



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Vice Chair

ALBERT BURSTEIN
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PUBLIC SESSION MINUTES

April 5, 2005

All of the Commissioners, 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. Selection of 2005 Gubernatorial Primary Election Debate Sponsors

Director of Public Financing Amy F. Davis reported that two applications were received by the March 15, 2005 deadline for sponsorship of the primary gubernatorial debates. They were:

- League of Women Voters of New Jersey Education Fund, with WPVI-TV, and WABC-TV; and,
- New Jersey Network (NJN), with the Philadelphia Inquirer, and the Gannett New Jersey newspaper chain.

Director Davis stated that the deadline for filing documentation to establish primary election candidate debate qualification is April 11, 2005. She noted that a gubernatorial candidate who is not participating in the public financing program may apply to participate in the primary election debates by submitting by April 11th a statement of qualification demonstrating that the candidate has raised and spent \$300,000. She said that to date, four Republican candidates, John Murphy, Paul DiGaetano, Bret Schundler, and Robert Schroeder, have qualified to receive 2005 primary election matching funds.

According to Director Davis, the following are the three criteria for sponsor eligibility:

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- A sponsor must be unaffiliated with any political party or holder of or candidate for public office;
- A sponsor must not endorse any candidate in the pending primary election, and must agree not to make any such endorsement until the completion of any debate sponsored by the organization; and,
- A sponsor must have previously sponsored one or more televised debates among candidates for statewide office since 1976, or be an association of two or more news publications or broadcasting outlets having between them a “substantial readership or audience in this State.”

She said that each of the two applicants has indicated that it is unaffiliated with any political party or candidate for public office and has agreed not to make any endorsement in the 2005 gubernatorial primary election until the completion of any debate it is selected to sponsor. Also, Director Davis said that the League of Women Voters of New Jersey Education Fund, WPVI-TV, WABC-TV, and NJN have all sponsored televised debates since 1976 among candidates for New Jersey statewide office and that the Philadelphia Inquirer was a co-sponsor with NJN in a 2001 gubernatorial general election debate.

Director Davis indicated that a third sponsor application was received by fax yesterday, April 4th from WCBS-TV.

Attending the meeting were Linda Munick and H. Patricia Tieman, representing the League of Women Voters of New Jersey Education Fund, WPVI-TV and WABC-TV, and Ed Rodgers representing New Jersey Network (NJN), the Philadelphia Inquirer, and the Gannett New Jersey newspaper chain. WCBS New York was not represented. The sponsor applicants each made presentations as included in their applications.

Commissioner Burstein asked Ms. Munick whether or not an audience would be present at the League of Women Voters debate.

Ms. Munick stated that the studio can seat about 20 people as guests of the candidates.

Commissioner Burstein asked further whether or not the format lent itself to a complete airing of candidate views.

Ms. Munick stated that “we have gotten away from candidate responses” and that yes, the format lends itself to a full airing of candidate positions.

Vice Chair Tober asked whether or not video streaming would be available on the web site that could be viewed at a later time.

Ms. Munick indicated that video streaming would be available.

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With regard to the NJN presentation, Commissioner Davis asked how audience questions would be handled.

Mr. Rodgers stated that questions would be filtered through the Philadelphia Inquirer and the Gannet New Jersey Newspaper chain.

At this juncture, Director Davis mentioned that in selecting the sponsors the Commission should also select sponsors for two Democratic debates in the event that any Democratic candidates file documentation by April 11, 2005.

Chair English recognized Bogata Mayor Steven Lonegan, a Republican candidate for Governor. Mr. Lonegan urged the Commission not to select the League of Women Voters to sponsor a debate, stating that the League's positions on issues are diametrically opposed to Republican principles. He said that debates require unbiased moderators, not ones that pose questions opposed to Republican values.

Ms. Munick responded that WPVI-TV has worked closely with the League on many debates over the years and has never found the League to be biased. She said, furthermore, that she works with the debate panelists and controls all questions. The League does not submit questions.

Ms. Tieman explained that the League of Women Voters of New Jersey Education Fund, which is applying to sponsor a debate, is a "501(c)3" organization and is separate and distinct from the League's "501(c)4" organization which takes stands on issues.

3. Advisory Opinion Requests No. 02-2005

An advisory opinion request was submitted by Peter G. Sheridan, counsel to Forrester for Governor, Inc., the 2005 primary election candidate committee of gubernatorial candidate Douglas R. Forrester. Mr. Sheridan's question concerns the criteria to be applied to a non-publicly financed gubernatorial candidate who elects to participate in the gubernatorial debates for publicly financed candidates.

In his request, Mr. Sheridan has asked whether or not 2005 gubernatorial primary election candidate Douglas Forrester, "who has elected not to accept public funding, but who has deposited and expended in excess of \$300,000 of his personal funds on campaign expenses," is eligible to participate in the two debates for 2005 primary election Republican gubernatorial candidates.

The Chair called upon Mr. Sheridan who explained that it is Mr. Forrester's constitutional right to use unlimited amount of his own funds to finance his gubernatorial campaign. Further, he stated that Section 45 of the law only requires that a gubernatorial candidate deposit and expend \$300,000 in order to participate in the gubernatorial debates. Mr. Sheridan explained that it is the intention of the campaign to submit "back-up" information by the debate qualification deadline.

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Commissioner Burstein stated that it is necessary to weigh the desire to include all candidates against the public policy of the public financing program and its restrictions. He asked whether or not Mr. Forrester would be getting an added advantage by being allowed to debate?

Mr. Sheridan responded that admitting Mr. Forrester does not take away the right of other candidates to use public money. He said the recent Samson case stands for the right of choice among candidates, and the Commission should protect the electorate as in Samson.

Commissioner Burstein said that Mr. Forrester is not inhibited by his absence from these debates. With his personal funds, he has great access and full opportunity to buy media time.

Commissioner Davis asked whether or not Mr. Forrester has complied with the same rules as a publicly financed candidate.

Mr. Sheridan responded that he does not think he has to do so.

Vice Chair Tober asked whether or not the qualification criteria are intended to avoid a dozen candidates in the debate.

Mr. Sheridan answered that the Legislature has the right to set criteria.

The Chair asked Mr. Sheridan if it was his position that the Commission cannot bar a self-funded candidate from the debate.

Mr. Sheridan answered in the affirmative if a candidate has deposited \$300,000 and is on the ballot.

The Chair recognized Mr. Lonigan who indicated his support for permitting Mr. Forrester to participate in the Republican candidates' debates. A representative of the Libertarian Party indicated that their candidate would "play by the rules" in the general election debates and wanted to be sure that there was a candidate with whom to debate.

4. Proposed New Rules to Implement the 2005 General Election Clean Elections Pilot Project

Legal Director Massar introduced proposed new rules to implement the Clean Elections Program. She said that if the new rules are approved for proposal by the Commission today, the proposal notice will be submitted to the Office of Administrative Law (OAL) for publication in the New Jersey Register. Secondary notice will be accomplished by posting the proposal on the Commission's Internet web site and in the Commission's public room, by mailing a notice of the proposal to interested individuals, and by circulating a press advisory to the State House press corps. Copies of the proposal will be mailed to any person requesting them. Staff expects that a public hearing will be conducted at the June 21, 2005, Commission meeting.

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Legal Director Massar stated that under this proposed schedule, which includes a 60-day period for receipt of written comments, staff expects that the rules will be ripe for adoption consideration at the Commission's July 19, 2005 meeting, and the anticipated effective adoption and publication date will be in August, 2005.

Legal Director Massar outlined the major provisions of the Act and explained that the proposed new rules address the following requirements in the Act:

- Two legislative districts are selected for the pilot project by either the State political party chairs or by an alternative selection committee.
- During the qualifying period, a candidate shall accept only seed money and qualifying contributions.
- Qualifying contributions must come from registered voters in a candidate's legislative district. Qualifying contributions are contributions from 1,500 individuals totaling \$20,000 in denominations of \$5 and \$30.
- No candidate may be certified as a Clean Elections candidate unless both candidates for election to the General Assembly in 2005 who are members of the same political party in a legislative district participate in and are eligible to be certified as New Jersey Fair and Clean Elections candidates.
- A candidate may receive an initial grant from the fund of no more than \$100,000.
- A certified candidate may receive additional sums from the Fund if competing against non-participating candidates or if independent expenditures are involved.
- A certified candidate may, at any time prior to the day of the election, withdraw from the pilot project with the approval of the New Jersey Citizens' Clean Elections Commission.
- A candidate may appeal a Commission certification decision to Superior Court.
- Certified candidates must participate in two candidates' debates.
- The Act contains civil and criminal penalty provisions.
- The Commission is responsible for preparation of a Voter's Guide.

Director Massar explained that the rules are proposed in a new Subchapter 23: New Jersey Fair and Clean Elections Pilot Project.

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission approved the proposed Clean Elections Regulations presented by staff and directed staff to file the proposal at the OAL.

5. Selection of 2005 Gubernatorial Primary Election Debate Sponsors (continued)

Chair English called for discussion of the applications to sponsor the primary election debates.

Commissioner Burstein moved approval of NJN as the sponsor of the primary gubernatorial debates. Vice Chair Tober seconded the motion. Commissioner Burstein stated that while both applications were solid he preferred the two-hour format of NJN.

Commissioner Davis stated that he believed that each application satisfies the requirements for debate sponsors. He pointed out that the Commission could select both sponsors to conduct one Republican debate each and one Democratic debate each, if needed.

Commissioner Burstein withdrew his motion.

On a motion by Commissioner Burstein, seconded by Commissioner Davis, the Commission approved the selection of the League of Women Voters of New Jersey Education Fund and its co-sponsors and NJN and its co-sponsors to sponsor one Republican debate and one Democratic debate (if needed) each.

Chair English recognized Ms. Ingrid Reed, representing The Eagleton Institute of Politics. Ms. Reed urged the Commission to take a role in promoting the primary election gubernatorial debates because sponsors with diverse interests do not typically coordinate advertising of the debates.

Executive Director Herrmann noted that the Commission had unsuccessfully asked for funding for this purpose.

6. Advisory Opinion Requests No. 02-2005 (continued)

Chair English asked the Commission to consider its response to the advisory opinion request submitted on behalf of candidate Forrester.

Vice Chair Tober moved approval of the request to allow candidate Forrester to participate in the public financing debates. Chair English seconded the motion.

Vice Chair Tober said that he understood the concerns that guidelines be followed. He stated further that when looking at the legislative intent of the debate provisions, it seemed the Legislature desired the participation of serious candidates for Governor in the debates. He said that he believed it was the intent of the Legislature, and in the public interest, to encourage participation in the debates.

Commissioner Davis disagreed. He said that certainly full participation was intended but only if one qualifies by following the rules. He said that by this motion the Commission would undermine its own regulations.

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Commissioner Burstein noted that the Commission was confronted with a serious issue. He stated that he respected both viewpoints. Commissioner Burstein stated that it is a natural reaction to want every one to participate in the debates. He said, however, that as important as this principle is it is of less consequence than undermining public policy and eroding the structure of the public financing program. He stated that if Candidate Forrester were allowed to participate while not adhering to the guidelines by which publicly financed candidates were required to comply, it would be counter to the purpose of the program, which in part is to level the playing field between candidates of limited means and wealthy candidates.

Chair English stated that the issue was exceptionally troublesome. She said, however, it has been her practice to evaluate legislative intent when performing the functions of a regulatory agency. She said that a liberal interpretation of the statute should be granted and that she wanted to see a debate in which all serious candidates participated.

Chair English called for a vote on the motion. By a vote of 2-2, the Commission deadlocked on the matter. Chair English and Vice Chair Tober were in the affirmative while Commissioner Davis and Commissioner Burstein were in the negative.

Commissioner Burstein stated he believed that a special meeting of the Commission was needed with an opinion from Counsel.

The Commission instructed Counsel Wyse to further research the issues raised by the advisory opinion request and to address specifically the issue of Mr. Forrester's participation in the debates and the question of what happens if the vote remains a 2-2 tie.

Vice Chair Tober said that it would be detrimental to Mr. Sheridan's client, who may need to appeal the Commission's decision, to wait too long to meet again.

Mr. Sheridan stated that the Commission must respond to an advisory opinion response within ten days.

Legal Director Massar indicated that Commission rules provide that the ten-day period is counted as ten business days.

The Commission determined to meet on April 13, 2005.

7. Resolution to go into 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 continuation of contractual legal services for James P. Wyse.

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8. 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.

9. Adjournment

On a motion by Commissioner Davis, seconded by Vice Chair Tober and passed by a vote of 4-0, the Commission voted to adjourn at 1:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz