

ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

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

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Comments from the Chairman Ronald DeFilippis

On May 9th the 29-day pre-election report is due to be filed by all candidates participating in the June 7th primary election.

This year will be a very busy one at the Election Law Enforcement Commission. Not only will candidates be running for municipal and county offices but for State Senate and Assembly as well.

For this reason, my column will deal with the basic disclosure requirements applicable to all candidates running for office. Compliance with these rules serves the public interest. The Commission makes every effort to insure that candidates are familiar with the requirements of the law.

In the pre-election setting candidates are required to file two pre-election reports and at least one post-election report.

For the primary, the pre-election dates are May 9 and May 27. The post-election date is June 27. These dates correspond to the 29 and 11 day pre-election report and the 20-day post-election report.

The general election 29 and 11-day pre-election reports are due on October 11 and October 28 and the 20-day post is due on November 28. Election Day is November 8.

This same schedule applies to all other elections, whether May municipal, school board or fire district. In other words, 29-day, 11-day, and 20-day post reports are required in each case.

Additional quarterly reports are required beyond the 20-day post report if the campaign account is not closed, whether or not the individual serves in elected office.

Every candidate (other than school board or write-in) is required to file a report whether or not any money is raised and spent.

For a single candidate committee spending more than \$4,000 per election, a detail report of contributions and expenditures is required to be submitted to the Commission.

The report must disclose the identity of contributors making donations of more than \$300 and an itemized accounting of all expenditures. All contributions of \$300 or less must be disclosed as a lump sum.

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Comments from the Chairman Ronald DeFilippis

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Reporting thresholds are different for candidates establishing joint candidate committees. For those committees made up of two candidates, detailed reports must be filed when spending more than \$7,600. For committees of three or more candidates the threshold is \$11,000.

Sworn statements are also required for those joint candidates not spending more than \$7,600 or \$11,000. Joint candidate committee reports are due at the same time as single candidate reports.

Finally, candidates are required to file 48-hour notices when they receive a contribution in excess of \$1,200 starting with the 13th day before election and up to, and including, Election Day.

Disclosure is important to maintaining the integrity of the electoral process. The Commission takes this role very seriously and provides for the public to view scanned reports filed by candidates well before Election Day.

The public can access every report filed with the Commission by going to ELEC's website at www.elec.state.nj.us. Moreover, a wealth of additional information is also available, including forms, manuals, statistics, advisory opinions, reports, regulations, and contribution limit charts.

While the information listed above is a general summary of guidelines for reporting; candidates, treasurers, and interested citizens should visit our website, attend one of our seminars, or contact a Compliance Officer for additional information and instruction material.

Executive Director's Thoughts Jeff Brindle

A little more than a year ago the U.S. Supreme Court handed down its controversial ruling in Citizens United v. Federal Election Commission. Now, in McComish v. Bennett, it is hearing arguments in another important case involving campaign finance.

Citizens United allowed corporations and unions to spend unlimited amounts on campaigns as long as it is done independent of candidates.

McComish v. Bennett challenges Arizona's public financing system. Arizona's "Clean Elections" program gives public dollars to candidates agreeing not to accept private donations. In the spirit of western progressivism, the Arizona law provides added funds to these candidates when outspent by their non-participating opponents.

And that's the rub. The provision allocating "rescue money" to publicly-financed candidates is the subject of the challenge.

The Arizona law is designed to encourage candidates to shun private donations in favor of public financing. It is also designed to level the playing field.

One clue to how the Court might vote comes from Davis v. FEC, a 2008 ruling on a related issue.

Ruling on the "Millionaires' Amendment" to the 2002 Bipartisan Campaign Finance Act (BCRA), the Court found that tripling contribution limits for congressional candidates opposed by self-financed competitors who spent more than \$350,000 of their own money was unconstitutional.

Though both cases are similar in that "rescue money" is challenged, the distinction is that the "Millionaires' Amendment" did not involve public financing.

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Executive Director's Thoughts Jeff Brindle

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Two lower court decisions—one in Connecticut and, of course, the Arizona program—injecting the issue of public financing into the debate. The second Circuit Court of Appeals found Connecticut Citizens Election Program to be constitutional. It was challenged on the grounds that it discriminated against minor party candidates. And in May 2010, the 9th Circuit Court of Appeals out of San Francisco upheld Arizona's law. Both decisions overturned earlier decisions rendered by trial judges that deemed both laws unconstitutional.

With the Arizona case looming before the Supreme Court, both sides present compelling arguments.

Bradley Smith, former member of the Federal Election Commission, writes in the Wall Street Journal, "Arizona and a handful of other jurisdictions have gone far beyond what was approved in Buckley by offering candidates 'rescue' funds."

He further argues "this [rescue funds] will discourage political speech Why make a contribution . . . if doing so triggers a government subsidy to his opponent?"

Conversely, Charles Fried, Solicitor General in the second Reagan administration, states in The New York Times, "contrary to the challengers' claims, the Arizona law doesn't prevent privately financed candidates from speaking or spending as much as they like . . . nor does it place any limits on how much anyone may spend in support or opposition to a candidate."

The decision in McComish promises to be the biggest campaign finance case of the year. And it bears watching, especially in New Jersey. The State's Gubernatorial Public Financing Program matches private dollars with public dollars. It has been a mainstay of gubernatorial elections since 1977. The program is considered a model for other states and has engendered trust in our gubernatorial elections process.

Importantly, the program does not contain a provision for "rescue money," a critical distinction. Because of this, New Jersey's program does not seem vulnerable to any decision that may come out of McComish.

While questioning by judges in Monday's hearing suggests that parts of Arizona's law will be struck down, it did not signal that public financing in general will be deemed unconstitutional. The Court most likely will restrict its decision to the constitutionality of "rescue money." It will not spell the end of the world for supporters of public financing.

Like the high court did in Citizens United in strongly endorsing disclosure, it may, in McComish, indirectly express support for public financing programs generally, while dismissing rescue money as unconstitutional.

Moreover, by halting the practice of rescue money, which is an inducement for outside groups to spend even more money independently, the Court's decision may, in the end, not be a bad thing.

Pay-to-Play

Public contractors reported making \$9.4 million in political contributions in 2010, a 13 percent falloff from a year earlier.

Contributions from contractors peaked at \$16.4 million in 2007, the last year in which both legislative houses were up for reelection. Total reported contributions have dropped 38 percent since State law required such reports five years ago under "pay-to-play" restrictions.

Table 1
Total Contributions Reported Annually
by Public Contractors from 2006 to 2010

YEAR	AMOUNT	2-YEAR TREND	PERCENT
2010	\$ 9,413,012	\$ (1,456,553)	-13%
2009	\$10,869,565		
2008	\$12,190,643		
2007	\$16,399,852	5-YEAR TREND	PERCENT
2006	\$15,093,816	\$ (5,680,804)	-38%

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Pay-to-Play

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There are several possible explanations for the decline.

For one thing, there were no statewide elections last year, and only a handful of special legislative elections. That could cause some drop-off.

Also, some contractors have stopped making political contributions altogether because they are afraid of losing business by inadvertently violating pay-to-play laws.

The recession and widespread budget-cutting by government agencies also could be taking a toll.

However, the overall value of the contracts reported last year fell -4 percent to \$5.8 billion.

Another factor could be the proliferation of political action committees (PACs) that are extensions of parties or candidates rather than political fund-raising arms for special interests groups like banks, realtors or unions. Use of these PACs becomes a problem if they are intended to deliberately circumvent state contribution limits and pay-to-play laws.

Table 2
Total Value of Contracts Reported Annually
by Business Entities Subject to State Pay-to-Play Law

YEAR	AMOUNT	2-YEAR TREND	PERCENT
2010	\$ 5,816,588,558	\$ (245,382,611)	-4%
2009	\$ 6,061,971,169		
2008	\$ 5,008,857,958		
2007	\$ 5,686,716,597	5-YEAR TREND	PERCENT
2006	\$10,395,179,530	\$(4,578,590,972)	-44%

The number of business entities with public work that filed reports with ELEC was down.

Table 3
Total Number of Business Entities Reporting
Annually under State Pay-to-Play Law

YEAR	NUMBER	2-YEAR TREND	PERCENT
2010	1,900	(149)	-7%
2009	2,049		
2008	1,834		
2007	1,990	5-YEAR TREND	PERCENT
2006	2,312	(412)	-18%

The total number of contracts also was down.

Table 4
Total Number of Contracts Reported Annually
by Business Entities under State Pay-to-Play Law

YEAR	NUMBER	2-YEAR TREND	PERCENT
2010	18,298	(3,122)	-13.5%
2009	21,420		
2008	23,109		
2007	22,589	5-YEAR TREND	PERCENT
2006	24,927	(6,629)	-27%

It should be noted that 2010 numbers are preliminary. They reflect information available to the Commission through March 31. Some contractors are likely to submit amendments after that date that could change the totals. Numbers before 2010 more fully reflect these revisions. While 2010 numbers are likely to change, the downward trend is expected to hold. Reports from 2010 and earlier years are available at ELEC's website at www.elec.state.nj.us.

Under pay-to-play laws, all businesses that have received \$50,000 or more in total public contracts must report their contracts and contributions to ELEC each spring.

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Pay-to-Play

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Those with State contracts are prohibited from contributing more than \$300 to gubernatorial candidates, state political parties, legislative leadership committees, county political parties and municipal political party committees. Firms that exceed this limit must refund the excess contributions within a necessary time period or relinquish their contracts for four years.

Similar limits apply to municipal or county contractors unless local officials adopt a "fair and open" bidding process intended to encourage competition. Where "fair and open" rules are adopted, normal contribution limits, which are much higher, apply to contractors.

State contribution limits range from \$2,600 per election from individuals or corporations to candidate committees to \$37,000 annually to county party committees. During the five-year period, the average donation from contractors fell from \$1,225 to \$1,101- down 10 percent.

As one of its legislative priorities, the bi-partisan Commission has recommended adopting a single statewide pay-to-play law that would end separate local and county pay-to-play laws as well as the "fair and open" loophole. The Commission also is urging the Legislature to reduce the current threshold for disclosure from \$50,000 to \$17,500.

Commission members believe this move would greatly streamline the pay-to-play reporting process while increasing the amount of disclosure to the public.

The Commission also has recommended making it harder for one candidate or group to establish multiple, affiliated PACs as a means of skirting campaign finance and pay-to-play laws. The Federal Election Commission already has such regulations.

Ten firms that reported the largest contract totals for 2010 are listed below.

**Table 5
Ten Business Entities that Reported Largest Contract Totals in 2010**

BUSINESS NAME	AMOUNT
Horizon Healthcare of New Jersey, Inc.	\$1,416,973,042
Amerigroup New Jersey, Inc.	\$ 377,566,876
The Prudential Insurance Co. of America	\$ 257,952,092
Tilcon New York, Inc.	\$ 248,097,029
PKF-Mark III, Inc.	\$ 234,945,741
South State, Inc.	\$ 191,767,158
Verizon New Jersey Inc.	\$ 143,877,111
Colonial Bank FSB	\$ 115,651,783
Crisdel Group - Sordoni Construction, A Joint Venture	\$ 101,656,146
George Harms Construction Co., Inc.	\$ 80,433,374

The following firms reported the largest contribution totals for 2010.

**Table 6
Business Entities that Reported Largest Donation Totals in 2010**

BUSINESS NAME	AMOUNT
T&M Associates	\$ 435,110
CME Associates	\$ 346,650
Remington & Vernick Engineers, Inc.	\$ 342,450
Pennoni Associates Inc.	\$ 201,020
Maser Consulting P.A.	\$ 193,590
Birdsall Services Group	\$ 180,800
Richard A. Alaimo Associates	\$ 168,150
Waters, McPherson, McNeill, P.C.	\$ 147,075
Parker McCay P.A.	\$ 129,348
Capehart Scatchard P.A.	\$ 124,075

Note: In some cases, rankings would be higher if contributions by related businesses were added to these amounts.

State government was the largest source of contracts in 2010, followed by independent authorities, municipalities, counties, school boards, fire districts and the Legislature.

**Table 7
Contracts by Public Entity Type in 2010**

PUBLIC ENTITY TYPE	NUMBER	AMOUNT
State	1,314	\$3,522,930,700
Independent Authority	2,162	\$ 748,313,310
Municipality	8,935	\$ 704,210,350
County	1,752	\$ 514,423,677
School Board	3,463	\$ 315,561,363
No Information	137	\$ 7,356,629
Fire District	522	\$ 3,749,416
Legislature	13	\$ 43,112
	18,298	\$5,816,588,558

Amanda Haines "Profile"

Assistant Legal Director

Amanda Haines wasn't sure where her career path would lead after she graduated from Temple Law School more than six years ago.

After she saw a notice about a job as Assistant Legal Director at the New Jersey Election Law Enforcement Commission, the South Jersey native ended up working in Trenton, NJ.

"You can't beat an attorney job where you go home every day and feel you did something good and right," said Haines.

Like all the members of ELEC's critical five-person legal staff, Haines has important responsibilities.

For one thing, she tracks legislation pertinent to the Commission.

She also drafts complaints against violators of the laws ELEC enforces and manages cases as they proceed through the legal system. Sometimes that can include appearances before State administrative law judges.

Haines acknowledges that most people who receive complaints from the agency are not very happy when she first talks to them. Many candidates rely on volunteer treasurers and often complain that they committed violations only because they received little or bad advice.

Haines tries to bring a supportive, upbeat professionalism to her job to try to make compliance less angst-ridden. "I think I have a personality that puts people at ease," she said.

"People generally appreciate when you are kind to them and patient. Most people want to comply with the law," Haines said.

In her pastime, Haines often reads "a broad spectrum of fiction" on her electronic book reader. She loves being outdoors and often hikes, camps and rides bikes.

She grew up in Hammonton where her mother remains a middle school teacher. She said one of the benefits of living in the American city that reportedly has the highest concentration of Italian-Americans - great pasta and pizza in the high school cafeteria.

Like most people in her family, Haines loves sports. "I have an older brother. Everything he did, I did."

She played field hockey, basketball and softball in high school, and guarded first base on her college softball team.

Like her grandmother and the rest of her family, she is a devoted fan of Philadelphia sports teams, including the Phillies, Eagles and Flyers. "If I called my grandmother right now, she'd want to talk about the Phillies pitching rotation," Haines said.

Haines earned her undergraduate degree in sociology from Princeton University.

Her favorite trip: a 2006 visit to Tuscany to attend the wedding of a law school friend.

Seminar Training Dates

Seminars are conducted at 10:00 a.m. at the Commission's offices at 28 West State Street, 8th floor, in Trenton.

Treasurer Training for Candidates and Joint Candidates Committees	
May 3, 2011	September 12, 2011
May 18, 2011	September 27, 2011
	October 3, 2011
Treasurer Training for Political Party Committees and PACs	
June 30, 2011	September 21, 2011
	December 14, 2011
Electronic Filing Training (REFS)	
May 5, 2011	September 14, 2011
May 17, 2011	September 26, 2011
July 27, 2011	October 4, 2011

DATES TO REMEMBER Reporting Dates

	PERIOD COVERED	REPORT DUE DATE
SCHOOL BOARD ELECTION - APRIL 27, 2011		
29-day pre-election	Inception of campaign* - 3/26/11	3/29/2011
11-day pre-election	3/27/11 - 4/13/11	4/18/2011
20-day post-election	4/14/11 - 5/14/11	5/17/2011
48 Hour Notice Reports Start on 4/14/11 through 4/27/11		
MUNICIPAL ELECTION - MAY 10, 2011		
29-day pre-election	Inception of campaign* - 4/8/11	4/11/2011
11-day pre-election	4/9/11 - 4/26/11	4/29/2011
**20-day post-election	4/27/11 - 5/27/11	5/31/2011
48 Hour Notice Reports Start on 4/27/11 through 5/10/11		
RUNOFF ELECTION** - JUNE 14, 2011		
29-day pre-election	No Report Required for this Period	
11-day pre-election	4/27/11 - 5/31/11	6/3/2011
20-day post-election	6/1/11-7/1/11	7/5/2011
48 Hour Notice Reports Start on 6/1/11 through 6/14/11		
PRIMARY ELECTION*** - JUNE 7, 2011		
29-day pre-election	Inception of campaign* - 5/6/11	5/9/2011
11-day pre-election	5/7/11 - 5/24/11	5/27/2011
20-day post-election	5/25/11 - 6/24/11	6/27/2011
48 Hour Notice Reports Start on 5/25/11 through 6/7/11		
GENERAL ELECTION*** - NOVEMBER 8, 2011		
29-day pre-election	6/25/11 - 10/7/11	10/11/2011
11-day pre-election	10/8/11 - 10/25/11	10/28/2011
20-day post-election	10/26/11 - 11/25/11	11/28/2011
48 Hour Notice Reports Start on 10/26/11 through 11/8/11		
PACS & CAMPAIGN QUARTERLY FILERS		
1 st Quarter	1/1/11 - 3/31/11	4/15/2011
2 nd Quarter	4/1/11 - 6/30/11	7/15/2011
3 rd Quarter	7/1/11 - 9/30/11	10/17/2011
4 th Quarter	10/1/11 - 12/31/11	1/17/2012

* Inception Date of Campaign (first time filers) or from January 1, 2011 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in the 2011 Runoff election is not required to file a 20-day postelection report for the 2011 Municipal election.

*** Form PFD-1 is due on April 21, 2011 for Primary Election Candidates and June 17, 2011 for Independent General Election Candidates.

[Late and non-filing of reports are subject to civil penalties determined by the Commissioners](#)