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ELEC-Tronic

AN ELECTION LAW ENFORCEMENT COMMISSION NEWSLETTER

"Furthering the Interests of an Informed Citizenry"

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Comments from the Chairman Ronald DeFilippis

"The essence of Democracy is an informed electorate. It is the fulfillment of this goal that the New Jersey Election Law Enforcement Commission (ELEC) embraces as its valued mission."

That comment is part of the Commission's Mission Statement.

Part and parcel to the fulfillment of that commitment is the enforcement of campaign finance laws in all their dimensions, from seemingly minor provisions to the most major.

One of those provisions, sometimes overlooked by candidates and campaigns, but not by opponents nor the public is the disclaimer law.

Whenever a candidate or joint candidates committee expends money for an advertisement designed to promote or defeat a candidate, a political identification statement must be attached to the communication.

In other words, if candidate Tom Jones purchases a radio spot which promotes his candidacy, the spot must contain language identifying the name, business or residence address of the committee, person or group sponsoring the ad and a "paid for by" disclaimer.

"VOTE FOR TOM JONES FOR DOG CATCHER"

Paid for by Committee to Elect Tom Jones
 22 Fielding Way, Henry, N.J.

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This "paid for by" provision applies to all broadcast, (including online) and print media advertising. It also applies to telemarketing efforts, i.e. robo-calls.

So any time a campaign sends out direct mail, places an ad in the newspaper or online publication, or advertises on TV or radio, a disclaimer is required.

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Comments from the Chairman Ronald DeFilippis

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This requirement not only applies to candidates but to political parties, legislative leadership committees, PACs, political committees, and individuals making independent expenditures.

While the main thrust of the law deals with candidate committees the political identification requirements also apply to spending to pass or defeat a public question. Again, any committee, political party or otherwise, spending money on advertising in support or opposition to public referenda must provide a clear identifying statement.

The disclaimer law is one way that allows the voters of the State of New Jersey to learn who is paying for campaigns.

The Commission takes the enforcement of this provision very seriously. And so does the public.

In truth, the public is the eyes and ears of the Commission in so far as assuring that candidates and committees comply with the disclaimer law.

Each and every year numerous complaints are filed by citizens alleging violations of the political identification requirement. And each and every year fines are issued regarding infractions of the law.

This law, which requires "paid for by" statements on all advertising, is really at the front line in promoting transparency in government.

We at the Commission urge all participants in the electoral process to be aware of this requirement and comply with it.

It's a small step that goes a long way toward engendering trust in government.

Executive Director's Thoughts Jeff Brindle

Carey vs. FEC and Super PACs

Lately, the term Super PAC has been bandied about.

The term has taken on new prominence following the June 14 decision by the D.C. Federal District Court in Carey vs. FEC.

In that decision, the court addressed the question of whether a federal PAC could establish a separate bank account for the purpose of soliciting contributions in unlimited amounts. Currently, PACs are limited to taking contributions of \$5,000 or less.

The D.C. Court said that it could with one caveat: that those "soft" money donations could only be used by the PAC when it spent independently.

In essence, the court allowed for federal PACs to establish two accounts, one for hard money and one for soft money.

The hard money account, or the one subject to contribution limits, could be used to make direct monetary contributions to federal candidates. The soft money account, used in accepting large, unregulated donations, is for independent spending explicitly.

Thus were born Super PACs.

Super PACs are distinguishable from other outside groups gaining notoriety of late. Unlike 527 organizations or the 501(c) groups, Super PACs register with the Federal Election Commission and disclose their contributions and expenditures.

The 527's and 501(c)'s are largely unregulated.

Already we are seeing an explosion in Super PAC activity. Both Democrats and Republicans are jumping on the bandwagon.

A recent article in the Huffington Post noted that Senate Majority Leader Harry Reid is soliciting donations for Majority PAC, a Democratic Super PAC.

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Executive Director's Thoughts Jeff Brindle

Carey vs. FEC and Super PACs

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And presidential candidates on the Republican side are also jumping into the fray. USA Today reported recently that "several prominent supporters of Mitt Romney on Thursday announced a new group that will spend unlimited sums of money to help the Republican's presidential campaign."

The name of the PAC is "Restore Our Future PAC."

But what does this mean for New Jersey? Lots.

New Jersey law requires the registration and disclosure of contributions to and expenditures by political action committees.

The law also limits contributions in these committees to \$7,200. It limits contributions by these committees to candidates to \$8,200.

New Jersey's law has worked well. It has provided candidates and political party entities the means to undertake effective campaigns. And it has done so through the implementation of a fair and balanced contribution limit scheme that has been open to public view.

This could all be threatened and upended by the decision in Carey vs. FEC. It has not been determined whether the Supreme Court will take the case on appeal. Either way, it's a good bet that the decision will be upheld.

So in addition to needing legislation that requires disclosure by 527 and 501(c) groups, as proposed by the Election Law Enforcement Commission, thought will now have to be given to how to deal with this emerging trend toward Super PACs.

Six Top Fundraising Committees

Second Quarterly Report 2011

With legislative elections looming this fall, the State's two major political parties have amassed a combined war chest of \$3.3 million, according to their latest reports.

Reports filed by the two State parties and four Legislative Leadership Committees show that Republicans continued to have more success than Democrats during the quarter that ended June 30. They raised and spent more, and have more than twice as much in reserve.

Compared to four years ago, which was the last time there was a contest for all 120 legislative seats, combined fundraising for all "Big Six" committees is down 36 percent and spending down 18 percent. Cash-on-hand and net worth both are down even more.

Continuing a trend that began following the election of Republican Governor Chris Christie in January 2010, Republican fundraising fortunes have improved steadily while Democratic totals are down compared to four years ago.

It should be noted that separate reports recently filed by individual legislative candidates show that Democrats still enjoy a two-to-one advantage among those candidates. Democrats reported having \$9.5 million in reserves, compared to \$4.2 million for Republicans. Democrats currently control both legislative houses.

Several factors have had an impact on "Big Six" fundraising trends.

One is the recession, which has forced some contributors to go out-of-business and caused others to reduce the size of their checks.

While Republicans are doing better now compared to four years ago, combined fundraising is down. That may be explained by the fact that State contractors now face tight contribution limits under pay-to-play laws. Many contractors have simply stopped making contributions to all state elections, and that has made fundraising harder for both parties.

Democrats have lost additional financial support because former Democratic Gov. Jon Corzine, previously a major contributor to New Jersey fundraising committees, has scaled back his activity.

State Party Committees and Legislative Leadership Committees are required to report their financial activity to the Commission on a quarterly basis. The reports are available on ELEC's website at www.elec.state.nj.us.

Annual Lobbying Reports

Annual lobbying reports for calendar year 2010 are now available for online viewing.

The reports are now available at ELEC's website: www.elec.state.nj.us. These include detailed information about Governmental Affairs Agents, or lobbyists, or Represented Entities that hire them.

Lobbyists who exceed \$2,500 in receipts or expenditures in a calendar year must disclose their financial activities on an annual basis through reports due on or about February 15. Accordingly, reports filed on February 15, 2011 reflect activity covering 2010.

In 2010, total lobbyist spending reached \$65.9 million - a 14.5 percent increase. The average number of lobbyists last year was 965.

This is the second year that the agency has been making the annual lobbying reports available via the Internet. Prior to last year, copies of reports were not accessible online.

This is part of an ongoing effort by the agency to make available in electronic form all documents that can be shared with the public. ELEC's primary mission is disclosure, and efforts like this help ELEC fulfill that mission.

Future computer software upgrades will enable the agency to accept lobbying forms electronically. This would make it easier and faster to provide website disclosure.

Online reports filed by "Government Affairs Agents," the name for lobbyists under ELEC law, contain the following information for calendar year 2010:

- Contact information for the lobbying firm;
- Name, address and phone number of all Governmental Affairs Agents;
- A list of Represented Entities and fees paid by them to the lobbying firm;

- A list of Governmental Affairs Agents who served on any independent bi-state, state, county or local authority, board or commission;
- Salaries and compensation paid to Governmental Affairs Agents;
- Funds paid to support personnel;
- Communications expenses;
- Travel/lodging expenses; and,
- Benefits given to public officials, such as meals, travel and gifts.

Reports filed by "Represented Entities," which include trade associations, unions, corporations and other groups, may include all the above information while also including assessments, fees or dues collected from members with the specific purpose of influencing state policy.

Annual reports also are filed by those who communicate with the public directly about issues. This is generally known as grassroots lobbying. Along with identifying information, these reports include funds raised through contributions, assessments, fees or dues, along with funds spent on support personnel, communications, and travel and lodging.

Finally, the website also contains reports filed by Represented Entities authorizing Governmental Affairs Agents to file their annual reports for 2011.

A "lobbyist" is a person who is compensated to communicate with, or provide a benefit to, a state official covered by the lobbying law to influence legislation, regulations or governmental processes. Governmental processes include contracts, permits, rate making, etc. There is a 20-hour per calendar year threshold to trigger registration.

Registered lobbyists are required to report their lobbying activities on a quarterly basis. These reports can be viewed or obtained by visiting or contacting the Commission.

Legislative Primary – 20-Day Post

Legislative candidates have set aside \$13.7 million in reserves as they head toward this fall's general election, when all 120 seats are up for reelection, according to an analysis by the New Jersey Election Law Enforcement Commission.

Reports submitted by candidates 20 days after the June 7 primary election show that Democrats, who control both legislative houses, have the most funds in the bank- more than \$9 million. Republicans have more than \$4 million in reserve. The combined totals are \$1.5 million higher than the candidates reported May 9, which is 29 days before the primary election.

Table 1
Current Fundraising Reserves of Legislative Candidates

Party	Cash-On-Hand On May 9	Cash-On-Hand On June 27	Difference - \$	Difference - %
Dem.	\$ 8,247,345	\$ 9,474,450	\$ 1,227,105	15%
Rep.	\$ 3,965,403	\$ 4,223,915	\$ 258,512	7%
Grand Total	\$12,212,748	\$13,698,365	\$ 1,485,617	12%

The combined total could be the largest cash-on-hand total ever.

The initial reports filed by candidates for the 2007 general election showed about \$13.8 million in cash-on-hand. However, that total included \$1.9 million in public funds from a pilot legislative public financing program that has been discontinued. It also was reported 29 days before the election after summer fundraising had taken place. So this could be the most legislative candidates have raised on their own at this early point.

With little serious competition in the primary elections, it is not surprising that many candidates, particularly incumbents, were able to build bigger war chests for the fall.

This is the first time in four years that all 120 seats are up for reelection. The stakes are high this fall. Control of the Legislature and the policy agenda are in play this November.

Incumbents hold a huge edge over challengers at this point with nearly eight times more cash reserves.

Typically, however, challengers collect the bulk of their money during the general election.

Table 2
Cash-On-Hand Totals of Incumbents Compared to Challengers

Status	Cash-On-Hand
Incumbents	\$ 12,134,618
Challengers	\$ 1,563,747
Grand Total	\$ 13,698,365

Historically incumbents enjoy a reelection rate of more than 90 percent, which gives them a built-in advantage in raising money. They usually are far better known than a challenger, which also gives them a leg up. And they have two or four years to build their war chests.

Among the ten candidates with the largest cash-on-hand reserves, seven are State Senators and three are State Assembly members. All are incumbents, though Assemblyman Vincent Polistina is running for State Senate.

Table 3
Top Ten Legislative Candidates Ranked by Cash-On-Hand

Candidate	Cash-On-Hand On June 27
Senator Richard J. Codey	\$ 1,133,029
Senator Stephen M. Sweeney	\$ 930,470
Senator Shirley K. Turner	\$ 568,256
Senator Paul Sarlo	\$ 563,581
Senator Bob Smith	\$ 437,881
Senator Joe Kyrillos, Jr.	\$ 405,841
Assemblyman Vincent Polistina	\$ 349,651
Senator Thomas H. Kean, Jr.	\$ 340,902
Senator Donald Norcross	\$ 336,904
Assemblyman Louis D. Greenwald	\$ 304,478

Reports filed by legislative candidates are available online on ELEC's website at www.elec.state.nj.us.

A downloadable summary of data from those reports is available in both spreadsheet and PDF formats at <http://www.elec.state.nj.us/publicinformation/statistics.htm>.

Tamico Flack Profile

[Data Entry Technician](#)

Tamico Flack admits she takes after her late father, Edward.

Her dad was a Navy veteran who was known for his industriousness and sense of precision.

Flack applies those same values to her work at the New Jersey Election Law Enforcement Commission as a Data Entry Technician.

One of her jobs is to type in contribution data and other campaign finance information into the agency's computer so members of the public and others can easily search the data.

It is long, tedious work that requires lots of concentration.

It doesn't faze Flack.

"We just get in our little zone and type away all day long," she said. "Doing the data entry becomes second nature. You get used to it."

Flack and her colleagues not only have to hand-enter thousands of items of data each week, but then recheck their work to try to minimize mistakes.

"Everything has to be coded correctly. Everything has to be right," she said.

Flack has worked at ELEC since 2005. She was born in Newport, RI when her father was still in the Navy and moved to New Jersey when she was about 5 years old.

Before working at ELEC, she spent five years operating one of the manual elevators in the building that contains ELEC's offices. Fortunately, she's not claustrophobic and she liked the conversations she had with people in that job.

Flack was one of three former elevator operators who were hired by ELEC. Jeff Brindle, ELEC's Executive Director, said he urged Flack to apply because he could see she was personable, hard-working and reliable. The other former operators, Irene Comiso and Aracelis Ocasio, also displayed a good work ethic and have done an excellent job at ELEC, he said.

Flack is even enterprising in her spare time. She is about to earn her associate's degree in management from Mercer County Community College, and intends to pursue a bachelors degree in public administration from Thomas Edison State College. She also has raised two sons, one of whom is currently attending college.

When she does have leisure time, she exercises at home or at a nearby Lucille Roberts fitness center. She also relaxes by reading religious fiction novels on her Amazon Kindle, and magazines such as "Black Enterprise."

While Flack inherited many of her best traits from her father, she does not paint. Her father's artwork, she says, remains so well-regarded that it is still on display in Philadelphia galleries.

Nor does she possess his love of the ocean.

Even though she is not afraid of water and goes into pools, she gets dizzy if she stands near the sea.

Officeholders Must Take Heed of 90-Day Rule

Incumbents running in the November 8 election face special limits on their political communications starting [August 11, 2011](#).

Candidates who are officeholders must remember that even some communications that DO NOT contain an explicit appeal for the election or defeat of a candidate may be deemed to be a political communication.

Under state law, these candidates generally must be careful concerning their public offices or equipment for communications with constituents within 90 days of the election.

The provision that comes into play is commonly known as the 90-day rule, or the political communication regulation.

The 90-day rule applies to all incumbent candidacies, including legislative, municipal, fire district and school board.

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Officeholders Must Take Heed of 90-Day Rule

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Take the case where a newsletter is distributed by a municipality to residents in the weeks prior to the primary or general election but contains no direct appeal for votes. The newsletter touts the goals and achievements of a mayor who is running for reelection and has been consented to by the mayor. In this situation, the officeholder would be required to report the expense as an in-kind contribution to his or her campaign.

Beyond the disclosure requirement, candidates in such instances could be charged with improper use of public funds for campaign purposes. ELEC's jurisdiction applies only to disclosure; local, county or state authorities would have to decide any issue about misuse of public funds.

The 90-day rule doesn't mean incumbent candidates can't communicate with their constituents. They just have to use campaign offices, equipment and funds to do so, and clearly identify the communications as being campaign-related.

For instance, say an incumbent legislator is running for re-election. In the weeks prior to the election, he or she sends out a direct mail piece containing an explicit appeal for support on Election Day. This piece is clearly a political communication and is reportable as such in preelection reports.

Below are the conditions under which the 90-day rule applies:

- If the communication is made within 90-days of any election involving the candidate;
- If the recipients are substantially made up of individuals eligible to vote for the candidate;
- The communication refers to the governmental objectives or achievements of the candidate; and,
- The communication is done with the cooperation or consent of the candidate.

If these conditions are met, the cost of producing and distributing the newsletter would constitute an in-kind contribution from the municipality to the mayor's campaign and must be disclosed as such.

In this instance, the Commission is involved with enforcing disclosure of the in-kind contribution from the municipality to the mayor. The same rule would apply if a legislator used state resources to communicate with constituents.

While such expenditures would have to be disclosed, the Commission has no jurisdiction to consider the legality of the use of public funds in this manner.

As with most rules, there are exceptions.

For example, there is no requirement to report a communication by an incumbent officeholder seeking re-election if the communication is in writing and is made to a constituent in direct response to a prior communication from the constituent.

There is no requirement to report a communication that is broadcast or circulated for the limited purpose of requiring constituents to make applications or take other actions before the date of the election or providing information involving a public emergency.

Finally, there is also no requirement to report a communication by a candidate running in the primary election if that candidate is unopposed.

ELEC Tip - Searching Complaints and Final Decisions

When the bipartisan ELEC finds that a candidate, party committee, PAC, political committee or lobbyist has violated the laws it enforces, it issues an initial complaint detailing allegations of all violations and later a final decision that often includes a fine.

Copies of these documents are available at ELEC's website at <http://www.elec.state.nj.us/ELECReport/ComplaintsDecisions.aspx>.

The documents can be easily searched by name of the violator, location, date released, year, type of office and election, party affiliation, and whether it is a complaint or final decision. Documents are displayed as Microsoft Word files.

TRAINING SEMINARS

The seminars listed below will be held at the Offices of the Commission, located at 28 West State Street, Trenton, New Jersey. Seminars are conducted at 10:00 a.m.

RSVP by mailing the form back to ELEC, PO Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854.

	DATE	DATE	DATE
TREASURER TRAINING FOR CANDIDATES AND COMMITTEES Treasurer Training Reservation Form			
	9/12/2011	9/27/2011	10/3/2011
TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS			
	9/21/2011	12/F4/2011	
R-1 ELECTRONIC FILING SOFTWARE (REFS) REFS Training Reservation Form			
	9/14/2011	9/26/2011	10/4/2011
PAY-TO-PLAY Pay-to-Play Reservation Form			
	*8/5/2011	*9/16/2011	
* Full			

DATES TO REMEMBER

[Reporting Dates](#)

	PERIOD COVERED	REPORT DUE DATE
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		
3 rd Quarter	7/1/11 - 9/30/11	10/17/2011
4 th Quarter	10/1/11 - 12/31/11	1/17/2012

** 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](#)