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Pending Campaign Finance Bill Will Bring Long-Needed Reforms

JEFF BRINDLE | July 11, 2022, 2:37 pm | in [Caucus Room](#), [Columnist](#)

After being voted out unanimously and with bipartisan support by two state Senate Committees and an Assembly committee, the “Elections Transparency Act” (S-2866/A4372) stalled before the Legislature left for its summer recess on June 29.

Co-sponsor and Senate President Nicholas Scutari (D-Union) told Politico on July 5, 2022 that he believes it will pass in the fall.

The Act represents a bipartisan effort co-sponsored by Scutari and Senate Minority Leader Steve Oroho (R-Sussex) along with Assembly Majority Leader Louis Greenwald (D-Camden).

The proposed legislation requires independent, so-called “Hidden Money” groups, to disclose contributions and expenditures in the context of electioneering activity and within limited timeframes of 30 days before a primary election or 60 days before a general, municipal, runoff, school board or special election.

During its path through the committee process, the legislation was amended to “narrowly tailor” disclosure by independent groups in ways that would make the provision constitutionally sound.

It included amendments that limited disclosure by these groups to “electioneering communications” within the tight timeframes noted above. These expenditures tend to be the largest for most campaign committees.

Besides requiring Hidden Money groups to be more transparent in terms of their financial activity, the legislation seeks to strengthen political parties and candidates, which unlike independent groups are subject to contribution limits, disclosure, and more under New Jersey statutes.

By increasing contribution limits applicable to political parties and candidates, the legislation will bring greater balance to the State's electoral process. Special interests that now routinely spend tens of millions independent of parties and candidates in state elections have gained a huge influence over those elections.

Moreover, while financial activity by independent groups has grown sharply, financial activity by parties and candidates has been declining precipitously.

Group	2005	2021	Change- %
Big Six- Two State Parties and Four Legislative Leadership Committees	\$19,667,905	\$17,046,596	-13%
County Political Parties	\$19,009,467	\$13,234,794	-30%
Totals	\$38,677,372	\$30,281,390	-22%
Independent Spending by Special Interests	\$ 411,224	\$57,504,301	13,884%
Grand Totals	\$39,088,596	\$87,785,691	125%

The legislation seeks to even things up. It does so not only by requiring disclosure by independent groups but by increasing contribution limits applicable to candidates and parties, a recommendation made by ELEC in its annual reports for more than a decade.

The provision to increase contribution limits was opposed by the New Jersey League of Women Voters, an organization universally respected for its work on behalf of honest and fair elections and its efforts to sponsor and conduct debates throughout New Jersey.

The League contends that doubling contribution limits means more money would pour into elections.

What was not pointed out, however, is the fact that the limits have not been raised since 2004 (18 years) and that inflation related to campaign costs has increased by 80 percent during this period. By combining that 80 percent inflation rate with the high inflationary pressures of present times, the recommended contribution limit increases in the bill are right on target when applied to the 2023 legislative elections.

Plus, if the higher limits encourage special interests to send larger checks to party committees, it might reduce spending by independent groups. So the change may not drive up the overall cost of elections as much as some might expect. If at all.

By opposing the proposed increases in contribution limits because it would mean more money in elections and benefit political parties, the League is respectfully fighting the last war when political parties were much more dominant and independent spending was a rarity.

Furthermore, opposition to raising contribution limits ignores the direction the U.S. Supreme Court appears to be taking in terms of campaign finance law. The trend can be seen in its 2019 case involving contribution limits in the Alaska case, *David Thompson v. Heather Hebdon*.

In its ruling, the Supreme Court reiterated points made in an earlier case in 2006, *Randall v. Sorell*, wherein recently retired Justice Stephen Breyer observed “contribution limits that are too low . . . harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders; thereby reducing democratic accountability.”

The Court also indicated in the *Hebdon* ruling that Alaska’s limits are not adjusted for inflation, which over time they will “inevitably become too low.”

Thus, since 2006 the U.S. Supreme Court has shown concern for contribution limits, the necessity of inflationary adjustments, and their respective relationship with First Amendment rights.

Progressive interests in New Jersey also targeted changes the bill would make to the State’s convoluted pay-to-play law.

Historically, the progressive movement has brought about many important improvements to government, including secret ballots, regulation of railroads and utilities, recall elections, civil service and campaign finance reform.

But opposition from current leaders seems to overlook serious problems with the complicated pay-to-play law that make compliance and enforcement very difficult.

This opposition also misses another important point —the current law discourages participation in politics by some honest business people who fear running afoul of the complex law and causes others to seek ways to legally circumvent it.

Because special interest PACs and independent groups have not been included under the law, ELEC statistics show that contractor donations have increasingly bypassed the law through

donations to PACs and independent groups. This makes it more difficult to connect the dots between a contribution and a contract.

Amendments put forth in the pending reform bill move the needle in a better direction.

ELEC has proposed that the law be simplified, and disclosure strengthened, by having just one State law and disclosure of contracts over \$17,500. As part of that simplification, the Commission has recommended ending the Fair and Open loophole, which exempts county and municipal governments from the State law if they publicly advertise a contract. The state Comptroller's Office has supported this view.

ELEC has also proposed sunseting the ability of local governments to enact their own ordinances. Separate local laws not only can differ substantially from the State law. But they also are subject to more frequent changes when new officials are elected to office. The result is a maze of different laws throughout the state.

While the legislation does not eliminate the Fair and Open loophole, it does sunset local ordinances (of which there are now about 160 different ordinances), which is a step in the right direction toward one State law.

Having just one State law is not the only way the reform bill strengthens the pay-to-play law. The bill also expands disclosure by contractors by requiring the Commission to establish a new business entity database. This will lead to more complete transparency of political activity by businesses entering public contracts.

In addition, S-2866/A4372 continues to place accountability on officeholders responsible for rewarding contracts in that the same rules will apply to them under the proposed legislation as exist now.

Further, because the legislation directly places responsibility on officeholders and not parties, officeholders will be all the more under the microscope in terms of putting the public's interest first since the law bans officeholders from accepting contractor contributions for a period of time prior to voting to award such contracts.

The proposed legislation would also encourage contractors to give to political parties, which are highly regulated and subject to contribution limits and disclosure. Political parties represent a broad coalition of people rather than the more narrow interests of special interest

PACs and independent groups, both of which are not included under the current Pay-to-Play law.

As veteran political consultant Julie Roginsky said in the July 1, 2022 Star-Ledger “Friendly Fire” opinion piece: “The current system does more to obscure money in politics than anything this legislation (S-2866/A4372) would do. . . rather than donating directly to a politician or the politician’s political party, he (a vendor) just deposits an unlimited amount of money in a dark money PAC that elects a politician.”

Whenever major reforms are proposed to the State’s campaign finance law there are bound to be different points of view in terms of the efficacy of the recommendations. That was the case in 1993, the last time the Legislature reformed campaign finance law in the State by formalizing legislative leadership committees, strengthening parties (subsequently weakened by pay-to-play laws) and instituting contribution limits, and requiring quarterly reporting by CPC’s.

While the 1993 Rosenthal Commission reforms were controversial to some, in the end they served the public well. But things change in politics, as evidenced by the emergence of independent groups. Campaign finance law must continue to evolve.

Overall, S-2866/A4372 represents positive change for New Jersey by increasing contribution limits, strengthening political parties and candidates, requiring disclosure for independent groups, simplifying pay-to-play along with enhancing disclosure, and requiring inflationary adjustment of contribution limits.

Like the 1993 reforms, the changes included in S-2866/A4372 bring with it opposition. That is the beauty of democracy.

Yet on balance, this bill will update campaign finance law in New Jersey, helping it to comply with current trends witnessed in U.S. Supreme Court decisions as well as to address emerging domination of elections by independent 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.

