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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

Now that the primary election for governor is behind us, it is time to look forward to the general election.

The question that comes to mind is the role that the Gubernatorial Public Financing Program will play in November's election.

If history is any guide, the program will play an integral part in this year's contest.

The program has been a model for other state programs since its inception in the 1977 general election. Subsequently, the public financing initiative was expanded in 1981 to include primary elections as well.

The twin purposes of the program are to eliminate even the appearance of corruption and to allow qualified candidates of limited personal wealth to run for the State's highest office.

Through the years those two goals have been more than satisfied.

At the completion of this year's primary, 68 candidates had participated in the program. These candidates were able to mount credible campaigns and, in the case of six of them, become governor.

Moreover, since the start of the program there has never been a whiff of scandal.

The Gubernatorial Public Financing Program is a matching program. In other words, each private dollar raised is matched with two public dollars.

Of course, there is a viability test to determine eligibility to participate in the program. Public money is not just given out indiscriminately.

In order for candidates to qualify for the program in 2013, for instance, they must raise \$380,000 in private donations.

Once this threshold is met, \$258,000 of it is matched 2 to 1 with public dollars. A total of \$122,000 of the initial \$380,000 is not matched.

Candidates in this year's general election, who opt to participate in the program, and qualify, can receive up to \$8.2 million in public funds but are subjected to an overall expenditure limit of \$12.2 million.

Thus, to max out, candidates must raise \$4.122 million in public funds with only the \$122,000 not matched.

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Candidates participating in the program as well as those not participating are subject to a contribution limit of \$3,800 per donor per election cycle.

The importance of the program to the integrity of the electoral process in New Jersey cannot be overstated.

And, in this year's election, its importance is all the more enhanced by the prospect of huge dollars being spent independently by outside groups, many of whom at this juncture will not be subject to disclosing their fundraising activity under the State's campaign finance laws.

The Commission's Executive Director initially predicted that \$25 million would be spent by these groups in 2013.

Based on the fact that almost \$14 million has already been spent independently in the primary, that initial estimate has been revised upwards of \$30 million.

Because of this, the importance of the public financing program as a means of offsetting the influence of these anonymous groups is considerably enhanced.

The Commission is responsible for administering the Gubernatorial Public Financing Program. In so doing, the specially hired staff carefully reviews every submission of private funds to ensure that the public's money is spent wisely and in accordance with the law.

In this year's election, the public can be assured that the gubernatorial contest will once again be conducted in a fair and impartial manner, with a public financing program as an integral part of that effort.

## Executive Director's Thoughts Jeff Brindle

*Reprinted from newjerseynewsroom.com*

A longstanding ban on contractors making contributions in federal elections is under legal challenge. The U.S. Court of Appeals for the District of Columbia (DC) will hear oral arguments in the case on Monday, September 30, 2013.

The issue for New Jersey is how the outcome of this case will impact its own pay-to-play law. In Wagner v. Federal Election Commission (FEC), three federal contractors are suing for the right to make campaign contributions. They claim the prohibition is a violation of their First and Fourteenth Amendment rights of free speech and equal protection.

The case thus far has followed an interesting path; In November of 2012, the U.S. Court for DC upheld the ban in the Federal Election Campaign Act on federal contractor donations.

The Act prevents contractors receiving federal contracts from donating to any political party, committee, or candidate for public office. Subsequently, the plaintiffs appealed the case, challenging the ban in section 441c of the Federal Election Campaign Act (FECA). They said the prohibition is not justified by a "sufficiently important governmental interest" because there is no evidence that contributions lead to corruption.

Further, they challenged the Act as violating the equal protection clause of the Constitution. On May 31st of this year, the Appeals Court remanded this case to the DC District Court. In taking this action the Appeals Court said that under section 437h of FECA, district courts are limited in terms of constitutional challenges.

The court ordered the District Court to develop a record for appellate review and certify the case for a review by the whole DC Appeals Court. Thus, the case will be given an en banc review (heard by full court) in September.

Though it is difficult to predict the outcome of this case there is certainly the possibility, considering recent decisions by the DC Court of Appeals, that the decision may find for the plaintiffs and rule the ban as unconstitutional.

If this is the case, then what are the ramifications for New Jersey's pay-to-play law?

It is difficult to say. However, there is a significant difference between New Jersey's law and federal law. Pay-to-play in New Jersey does not ban contributions in state elections. It only limits them. This is a major distinction. So there may not be as sufficient a First Amendment concern.

The Fourteenth Amendment equal protection argument may be a bigger problem. While individual contributors are subject to a \$2,600 contribution limit, contractors cannot give more than \$300.

The equal protection clause of the constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Over time, the clause has been interpreted to apply to federal laws as well.

The difference between \$300 and \$2,600 could be viewed as not treating certain contributors similarly under the law. The State's pay-to-play law is complicated and convoluted. It is not easy to understand, even sometimes for lawyers and regulators.

It has led to precipitous drops in fundraising by candidates and parties, the entities most accountable. On the other hand, those groups less accountable, PACs and independent, often anonymous groups, are proliferating and often are recipients of contractor contributions.

The New Jersey Election Law Enforcement Commission has proposed changes to existing law. It has called for one state law, rather than the current situation which allows local governments to adopt their own ordinances or circumvent the state law by invoking the fair and open loophole.

Moreover, the proposal calls for strengthening disclosure by requiring reporting for all contracts over \$17,500, an end to fair and open, and an increase in the contractor contribution limit from \$300 to \$1,000.

It is not known what the DC Appeals Court will do. But if it decides that the federal pay-to-play law is unconstitutional, these reforms would strengthen the state's case against similar action taken against it.

Simplifying the law, ending fair and open, and in particular raising the contribution limit would help defend against the charge of unequal treatment, let alone an abridgement of First Amendment free speech rights.

## 2013 Gubernatorial and Lieutenant Gubernatorial General Debate Sponsors

On July 16, 2013, the Commission selected William Paterson University with WCBS TV Channel 2 in NY, KYW TV Channel 3 in Philadelphia, The Record/Herald News and Gannett NJ newspapers; and Montclair State University with NJTV and other local media partners as the 2013 gubernatorial general election debate sponsors.

The Commission further selected Kean University to sponsor the lieutenant gubernatorial debate. Candidates that receive public matching funds must participate in the debates. Candidates that do not accept public funds may elect to participate by filing with the Commission by September 3<sup>rd</sup>. For additional information, please contact the debate sponsors.

## White Paper No. 23 Legislative General Elections 2011 "Rise of the Independents."

By Joe Donohue, Deputy Director

Independent groups spent an estimated \$1.8 million in the 2011 legislative elections, nearly 11 times the amount in the previous year where all 120 legislative seats were at stake, according to a new analysis by the New Jersey Election Law Enforcement Commission (ELEC).

The growing clout of independent groups in New Jersey legislative campaigns is one of the key findings of a new analysis entitled "White Paper No. 23- Legislative General Elections 2011- Rise of the Independents."

It found that special interest groups operating outside candidates and parties- hence, the term "outside groups"- may have a disproportionate impact by targeting legislative districts where neither party is totally dominant.

While not all independent groups detailed their spending, ELEC was able to analyze about \$1.2 million spent during the campaign. It found that about 91 percent went to so-called "battleground" districts. As a comparison, candidates and parties spent only about 63 percent of their funds in the same districts.

Joe Donohue, ELEC's Deputy Director and author of the study, said independent spending in campaigns has existed ever since federal and state regulators began enforcing campaign finance disclosure laws in the early 1970s. Independent spending began rising in the mid-1990s after issue-oriented ads became popular in federal campaigns, he added.

"Independent groups became an even bigger factor after the so-called McCain Feingold law in 2002 prohibited national parties from accepting unlimited "soft money" contributions from special interest groups. After the ban, special interests began waging more of their own independent campaigns."

"The U.S. Supreme Court's *Citizens United v. FEC* ruling in 2010 finally blew the lid off independent spending by ending a long-standing ban on independent spending by corporations and unions," Donohue said. "Now, the clout of independent groups is growing faster than ever."

According to the Center for Responsive Politics, non-party outside spending in presidential campaign years tripled to nearly \$1.1 billion just between 2008 and 2012.

"Already in the 2013 New Jersey legislative election, one group alone has raised nearly as much as all independent groups spent just two years ago," Donohue said.

Since some groups engaged in independent spending are not required to disclose their campaign finance activities, ELEC has recommended legislation that would broaden public disclosure.

White Paper 23 also reiterates a previous recommendation that candidates need to do a better job of detailing expenditures, particularly media outlays.

Among other highlights from the research report:

- Disregarding nearly \$4 million in public funds spent in the 2007 election under a now-discontinued pilot program, the 2011 legislative election drew the most private spending ever- \$45.9 million.
- Spending in two perennial battleground districts- the 2<sup>nd</sup> and 38<sup>th</sup>- was high enough to rank among the top five all time most expensive legislative races.
- All 37 Senate incumbents won in 2011- the highest win rate in at least a decade for Senate members.
- Candidates in 2011 saved an unprecedented amount- \$6.4 million- for their 2013 campaigns.

White Paper 23 and other research reports are available by contacting ELEC at 609-292-8700, or on its website at [www.elec.state.nj.us](http://www.elec.state.nj.us).

## “Big-Six” 2<sup>nd</sup> Quarter

The so-called “Big Six” fundraising committees have amassed reserves of nearly \$3.2 million for this fall’s legislative elections, slightly less than at the same point two years ago.

According to new quarterly reports filed with the New Jersey Election Law Enforcement Commission (ELEC) by the two state parties and four Legislative Leadership Committees, Republicans have raised more money than Democrats, and have larger cash reserves. Democrats have spent more so far this year.

**TABLE 1**  
**FUNDRAISING BY “BIG SIX” COMMITTEES**  
**JANUARY 1 THROUGH JUNE 30, 2013**

<b>REPUBLICANS</b>	<b>RAISED</b>	<b>SPENT</b>	<b>CASH-ON-HAND</b>	<b>NET WORTH*</b>
New Jersey Republican State Committee	\$ 783,761	\$ 617,299	\$ 414,041	\$ 391,541
Senate Republican Majority	\$ 676,844	\$ 126,365	\$ 1,054,478	\$ 1,054,478
Assembly Republican Victory	\$ 449,713	\$ 129,484	\$ 526,149	\$ 526,149
<b>Sub Total-Republicans</b>	<b>\$ 1,910,318</b>	<b>\$ 873,148</b>	<b>\$ 1,994,668</b>	<b>\$ 1,972,168</b>
<b>DEMOCRATS</b>				
New Jersey Democratic State Committee	\$ 339,069	\$ 376,225	\$ 44,638	\$ 21,398
Senate Democratic Majority	\$ 414,829	\$ 271,270	\$ 437,139	\$ 417,139
Democratic Assembly Campaign Committee	\$ 718,521	\$ 353,438	\$ 713,444	\$ 683,006
<b>Sub Total-Democrats</b>	<b>\$ 1,472,419</b>	<b>\$ 1,000,933</b>	<b>\$ 1,195,221</b>	<b>\$ 1,121,543</b>
<b>Total-Both Parties</b>	<b>\$ 3,382,737</b>	<b>\$ 1,874,081</b>	<b>\$ 3,189,889</b>	<b>\$ 3,093,711</b>

\*Net worth is cash-on-hand adjusted for debts owed to or by the committee.

With just under \$3.2 million in cash reserves, the Big Six committees have stashed away about \$140,000, or 4.2 percent less, than they had at this point two years ago, said Jeff Brindle, ELEC’s Executive Director. 2011 was the last time all 120 lawmakers ran for reelection. The same groups have amassed about \$500,000, or 13.4 percent, less than in 2009, when only Assembly members were running.

“While the combined cash reserves are down from the last two legislative elections, they are up more than \$625,000, or 24.4 percent, since the previous reports filed in April,” Brindle said. “Clearly, the parties are trying to stockpile their ammo before the general election begins in earnest in September.”

Looking at just the most recent quarter, which extended from April 1 through June 30, the Senate Republican Majority raised the most funds, while the Senate Democratic Majority collected the least.

**TABLE 2  
FUNDRAISING BY "BIG SIX" COMMITTEES  
APRIL 1 THROUGH JUNE 30, 2013**

REPUBLICANS	RAISED
New Jersey Republican State Committee	\$ 387,983
Senate Republican Majority	\$ 468,752
Assembly Republican Victory	\$ 242,660
<b>Sub Total- Republicans</b>	<b>\$1,099,395</b>
DEMOCRATS	
New Jersey Democratic State Committee	\$ 234,669
Senate Democratic Majority	\$ 156,448
Democratic Assembly Campaign Committee	\$ 426,661
<b>Sub Total- Democrats</b>	<b>\$ 817,778</b>
<b>Total- Both Parties</b>	<b>\$1,917,173</b>

Democratic fundraising, spending and cash reserves are down compared to four years ago, while Republican totals are up.

**TABLE 3  
CAMPAIGN FINANCE ACTIVITIES FOR "BIG SIX"  
COMMITTEES THROUGH SECOND QUARTER  
2009 VERSUS 2013**

REPUBLICANS	RAISED	SPENT	CASH-ON-HAND	NET WORTH*
2009	\$ 664,649	\$ 437,425	\$ 835,596	\$ 713,548
2013	\$ 1,910,318	\$ 873,148	\$ 1,994,668	\$ 1,972,168
Difference-Dollars	\$ 1,245,669	\$ 435,723	\$ 1,159,072	\$ 1,258,620
Difference-%	187%	100%	139%	176%
DEMOCRATS				
2009	\$ 2,988,454	\$ 1,373,798	\$ 2,846,640	\$ 2,834,512
2013	\$ 1,472,419	\$ 1,000,933	\$ 1,195,221	\$ 1,121,543
Difference-Dollars	\$ (1,516,035)	\$ (372,865)	\$ (1,651,419)	\$ (1,712,969)
Difference-%	-51%	-27%	-58%	-60%
BOTH PARTIES				
2009	\$ 3,653,103	\$ 1,811,223	\$ 3,682,236	\$ 3,548,060
2013	\$ 3,382,737	\$ 1,874,081	\$ 3,189,889	\$ 3,093,711
Difference-Dollars	\$ (270,366)	\$ 62,858	\$ (492,347)	\$ (454,349)
Difference-%	-7%	3%	-13%	-13%

\*Net worth is cash-on-hand adjusted for debts owed to or by the committee.

State Parties 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](http://www.elec.state.nj.us). ELEC also can be accessed on Facebook ([www.facebook.com/NJElectionLaw](http://www.facebook.com/NJElectionLaw)) and Twitter ([www.twitter.com/elecnj](http://www.twitter.com/elecnj)).

## Training Seminars

The seminars listed below will be held at the Offices of the Commission, located at 28 West State St., Trenton, NJ. Please visit ELEC's website at <http://www.elec.state.nj.us> for more information on training seminar registration.

	TRAINING DATES	TIME
<b>BUSINESS ENTITY PAY-TO-PLAY TRAINING</b>	September 23 <sup>rd</sup> , 2013	10:00 a.m.
	November 18 <sup>th</sup> , 2013	10:00 a.m.
<b>TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES</b>	September 10, 2013	10:00 a.m.
	September 25, 2013	10:00 a.m.
	September 30, 2013	10:00 a.m.
<b>TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS</b>	September 16, 2013	10:00 a.m.
	December 11, 2013	10:00 a.m.
<b>R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING</b>	September 11, 2013	10:00 a.m.
	September 19, 2013	10:00 a.m.
	October 2, 2013	10:00 a.m.

## Lobbying Reporting Dates

	INCLUSION DATES	ELEC DUE DATE
<b>LOBBYING QUARTERLY FILING</b>		
3 <sup>rd</sup> Quarter	7/1/13 – 9/30/13	10/10/13
4 <sup>th</sup> Quarter	10/1/13 – 12/31/13	1/10/14

## Reporting Dates

	INCLUSION DATES	REPORT DUE DATE
<b>General Election*** - 11/5/2013</b>		
29-day pre-election	6/22/13 - 10/4/13	10/7/2013
11-day pre-election	10/5/13 - 10/22/13	10/25/2013
20-day post-election	10/23/13 - 11/22/13	11/25/2013
48 Hour Notice Reports Start on 10/23/13 through 11/5/13		
90 Day Start Date: 8/7/13		
<b>Runoff Election** - 12/3/2013</b>		
29-day pre-election	No Report Required for this Period	
11-day pre-election	10/23/13 - 11/19/13	11/22/2013
20-day post-election	11/20/13 - 12/20/13	12/23/2013
48 Hour Notice Reports Start on 11/20/13 through 12/3/13		
<b>PACs, PCFRs &amp; Campaign Quarterly Filers</b>		
3 <sup>rd</sup> Quarter	7/1/13 - 9/30/13	10/15/2013
4 <sup>th</sup> Quarter	10/1/13 - 12/31/13	1/15/2014

\*\* A candidate committee or joint candidates committee that is filing in a 2013 Runoff election is not required to file a 20-day post-election report for the corresponding prior election (May Municipal or General).

\*\*\* Form PFD-1 is due on April 11, 2013 for Primary Election Candidates and June 14, 2013 for Independent General Election Candidates.