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 Edwin R. Matthews, Legal Counsel

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

Now that the presidential campaign is over, New Jersey residents should brace themselves for the next campaign: The contest for governor.

New Jersey is one of only two states that will hold an election for governor next year. Virginia is the other.

Therefore, the campaign will not only draw attention from voters and the media in the State but from the media nationwide as well.

New Jersey has been known for its model Gubernatorial Public Financing Program, which in the coming year will be more important than ever. This is due to the anticipated participation of outside, independent groups in our gubernatorial election contest.

Candidates qualifying and participating in the program will receive two public dollars for every private dollar raised.

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But there is a string attached. In order to receive public funds, candidates must participate in two debates. Their lieutenant governor running mates must participate in one debate.

So, in anticipation of substantial interest by organizations hoping to sponsor the debates, this column will be dedicated to providing a general outline of the procedures for applying to become a sponsor of the debates.

To sponsor one or more of the debates, an organization must meet the following criteria:

1. The organization must not be affiliated with any political party, holder, or candidate for public office;
2. The organization must not have endorsed any candidate for governor and must agree not to do so until the completion of the sponsored debate; and,
3. The organization must have previous experience sponsoring televised debates for statewide office in New Jersey

There are exceptions to guideline number three. Any association of two or more separately owned broadcast outlets or news publications are eligible if they have substantial viewership or readership in New Jersey.

Also eligible is an association of broadcast news or press service correspondents with substantial followership in New Jersey.

With regard to the primary debates, written applications to sponsor a primary election debate must be submitted to the Commission by March 15, 2013.

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Comments from the Chairman Ronald DeFilippis

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The written applications must be on a form provided by the Commission.

On the application form prospective sponsors should provide the following information:

1. The time and date of the debate;
2. Those television, radio, and media outlets committed to providing live coverage of the debates;
3. The span of coverage, including households and counties;
4. Those media outlets committed to rebroadcasting the debates, including dates and times;
5. Plans for foreign language coverage;
6. The location of the debates, including facilities for handicap accessibility, and seating capacity;
7. Specific plans for promoting the debates;
8. Plans for providing the hearing-impaired the ability to access the debate;
9. Arrangements for a debate moderator; and,
10. Sources of financial support for underwriting the debates.

The Commission is required to select the sponsors for the gubernatorial primary election debates within 30 calendar days of the March 15 deadline for receipt of sponsor applications.

During this gubernatorial year, sponsors will be selected at the Commission's April 2013 meeting.

The preceding is a brief summary of the procedure for becoming a sponsor of the 2013 primary debates. It is by no means an exhaustive list of the responsibilities to be undertaken by debate sponsors.

Potential applicants should consult the Commission's regulations at 19:25-16.39 *et al.* and/or contact the Commission's Special Programs staff at 1-888-313-3532.

Information is also available on the Commission's website at www.elec.state.nj.us.

Executive Director's Thoughts Jeff Brindle

Many lament the blitzkrieg of outside political spending in recent years.

Some blame it on the 2010 Citizens United ruling, which allowed unlimited independent spending in federal elections by corporations and union.

But the real cause may run deeper.

The root of this phenomenon, which has infected the electoral landscape, may be a major shift in our political culture since World War II. This generational shift has laid the groundwork for the growth of independent spending. Much of it has been done in secret, usually at the expense of political parties, candidates and voters.

A comparison of the political values of the Depression Era/World War II generation to those of post-war Americans helps explain the genesis of the age of independent spending.

The World War II generation valued frugality and saving. Internationally, they supported a bi-partisan foreign policy.

Most of all, there was greater allegiance to the two political parties, which represented broad coalitions of people.

Party identification was much stronger back then. According to the Pew Research Center, 76 percent of the public identified themselves as Republican or Democrat in 1939. Only 18 percent considered themselves independent.

Now, in 2012, only 56 percent of the people consider themselves Republican or Democrat. The share identifying themselves as independent has risen to 38 percent- more than double the 1939 figure and the largest percentage ever.

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Executive Director's Thoughts Jeff Brindle

Continued from page 2.

The Post-World War II baby boomers faced a much different world than their parents. From the late 1940's to the 1970's, America experienced strong economic growth.

Relatively speaking, it was a period of peace and prosperity. The baby boomers experienced neither world war nor the deprivation that came with the depression.

As a result, the political culture and values changed. Whereas the World War II generation supported the political party system, the baby boomers, more formally educated than their forbears, loosened their ties with political parties and engaged to a greater extent in single-issue politics.

Baby boomers involved themselves in social movements such as the anti-Vietnam war movement, civil rights, nuclear disarmament, feminism, and ecology.

Further, the Watergate scandal increased cynicism among the emerging electorate and distrust in established institutions like political parties and government.

Certainly, many other factors contributed to the explosion of independent spending.

Independent spending started surging soon after Buckley v. Valeo declared in 1976 that wealthy individuals were not bound by federal contribution limits if they spent independently.

The Bipartisan Campaign Reform Act (BCRA) of 2002, better known as McCain Feingold, greatly accelerated this trend when it banned soft money contributions to national parties. Instead, the money poured into independent groups.

But without the broader cultural shift, these legal and legislative changes might not have had as much impact. The change in political values created a climate for outside spending to flourish.

To reverse this trend completely would mean changing the political culture. That will not happen any time soon- if ever.

Even so, there are steps that can be taken to stem the tide of independent spending.

First, national parties should be allowed to raise more money, coordinate their activities with candidates, and provide more money to the state party organizations.

Second, contribution limits to federal candidates should be raised and the Presidential Public Financing Program should be reformed and strengthened.

Thirdly, laws requiring disclosure of contributors and expenditures by independent 527's, 501c's and Super PACs should be enacted at both the federal and state levels.

While it could take years to significantly reduce the involvement of outside groups in our elections, these reforms would help offset their influence while bringing their activities out in the open.

2013 Commission Meeting Schedule

The New Jersey Election Law Enforcement Commission has announced its meeting schedule for 2013. Unless otherwise indicated in the future, meetings will be held at the Commission's offices at 28 West State Street, 12th Floor, in Trenton.

| | |
|-----------|-------------------------------|
| January | 15, 11:00 a.m. |
| February | 19, 11:00 a.m. |
| March | 19, 11:00 a.m. |
| April | 09, 11:00 a.m. |
| May | 21, 11:00 a.m. |
| June | 18, 11:00 a.m. |
| July | 16, 11:00 a.m. |
| August | 20, 11:00 a.m. (if necessary) |
| September | 17, 11:00 a.m. |
| October | 15, 11:00 a.m. |
| November | 19, 11:00 a.m. |
| December | 17, 11:00 a.m. |

Edwin R. Matthews

Legal Counsel

Edwin R. Matthews was selected to be the Commission's Legal Counsel and began serving in that capacity in November, 2012.

Mr. Matthews is a partner with the firm of Bourne, Noll & Kenyon, located in Summit, New Jersey. He specializes in the areas of civil litigation, municipal law, appellate practice, personal injury, products liability, and tax appeals.

As a former Counsel for the Township of South Orange Village, a past Municipal Court Judge, and a past member of its governing body, Mr. Matthews has developed special expertise regarding product liability and toxic tort cases.

Mr. Matthews' affiliations include: Certified Civil Trial Attorney; New Jersey State Bar; United States District Court for the District of New Jersey, Southern District of New York and Eastern District of New York; United States Court of Appeals Third Circuit and Second Circuit; United States Supreme Court; New York State Bar; Mediator, United States District Court; Mediator, New Jersey Courts; Arbitrator, United States District Court; Member, Committee on Character, appointed by the New Jersey Supreme Court (1993-2009); and, Member and President, Trial Attorneys of New Jersey, Board of Trustees (2004).

Mr. Matthews has lectured frequently at seminars on trial tactics, product liability, rules of procedure, and rules of evidence. He is a Master of the Worrall F. Mountain Inn of Court and has been an adjunct faculty member of the School of Law and a Master of the Inn of Court at Seton Hall University School of Law.

Mr. Matthews served in the United States Marine Corps where he attained the rank of Captain. He was awarded the Bronze Star Medal, Navy Commendation Medal, two Purple Heart Medals, the Combat Action Ribbon, and the New Jersey Distinguished Service Medal. Mr. Matthews has been recognized as a *New Jersey Super Lawyer* in the editions for 2009 through 2011.

Mr. Matthews received a B.A. degree from College of the Holy Cross and J.D. degree from Seton Hall University School of Law.

Henry Coslick "Profile"

By Joe Donohue

In an era when public service is more often the object of scorn than acclaim, Henry Coslick still hopes one day to enter its ranks.

"I can't understand people who don't want to participate in our government. You wouldn't have society without government," said Coslick, a senior at College of New Jersey who is serving an internship at ELEC.

Along with his sincere desire to become a public servant, he also is being pragmatic. He believes many job openings will be available in the next decade or so as Baby Boomers enter their late 60s. "About one-third of the civil service system is retiring," he said.

Born in New York and raised in Somerset County, Coslick is a major in political science with a minor in history. He hopes to obtain a master's degree after he graduates next spring.

His interest in political science hasn't translated into many electoral wins. So far, he is only one for six. He ran four times unsuccessfully to become high school president, then failed to win election to the college Senate.

Two years ago, however, his persistence finally paid off.

Coslick was chosen as the youngest-ever member of executive board of the 900-member Central New Jersey Mensa. He also arranges speakers for the group's monthly meetings and oversees its scholarship program. Membership in Mensa is limited to people with IQ's in the 130s and higher.

At ELEC, he has helped with several research projects. For instance, he is currently working on a history of the agency to help celebrate its 40th anniversary next year. He is also working on a paper for school about the state's public finance program for gubernatorial elections. He has authored two articles for the agency's newsletters, the most recent being a history of laws affecting corporations and unions.

Coslick said he finds the campaign finance field intriguing. "It's interesting that one person can amass thousands or millions of dollars for a

campaign. The organization of getting that money together fascinates me.”

He also is glad an agency like ELEC oversees the fundraising process. “I’m really happy we’re part of a regulatory agency that sees that the sources of money are clean,” he said.

As part of his research, he learned that only about 2 percent of all New Jersey candidates disclosed their campaign finances during the 1950s, when much looser standards prevailed. That figure now exceeds 90 percent.

Corporations, Unions, and Campaign Finance Law

[By Henry Coslick](#)

Corporations and unions serve vital, influential roles in society. However, because of their influence, many face restrictions on how they can spend their funds in federal and New Jersey political campaigns. Laws governing how corporations and unions may act in elections have evolved a great deal over the last century. This timeline highlights some of the key changes.

1907—Tillman Act (US) prohibited monetary contributions to national political campaigns by corporations. Imposed fines up to \$5,000 as well as potential jail time in cases of violations.

1911—Corrupt Practices Act (NJ)- Outlawed direct contributions by state-regulated corporations, including utilities, banks and insurance companies, to political campaigns.

1947—Labor Management Relations Act (Taft-Hartley) (US)- Extended to unions the 1907 ban on corporate contributions to federal campaigns. Also explicitly banned independent expenditures by unions and corporations.

1973—New Jersey Campaign Contributions and Expenditures Reporting Act (NJ)- Required the reporting of all contributions received and expenditures made to any candidate.

1972&74—Watergate Scandal (US)- Involved several convictions for illegal federal campaign contributions by corporations and unions.

1974—Federal Election Campaign Act amendments (US)- Imposed \$5,000 contribution limit on political action committees (PACs), including those formed by corporations and unions.

1976—Buckley v. Valeo (US)- Struck down limits on campaign expenditures, including annual \$1,000 limit on independent expenditures by individuals.

1976—Casino Control Act (NJ)- Prohibited contributions by casinos and their employees to NJ candidates except to those running for federal office.

1978—First National Bank of Boston v. Bellotti (US)- Allowed corporations to legally contribute unlimited amounts to elections involving public referenda.

1986—FEC v. Massachusetts Citizens for Life (US)- Permitted non-profits to make independent expenditures in support of candidates who agree with them on issues.

1990—Austin v. Michigan Chamber of Commerce (US)- Upheld the right of Michigan to prohibit corporations from using treasury funds to support or oppose candidates.

2002—Bipartisan Campaign Reform Act aka McCain Feingold (US)- Forbid corporations and unions from making “soft money” contributions to political parties. Also banned ‘electioneering communications’ or issue ads during blackout periods: 60 days before a general election and 30 days before a primary election.

2004—Lobbying Law Expansion (NJ)- Required groups that communicate directly with the public about legislation or regulations to file grassroots lobbying report. This has led to disclosure of contributions and expenditures related to some issue ads that have aired during legislative and gubernatorial election years.

2005—First of several Pay-to-Play Reforms (NJ)- Prohibited companies from entering state contracts larger than \$17,500 if they give over \$300 annually to candidates within the state. Also, if a company has over \$50,000 in contracts with the state, it required them to file contribution and expenditure reports with ELEC.

2010—**Citizens United v. FEC** (US)- Ended blackout period for issue ads that was imposed by McCain Feingold, and struck down Taft-Hartley ban on independent spending by corporations and unions.

2010—**Speechnow v. FEC** (US)- Forbid FEC from imposing \$5,000 contribution limit on federal 527 political committees that engaged in independent campaigns to promote or oppose candidates.

2010—**FEC Advisory Opinions** (US)- FEC issued two advisory opinions authorizing independent-spending only committees- later dubbed Super PACs- that can accept unlimited funds from corporations and unions while requiring disclosure of those contributions. Funds from these accounts cannot be used to contribute to candidates.

2011—**Carey v. FEC** (US)- PACs that do contribute to candidates are allowed to accept unlimited contributions for independent expenditure efforts. They must keep a separate account for contributions to candidates that are subject to contribution limits- so-called “hard” money accounts.

2012—**Montana v. FEC** (US)- U.S. Supreme Court strikes down Montana law banning independent corporate expenditures.

Where things stand today:

FEDERAL CAMPAIGNS

Corporations and labor organizations cannot use their general treasuries to make direct contributions to candidates. They can set up segregated funds (popularly known as PACs) to support federal candidates that are subject to contribution limits. PACs can maintain separate accounts not subject to contribution limits that engage only in independent expenditures. PACs disclose their activities to the FEC.

Corporations and unions also can create political nonprofit groups organized under section 527 of the IRS code to make contributions to candidates. These groups also can make campaign expenditures independent of candidates. 527 groups disclose their contributions and expenditures

to the IRS unless their “major purpose” is to nominate or elect candidates. In such cases, they must register and report to the FEC as political committees.

Additionally, corporations and unions can set up social welfare, labor and trade association nonprofit groups under section 501 of the IRS code that can engage in independent campaign spending if it is not their primary activity. These groups disclose some expenditure information, but not their contributors, to the IRS.

Those that pay for any ads that explicitly call for a candidate’s election or defeat, or electioneering ads that refer to a specific candidate right near the election, must report to the FEC. However, few disclose contributor names because FEC generally regards contributions to these groups as member dues not subject to disclosure.

NEW JERSEY CAMPAIGNS

Banks, insurance corporations, public utilities, cable television corporations, as well as casinos, are prohibited contributors. However, their employees can- and often do- form political action committees to raise funds for campaigns. Contributions by certain business entities that have or are seeking New Jersey government contracts, a practice known as “Pay-to-Play,” are subject to contribution restrictions.

Other corporations, as well as unions, are not prohibited in New Jersey from making direct contributions to candidates. They are subject to contribution limits, but may form a continuing political committee or PAC to make larger contributions.

A corporation or union that independently spends more than \$1,200 to directly promote or oppose a candidate must report those expenditures to ELEC. Under current law, they are not required to report contributions. Corporations or unions also can create political committees to support or oppose ballot questions. These committees are not subject to contribution limits but they must report contributions and expenses above \$2,100 to ELEC.

Training Seminars

The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please visit ELEC's website at <http://www.elec.state.nj.us> for more information on training seminar registration.

| TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS | |
|---|------------|
| December 12, 2012 | 10:00 a.m. |
| BUSINESS ENTITY PAY-TO-PLAY TRAINING | |
| January 25, 2013 | 10:00 a.m. |
| February 22, 2013 | 10:00 a.m. |
| March 15, 2013 | 10:00 a.m. |
| LOBBYING TRAINING | |
| January 4, 2013 | 10:00 a.m. |
| January 8, 2013 | 10:00 a.m. |
| January 14, 2013 | 10:00 a.m. |
| January 24, 2013 | 10:00 a.m. |
| January 30, 2013 | 10:00 a.m. |
| February 4, 2013 | 10:00 a.m. |

Reporting Dates

| ELECTION | 48 HOUR START DATE | INCLUSION DATES | FILING DATE |
|---|---------------------------|------------------------------------|--------------------|
| RUNOFF (DECEMBER)* | 11/21/12 | | 12/4/2012 |
| 29-day Preelection Reporting Date | | No Report Required for this Period | |
| 11-day Preelection Reporting Date | | 10/24/12 - 11/20/12 | 11/23/2012 |
| 20-day Postelection Reporting Date | | 11/21/12 - 12/21/12 | 12/24/2012 |
| PACs & CAMPAIGN QUARTERLY FILERS | | | |
| 4th Quarter | | 10/1/12 - 12/31/12 | 1/15/2013 |

* A candidate committee or joint candidates committee that is filing in a 2012 Runoff election is not required to file a 20-day postelection report for the corresponding prior election (May Municipal or General).