2005 and September 20, 2005

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission approved the Public Session Minutes of September 13, 2005 and September 20, 2005.

Executive Director Herrmann stated that on behalf of the other Commissioners and staff, he wished to congratulate Chair English on her reappointment to the Commission by Acting Governor Richard J. Codey and the Senate for a new three-year term.

#### 3. Executive Director's Report

##### A. Clean Elections Report

The Executive Director reported that on October 6, 2005, he provided an update to the Clean Elections Commission at a meeting held in the Cook Campus Center of Rutgers University on recent administrative developments in the pilot program. He indicated that he reviewed the amounts of qualifying contributions raised in the Sixth Legislative District by the four candidates. He mentioned that he also reviewed the

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results of the on-line contributions made by debit cards and e-checks to candidates in the Sixth and Thirteenth Legislative Districts pursuant to ELEC's recent advisory opinion on the use of such banking tools.

Executive Director Herrmann discussed ELEC's work on the 500-word Voter's Guide Statements by candidates who voluntarily submitted them for placement on ELEC's website, ELEC's handling of the forms filed for the two candidate debates being held in the Sixth District, and the payout by ELEC of additional grant monies in the Sixth District to the Democratic candidates because the Republican candidates did not become certified.

The Executive Director informed the Commission that Legal Director Massar, Director of Public Financing Amy Davis, and he provided technical advice for a discussion about the possibility of the Sixth District Democratic candidates sharing some of their public money with the Republican candidates by matching on a pro rata basis the money the Republicans raised.

The Executive Director noted that he informed the Clean Elections Commission that ELEC would be doing an advisory opinion at its October 18<sup>th</sup> meeting about the disposition of leftover qualifying contributions by the Thirteenth District Republicans.

B. Staff Activities

According to Executive Director Herrmann, he has been named by the Council on Governmental Ethics Laws (COGEL) President to co-chair a subcommittee of the Past Presidents' Advisory Committee. He stated that this new subcommittee will be responsible for the restoration and preservation of COGEL records. The Executive Director noted that it is a good fit for him as a "semi-retired historian."

Executive Director Herrmann reported that Director of Administration Gary Alpert has put together a "Human Resources Information Survey" for the staff. He indicated that the Finance and Administration Section will be able to present instructional seminars and also schedule guest speakers to discuss various personnel topics. Executive Director Herrmann said that the Section is endeavoring to improve and expand its ability to provide the staff with the latest Human Resources related information.

Executive Director Herrmann announced that on September 21, 2005, he was a panelist on a program sponsored by the Institute for Continuing Legal Education (ICLE) and the New Jersey Bar Association (NJBA) entitled "Lobbying for Lawyers: Who is a Lobbyist?." According to the Executive Director, he spoke about the new lobbying laws and ELEC's repropounded regulations to implement them. He said that many people on the panel and in the audience were very complimentary about ELEC's efforts to put the new regulations in place in a fair and open manner.

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Executive Director Herrmann added that on September 27, 2005, Legal Director Massar met with Professor Frank Askin's Election Law Seminar at the Rutgers University Law School in Newark to discuss New Jersey's campaign finance laws and that on October 6, 2005, he gave a lecture to Professor Dan Weissman's journalism class at Rutgers University in New Brunswick about the work of ELEC and campaign finance issues relevant to the current gubernatorial election and Clean Election's Pilot Project.

Executive Director Herrmann reported that on October 14, 2005, the Compliance Division with the assistance of the Systems Administration Section, released comprehensive filing statistics from the 29-day preelection assembly reports to the media and public. He said that all of the candidates were listed by name, party, incumbency status, and amounts raised and spent. Executive Director Herrmann expressed special thanks to Compliance Director Evelyn Ford, Director of Systems Administration Carol Neiman, and their staffs for the many days of hard work they put into this important disclosure project.

C. New Staff Members

Executive Director Herrmann introduced the following new staff members:

- Lovinsky Joseph, Assistant Review Officer;
- Sylvette Seay, Assistant Compliance Officer;
- Maite Urtasun, Assistant Compliance Officer;
- Lindsey Kugel, Assistant Review Officer;
- Kenneth Mariano, Assistant Review Officer;
- Marcus Malmignati, Assistant Compliance Officer;
- Danielle Hacker, Assistant Compliance Officer;
- Christopher Vigale, Assistant Compliance Officer; and,
- Tamico Flack, Clerk.

D. Future Meeting Schedule

- November 15, 2005 at 11:00 a.m. in Trenton; and,
- December 20, 2005 at 11:00 a.m. in Trenton.

4. Adoption of Reproposed Amendments and New Rules to Implement New Lobbying Laws

Legal Director Massar stated that in late 2004, the Commission proposed extensive amendments to its regulations and new rules to implement the provisions of new lobbying laws enacted during 2004. She said that the new lobbying laws significantly expanded the scope of lobbying activity and reporting in New Jersey. Legal Director Massar said that as a

result of testimony offered at two public hearings on the original proposal and the numerous written comments received, the Commission determined that the new rules and amendments, as originally proposed required significant changes to address the issues raised by the commenters. She indicated that because the required changes to the original proposal were substantive and could not be made upon adoption, the Commission repropose new rules and amendments to its regulations which responded to the testimony and comments received. A public hearing on the reproposal was conducted at the Commission meeting on September 20, 2005, and the period for receipt of written comments expired on September 30, 2005. Legal Director Massar summarized for the Commission written comments and testimony concerning the repropose new rules.

Legal Director Massar stated that staff recommends that the Commission adopt the reproposal with one change. Staff recommended that the reference to the Open Public Meetings Act (OPMA) be deleted from repropose N.J.A.C. 19:25-20.3(a)8iii, which deals with volunteer participation in task forces. As a result of comments received, staff has determined that the OPMA is not applicable to the work of task forces.

Director Massar stated the staff belief that it is extremely important to adopt the reproposal at this time so that implementation of the new laws may begin. In the near term, specific questions about application of the new law and regulations can be raised and addressed in the advisory opinion process. She stated that the commenters have raised significant issues concerning the repropose regulations. Staff acknowledges that further clarification is required and expects to undertake further regulatory action on an on-going basis to resolve the remaining complex issues noted by the commenters.

Commissioner Burstein cited the work of staff, in particular Legal Director Massar, for an exemplary job in crafting regulations to effectuate a complex law.

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission adopted the lobbying regulations.

5. 2005 Clean Elections Program Report

Director of Public Financing Amy Davis presented the following report on the Clean Elections Pilot Program. Director Davis said that the program involved the Sixth and Thirteenth Legislative District State Assembly candidates in the 2005 general election. Director Davis said that candidates were required to receive qualifying contributions by 4:00 P.M. on September 21, 2005, and submit them to the Commission by September 26, 2005 in order to receive public funds. She indicated that in the Sixth District, submissions were filed by Republican candidates, Marc Fleischner and JoAnn Gurenlian, and Democratic candidates, Louis Greenwald and Pamela Rosen Lampitt. According to Director Davis, there were no submissions filed by any Thirteenth District candidate. The submissions in the Sixth District are set forth below:

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	<b># of \$5 Contributions</b>	<b># of \$30 Contributions</b>	<b>Total of Contributions</b>
<b>Marc Fleischner</b>			
Sub #1 (9/26/05)	821	244	1,065
<b>JoAnn Gurenlian</b>			
Sub #1 (9/26/05)	807	255	1,062
<b>Pamela Rosen Lampitt</b>			
Sub #1 (7/28/05)	20	21	41
Sub #2 (8/11/05)	82	26	108
Sub #3 (8/25/05)	377	204	581
Sub #4 (9/1/05)	501	176	677
Sub #5 (9/13/05)	321	122	443
Sub #6 (9/20/05)	103	45	148
<b>TOTAL:</b>	<b>1,404</b>	<b>594</b>	<b>1,998</b>
<b>Louis Greenwald</b>			
Sub #1 (7/28/05)	25	30	55
Sub #2 (8/11/05)	98	50	148
Sub #3 (8/25/05)	409	233	642
Sub #4 (9/1/05)	517	218	735
Sub #5 (9/13/05)	350	111	461
Sub #6 (9/20/05)	74	48	122
<b>TOTAL:</b>	<b>1,473</b>	<b>690</b>	<b>2,163</b>

Director Davis said that based upon the submissions, Candidates Fleischner and Gurenlian were not certified as 2005 general election Clean Elections candidates because they did not each receive 1,500 qualifying contributions, comprised of at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00.

Director Davis said, however, that based upon review of the final submissions and the earlier Clean Elections submissions filed, staff determined that Candidates Greenwald and Lampitt did meet the criteria for certification as 2005 Clean Elections candidates. She said that staff notified the Department of Treasury that the candidates were eligible to receive the initial grant amount and a check for \$65,100 was issued to each candidate on September 22, 2005. She added that an additional grant check was issued to each candidate on October 6, 2005, equal to the \$65,100 initial grant amount, since the opposing party candidates in the Sixth Legislative District were not certified Clean Elections Candidates.

Chair English recognized Assembly Candidate Pamela Rosen Lampitt, a Clean Elections Certified Candidate in the Sixth Legislative District.

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Candidate Lampitt stated that she was proud to participate in the pilot program. She said, however, that it took a tremendous amount of work and much strategic planning to qualify. Candidate Lampitt said that it was a challenge, but not insurmountable, and that a major part of the effort was to educate the voter.

Candidate Lampitt stated that her runningmate, Louis Greenwald, and she had to find other forums besides knocking on doors to accomplish their goal. She said that they arranged for picnics and house parties in order to raise the requisite number of contributions in denominations of \$5 and \$30.

Chair English asked whether or not Ms. Lampitt found voters to be supportive of the program.

Candidate Lampitt stated that after explaining the program voters appeared to be supportive.

Chair English thanked the candidate for her efforts on behalf of the program.

Commissioner Davis asked whether or not any thresholds should be modified.

Candidate Lampitt stated that it was not so much the thresholds that were the problem but the \$5 and \$30 denominations. She suggested that contributors be allowed to give up to \$30.

Vice Chair Tober asked whether or not check cards were helpful.

Ms. Lampitt said that they would be helpful in the future.

Chair English recognized Assemblyman Louis D. Greenwald.

Assemblyman Greenwald stated that Clean Elections is a very important program and that he was one of the sponsors of the bill. He said it was a rewarding experience and a remarkable effort.

Assemblyman Greenwald reiterated the fact that Candidate Lampitt and he stayed with the grassroots approach but changed strategy once it became apparent that the threshold amount would not be reached simply by knocking on doors. He said that the pair began to arrange house parties and picnics. Assemblyman Greenwald added that the impression left by the media that his runningmate and he were part of a machine was wrong. He said that they achieved the Clean Elections goal through hard work.

Assemblyman Greenwald explained that in the interest of the Clean Elections Program, desiring that it should succeed because it is a meritorious program, his runningmate and he gave their opponents \$75,000 of their Clean Elections money. He said, however, that the money was given with the condition that no other monies would be utilized by GOP Candidates Marc Fleischner and JoAnn Gurenlian and that they would not engage in negative advertising. Assemblyman Greenwald said that the GOP Candidates signed a pledge to that

effect. Assemblyman Greenwald added that only one day after signing the pledge the Republicans distributed a flier, "paid for by the Camden County Republican Committee," that was highly negative and critical of Ms. Lampitt and him. Assemblyman Greenwald said that this was a violation of the pledge, drafted by former Senator William E. Schluter, the chairman of the New Jersey Citizens' Clean Elections Commission, and constituted an in-kind contribution as well.

Assemblyman Greenwald suggested that ELEC needs to send a message that this behavior is unacceptable and a violation of the Clean Elections Program. He said that ELEC needs to issue a penalty to fine the GOP candidates and do it prior to the election.

Chair English thanked Assemblyman Greenwald for his comments and his interest and participation in the Clean Elections Program. She advised him that ELEC has a process for dealing with allegations of violations and that he could contact staff about the procedures.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission accepted the Clean Elections report.

6. 2005 Gubernatorial Public Financing Report

Director of Public Financing, Amy Davis presented the following report on the Gubernatorial Public Financing program.

**2005 Primary Election**

**Bret Schundler**

Director Davis stated that staff review of Candidate Schundler's submissions 9, 10, and 11 determined that Candidate Schundler submitted contributions eligible for match, totaling \$71,689.10. She indicated that on September 9, 2005, public funds totaling \$122,448.70 were deposited into Candidate Schundler's public fund account. She noted that this amount reflects that \$20,929.50 was deducted from the total amount of public funds to adjust for the overpayment on Submission #8 as a result of the percentage certification process.

Director Davis further stated that Candidate Schundler filed his twelfth matching fund submission on September 20, 2005, and reported \$45,088.00 in net contributions submitted for match. She said that when review of the submission is completed, staff will deposit the public matching funds and will report to the Commission at its next meeting.

**Robert Schroeder**

Director Davis advised the Commission that Candidate Schroeder filed his tenth matching fund submission on August 23, 2005, and reported \$22,280 in net contributions submitted for match. She said staff completed its review and determined that Candidate Schroeder submitted \$16,980 in contributions eligible for match. Public funds in the amount of \$33,960 were deposited into Candidate Schroeder's public fund account on September 9, 2005.

### **Steven Lonigan**

Director Davis noted that staff review of Candidate Lonigan's submissions 10, 11, and 12 determined that Candidate Lonigan submitted contributions eligible for match, totaling \$32,398.31. She said that on August 25, 2005, public funds totaling \$29,267.14 were deposited into Candidate Lonigan's public fund account for Submission #10, adding that on September 21, 2005, public funds totaling \$35,529.48 were deposited for Submissions #11 and #12.

Director Davis said that Candidate Lonigan filed his thirteenth matching fund submission on October 18, 2005, and reported \$23,443 in net contributions submitted for match. She said that when review of the submission is completed, staff will deposit the public matching funds and will report to the Commission at its next meeting.

### **2005 General Election**

#### **Hector Castillo**

According to Director Davis, Candidate Castillo filed his first matching fund submission on September 1, 2005, and reported \$318,450 in net contributions for match. Staff's review of the submission indicated only \$298,450 in contributions were eligible for match an amount less than the \$300,000 qualification threshold to receive public funds. She said that as a result of the Commission's decision on September 13, 2005, that Candidate Castillo is a qualified candidate, public funds totaling \$404,900 were deposited into Candidate Castillo's public funds account on September 21, 2005.

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission accepted the Public Financing report.

#### 7. **Public Comment**

Chair English recognized Salvatore J. Siciliano.

Mr. Siciliano stated that he helped with the Clean Elections Program and that he was very much in support of it. He said that he feels that the program gets special interests out of the process and allows candidates to focus on the issues. Mr. Siciliano indicated that he collected money for the program but not for any specific candidates. He said he collected the small donations for both the GOP and Democratic candidates and knows them all personally. Mr. Siciliano said, however, that he felt betrayed by the literature distributed by the GOP candidates. He said New Jersey has a chance to do something positive and be a model for the nation. He urged the Commission to take action with regard to the activities of the Republican candidates who received Clean Elections money.

Chair English thanked Mr. Siciliano for his interest and concern for the program.

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Chair English recognized Mr. Louis M. Stefanelli, Treasurer of the Pawlowski for Governor campaign.

Mr. Stefanelli complained about the lack of cooperation from New Jersey Network (NJN), stating that the station did not fulfill the requirements of the debate as set forth in its application. Mr. Stefanelli urged the Commission to require NJN to hold another debate with all of the candidates, including the major party candidates.

Chair English asked about the Court proceeding vis-à-vis the non-ELEC sponsored debate and the independent candidates.

Mr. Matthew Prusik, Counsel to Candidate Pawlowski, explained the candidate's position in that case brought against NJN by Candidate Pawlowski. He said that Candidate Pawlowski's interests were harmed by not being in the NJN debate with Candidates Forrester and Corzine. He said, however, that the Court found no irreparable harm because there were other debates in which all candidates would be involved.

Mr. Prusik stated that NJN is totally uncooperative and that this situation is a case that cried out for regulatory action against NJN. He said NJN is flouting the Commission's authority.

Commissioner Burstein asked what Mr. Prusik would have the Commission do beyond expressing disappointment in NJN? Are you suggesting that we mandate another debate?

Mr. Prusik responded in the affirmative.

Commissioner Burstein said that the Commission lacked the authority to take such an action.

Commissioner Davis stated that at the last meeting, the Commission expressed its disappointment and that the Commission cannot go beyond that.

Chair English recognized Jay Boucher, Campaign Manager for the Pawlowski campaign, who also expressed his dissatisfaction with the NJN debate.

Chair English asked Mr. Prusik why he was not back in court. He explained that he was considering litigation and needed a Commission ruling to exhaust his administrative remedies.

7. Resolution to go into 1<sup>st</sup> Executive Session

On a motion by Commissioner Davis, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss the Pawlowski matter because it involves potential litigation.

8. Return to Public Session

Chair English addressed Mr. Stefanelli, Mr. Prusik, and Mr. Boucher. She stated that the Commission listened carefully to their application on behalf of Candidate Pawlowski that the Commission modify the gubernatorial debate calendar or require an additional debate before the November 8<sup>th</sup> general election. The Commission considered the statement that they anticipated further litigation, and therefore met in Executive Session to consider its response to their request for a ruling.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission moved to adopt the conclusion it reached in Executive Session that the Commission finds no statutory or regulatory basis to grant the request to modify the Commission's debate calendar and provide an additional debate.

Chair English advised Mr. Stefanelli and Mr. Prusik that their concerns are very important to the Commission and urged them to participate in the postelection hearings on the gubernatorial process. She thanked them for performing an important public service.

Chair English thanked the representatives of the Pawlowski campaign for their participation and for bringing these matters to the attention of the Commission.

9. Resolution to go into 2<sup>nd</sup> Executive Session

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss anticipated litigation and the following matters, which will become public as follows:

- A. Final Decision Recommendations in violation 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. Investigative Reports of possible violations, which reports will not become public. However, any complaint generated as the result of an Investigative Report will become public not later than seven business days after mailing to the named respondents.
- C. A report on requests from the public for investigations of possible violations, which report will not become public in order to protect the identity of informants and maintain the integrity of investigative procedures and priorities. However, any complaint alleging violations, which complaint may be generated as a result of a request for investigation, will become public not later than seven business days after mailing to the named respondents.

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10. Return to Public Session

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission voted to return to Public Session.

11. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 2:15 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.  
Executive Director

FMH/elz