

# **ELEC WHITE PAPER**

## **Ideas For An Alternate Funding Source**



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## **ELECTION LAW ENFORCEMENT COMMISSION**

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### **ACKNOWLEDGMENT**

The Commission wishes to commend various staff members for their contributions to this pioneering study. Deputy Director Brindle and Research Intern Steven B. Kimmelman drafted this paper based on Kimmelman's compilation of data from jurisdictions throughout the nation.

This project was conceived by Executive Director Herrmann and its earliest findings were presented by him before national conferences held by the Citizens' Research Foundation (CRF) in May, 1989 and the Council of State Governments (CSG), the National Association of Secretaries of State (NASS), and the Council on Governmental Ethics Laws (COGEL) in September, 1989. Executive Director Herrmann developed the issues discussed in collaboration with Deputy Director Brindle, Legal Director Nagy, and Director of Compliance and Information Evelyn Ford.

Legal Director Nagy was responsible for proofreading the entire manuscript and Executive Director Herrmann for editing it. Executive Secretary Josephine A. Hall did a fine job on the wordprocessing of the report.

Although the Commission supports the general concept of alternate funding for its activities, nothing contained herein is to be construed as an official expression of support for any particular approach. ELEC is releasing this White Paper based on extensive research in the hope of advancing constructive debate in this area. The ideas contained herein are meant to be the beginning of a public discussion not necessarily an ultimate solution to the problems addressed. ELEC welcomes modifications, additions, and alternatives to its discussion.

“The Election Law Enforcement Commission in Trenton is the State’s main repository for campaign data. Given its limited resources, [this] small agency does a tremendous job. Its staff is friendly and helpful. It regularly issues valuable reports on campaign financing trends and often suggests reforms . . . . ELEC is understaffed and underfunded. It needs more computers and more personnel . . . . If public officials are going to be truly accountable, they must provide the public with a cheap, convenient, easy-to-use means of finding out who bankrolls their campaigns.”

Joseph Donohue  
Atlantic City Press  
October 15, 1989

How do you assure the independence of the funding? Obviously, almost everything is allocated from a legislative budget . . . . How can you make sure that over a long term there’s going to be adequate funding, that a [Campaign Finance] Commission won’t be punished for taking strong idealistic positions?

Commissioner Richard D. Emery  
Questions asked before New York  
Commission on Government Integrity  
October 22, 1987

“The ELEC . . . has found a way to ease its fiscal problems without a drain on State taxpayers. In the long run, [their idea to raise fine levels and retain this money] could help avoid a repeat of the fundraising scandals that tarnished the State in the Sixties and Seventies.”

Editorial  
The Bergen Record  
October 18, 1989

“ELEC Executive Director Frederick Herrmann’s [call for enough] . . . staff to do the job right . . . sounds like a typical bureaucratic complaint, but he is probably right on the money.”

Jim Goodman  
Trenton Times  
January 8, 1989

“Campaign Finance agencies are notoriously under-funded . . . . They are not just another governmental entity, government body. They are very special. As far as the political sensitivity of the role goes, it is as sensitive as any I know of, and properly organized, they can be . . . a bulwark in the restoration of public confidence in the integrity of government.”

Frank P. Reiche  
Former Chairman of ELEC and the  
Federal Election Commission  
Testimony before New York Commission  
on Government Integrity  
October 22, 1987

## **INTRODUCTION**

In the second half of 1988, by the time the fiscal year 1990 budget was being prepared, it was becoming clear to New Jersey budgetary planners that lean times were ahead.

Introducing his fiscal year 1990 budget, Governor Thomas H. Kean, in his January budget message, set the tone for the coming appropriations process by outlining a State budget that was, in his own words, “frugal.”<sup>1</sup>

Indeed, as this process evolved, predictions of a “frugal” and “lean” year turned into clear-eyed, unsentimental talk about “hard times” and a fiscal picture that was increasingly “gloomy.”

For instance, on March 9, 1989, Craig R. McCoy, in the Philadelphia Inquirer, wrote, “on Monday, the Legislature’s non-partisan staff issued a downbeat prognosis for the budget year that begins July 1. It said the State could expect a \$5.4 million deficit in 1990 at the end of that fiscal year. . . .”<sup>2</sup>

When all was said and done, Governor Kean signed into law a \$12 billion budget which had to make millions in budget cuts.

Ironically, it was during this same lean period that the New Jersey Election Law Enforcement Commission (ELEC) faced the realization that its workload was increasing dramatically and that its budget was much too modest to keep pace with its growing responsibilities.

To make matters worse, this situation became even more pronounced as the Office of Management and Budget (OMB) in the Department of the Treasury cut 13 percent from the Commission's FY1989 budget. This cut reduced ELEC's budget almost a half million dollars from what the Commission said it needed for FY1990.

In its 1988 Annual Report, the Commission inveighed, "there is no question but that this budgetary reduction will place enormous pressure on an already thin staff as it copes with a campaign finance industry that is growing in an explosive manner, adding greatly to the Commission's workload."<sup>3</sup>

This message was reinforced on numerous occasions, both by the Commission itself and by individuals and groups that support the work the agency is doing.

For example, Edward McCool, Executive Director of New Jersey Common Cause, stated in testimony before the Senate and Assembly Appropriations Committees that "no other agency gives the people of New Jersey the picture of who pays for its elections, and no other agency is

responsible for enforcing this disclosure, of letting the sun shine on our electoral process. It cannot adequately fill these roles without adequate funding.”<sup>4</sup>

Karen Kotvas, Executive Director of Lawyers Encouraging Government and Law (LEGAL), in testimony before the Assembly State Government Committee concerning expanding ELEC’s responsibilities under new legislation, said that “ELEC should be funded more heavily than it is, because we can do all the campaign financing reform we want to, and if we don’t get the money to enforce it, it means absolutely nothing. We need that enforcement, and . . . [ELEC] needs a bigger staff to do what you decide.”<sup>5</sup>

Just ten days later Ms. Kotvas, before the Senate State Government, Federal and Interstate Relations and Veterans’ Affairs Committee, again spoke of ELEC’s need for more money stating that “the most important point of all is that ELEC has to have money to monitor this, because we can do wondrous things here and make wondrous reforms and have the best system in the entire world, but, if ELEC does not have the money to monitor, to police, and to do what it has to do, it’s really meaningless.”<sup>6</sup>

And finally, Phillis R. Elston, Executive Director of the New Jersey Environmental Lobby, at the same Senate Committee meeting, backed up Ms. Kotvas’ comments on an increased Commission role under new bills by saying, “the ELEC appropriation, we think, is super important, because of the same old happening where programs are mandated without the funds to



to carry them out. And ELEC will need the enforcement people, if we are lucky enough to see reform in our campaign laws.”<sup>7</sup>

Despite protestations to the contrary, however, ELEC’s budgetary prognosis remains, like the State’s, less than bright. Until there is an upturn in State revenues, ELEC, under the existing budgetary process, will certainly see no real increase in its current stringent budget, and may even suffer further damaging cuts.

Moreover, even if State revenues begin to climb, it is doubtful that the Commission will realize the kind of increases necessary not only to maintain its current level of services, but also to continue improving upon them and retain its premier standing among sister agencies throughout the nation.

Recognizing this harsh reality, and recognizing that if, during these difficult and lean times for State government, its call for increases in its budget be taken seriously, ELEC set about to determine how it could realize its funding goals in a way that did not increase the burden on the New Jersey taxpayer.

The ideas contained in this report, including a special fund to be created by the Legislature, which would be replenished yearly through the imposition of a percentage filing fee on continuing political committees (CPCs) and a flat fee on lobbyists as well as the retention of fine

collections, not only would remove the Commission from the appropriations process, but also would provide a stable source of funding adequate to meet ELEC's future needs at little or no expense to the taxpaying public.

As part of this analysis, ELEC would be guaranteed a base budget amount, which would be adjusted by the Consumer Price Index (CPI) each year to account for inflation. In any year in which the fund would be in deficit, the difference between the amount of money in the fund and that year's base budget target would be made up through an appropriation by the Legislature. Correspondingly, in Legislature. Correspondingly, in a year when the fund realizes a surplus, the difference between the surplus amount and the base target would remain in the fund to cover possible future shortfalls.

The fund would operate in much the same way as the Gubernatorial Elections Fund, which replenishes itself through the tax-checkoff program and is used to provide public funds for gubernatorial candidates. The major difference, however, is that the bulk of the ELEC special fund would be replenished, not by the taxpayers, but by continuing political committees that file with the Commission and are regulated by it. New Jersey's taxpaying public will benefit from the fund because they will no longer be primarily responsible for funding ELEC's work. In all probability, CPC receipts will continue to rise, and the public will have no responsibility at all for ELEC's budget. It may be sounder public policy that the Commission's efforts should be financed by those whom it regulates instead of the State's citizens.

In the following pages, this idea is discussed in greater detail, providing its pros and cons, reviewing its applicability to continuing political committees and lobbyists, and placing it squarely in the context of the desirability that an ethics agency not be subject to budgetary control by the very same people it regulates.

## **THE COMMISSION AND THE CURRENT BUDGETARY CLIMATE**

### **The Functions of the Commission**

The Election Law Enforcement Commission, established in 1973, monitors the campaign financial activity of candidates for local, county and statewide offices; lobbyists; political action committees; and political party organizations. It also administers the Gubernatorial Public Financing Program.

Under “The Campaign Contributions and Expenditures Reporting Act,” candidates file reports which disclose total receipts and expenditures and identify contributors of more than \$100. The candidates file their campaign reports 29 and 11 days before the primary and general elections; and, at a minimum, one time after these elections on a 20-day postelection report.

Continuing political committees, including political action committees (PACs) and political party committees, are also required to report their financial activity, but on a quarterly basis. In addition, lobbyists report their financial activity on an annual basis, and legislative and gubernatorial candidates their personal finances in the year they are running for office.

## **How the Commission is Organized**

The Commission is organized into five sections, a change instituted four years ago to improve its efficiency and effectiveness.

The Legal Section is responsible for reviewing proposed legislation, prosecuting complaints, collecting fines, preparing advisory opinions, and promulgating regulations.

The Review and Investigation Section reviews campaign, quarterly, personal financial and lobbyist reports in order to uncover potential violations of the Campaign Act and investigates potential infractions of the law stemming from these internal reviews as well as from complaints from the public.

The Public Financing Section, among the most visible of ELEC's sections, administers a gubernatorial public financing program that is second to none and has been hailed as a national model.

The Compliance and Information Section provides valuable assistance to candidates and treasurers of campaign committees and to representatives of all filing entities. Moreover, the section provides access to campaign-related information to the press, public, and elected officials; oversees the filing of reports; and prepares press releases.

While not organized as a Section, the Commission also employs a computer staff which provides the agency's data processing services. A very important part of the Commission's efforts to furnish valuable campaign financial information to the public, the computer staff prepares computer printouts of alphabetical listings of contributors; summary printouts of candidate expenditures; and, upon request, data in various formats for research and other purposes. The computer operation is essential to the Commission's drive to maximize efficiency with minimal staff resources.

Finally, the Administration Section provides all management services for the agency.

The Election Law Enforcement Commission, organized in this logical and commonsense manner, has been able to handle its significant tasks extremely effectively, in the process proving itself to be one of the premier ethics agencies in the country.

### **The Commission Continues its Fine Record**

In 1988, for instance, the Commission continued to build upon its outstanding record in getting filers to comply with the law, producing analytical studies, and in enforcing campaign finance laws.

It processed over 15,000 reports, issued over 20 advisory opinions, concluded almost 100 investigations, issued over 600 complaints,

and responded to over 8,000 requests for public assistance. It conducted seminars; published a highly acclaimed Gubernatorial Cost Analysis Report, which led to the law being changed; published analytical press releases; and initiated a series of White Papers.<sup>8</sup>

Commenting on the Commission's record and reputation, John D. Feerick, Chairman of the New York State Commission on Government Integrity and Dean of the Fordham University School of Law, went so far as to refer to the Commission in Governing as a "dynamic, independent enforcement board."<sup>9</sup>

### **Budget Cuts and Campaign Industry Growth Jeopardize the Commission's Standing**

Despite this deserved reputation, however, the ability of the Commission to maintain its high level of services and national leadership prominence is squarely in jeopardy as the result of budget cuts and the inability of the Commission, under the existing budgetary process, to obtain the level of funding necessary to maintain and improve upon its disclosure efforts and to keep pace with its ever-increasing workload.

As stated by its Executive Director, Frederick M. Herrmann, in his 1988 Annual Report remarks:

The ramifications of . . . ever-increasing financial activity by . . . reporting entities are enormous. For it is this financial activity, the increasing number of contributor transactions, not just the increase in entities filing reports, that is the basis of Commission's workload.

Specifically, continued growth in the number and financial activity of candidates, PACs, and lobbyists will have a severe impact on informational, prosecutorial, and analytical activities. There will be a need for more document review, investigations, prosecutions, telephone assistance, computer data entry, and xeroxing.

In enforcement, the volume of review, investigative, and prosecutorial activity will continue to increase as financial activity increases. One Field Investigator for State and one Assistant Counsel for prosecutions will not possibly be able to keep up with the growing workload.

Also, the increasing number of requests for information (over 8,000 in 1988) together with the growing financial activity of reporting entities (over 15,000 reports in 1988) has already strained the compliance resources of the Commission and will do so in more devastating fashion if current trends continue.

Finally, in the area of research and analysis, the Commission, absent any research staff, will be hard-pressed to continue to provide the same quality of analysis if the growth and sophistication of campaign finance activity continues unabated.<sup>10</sup>

Without question, campaign and lobbyist spending has risen dramatically, fueling an increase in the workload of the Commission that is staggering.



For instance, during the ten-year period 1977 to 1987, general election candidates for the Legislature increased their receipts by 261 percent and their expenditures by 195 percent. Receipts went from \$4.1 million to \$14.8 million and expenditures from \$3.9 million to \$11.5 million.<sup>11</sup>

The most recent spending figures available, those of Assembly candidates who ran in the 1989 primary, show this trend continuing. These candidates reported spending \$1 million for their campaigns. Only four years ago, in 1985, the total amount spent was only \$582,913, nearly one-half as much. This trend is expected to continue.<sup>12</sup>

Moreover, with respect to gubernatorial elections, the recent changes to the gubernatorial public financing program precipitated a primary election in which candidates for Governor raised and spent more money than ever before. With approximately \$8.6 million dispersed in public funds, up from \$3.6 million in 1985, gubernatorial candidates spent approximately \$14.4 million dollars on their campaigns, a 132 percent increase over 1985, when they spent \$6.2 million. In the general election, \$6.6 million is expected to be dispersed in public funds and \$10 million spent directly by the candidates.<sup>13</sup> Millions more may be spent on the gubernatorial campaigns by the State Political Party Committees and other committees.

Special interest political action committee financial activity has also increased significantly. In addition to a 65 percent increase in

the number of PACs filing reports between 1985 and 1987, PACs increased their spending in the same time period on candidates by 98 percent. In 1985, there were 113 PACs filing reports with the Commission, whereas in 1987 that number increased to 187. Spending on candidates by PACs increased from \$2.2 million in 1985 to \$4.4 million in 1987. While receipt and expenditure statistics are not yet available for 1988 and 1989, there is no question that PAC financial activity has continued to rise. Indeed, the total number of PACs registered in 1989 increased to 217. Further, the other continuing political committee types, political party committees and officeholder PACs, have also been increasing their financial activity.<sup>14</sup>

Lobbyist and legislative agent reporting has also been steadily increasing. In 1987, 397 annual reports were filed with the Commission. Lobbyists in that year reported spending \$7.7 million. In 1988, 502 reports were filed, and spending by lobbyists was reported to reach \$10.5 million.<sup>15</sup> It is anticipated that these numbers will again rise in 1989 and in subsequent years.

### **Staff Resources Strained**

Obviously, the pressure on the staff resources of the Commission, a small agency comprised of 35 permanent staff members, is intensifying quite considerably. The increase in the financial activity of filing entities, the increase in the overall number of entities filing with the

Commission, and the added sophistication of those that use ELEC's services have contributed to a surge in the Commission's workload that is growing out of balance with its staff resources and funding levels.

Moreover, this pressure could grow even more intense if changes are made in any or all of the disclosure laws over which the Commission has jurisdiction. For instance, as the 1990's dawn, there are several key proposals for reforming the financial and lobbyist disclosure laws that have the pnt by lawmakers in Trenton. Needless to say, if reforms are made, they would probably come in the form of a legislative public financing program, an overhaul of the Lobbyist Disclosure Act, and the introduction of comprehensive changes in campaign financing laws, which would include the imposition of contribution limits and the enactment of more stringent regulation of PACs.

In each instance, the regulatory responsibilities of the Commission would increase. Coupled with the increase in financial activity that is occurring, these reforms would greatly intensify the workload of the Commission and severely strain its staff resources.

Setting aside, however, the issue of changes in the statute and an accompanying increase in ELEC responsibilities, the Commission needs more money and more staffing to maintain its level of services under current law. In addressing these needs, the Commission set forth what it believes it

needs to cope with this explosive growth in campaign financial activity in a five-year plan it developed last year.

Essentially, this plan would add 14 new positions, include the necessary administrative costs to support these positions, and contain funding for improvements in ELEC's computer operation.

### **Increased Budget Unlikely**

Despite this effort, however, and despite the fact that its proposal for fiscal year 1990 contained the first part of its plan, the current budgetary situation worked against the Commission's priority package, which called for six new permanently budgeted positions for 1990, being approved during the appropriations process. As a matter of fact, as noted above, the current fiscal year's budget (\$1,486,000) was not only reduced by almost a quarter of a million dollars from the original target of \$1,707,000 (including public financing administrative costs) but is actually \$28,000 lower than the fiscal year 1989 budget of \$1,514,000 (including public financing administrative costs). In the current fiscal year, the budget for regular Commission operations, not including public financing, is only \$1,186,000. The Commission had asked for a total of almost \$500,000 more for fiscal year 1990 (this figure includes what the Commission had asked for on top of its original target) than it received.

For fiscal year 1991, the Commission is again asking for more money beyond the budget target given to it by OMB. OMB's original target for ELEC in planning for fiscal year 1991 is \$1,207,000, which is only \$21,000 more than its current budget. The \$21,000 increase is merely to compensate for estimated salary increases and cannot be construed as an increase in real dollars. The public financing program will be inactive in fiscal year 1991; therefore, administrative costs for the program are not included in the budget target. Moreover, while the Commission has asked for \$200,000 more in fiscal year 1991 than the budget target projects, the likelihood of this increase being realized is not good. The fiscal restraint presently being exercised is expected to continue and it is highly unlikely that the Commission will receive from the appropriations process the dollars it desperately needs to keep pace with the dramatic growth in the industry it regulates.

### **Commission Ideas About Self-Sufficiency**

With these considerations in mind, the Commission is setting forth various ideas for self-sufficiency which will remove it from the regular State budgetary process and transfer its fiscal base of support from the taxpayers to the continuing political committees and lobbyists that generate its workload. These ideas are outlined in the next section of this report.

## AN ALTERNATE REVENUE SOURCE

ELEC's discussion of an alternate revenue source contains five parts:

- 1) a filing fee would be imposed on the total gross receipts of continuing political committees;
- 2) a lobbyist filing fee would be introduced;
- 3) ELEC would keep all fine money collected from Campaign Act violators and the fine scale would be increased at least to take into account the past fifteen years of inflation since the Act's inception in 1973;
- 4) the Commission would keep a percentage of public funds collected through the gubernatorial check-off program for administrative purposes of the public financing program; and
- 5) a constitutional or statutory budget base, increased annually by an inflationary index, would be established to insure fiscal stability.

## **Percentage Fee on Continuing Political Committee Receipts**

The first of the Commission's ideas for budgetary self-sufficiency is a filing fee that would be exacted against continuing political committees. Continuing political committees include: special interest PACs, officeholder PACs, and political party committees. Continuing political committees are defined by the statute as any group of two or more persons who raise and spend, for political purposes, more than \$2,500 annually on an ongoing basis and any political party committee regardless of financial activity.

The amount of fundraising by these political entities in recent years has skyrocketed. In 1985, for instance, they raised \$11.7 million. This figure rose to \$24.6 million in 1987 and to \$37.6 million in 1988. It is quite conceivable that continuing political committees in New Jersey will have raised \$50 million by the end of 1989.<sup>16</sup>

CPCs, including political parties and PACs, have contributed significantly to the tremendous rise in campaign financial activity, and, consequently, to the ever-increasing workload of the Commission. Not only are the Commission's responsibilities in the area of compliance assistance and enforcement being enlarged, but also its activity in the area of providing information to the public is being increased. Political parties and PACs are major users of the information made available by ELEC. While there are numerous reasons why this information is useful to these entities,

there is little doubt that much of the campaign financial information obtained through the Commission is helpful in terms of developing mailing lists for future fundraising efforts.

It is easy to see how a reasonable fee would provide the necessary funding to allow the Commission to keep pace with its increasing workload and to enhance its services. For instance, continuing political committees in New Jersey during 1988 raised \$37.6 million. A filing fee of four percent would net the Commission approximately \$1.5 million, exceedingly close to the \$1.7 million budget the Commission needs to continue its record of excellence. Moreover, since the overall trend in financial activity is upward (it is expected to reach \$50 million by the end of 1989) this source of revenue could provide the Commission with its annual base budget adjusted for inflation if it were assessed at the sample percentage.

A filing fee makes sense for continuing political committees because these entities are among the prime users of ELEC's facilities. In addition to their utilization of contributor lists for fundraising purposes, continuing political committees can search the records of their competitors not only to measure the success of the competition's fundraising efforts, but to determine to whom their competitors are contributing. In this way, they can adjust their own strategies to become more proficient at influencing the political process and controlling the outcome of elections.



Unlike candidates, who will not be charged a fee for running for office, continuing political committees, be they PACs or the parties, exert an ongoing influence over electoral and governmental processes, an influence that is growing by leaps and bounds.

The influence of political action committees over the electoral process at the State level, for example, has been growing steadily in New Jersey. As demonstrated in ELEC's White Paper Number Two: *Trends in Legislative Campaign Financing: 1977-1987*, PAC activity in New Jersey came of age during the 1980's and is considered to be a driving force in the rapid increase in legislative campaign financial activity. For example, in 1987, there were 187 statewide PAC's, up 65 percent from 1985. Moreover, their involvement in legislative campaigns has increased dramatically to \$2.8 million in the legislative general election of 1987. Overall expenditures by these groups amounted to more than \$6 million that year. Based on contributions to local, county, and legislative candidates combined, PACs gave \$4.4 million that year, a figure that was double that of 1985, when PACs spent only \$2.2 million on all candidates in the State.<sup>17</sup> Most assuredly, these figures are expected to climb.

Officeholder PACs might also be charged a filing fee. Consistent with the overall trend in increased campaign financial activity, these PACs, most of which have been formed by members of the Legislature, grew from 3 to 78 between 1983 and 1987. The financial activity of these groups reached \$2.3 million in 1987, with approximately \$600,000 contributed to legislative

candidates; and, this activity is expected to intensify.<sup>18</sup> While receipt and expenditures totals are not yet available, the number of officeholder PACs has grown to 170 in 1989.

Finally, political party committees are the third major type of continuing political committee that might be subject to a filing fee. Political party organizations in New Jersey exist on the State, county and local level. These political party organizations, especially on the State level, and to a significant extent the county level, have demonstrated their ability to raise large sums of money. The State party organizations, for instance, have evolved into service industries and could be deemed super PACs. They pay for advertising and polling, political consultants, and undertake sophisticated voter registration and get-out-the-vote operations. They even provide media and campaign strategy sessions for their respective candidates. The State parties, along with their county and local organizations, constitute an extremely important part of the electoral process and are responsible for much of the campaign financial activity occurring throughout the State.<sup>19</sup>

A fee on continuing political committees may prove controversial. Indeed, the pros and cons of the Commission's ideas about self-sufficiency will be discussed later. Nevertheless, the increasing financial activity of PACs and parties, which is fueling the spending activity by candidates, and in turn, increasing the burden on ELEC to provide the disclosure the public deserves, may be seen as the primary means by which the Commission can

obtain the budget it needs to operate effectively. Moreover, this fee system would permit the Commission to accomplish this goal while decreasing the burden on the taxpayer.

### **Flat Fee on Lobbyists**

The second of the Commission's alternate funding source ideas is the imposition of a flat fee for filing lobbyist reports. This idea dovetails closely with the filing fee on continuing political committees, although it would not raise nearly as much revenue for the Commission.

Lobbyists and legislative agents registered in New Jersey file annual reports of their financial activity with the Commission. Under the current bifurcated system, these same lobbyists and legislative agents register with the Attorney General and file quarterly reports with the Department of Law and Public Safety. While the Commission and the Attorney General have consistently called for reform of this system to require registering and all reporting to be done through ELEC, immediate chances of accomplishing this change are not promising. It should be noted that lobbyists and legislative agents are currently required to pay a fee for both registering and filing with the Attorney General.

While lobbyists and legislative agents, in the main, do not exist solely for campaign-related purposes (of course they do make campaign contributions) and are not directly responsible for the surge in campaign

funding, they do influence public policy and generate work for the Commission. There is an important public purpose being served through the disclosure of their financial activity on behalf of their lobbying pursuits.

This financial activity is increasing. And, as with continuing political committees, it is intensifying at a fast pace. Moreover, the number of lobbyists and legislative agents operating in New Jersey is increasing. Subsequently, not only is the amount of expenditure information to be reviewed rising, but also the number of lobbyists and legislative agents to be monitored.

Lobbyists and legislative agents, who promote special interests, numbered 360 in 1986. In that year, their reported expenditures reached \$5.8 million. In the next year, 1987, the number of registered lobbyists and legislative agents amounted to 397, with their expenditures reaching \$7.7 million. Finally, in 1988, lobbyists and legislative agents totaled 502, reporting expenditures of \$10.5 million. Since 1986, lobbyists and legislative agents have increased in number by 39 percent and have increased their spending by 81 percent.<sup>20</sup>

Lobbyists and legislative agents exist to influence legislation and public policy. They represent special interests, and while their activity is protected and encouraged by the nation's democratic political culture and tradition, it cannot, broadly speaking, be said to be undertaken

in the general interest of the public or be as an essential a part of the political system as say running for office.

It may be appropriate to exact a filing fee on lobbyists and legislative agents as a cost of their doing business. While these groups may not use the services provided by the Commission as widely as do continuing political committees, they certainly derive pecuniary benefits from their ability to operate freely on behalf of their interests in a free and open society. They also generate a certain amount of ELEC's workload.

A flat filing fee, perhaps of \$200, would help the Commission realize approximately \$100,000. This figure is based on the number of lobbyists and legislative agents reporting to ELEC in 1988. While not an enormous amount, together with the revenues realized through the percentage fee on CPC's and through the retention of fines by ELEC, this money would certainly help the Commission reach its base target budget each year.

### **Fines to be Retained**

The third idea is for the retention of all fine money paid to it in response to penalties exacted against violators of the Campaign Act, the Personal Financial Disclosure Act, and the Lobbyist Disclosure Act.

Currently, the Commission collects over \$30,000 in fines per year. This money reverts to the general treasury and the Commission derives

no benefit from its collection efforts. This arrangement might be changed to derive direct monetary benefit for ELEC from its fine collection activity. Again, the revenues raised through this alternate funding method will contribute to the overall base target the Commission believes it needs to operate at peak capacity and provide the public with the most complete disclosure of campaign financial activity possible. While the agency currently collects over \$30,000 in fines, this amount could be expected to increase steadily if an alternate funding source plan is implemented, and, in turn, enforcement efforts increase. Moreover, the Commission has proposed that the fine schedule in the law at least be adjusted for inflation.

### **Public Financing Administrative Costs as a Percentage of the Gubernatorial Elections Fund**

The gubernatorial public financing program is certainly among the Commission's proudest achievements. This program, which distributes public funds to qualifying gubernatorial candidates, has provided needed campaign money to viable candidates and has helped to eliminate undue influence from the gubernatorial elections process.

Historically, this program has been financed by the Gubernatorial Elections Fund, which derives its money from the \$1 tax check-off program. Amended twice since its inception in 1977, the public financing program was changed most recently in 1989 when its various limits and thresholds were

increased to reflect the impact of eight years of inflation. In addition to raising the contribution and expenditure limits, the most notable change consisted of increasing the public funds cap to a level whereby the majority of the money spent by participating candidates would derive from public funds. In just the 1989 primary alone, \$8.6 million was distributed to candidates and an additional \$6.6 million in public funds was awarded to gubernatorial candidates in the general election. In total, a record \$15.2 million was provided to candidates in this most recent gubernatorial election year.

The changes wrought in the gubernatorial program have resulted in more money being distributed to candidates; and, concomitantly, in an intensification of the Commission's workload in the area of public financing. Certainly, there can be no expectation of a slowing of this activity in the years to come.

The Commission's public financing appropriation has been traditionally outside of its regular operating budget. Until recently, when an arrangement was established by OMB whereby the Commission's operating budget was supplemented with funding for the administration of the program, the program's administrative costs were absorbed in the appropriation from the Gubernatorial Elections Fund. Currently, money in this fund is used only for the purposes of distribution to candidates. The administrative costs of the program, on the other hand, including the hiring of temporary staff and administrative support, are assumed by the general treasury. Except for a

permanent director and secretary who are included in the Commission's regular budget, all other public financing staff, both professional and nonprofessional, are temporarily employed. The public financing administrative budget, as well as the program itself, is funded in only those fiscal years in which there is a gubernatorial primary or general election.

In fiscal year 1990, the \$300,000 appropriation for administering the public financing program was reduced by \$130,000 from its original target of \$430,000, necessitating the elimination of State funding through ELEC of the ballot statement program that allows independent candidates to present their messages to the electorate. Such a situation does not have to occur in the future. The entire public financing program, including the administrative costs, could be considered separate and distinct and would not have to be absorbed in ELEC's base budget target, except for the director and secretary. ELEC could take a percentage of the tax check-off monies to administer the program.

Thus, a fourth idea for alternate funding is for the Commission to receive a percentage of tax check-off revenues for the purpose of administering the gubernatorial public financing program, which itself would continue to be funded through the gubernatorial elections fund.



## **A Guarantee of Fiscal Stability**

The fifth and final alternate funding idea is extremely important to the stable fiscal foundation the Commission wishes to secure. Under this concept, the Commission would be statutorily or constitutionally guaranteed a base budget starting at \$1.7 million in fiscal year 1991, and adjusted for inflation in each succeeding fiscal year. Moreover, in the eventuality that the statute is amended, in turn increasing the Commission's workload further, this guaranteed budget base would be altered to reflect the Commission's increased responsibilities. In turn, the new budget base would be adjusted for inflation in each succeeding year.

This concept would provide stability to ELEC's budgetary planning and protect it from the possibility of declining revenues, particularly in an off-election year in which there are neither gubernatorial nor legislative races. Moreover, it would be unsound for the Commission to maintain a certain size staff in one year, only to have to reduce it in the next year in order to compensate for a possible but unlikely loss in filing fee revenues. Certainty and stability might only result if the Commission is statutorily or constitutionally guaranteed a CPI adjusted base target each year. Barring any unforeseen statutory limitations on the financial activity of continuing political committees, revenues are expected to rise in a consistent pattern. Yet the Commission can never be certain of this fact. Thus, it would be irresponsible and not in the public interest for

the Commission to depend solely on these alternate funding sources for its fiscal support.

Essentially, an Election Law Enforcement Fund, which would be filled by revenues from filing fees exacted against continuing political committees and lobbyists, and from fines collected by the Commission could be created. This fund would be set-up in the same way the Gubernatorial Election Fund is, with the Legislature making a loan to the fund in the first year and the loan being repaid by the revenues collected during the course of that year. In each successive year, the Legislature would again make a loan to the fund, in the amount equal to the base target for that particular fiscal year. During the course of the fiscal year, the loan would be replenished by the revenues collected by the Commission.

In a year when the fund is in deficit, the Commission would still be guaranteed its base target for the coming fiscal year. The Legislature would make up the difference between the amount in the fund and the Commission's base target.

In a year when the fund is in surplus, the difference between the surplus amount and the Commission's base target would be saved for future use and the following year's loan would be proportionately smaller.

This arrangement could provide the necessary stability for the budgetary planning efforts of the Commission. Even more, it could provide

the taxpayers with a means by which they could actually make money, and at the same time derive the benefit of campaign disclosure laws that are not only comprehensive but also optimally enforced. While it is possible that this election fund could run a deficit, the more likely scenario is that the fund will continually realize a surplus. Even if it does not fully cover the Commission's needs the taxpayers would be still getting more from ELEC for less. For example, it now costs New Jersey taxpayers about \$1.2 million (not including public financing administrative funds) for ELEC to do a strained job that is \$500,000 short of needed funds. If the fund raised \$1.5 million, taxpayers would only be paying \$200,000 for an optimum ELEC budget of \$1.7 million.

The trend in campaign financial activity by continuing political committees is upward and is expected to remain so. With this being the case, the concept of an alternate funding source, while not only having the ability to give the budget process the stability it needs, would also ultimately benefit the taxpayers as well.

## **THE FILING FEE SYSTEM**

This section of the White Paper will focus on the concept of a filing fee system and its administration. The imposition of a filing fee on continuing political committees filing with the Commission is a major part of ELEC's thoughts on budgetary self-sufficiency.

### **The Rationale Behind the Filing Fee System**

As a practical matter, the filing fee system as conceptualized by the Commission is similar to a user fee system. In the 1980's, the user fee concept gained in popularity and in application as governmental budgets at all levels grew tighter and the need to find alternative sources of revenue increased.

Essentially, user fees place the burden of paying for certain government services on those persons or entities that use these services rather than on the taxpaying public. Under the traditional user fee concept, payment is based upon how much of a service is consumed. Moreover, user fee systems often deprive those who do not pay the fee from deriving any benefit from the government program. A simple example of this would be the use of the New Jersey Turnpike. If a motorist is unwilling to pay for the privilege of using this highway then he or she cannot drive on it. Conversely, if an individual chooses not to use this toll road then he or

she is not forced to pay for its maintenance. Only those drivers that use the highway are required to subsidize it.

The theory behind a filing fee system for CPCs not only encompasses this rationale but also takes it one step further. Continuing political committees would be charged a filing fee not only because these groups are frequent users of ELEC's information system, but also because they are fueling the rapid increase in campaign financing activity that in turn is increasing the Commission's workload. Not only are continuing political committees benefiting from the Commission's services but they are principally responsible for increasing the burden being placed on ELEC to maintain its current level of efficiency. With these facts in mind, it might be considered only fair that these entities, along with lobbyists, bear the primary responsibility for providing the financial means to allow the Commission to do its job.

### **Reasons for the Filing Fee System**

In terms of the user fee concept, several arguments are generally advanced to justify the application of this idea. These arguments can be viewed as applicable to the filing fee system discussed in this paper.

First and foremost, the fact that those entities that use the service the most (and in this case which are responsible for increasing ELEC's workload) will pay for it, lends itself to a situation whereby the

government will be saving the taxpayers money. The taxpayers will no longer be financing the total Commission budget, for instance. Instead, continuing political committees and lobbyists will contribute to the financial support of the agency.<sup>21</sup>

Another argument commonly advanced in favor of the user fee concept involves the notion of equity. Is it not more fair, for example, for those groups that are using the system the most, and simultaneously, driving up the workload of the Commission, to subsidize it? It is these entities, rather than the general public, that could bear the burden of the Commission's financial support.<sup>22</sup>

In addition, proponents believe that user fees provide government with tremendous revenue potential. For instance, by charging a user fee, government is able to raise revenues in addition to those raised through normal taxation procedures. This fact is particularly noteworthy in a period when budgets at all levels of government are tight.<sup>23</sup>

The State of New Jersey is entering a period of budgetary austerity, but more importantly, the revenue raising potential of this concept as outlined in this White Paper is enormous. The Commission's discussion of imposing a percentage filing fee on CPCS, and a flat fee on lobbyists, holds the possibility of raising considerably more revenue to enable the Commission to enhance disclosure than does the current system. For example, the Commission's fiscal year 1990 budget, including public financing, is \$1,486,000. Utilizing a filing fee system, the Commission's

budget could approximate \$1.7 million this year, excluding public financing administrative costs. This figure is derived by imposing a four percent filing fee on continuing political committees, which raised approximately \$37,000,000 in 1988, and estimating the money raised through the flat fee on lobbyists and the retention of fines collected.

Finally, proponents also favor the user fee concept because it is consistent with a police of easing the burden on the individual taxpayer and reducing the cost of government. Certainly, the filing fee system concept discussed in this paper would remove the primary responsibility for supporting ELEC from the taxpayers and place it squarely on the shoulders of those who are using the Commission's services while at the same time driving up the costs of campaigning. Not only would the system of disclosure be enhanced in New Jersey, but it would also be done so at the expense of the continuing political committees and lobbyists, and not the taxpaying public.

### **Other New Jersey Agencies Charge Filing Fees**

While the Commission's discussion of instituting a filing fee system is certainly interesting and far-reaching, it would not be the first such system implemented in New Jersey.

Besides transportation agencies like the New Jersey Turnpike, the Highway Authority and New Jersey Transit Authority, other agencies in the State have implemented some form of user or filing fee system. Many park

units, for example, collect fees from users in the form of admissions and parking fees. Also, in the Department of Environmental Protection, the Division of Fish, Game and Wildlife raised \$8.5 million for its fiscal year 1989 budget from the sale of licenses for hunting and fishing. Moreover, the State Lottery Commission is funded entirely from receipts that derive from lottery sales. A certain percentage of every dollar the Lottery Commission receives is set aside to administer this agency. Professional licensing boards also obtain revenue from filing fees. Groups like attorneys, for instance, are required to pay filing fees, which help pay for programs that aid in the administration of justice.<sup>24</sup> Finally, the Casino Control Commission is supported through fees for investigations and inspections by the Commission. In addition to these fees, which range from \$20 to \$50, per hour, the Casino Control Commission also derives funding from licenses for employees and slot machine vendors.<sup>25</sup>

### **Filing Fees Imposed on Electoral Activity in Other States**

In addition to the ample precedent in New Jersey State Government regarding filing fees in general, there is also precedent for such a system in the area of elections, albeit in other states. While in New Jersey filing fees are not charged for any election-related activity, numerous other states have employed filing fees vis-a-vis electoral matters. In the main, filing fees have been used in other states as a means of controlling access to the ballot. Unlike New Jersey, which has no filing fee of this type, but has traditionally required the filing of nominating petitions by



would-be candidates, many states have charged candidates a fee for being listed on the election ballot.

Extant in about two-thirds of the states, these filing fees vary from state to state. In some states they are based on a flat fee, usually between \$1,000 to \$2,000. In other states, these fees are based on the annual salary of the office sought. In Florida and Georgia, for instance, the fees are three percent of the annual office salary. For a congressional office, for instance, the fee would be \$2,685, which amounts to three percent of the annual salary of \$89,500.<sup>26</sup>

While these fee systems do exist and are rooted in history, it must be pointed out that in the 1970's several court decisions, though upholding the right of states to impose filing fees as a means of limiting access to the ballot, required states to provide an alternative means for candidates to gain such access. This alternative means is represented by the petition system, which is common to New Jersey. Thus, while setting a fee on this election-related process is common in numerous State electoral systems, the court has modified this approach to limiting access to the ballot by ordering states to provide an alternative, the petition filing. The courts have modified the filing fee system for ballot access on the grounds of equity; namely, that providing for only a filing fee system discriminated against the poor who did not have the means to run for office. By providing the petition alternative, the courts provided those who could

not pay a filing fee with an opportunity to get on the ballot and seek election to public office.<sup>27</sup>

### **A CPC Filing Fee Initiative is Innovative**

Throughout the nation, there is no exact precedent for the filing fee concept discussed by the Commission. It would be a pioneering effort that would not only free the Commission from the budgetary process controlled by the very same public officials it regulates, making it a self-sustaining agency with a budget adequate to its needs, but would also help to maintain its reputation as a national model for innovation.

Other states have considered proposals that in certain ways resemble this idea, but either have not enacted them or have adopted programs that are substantially different.

For example, Indiana currently requires political action committees to post a \$50,000 surety bond with the State, but does not require these PACs to pay a fee for filing. The surety bond insures the treasurer of the PAC and is designed to prevent PAC money from being misused. The actual cost of the bond, \$50 per year, is paid to the bonding company.<sup>28</sup>

In Florida, the Legislature has established the Elections Commission Trust Fund to become effective in January of 1990. An estimated \$150,000 annual operating budget for the Commission will be funded through a

one percent elections assessment levied against local, county, and State candidates. In addition, all fines collected by the Commission will be deposited in a separate Florida Election Campaign Financing Trust Fund, which has been established to support public financing of statewide candidates.<sup>29</sup>

Other states have considered imposing filing fees on PACs and other political players that are non-candidates, but thus far no program of this kind has been enacted.

Wisconsin, for instance, considered a filing fee for PACs earlier in 1989 but failed to take any action. The idea originated with the Wisconsin Governor's Office which proposed a flat annual fee of \$50 per PAC. The monies received from the Wisconsin proposal would have gone to the State Election Board and would have supplemented its regular budget appropriation.<sup>30</sup>

California had an even more novel idea. While not proposing a fee on PACs, the California Fair Campaign Practices Commission did suggest licensing political consultants. In order to obtain a license, these consultants would have to pay a fee similar to the licensing fee paid by doctors and lawyers. Like Wisconsin, the California proposal was never enacted. In California, the political consultants worked to defeat the proposal on the grounds that licensing would mean that the State could regulate the contents of political messages. The consultants claimed that this authority would be violative of the First Amendment. Similar to the

Wisconsin proposal, the California program would have supplemented the statutorily-based budget of the Fair Campaign Practices Commission.<sup>31</sup> In California, the Fair Campaign Practices Commission is guaranteed a base budget, which is adjusted each year according to cost-of-living increases in that State. The Legislature can add to this budget but cannot reduce it.<sup>32</sup>

And finally, in Connecticut, the Connecticut Elections Enforcement Commission, has submitted a proposal that would permit it to retain the fines it collects for its own budgetary purposes. If this statutory change is made, an additional auditor could be employed to generate more enforcement and fine activity. About \$18,000 in fines is collected annually in Connecticut.<sup>33</sup>

Thus, while other states have advanced ideas containing aspects that are similar to these discussed by the Commission, it is fair to say that ELEC's thinking is more far-reaching and comprehensive. Not only could the Commission raise revenues through the filing fee system, but it could raise enough money to support its entire budgetary needs at little or no expense to New Jersey's taxpayers.

## **Administration of the Filing Fee Program**

In spite of the fact that these ideas represent an exciting and new approach toward funding agencies that advance the causes of public disclosure, open government and ethics; it still bears the age-old problem of being administered. The Commission believes that considerable energy would have to be expended by either it or the Department of Treasury to collect revenues.

The Commission believes that the Department of Treasury, which is well equipped to do so and already has the necessary staff expertise to undertake such a task, could be responsible for administering the filing fee system. In other words, the continuing political committees and lobbyists would pay their filing fees directly to the Department of Treasury. The Department, in turn, would create the special fund and deposit all monies into it. Moreover, it would undertake the necessary collection procedures where needed and apply the same principles of accounting to this fund as it does with respect to all other revenues it collects. At the beginning of each fiscal year, money out of the fund would be applied to the base budget of the Commission.

While the Commission prefers this approach, in the alternative it would be willing to assume the task of administering this program itself. To do so, it would require the services of at least two professional fiscal officers as well as a clerical position. If this alternative is the one

chosen, these staff people would have to be trained in methods of collection and accountability and be charged with the responsibility of overseeing all aspects of program administration. Even in this case, however, the actual funds would be placed in an account established by the Department of Treasury to assure that the monies are accounted for and spent in the manner prescribed by law. Moreover, in administering the budget, the Commission would still be subject to all State procedures and controls. The Commission's base budget could perhaps be increased by \$75,000 to account for this administrative task.

Part and parcel of either administrative approach, however, is the need to insure compliance with the program. In order to guarantee a high level of compliance with the CPC and lobbyist filing program, there would have to be a provision in the law which provides for a strong negative incentive for entities which do not file. This negative incentive could ultimately lie in granting the Commission the authority to suspend the right of a continuing political committee or a lobbyist to operate in New Jersey if it fails to pay its filing fee. Certainly, this authority would be resorted to only after all other attempts to make the CPC or lobbyist comply are exhausted. Nevertheless, it could be written into the law as the bottom line compliance tool. Not only would this statutory authority help to make the administrative effort easier and more efficient, but it would also go far toward insuring that the Commission's budgetary base remains stable.

In conclusion, a filing fee system for CPC's may well be workable and desirable. It has its complexities, but the overall goal of providing adequate funding for public disclosure at no or little expense to the taxpayers is a positive one.

## **OBSTACLES TO THE FEE SYSTEM**

First and foremost, the Commission is studying alternate funding because it believes that its consideration is in the public interest. Moreover, as a State agency, ELEC maintains that it must respond to the tightening budgetary situation that will adversely affect its ability to maintain services at current levels. This paper is an analysis of a practical and responsible approach to the dilemma of responding adequately to the conflicting pressures of an increasing workload in a period of fiscal restraint and austerity. It reviews increasing the autonomy of the Commission from the Governor and the members of the Legislature. ELEC regulates them when they run for office. The Commission not only is studying the removal of the burden of its financial support from the taxpayer but also the addition of an increase in revenues it deems necessary to do the job.

### **Arguments Against Ideas to be Advanced**

There may be some obstacles and drawbacks to implementing these ideas. In short, the Commission is not under any illusion that a road toward budgetary self-sufficiency will be easy or smooth. For this reason, the Commission believes that it is important to outline the arguments that may be advanced against these ideas in order that they can be evaluated in as thorough and as fair a way as possible. Certainly, as has been the custom of the Commission in its previous White Papers, ELEC believes that it



has the responsibility of presenting arguments for, as well as arguments against, ideas it reviews in order to stimulate a debate of the issues that is intelligent and complete.

There are numerous arguments that can be expected to be put forward against ideas for alternate funding. These arguments range from the philosophical and legal to the practical. Since these ideas are charting new ground, such arguments can only be outlined in a theoretical, prospective sense, however.

One argument that opponents may make is that it is not in the public interest to impose a fee on any entity that is involved in the political or governmental process. Opponents will point out that the United States has a system of participatory democracy and that any obstacle, such as a filing fee, that is placed in the way of any group's or individual's attempt to participate in the governmental or electoral process is undemocratic. Along these lines, opponents will maintain that a filing fee on continuing political committees could drive some groups, particularly non-wealthy PACs, out of the process. According to opponents, certain continuing political committees, especially the smaller ones, will feel that if they are charged a filing fee for their participation then it may not be worth their while to get involved, thus hurting government in the State and in turn the public interest.

A second argument that may be advanced by opponents, and one that is related to the first, will suggest that if certain smaller groups are driven from the process, fewer voices will be heard, and consequently, the already powerful and rich PACs and lobbyists will gain even more influence over electioneering and government than they presently exercise. If this results, then the process of democracy will be shortchanged.

A third argument set forth by opponents may center upon the issue of First Amendment Rights. The ideas may be challenged on the grounds that they constitute a violation of freedom of speech in that a fee may impair the ability of certain groups to communicate their message and promote their political interests.

Similarly, a fourth objection may involve the argument that the concept violates the equal protection clause of the Constitution, which is contained in the Fourteenth Amendment. In other words, opponents may utilize the Fourteenth Amendment to attack the concept on two fronts: 1) that the filing fee system would not apply to all entities reporting to ELEC; and 2) that the concept as discussed discriminates against poorer committees as opposed to the more wealthy and powerful continuing political committees.

Opponents may submit a fifth argument, in that the system analyzed may actually lead to a situation in which there is less disclosure and less accountability by contributors. In other words, PAC activity may

give way to the “bundling” of contributors by individuals as a means of circumventing the filing fee system. Opponents may suggest that a trend such as this may actually make it more difficult to determine what interest is being advanced by the “bundlers” of contributions, thereby defeating the purposes of disclosure.

A sixth argument, similar to argument number five, is that the system discussed could be circumvented by officeholders who would desist from operating officeholder PACs, which would be subject to a filing fee, and utilize their campaign accounts instead to not only raise money for their campaigns but to function in the same way as their PACs did, freeing them from any filing fee.

Finally, a seventh argument is that such a system would be administratively cumbersome. In other words, it may prove to be administratively difficult to get continuing political committees to comply with a filing fee, threatening the stability of the revenue source. These opponents may paint a picture of a system that is not manageable.

## **The Commission's Ideas Are Sound**

Certainly, these potential arguments against the alternate funding concept are absorbing. However, in the Commission's view, they are not persuasive.

The Commission, for instance, has been very careful in discussing ideas that are very sensitive to the “equity and free speech” issues. It is envisioned that fees collected would only be as high as is necessary to cover the legitimate administrative costs of ELEC. By analyzing a percentage fee rather than a flat fee on continuing political committees, the Commission has reviewed an initiative that treats every group fairly and does not discriminate against less wealthy groups by impairing their ability to function. Moreover, because any percentage fee that is established would have to be reasonable, the concept discussed would not drive any groups out of the process. For example, using the four percent filing fee standard, a \$400 fee on a continuing political committee raising \$10,000 would not affect that group's ability to make political contributions. Furthermore, as an additional cushion against the equity as well as First Amendment arguments, an exemption from the filing fee for continuing political committees raising \$10,000 or less might be considered. In addition, a fee on continuing political committees, but not candidates, for example, is equitable because a fee on candidates would, in effect, amount to “double taxation.” Continuing political committees are prime contributors to

candidates; and their contributions, already assessed as receipts, would again be assessed when they are deposited into a candidate's account.

The Commission has historically and traditionally stood aggressively for complete disclosure. Therefore, the Commission would not consider any system that it believed would hinder disclosure and open government. This concept would not intentionally, or unintentionally, adversely affect ELEC's ability to secure maximum campaign financial or lobbyist disclosure. Rather, the concept may well enhance the cause of disclosure in New Jersey. PACs, for instance, would probably not disband and attempt to circumvent the filing fee system through "bundling" of contributions by individuals. To do so would be too cumbersome and unwieldy and not allow special interest groups to cohesively present their messages to the public and to elected officials. Further, to disband their PACs, which identify their interest and their group, would undercut their influence with governmental officials. Certainly political action committees have worked long and hard to be successful in raising money and in raising the consciousness of public officials about the interests they represent. These facts would mitigate against their disbanding to avoid paying a nominal filing fee.

The Commission believes that the phenomenon of officeholder PACs may be here to stay. Again, officeholder PACs, which in part are created to help a public official gain influence with his or her colleagues, perhaps helping them to eventually gain and maintain a leadership position, clearly

identify the officeholder who benefits from the PACs activity. For this reason alone, most public officials would keep their PACs intact, not risking the loss of the influence that goes along with them or the negative publicity that may accompany any attempt to circumvent the filing fee system. ELEC, moreover, does not find troublesome the possibility that candidates might eliminate these officeholder PACs and maintain their funds in one campaign account. Though this transfer of money would result in officeholders avoiding the filing fee, this activity would, nevertheless, make for a more simplified and clear-cut reporting system.

Finally, the Commission has discussed in this paper administering of a filing fee system. Through the Department of Treasury, or through additions to its own staff, the administration of such a program appears to be eminently doable. Moreover, putting teeth in the law by providing the authority to the Commission to suspend a political committee's operations would most certainly ease the burden of compliance.

ELEC is under no misapprehension that the prospects for implementing alternate funding is rosey, or that the reviewed ideas are devoid of all problems. However, on balance, the Commission - considering the fact that these ideas provide for a stable, independent source of revenue, free ELEC from a process controlled by the people it regulates, and potentially place no burden on the taxpayers - believes that they are generally sound and worthy of review by governmental leaders, the media, and the public.

## CONCLUSION

The Commission's discussion of alternate funding reviews a filing fee to be imposed on continuing political committees based on a percentage of their gross receipts. It also looks at exacting a flat rate filing fee on lobbyists and calling for all fine revenues collected by the Commission to be retained as part of its regular budget. Presently, these revenues revert to the State. Also studied is ELEC treating the administrative expenses associated with managing the Gubernatorial Public Financing Program as separate from its regular operating budget. Funds to administer this program could be derived from the gubernatorial check-off program, with a certain percentage of these funds being retained by the Commission for this purpose. Finally, the paper has reviewed guaranteeing the Commission a base budget, which would be adjusted every year on the basis of the Consumer Price Index. This provision could insure fiscal stability and would allow the Commission to plan adequately for its future needs.

This paper is a response to a critical need for the Commission to increase its budget and staff to enable it to keep pace with an intensified workload, which has been brought about by explosive growth in the campaign industry. Further, it is in response to a tightening budgetary situation in the State that shows no promise of easing and providing the Commission with the financial resources it needs to maintain services at current levels.

Additionally, the review of alternate funding highlighted an additional advantage that infuses it with significant credibility. If the concept is statutorily or constitutionally adopted, the Commission's budget would be removed from the normal State appropriations process, making ELEC fiscally independent of the people that it regulates. There is sufficient reason for the public to agree that open and honest government, whose very foundation is disclosure, is best served by an agency whose budget is not controlled by the officials it monitors.

The integrity of the Commission has never been interfered with, nor have there been any attempts to tamper with its budget. Indeed, since its inception, the Commission has always been grateful for the Governor and Legislature's support of its operations and respect for its role. Yet, the potential and appearance are always there, suggesting that a Commission budget independent of the appropriations process is in the long-term interest of the voters. Moreover, nothing discussed in this paper would interfere with the ongoing exercise of Legislative oversight with respect to ELEC doing its work in an optimal fashion.

Finally, alternate funding could be accomplished at little or no expense to the taxpaying public. In fact, an alternate funding program as discussed would actually save the public's money. Revenues could be derived from entities that use ELEC's services and are responsible for the overall increase in its workload. While there would be a guaranteed base budget, backed by an appropriation from the Legislature when needed, this provision



would always make money for the public. If the money raised in any given year exceeds the base target of the next fiscal year's budget, the surplus would be used in future years.

The alternate funding concept reviewed and analyzed in this paper is innovative and visionary. Nothing like it exists in other states or at the federal level. Quite clearly, it would keep New Jersey at the forefront of reform in the areas of campaign finance and ethics, and would set the stage for other agencies throughout the nation to explore ways both to save taxpayers' money and preserve the enforcement of campaign finance and ethics laws through independent and responsible budgetary means.

ELEC believes that the need to enhance public disclosure, ethics, and open and honest government in New Jersey is paramount. To insure budgetary stability, adequacy, and independence, and to insure that disclosure is enhanced in the Garden State; the Commission urges that the alternate funding concept discussed in this paper or some variation of it be seriously considered. New Jersey's governmental ethics laws will only be as strong and independent as the agency that is entrusted with administering them.

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## **LIST OF WHITE PAPERS**

White Paper Number One - Contribution Limits and Prohibited Contributions

White Paper Number Two - Trends in Legislative Campaign Financing: 1977-1987

White Paper Number Three - Legislative Public Financing

White Paper Number Four - Ideas For An Alternate Funding Source

White Paper Number Five - Lobbying Reform - Spring 1990

White Paper Number Six - PACs - Fall 1990

White Paper Number Seven - PFDs - Spring 1991

White Paper Number Eight - Review of ELEC Jurisdiction – Fall 1991

White Paper Number Nine - Electronic Reporting - Spring 1992