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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)

Directors:

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 Carol L. Hoekje
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 Carol Neiman
 Linda White
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 Steven M. Dodson
 Shreve Marshall

Comments from the Chairman Ronald DeFilippis

Record Keeping

Maintaining accurate and complete records is among the most important jobs of a campaign treasurer.

Treasurers and/or deputy treasurers of candidate committees are required to keep a written record of all financial activity undertaken by the committee.

This means that all contributions received, including monetary and in-kind, and all expenditures made, are to be part of the official campaign record.

All records pertaining to an election are to be kept for four years, or for four years following the transaction to which the records relate.

Failure to keep records will subject candidates and treasurers to fines for lack of compliance.

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The following information about contributions must be kept.

1. The name and address of the contributor;
2. The amount of the contribution;
3. The date the contribution was received; and,
4. The name of the checking account.

Further if the contributor is an individual, the occupation of the contributor and his or her employer and mailing address must be retained.

Records are to be kept on all contributions, even those that are \$300 or less.

Likewise, extensive records must be maintained regarding expenditures. The following expenditure information is required:

1. Written records of all expenditures;
2. The name and address of the recipient;
3. The amount and date of the expenditures; and,
4. The purpose of the expenditure.

In addition, the treasurer must maintain receipts, invoices, bills, and other documentation for each expenditure made. Moreover, a record of which permissible uses of funds is applicable to the expenditure should be provided.

As noted in an earlier column, expenditures made by credit card are subject to record keeping as well.

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Comments from the Chairman Ronald DeFilippis

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Records of the exact name or title of the owner of the credit card used by the committee is required to be kept. Moreover, the name of the lending institution issuing the card, the date of the purchase, the name and address of the vendor from whom the purchase was made, the purpose of the purchase, and the cost and description of the goods or services purchased are required to be maintained.

Finally, thorough and complete records involving contributions from partners in a partnership or limited liability (LLC) entity are to be kept.

A partnership or LLC is prohibited from making contributions in New Jersey. Therefore, if a contribution is received from a partnership or LLC, the following information must be maintained:

1. Instructions concerning the allocation of the contribution amount to a contributing partner;
2. A signed acknowledgement of the contribution from each contributing partner who has not signed the contribution check or other written instrument; and,
3. Contributor information from each contributing partner or member.

Executive Director's Thoughts Jeff Brindle

Super PACs are rapidly becoming the Leviathan that is swallowing up the electoral landscape.

Supposedly independent, they are anything but. While they now are actively supporting and opposing candidates, the next step may be to serve as fundraisers for candidates.

Super PACs are the latest manifestation of a campaign finance landscape that has been unsettled since the enactment of McCain/Feingold in 2002.

Two recent court decisions, one by the D.C. Circuit Court of Appeals in *SpeechNow v. FEC*, and one by the D.C. Federal District Court in *Carey v. FEC*, set the stage for the formation of these latest groups.

In particular, *Carey v. FEC*, permitted federal PACs to raise money in unlimited amounts as long as this soft money was only used for independent expenditures.

These independent spending-only committees, now known as Super PACs, are required to disclose their activities, but as long as they do not coordinate or consult with candidates, they are otherwise unrestricted.

To say, however, that these Super PACs are independent is misleading at best.

Campaign strategists aligned with the candidates in the Republican Presidential primary are heading up Super PACs that in some cases are outspending the campaigns themselves.

And President Obama, once critical of Super PACs, now has unleashed members of his cabinet to help raise money for a Super PAC supporting his re-election.

It's even been suggested that the state of the law would allow candidates themselves to attend Super PAC events and help raise money.

So is it far fetched to think that the next activity of the Super PACs is to serve as fundraisers for the candidates themselves?

Campaign finance lawyer Jason Torchinsky, who served as Deputy General Counsel to the Bush-Cheney campaign, thinks not.

In *Campaigns and Elections* magazine, Torchinsky said, "I almost see a really effective route for Super PACs to spend independently to help candidates raise money. I haven't seen any of them actually do it yet. But if you can spend independently and say 'Vote for Marc Elias', why can't I ask people to give money to Marc Elias?"

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Executive Director's Thoughts Jeff Brindle

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Robert Lenhard, former Chairman of the Federal Election Commission, agreed, saying, "There's a little bit of that out there, but there's not too much. I do think it's an opportunity for people to have an impact."

While the focus of Super PACs and other outside, independent groups is now on the presidential campaign, New Jersey is sure to be one of their next stops since important gubernatorial and legislative campaigns loom next year.

Independent groups already have displayed their considerable — and growing — clout in recent state elections.

Last year independent groups spent at least \$1.3 million on the legislative contest. And during the 2009 gubernatorial contest, almost \$14 million in independent spending by outside groups took place.

Even bigger spending could happen next year.

That is why it is important for the Legislature to move legislation that will require registration and disclosure by Super PACs and other outside groups.

Registration and disclosure, by virtue of Citizens United and the aforementioned decisions, are constitutional.

There is no better time than now for the Legislature to bring about this much needed reform.

(See more information on "Super PACs" on page 6).

Pay-to-Play

Public contractors reported making \$9.6 million in political contributions in 2011, a 1 percent decline from a year earlier.

While the total amount of contributions was down for the fifth straight year, the decrease was the smallest since 2007.

The long-term trend remains the same, but the rate of decline seems to be slowing. Pay-to-play is certainly achieving its original intent, which was to dampen contribution activity by public contractors. Contributions from contractors peaked in 2007 at \$16.4 million.

Table 1
Total Contributions Reported Annually
by Public Contractors from 2006 to 2011

YEAR	AMOUNT	TWO-YEAR TREND	PERCENT
2011	\$ 9,556,696	\$(62,321)	-1%
2010	\$ 9,619,017		
2009	\$10,867,725		
2008	\$12,102,993		
2007	\$16,399,852	SIX-YEAR TREND	PERCENT
2006	\$15,093,816	\$(5,537,120)	-37%

There is another story as well. Public officials in recent years have been under pressure and have striven to cut budgets. That may be one reason why overall contracts are down 49 percent since 2006.

Total contracts reported by contractors also fell last year. Contractors reported \$5.3 billion in total public work, down \$516 million, or 9 percent, from 2010.

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

YEAR	AMOUNT	TWO-YEAR TREND	PERCENT
2011	\$ 5,311,982,112	\$(516,464,196)	-9%
2010	\$ 5,828,446,309		
2009	\$ 6,062,029,274		
2008	\$ 5,001,408,451		
2007	\$ 5,686,716,597	SIX-YEAR TREND	PERCENT
2006	\$10,395,179,530	\$(5,083,197,418)	-49%

... Continued on page 4.

Another trend uncovered by an ELEC analysis is that contractors are making substantially more contributions to continuing political committees, better known as political action committees (PACs). Many are operated by special interests, such as businesses or unions. Others appear to be special interest PACs but actually are affiliated with political parties.

In 2006, the first year when contractors had to report their contributions to ELEC, they reported giving just under \$1.3 million, or 8.6 percent of their total contributions, to these two types of PACs. Last year, the total had reached \$1.7 million, or about 18.3 percent.

In some cases, contractors may be evading the intent of pay-to-play restrictions and contribution limits by giving indirectly through these PACs. That is why the Commission has recommended making it harder for one candidate or group to establish multiple, affiliated PACs. The Federal Election Commission already has such regulations.

Four PACs were among the top ten recipients of contractor contributions in 2011.

Table 3
Top Ten Recipients of
Contractor Contributions in 2011

RECIPIENT	AMOUNT
Constructors for Good Government	\$139,310
Wallace Simmons and Barnes for Freeholder	\$134,300
Tomaro for Freeholder	\$125,175
Barrett for Freeholder	\$120,675
Cappelli & McCray for Freeholder	\$117,600
GOPAC	\$116,600
Victory 2011	\$ 96,835
Sweeney Burzichelli and Riley	\$ 95,878
Verizon Good Government Club - New Jersey	\$ 90,060
The Leaders Fund	\$ 88,300

While the total value of contracts fell, the number of contracts was up. Businesses reported 23,249 contracts in 2011, the largest total since 2006. The number was up 25 percent from a year earlier.

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

YEAR	NUMBER	TWO-YEAR TREND	PERCENT
2011	23,249	4,656	25%
2010	18,593		
2009	21,421		
2008	22,753		
2007	22,589	SIX-YEAR TREND	PERCENT
2006	24,927	(1,678)	-7%

The number of business entities filing reports was down 9 percent to 1,927, the lowest count since 2008.

Table 5
Total Number of Business Entities Reporting
Annually under State Pay-to-Play Law

YEAR	NUMBER	TWO-YEAR TREND	PERCENT
2011	1,927	(195)	-9%
2010	2,122		
2009	2,063		
2008	1,847		
2007	1,999	SIX-YEAR TREND	PERCENT
2006	2,320	(393)	-17%

It should be noted that 2011 numbers are preliminary. They reflect information available to the Commission through April 2, 2012. Some contractors are likely to submit amendments after that date that could change the totals. Numbers before 2011 more fully reflect these revisions. Reports from 2011 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.

Those with State contracts in excess of \$17,500 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 six-year period, the average contribution from contractors fell from \$1,225 to \$1,068- a decline of 13 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.

These changes would improve the enforcement of pay-to-play law while increasing the amount of disclosure.

Ten firms that reported the largest contract totals for 2011 are listed below.

Table 6
Ten Business Entities that Reported Largest Contract Totals in 2011

BUSINESS NAME	AMOUNT
Horizon Healthcare of New Jersey, Inc.	\$1,717,387,622
Amerigroup New Jersey, Inc.	\$ 468,591,745
Verizon New Jersey Inc.	\$ 250,151,868
Colonial Bank FSB	\$ 159,023,815
Earle Asphalt Company	\$ 116,506,200
Creamer-Sanzari Joint Venture	\$ 92,164,605
Tilcon New York Inc.	\$ 87,391,352
George Harms Construction Co. Inc.	\$ 72,023,507
Union Paving & Construction Co. Inc.	\$ 69,067,908
South State Inc.	\$ 54,697,488

The following firms reported the largest contribution totals for 2011.

Table 7
Business Entities that Reported Largest Donation Totals in 2011

BUSINESS NAME	AMOUNT
CME Associates	\$ 537,960
T&M Associates	\$ 454,070
Remington & Vernick Engineers, Inc.	\$ 437,700
Maser Consulting P.A.	\$ 251,555
Pennoni Associates Inc.	\$ 249,660
Verizon New Jersey Inc.	\$ 222,010
Parker McCay P.A.	\$ 180,200
Florio Perrucci Steinhardt & Fader LLC	\$ 153,623
Winning Strategies Washington LLC	\$ 133,259
Princeton Public Affairs Group Inc.	\$ 131,509

Note: Rankings would be different if chart also included contribution totals from multiple business entities that have a single owner.

State government was the largest source of contracts in 2011, followed by municipalities, independent authorities, counties, school boards, fire districts, and the Legislature.

Table 8
Contracts by Public Entity Type in 2011

PUBLIC ENTITY TYPE	NUMBER	AMOUNT
State	1,166	\$2,988,074,763
Municipality	9,182	\$ 752,189,032
Independent Authority	2,271	\$ 693,630,318
County	1,774	\$ 428,023,562
School Board	3,803	\$ 356,656,507
No Information	4,445	\$ 89,820,872
Fire District	591	\$ 3,573,745
Legislature	17	\$ 13,313
	23,249	\$5,311,982,112

“Super PACs” in Federal Elections: Overview and Issues for Congress

Table 1. Basic Structure of Super PACs versus Other Political Committees and Organizations
(Refers to federal elections only)

	Is the entity typically considered a political committee by the FEC?	Must certain contributors be disclosed to the FEC?	Can the entity make contributions to federal candidates?	Are there limits on the amount the entity can contribute to federal candidates?	Can federal candidates raise funds the entity plans to contribute in federal elections?	Are there limits on contributions the entity may receive for use in federal elections?
Super PACs	Yes	Yes	No	Not permitted to make federal contributions	Yes, within FECA limits	No
“Traditional” PACs ^a	Yes	Yes	Yes	\$5,000 per candidate, per election	Yes, within FECA limits	\$5,000 annually from Individuals; other limits established in FECA
Party Committees	Yes	Yes	Yes	\$5,000 per candidate, per election	Yes, within FECA limits	\$30,800 from individuals; other limits established in FECA
Candidate Committees	Yes	Yes	Yes	\$2,000 per candidate, per election	Yes, within FECA limits	\$2,500 per candidate, per election from individuals; other limits established in FECA
527s ^b	No	No, unless independent expenditures or electioneering communications ^c	No	Not permitted to make federal contributions	N/A	No
501(c)(4)s, (5)s, (6)s ^d	No	No, unless independent expenditures or electioneering communications ^e	No	Not permitted to make federal contributions	N/A	No

Source: CRS adaptation from **Table 1** in CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and Federal Election Commission, “Contribution Limits for 2011-2012,” <http://www.fec.gov/info/contriblimits1112.pdf>.

Notes: The table does not include the following notes regarding additional limitations on contributions: (1) For individuals, a special biennial limit of \$117,000 (\$46,200 to all candidate committees and \$70,800 to party and PAC committees) also applies. These amounts are adjusted biennially for inflation; (2) The national party committee and the national party Senate committee (e.g., the DNC and DSCC or RNC and NRSC) share a combined per-campaign limit of \$43,100, which is adjusted biennially for inflation.

- a. This report uses the term *traditional PACs* to refer to PACs that are not super PACs. Here, the term includes separate segregated funds, nonconnected committees, and leadership PACs. The table assumes these PACs would be *multicandidate committees*. *Multicandidate committees* are those that have been registered with the FEC (or, for Senate committees, the Secretary of the Senate) for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. See 11 C.F.R. §100.5(e)(3). In practice, most PACs attain multicandidate status automatically over time.
- b. As the term is commonly used, 527 refers to groups registered with the Internal Revenue Service (IRS) as section 527 political organizations that seemingly intend to influence federal elections in ways that place them outside the FECA definition of a political committee. By contrast, political committees (which include candidate committees, party committees, and political action committees) are regulated by the FEC and federal election law. There is a debate regarding which 527s are required to register with the FEC as political committees. FEC contributor disclosure for these organizations applies only to those who designate their contributions for use in independent expenditures or electioneering communications. This table does not address general reporting obligations established in tax law or IRS regulations. For additional discussion, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika K. Lunder.
- c. Federal tax law requires that 527s periodically disclose to the IRS information about donors who have given at least \$200 during the year. See 26 U.S.C. §527(j). This information is publicly available. See 26 U.S.C. §6104.
- d. For additional discussion of these groups, see CRS Report RL33377, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, by Erika K. Lunder; and CRS Report R40183, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, by Erika K. Lunder and L. Paige Whitaker.
- e. Federal tax law requires that these groups disclose information to the IRS about donors who have given at least \$5,000 annually. See 26 U.S.C. §6033. Unlike information on donors to political committees and 527s, however, this information is confidential and not made public. See 26 U.S.C. §6104.

TRAINING SEMINARS

Business Entity Pay-To-Play Training Seminars

The New Jersey Election Law Enforcement Commission is pleased to announce that it will be holding training seminars as detailed below to assist business entities with the filing of annual disclosure reports pursuant to the State "pay-to-play" disclosure law (P.L.2005, c.271). Each seminar is expected to last for approximately 1-2 hours.

Please provide the information requested below and return the **entire reservation form** to ELEC. You may mail the form back to ELEC, Special Programs Section, P.O. Box 185, Trenton, NJ 08625-0185 or you may fax the form to ELEC at (609) 292-4238. Since space is limited, you must reserve a seat in order to attend. For directions, contact the Special Programs staff. The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please select your choice **by circling one of the dates below**:

BUSINESS ENTITY PAY-TO-PLAY TRAINING
Pay-To-Play Reservation Form
June 22, 2012 at 10:00 a.m.
September 14, 2012 at 10:00 a.m.
November 16, 2012 at 10:00 a.m.

The seminars listed below will be held at the Election Law Enforcement Commission, 28 West State Street, 8th Floor, Trenton, New Jersey at 10:00 a.m. To attend a seminar, you must reserve a seat. Space will be limited. Fill out the **reservation form below** and be sure **to circle the date you wish to attend**. Return the entire reservation form to the Commission. You may mail the form back to ELEC, PO Box 185, Trenton, NJ 08625-0185. Or, you may fax the form to ELEC at (609) 633-9854. For directions, contact the Compliance and Information staff.

TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES
Treasurer Training Reservation Form
September 11, 2012 at 10:00 a.m.
September 24, 2012 at 10:00 a.m.
October 2, 2012 at 10:00 a.m.

TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS
Treasurer Training Reservation Form
June 27, 2012 at 10:00 a.m.
September 28, 2012 at 10:00 a.m.
December 12, 2012 at 10:00 a.m.

R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING
REFS Training Reservation Form
July 25, 2012 at 10:00 a.m.
September 19, 2012 at 10:00 a.m.
October 3, 2012 at 10:00 a.m.

DATES TO REMEMBER

Reporting Dates

ELECTION	48 HOUR START DATE	INCLUSION DATES	ELEC DATE
SCHOOL BOARD	4/4/12		4/17/2012
29-day Preelection Reporting Date		Inception of campaign* - 3/16/12	3/19/2012
11-day Preelection Reporting Date		3/17/12 - 4/3/12	4/9/2012
20-day Postelection Reporting Date		4/4/12 - 5/4/12	5/7/2012
MAY MUNICIPAL (90 DAY START DATE: 2/8/12)	4/25/12		5/8/2012
29-day Preelection Reporting Date		Inception of campaign* - 4/6/12	4/9/2012
11-day Preelection Reporting Date		4/7/12 - 4/24/12	4/27/2012
20-day Postelection Reporting Date		4/25/12 - 5/25/12	5/29/2012
RUNOFF (JUNE)**	5/30/12		6/12/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		4/25/12 - 5/29/12	6/1/2012
20-day Postelection Reporting Date		5/30/12-6/29/12	7/2/2012
PRIMARY*** (90 DAY START DATE: 3/7/12)	5/23/12		6/5/2012
29-day Preelection Reporting Date		Inception of campaign* - 5/4/12	5/7/2012
11-day Preelection Reporting Date		5/5/12 - 5/22/12	5/25/2012
20-day Postelection Reporting Date		5/23/12 - 6/22/12	6/25/2012
GENERAL*** (90 DAY START DATE: 8/8/12)	10/24/12		11/6/2012
29-day Preelection Reporting Date		6/23/12 - 10/5/12	10/9/2012
11-day Preelection Reporting Date		10/6/12 - 10/23/12	10/26/2012
20-day Postelection Reporting Date		10/24/12 - 11/23/12	11/26/2012
RUNOFF (DECEMBER)**	11/21/12		12/4/2012
29-day Preelection Reporting Date		No Report Required for this Period	
11-day Preelection Reporting Date		10/24/12 - 11/20/12	11/23/2012
20-day Postelection Reporting Date		11/21/12 - 12/21/12	12/24/2012
PACS, PCFRS & CAMPAIGN QUARTERLY FILERS			
1st Quarter		1/1/12 - 3/31/12	4/16/2012
2nd Quarter****		4/1/12 - 6/30/12	7/16/2012
3rd Quarter		7/1/12 - 9/30/12	10/15/2012
4th Quarter		10/1/12 - 12/31/12	1/15/2013

* Inception Date of Campaign (first time filers) or from January 1, 2012 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2012 Runoff election is not required to file a 20-day postelection report for the corresponding prior election (May Municipal or General).

*** Form PFD-1 is due on April 12, 2012 for Primary Election Candidates and June 15, 2012 for Independent General Election Candidates.

**** A second quarter report is needed by Independent General Election candidates if they started their campaign before 5/9/2012.