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ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

“Furthering the Interests of an Informed Citizenry”

Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625
www.elec.state.nj.us (609) 292-8700 - Toll Free Within NJ 1-888-313-ELEC (3532)

Directors:

Jeffrey M. Brindle
 Joseph W. Donohue
 Carol L. Hoekje
 Amy F. Davis
 Carol Neiman
 Linda White
 Todd J. Wojcik
 Shreve Marshall
 Christopher Mistichelli

Comments from the Chairman Ronald DeFilippis

A very important aspect of the disclosure of campaign finance activity in New Jersey involves the reporting of contributions and expenditures immediately before the election.

In a word, this is a vital part of campaign finance law given the fact that the final comprehensive report of financial activity comes 11 days before the election.

Without the requirement that contributions and expenditures be reported within 48-hours of receipt or of being expended, a gap of 13 crucial days prior to the election would slip by without the public having any idea who is making contributions or how much is being spent.

In reality, the reporting period for candidates stops 13 days before the general election. Therefore, all information submitted on the 11-day report includes all financial transactions between the 29-day report and 13 days before the election.

If it were not for the fact of the 48-hour requirement filling this gap, much information would be lost to the public.

So here is how it works.

The campaign treasurer of a candidate committee or joint candidates committee is required to file a report (C-1) for a contribution in excess of \$1,400 within 48-hours of receipt of the contribution.

The 48-hour notice includes aggregate contributions from a contributor amounting to more than \$1,400 as well as any individual contribution of \$1,400 or more.

Contributions included within this requirement are those received on or after the 13th day preceding the election and up to and including Election Day.

The C-1 Report must contain the following information:

1. name of recipient candidate or joint candidate committee;
2. the date the contribution was received;
3. the amount of the contribution;
4. the name and mailing address of the contributor; and,
5. the occupation and employer information of an individual contributor.

The requirements for expenditures made between 13 days prior to the election and Election Day are basically the same.

Any expenditure of more than \$1,400 made during this period of time before the election is required to be reported by the campaign treasurer of the committee or joint committee on Form E-1.

Aggregate expenditures amounting to more than \$1,400 during this period are included in the report as well.

The following information is to be filed:

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1. name of candidates or joint candidates committee;
2. the name of the person, firm, or organization benefitting from the expenditure; and,
3. the amount and purpose of the expenditure.

Faxing the report is permitted.

The 48-hour notice requirement is an exceedingly important aspect of New Jersey's campaign finance law. Without it much significant, and important, financial activity prior to the election would be kept from the public.

This column is reprinted from an August 2012 New Jersey Newsroom Column.

An update is included at the conclusion of the article.

Executive Director's Thoughts Jeff Brindle

Are contribution limits the next to go?...

Another major challenge to campaign finance law has suddenly appeared on the horizon. The latest target: federal contribution limits.

The new challenge was filed just three days before the U.S. Supreme Court struck down a Montana law that banned corporate spending in its state elections. The judges decided the 100-year-old Montana Corrupt Practices Act and the limits it imposed were inconsistent with Citizens United v. FEC, the decision which declared corporations could spend unlimited amounts in elections as long as the funds were spent independently.

The new threat to campaign finance law emerged June 22 when lawyers sought to enjoin the FEC from enforcing the aggregate biennial contribution limits.

The Motion for Preliminary Injunction, which appears to be part of an orchestrated effort to dismantle campaign finance law, was filed on behalf of Shaun McCutchen, a 44-year-old Alabama contractor, and the Republican National Committee. McCutchen v. FEC may have the potential to further erode contribution limits. Specifically, it targets aggregate contribution limits that apply to individual contributors.

Under federal law, individuals can contribute no more than \$117,000 every two years to federal

candidates and committees. Of that amount, individual donors can give no more than \$70,800 to PACs and parties. Individual donors can give no more than \$46,200 to all candidates every two years. These limits are indexed for inflation.

The plaintiffs, represented by James Bopp, Jr. and Steve Hoersting, maintain that the two-year aggregate limits "substantially burden core political activity protected by the First Amendment rights of free expression and association." The lawyers contend they are unconstitutional on their face.

Bopp has filed numerous challenges to campaign finance laws, including the original Citizens United case, one of his major successes. General counsel to the National Right to Life Committee since 1978 and vice chairman of the Republican National Committee, the Indiana native doesn't hide his long-term goal.

"We had a 10-year plan to take all this down," he told the New York Times in 2010. "And if we do it right, I think we can pretty well dismantle the entire regulatory regime that is called campaign finance law."

In filing his motion with the United States District Court, District of Columbia, he might have given himself an advantage. It is the very Court that paved the way for Super PACs in its decision in Carey v. FEC. That decision held that PACs could set up segregated accounts, receive contributions in unlimited amounts, and be unrestrained in spending, as long as the activity was independent.

Given the history of the DC court, it is more than likely that it will grant the motion for injunction and ultimately find aggregate limits to be unconstitutional. This would also impact a number of states and localities that impose aggregate limits on donors.

Bopp and Hoersting maintain that in order for the aggregate limits to be viewed as constitutional "they must be justified for the government under 'the closest scrutiny' and any restriction must 'avoid unnecessary abridgement of associational freedoms.'"

In other words, the government must demonstrate that there is a compelling interest (i.e. corruption) for

the state to impose aggregate contribution limits on these entities.

Moreover, the McCutcheon Motion makes the further point that the restrictions applied to the national parties led to money flowing instead to independent committees. It contends aggregate contribution limits essentially are obsolete in the post-Citizens United world since there is no realistic way to stop circumvention. While the motion focuses on aggregate limits, the case potentially opens the door to a reexamination of all contribution limits. As demonstrated in Citizens United, the U.S. Supreme Court hasn't been shy about expanding its review of campaign finance issues.

Some members of today's court expressed serious doubts about contribution limits in Randall v. Sorrell (2006), another case brought by Bopp.

"There is simply no way to calculate just how much money a person would need to receive before he would be corrupt or perceived to be corrupt (and such a calculation would undoubtedly vary by person)," said Justice Clarence Thomas in his dissent.

Given that the U.S. Supreme Court has placed heavy importance on the First Amendment freedom of speech and association provisions, it is conceivable the judges may decide to weigh the constitutionality of contribution limits generally. Even previous courts have struck down contribution limits under some circumstances.

In the landmark Buckley v. Valeo (1976), the Supreme Court ended contribution limits for independent expenditures. In First National Bank of Boston v. Bellotti (1978), the Supreme Court invalidated a Massachusetts statute that prohibited corporations from making contributions or expenditures for the purpose of influencing ballot questions. The Bellotti case foreshadowed the legal reasoning in Citizens United by declaring that spending to influence popular votes on public issues poses no risk of corruption and therefore cannot be constrained.

However, Buckley, while exempting independent spending, also upheld contribution limits for candidates. Even Citizens United upheld the power

of the federal government to ban direct corporate contributions to candidates.

So while the McCutcheon case may be worrisome, there is strong precedent to not toss out all contribution limits. Whether the U.S. Supreme Court would take McCutcheon on appeal, or simply let the lower court ruling stand, remains to be seen.

UPDATE

Based on the questions posed by the Supreme Court Justices during the October 8, 2013 oral argument in McCutcheon v. Federal Election Commission, I will stick to my prediction made in this earlier article that aggregate limits will be overturned.

However, it is possible that the Supreme Court may lift the aggregate limits on federal candidates but keep them intact for the national political party entities.

Continuing to subject political parties to the aggregate limits would be a mistake in my opinion. One of the reasons for the tremendous growth in independent group activity stems from the soft money ban in the 2002 McCain/Feingold reforms. Money that once went to the more accountable political parties began to flow to these rather anonymous committees immediately following McCain/Feingold. Not only are these outside groups spending billions nationally (over \$21 million so far in New Jersey this year) but they are beginning to assume many of the roles traditionally performed by political parties. Lifting the aggregate limits on parties would go far toward redressing the balance of the federal level.

Finally, U.S. Senate Minority Leader Mitch McConnell, in a Friend of the Court Brief, asked the court to find unconstitutional individual contribution limits as well.

In my opinion the court will not do that and should not.

With independent spending on state campaigns already setting new records, money is pouring heavily into key legislative swing districts that could dictate which party controls the Legislature after November 5, according to initial reports on general election financial activity filed with the Election Law Enforcement Commission (ELEC).

“Even with the election still weeks away, independent spending in state campaigns already has hit an all-time high of \$21 million not including ballot questions,” said Jeff Brindle, ELEC’s Executive Director. “That compares to the previous high of \$14.1 million spent in 2009 mostly on the gubernatorial election.”

Table 1
Estimated Independent Spending by Special Interest Groups in 2013 State Campaigns

Group	Spent	General/ Primary/Both?	Election
Committee for Our Children's Future	\$ 7,800,000	P	Gubernatorial
Garden State Forward (New Jersey Education Association)	\$ 5,162,284	Both	Gubernatorial and Legislative
One New Jersey	\$ 2,800,000	P	Gubernatorial
Fund for Jobs, Growth and Security (also see ballot questions)	\$ 2,573,065	Both	Legislative
Republican Governors Association	\$ 1,725,000	P	Gubernatorial
Americans for Prosperity	\$ 400,000	G	Legislative
Latino Consumer Group Inc.	\$ 365,095	G	Gubernatorial
Republican State Leadership Committee	\$ 268,017	G	Legislative
National Association of Realtors	\$ 142,087	P	Legislative
NJ Workers' Voices (NJ AFL-CIO)	\$ 24,644	Both	NA
Total Gubernatorial and Legislative Elections	\$21,260,192		
STATEWIDE BALLOT QUESTIONS			
Fund for Jobs, Growth and Security	\$ 686,006	G	Ballot Question
Coalition to Preserve Jobs and Our Constitution Inc.	\$ 569,292	G	Ballot Question
Working Families United for NJ	\$ 250,448	G	Ballot Question
Working America	\$ 60,467	G	Ballot Question
NJ Keep It Green	\$ 25,276	G	Ballot Question
Total Ballot Questions	\$ 1,591,489		
Total Independent Spending	\$22,851,681		

So far, nearly \$1.6 million already has been spent on statewide ballot questions, mostly to oppose or support a plan to raise the minimum wage. In 2009, \$844,102 was spent on state ballot questions.

Brindle said because New Jersey law as yet does not require Independent Spending Only groups to disclose their contributions and, in some cases, even their expenses, it is impossible to say exactly how much money is flowing into legislative races. ELEC has recommended that the Legislature require all independent groups to fully disclose their campaign finance activities.

“While we can’t give an exact figure, a single group- Fund for Jobs, Growth and Security- already has spent \$2.6 million on legislative elections,” Brindle said. “That compares to \$1.8 million in independent spending by eight groups in 2011 legislative elections, less than \$16,000 in 2009, and \$165,000 in 2007.”

An analysis in “White Paper No. 23- Legislative General Elections 2011- Rise of the Independents” found that 91 percent of the independent spending that was disclosed went into the handful of so-called “battleground” districts where races traditionally have been competitive.

“A similar trend is likely in this year’s election,” said Brindle. “For instance, Fund for Jobs, Growth and Security already has reported spending in districts 1, 2, 3, 7, 14, and 38. All six districts are considered critical swing districts where a change in representation could shift control of the Legislature.”

“Given the large infusion this year of independent dollars, it is likely that spending in one or more districts is likely to top the all-time record of \$6.1 million set in 2003 in the Fourth Legislative District,” Brindle said.

Currently, Democrats control 48 of the 80 Assembly seats, and 24 of the 40 Senate seats. All 120 legislative seats are up for reelection this year. The office of governor also is in contention.

With the election still weeks away, spending already is soaring in the battlegrounds. Ten of the 40 legislative districts have attracted 75 percent of the spending so far, Brindle said.

“Of the \$15.7 million spent to date by legislative candidates, \$11.7 million has taken place in those ten districts, most of which have been announced as targets by the two major political parties,” he said. “The stakes are huge this year, and the heavy spending we see already in these battleground districts makes that clear.” He noted that the total does not even include independent spending.

Table 2
Top Ten Legislative Districts by
Spending through October 7, 2013

District	Spent
14	\$ 1,832,544
38	\$ 1,786,272
3	\$ 1,785,507
18	\$ 1,345,221
2	\$ 1,236,062
1	\$ 999,784
21	\$ 927,438
7	\$ 768,670
36	\$ 521,365
27	\$ 518,922
Total	\$11,721,786
All Spending	\$15,664,520
Percent Top Ten	74.8%

Brindle said the top ten districts also attracted nearly 62 percent of total fundraising- \$17.1 million.

Table 3
Top Ten Legislative Districts by
Fundraising through October 7, 2013

District	Spent
3	\$ 2,877,883
14	\$ 2,085,791
38	\$ 1,945,563
2	\$ 1,867,516
21	\$ 1,661,645
18	\$ 1,637,848
27	\$ 1,461,620
7	\$ 1,367,802
36	\$ 1,145,925
1	\$ 1,076,843
Total	\$17,128,437
All Fundraising	\$27,730,881
Percent Top Ten	61.8%

Fundraising and spending totals are slightly higher than they were at this point two years ago when both houses also were up for reelection. Cash-on-hand is lower.

Table 4
Amounts Reported by Legislative Candidates
through October 7, 2013

Year	Raised	Spent	Cash-on-Hand
2013	\$27,730,881	\$15,664,520	\$12,083,023
2011	\$26,027,610	\$12,727,451	\$13,304,075
Difference	7%	23%	-9%

In the governor's race, Republican Governor Chris Christie leads Democratic challenger and State Sen. Barbara Buono and independent candidates in fundraising. Both major party candidates have qualified for public funding.

Table 5
Campaign Finance Activity by
Gubernatorial Candidates through October 7, 2013

Candidate	Party	Raised	Spent	Cash-on-Hand
Chris Christie	R	\$12,917,023**	\$ 4,882,509	\$ 8,044,537
Barbara Buono	D	\$ 2,129,026***	\$ 926,565	\$ 1,204,462
Diane Sare	I	\$ 31,342	\$ 32,804	\$ 5,982
Kenneth Kaplan	I	\$ 2,105	\$ 117	\$ 1,988
William Araujo	I	\$ 755	\$ 850	\$ (95)
Jeffrey Boss	I	NA	NA	NA
Steven Welzer*	I	NA	NA	NA
Hank Schroeder*	I	NA	NA	NA
Totals		\$15,080,251	\$ 5,842,845	\$ 9,256,874

*Does not expect to raise or spend more than \$4,500.

**\$8.2 million from public funding.

***\$1.3 million from public funding.

Compared to four years ago, when former Governor Jon Corzine drew heavily on his personal wealth for his reelection bid, the cost of this year's gubernatorial campaign is far smaller.

Table 6
Comparison of Campaign Finance Activity for Gubernatorial
General Election Candidates through October 7, 2013

Year	Raised	Spent	Cash-on-Hand
2013	\$15,080,251	\$5,842,845	\$9,256,874
2009	\$27,481,880	\$23,138,639	\$4,360,712
Difference	-45%	-75%	112%

In the legislative races, Democrats have raised and spent more money, and have larger cash reserves than Republicans through October 7, 2013.

Table 7
Party Breakdown of Legislative Campaign
Finance Activity through October 7, 2013

Party	Raised	Spent	Cash-on-Hand
Democrats	\$18,954,697	\$11,161,474	\$ 7,837,424
Independents	\$ 69,100	\$ 45,353	\$ 23,748
Republicans	\$ 8,707,084	\$ 4,457,692	\$ 4,221,851
All Parties	\$27,730,881	\$15,664,520	\$12,083,023

At this point in the campaign, incumbents have nearly 13 times more cash reserves than challengers.

Table 8
Cash-on-Hand Reserves of
Incumbents Versus Challengers

Group	Cash-on-Hand
Incumbents	\$ 11,197,933
Challengers	\$ 885,090
Total	\$ 12,083,023

Candidates for the 40 Senate seats are sitting on more cash balances than those seeking the 80 Assembly seats.

Table 9
Cash-on-Hand Balances by Legislative House

Group	Cash-on-Hand
Senate Candidates	\$ 6,746,802
Assembly Candidates	\$ 5,336,221
Total	\$ 12,083,023

State elections so far have cost about \$76 million this year.

Table 10
Overall Campaign Spending To Date

Type	Spending
Gubernatorial	\$ 15,520,323
Legislative	\$ 37,817,762
Independent Committees	\$ 22,851,681
Total	\$ 76,189,766

The numbers in this report should be considered preliminary. The analysis is based on fundraising reports received by 5 p.m. October 9, 2013.

Reports filed by legislative and gubernatorial candidates are available online on ELEC's website at www.elec.state.nj.us. A downloadable summary of data from legislative reports is available in both spreadsheet and PDF formats at www.elec.state.nj.us/publicinformation/statistics.htm.

Several, but not all, independent groups also file reports with ELEC. These reports can be searched at www.elec.state.nj.us/ELECReport/IndependentExpenditureSearch.aspx. Some also disclose their activities in reports made public by the Internal Revenue Service at www.irs.gov/Charities-&-Non-Profits/Political-Organizations.

ELEC also can be accessed on Facebook (www.facebook.com/NJElectionLaw) and Twitter (www.twitter.com/elecny).

Follow us on You-Tube <http://youtu.be/aySMwzQZlps>.

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.

	TRAINING DATES	TIME
BUSINESS ENTITY PAY-TO-PLAY TRAINING	November 18 th , 2013	10:00 a.m.
TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS	December 11, 2013	10:00 a.m.

Lobbying Reporting Dates

	INCLUSION DATES	ELEC DUE DATE
LOBBYING QUARTERLY FILING		
4 th Quarter	10/1/13 - 12/31/13	1/10/14

Reporting Dates

	INCLUSION DATES	REPORT DUE DATE
General Election*** - 11/5/2013		
29-day pre-election	6/22/13 - 10/4/13	10/7/2013
11-day pre-election	10/5/13 - 10/22/13	10/25/2013
20-day post-election	10/23/13 - 11/22/13	11/25/2013
48 Hour Notice Reports Start on 10/23/13 through 11/5/13		
90 Day Start Date: 8/7/13		
Runoff Election** - 12/3/2013		
29-day pre-election	No Report Required for this Period	
11-day pre-election	10/23/13 - 11/19/13	11/22/2013
20-day post-election	11/20/13 - 12/20/13	12/23/2013
48 Hour Notice Reports Start on 11/20/13 through 12/3/13		
PACs, PCFRs & Campaign Quarterly Filers		
4 th Quarter	10/1/13 - 12/31/13	1/15/2014

** A candidate committee or joint candidates committee that is filing in a 2013 Runoff election is not required to file a 20-day post-election report for the corresponding prior election (May Municipal or General).

*** Form PFD-1 is due on April 11, 2013 for Primary Election Candidates and June 14, 2013 for Independent General Election Candidates.