



ELEC-TRONIC

An Election Law Enforcement Commission Newsletter

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"Furthering the Interest of an Informed Citizenry"

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Website:

www.elec.state.nj.us

Comments from the Chairman Ronald DeFilippis

It's that time again. Labor Day, that mystical start to the campaign season, has passed.

Therefore, it is time for campaign treasurers to refresh themselves on the ins and outs of the state's campaign finance law.

While there is no contest for Governor or Legislature this year, thousands of candidates for municipal and county office will be facing off in November.

Treasurers are encouraged to attend ELEC sponsored training sessions that are conducted both in Trenton and off-site at locations throughout the State.

If in person training is not possible, treasurers can avail themselves of two interactive training videos, one dealing with reporting guidelines and the other with forms.

For information about these training opportunities, treasurers should check out the schedule printed on page five of this newsletter.

Further, treasurers may access the Compliance manual by keying into the Commission's website at www.elec.state.nj.us.

In any event, the following represents important information for all individuals signing on to assist campaigns as treasurers this fall.

First, any candidate raising money must establish a campaign committee bank account. All funds raised must be deposited into the account and all expenditures must be drawn from the account.

Information involving the account is required to be filed with the Election Law Enforcement Commission on a form D-1.

The D-1 requires the following to be disclosed:

1. The name of the candidate committee;
2. The name, mailing address, and telephone number of the person appointed chairperson;
3. The name, mailing address, and telephone number of the treasurer;
4. The name, mailing address, and telephone number of the bank depository; and,
5. The name, mailing address, and telephone number of persons authorized to sign checks.

Throughout the campaign detailed records of all financial transactions must be maintained by the treasurer.

Campaigns are required to report their financial activity 29 and 11 days before the election, 20 days after the election and then quarterly until the campaign account is zeroed out and closed.

All contributors who make in the aggregate donations amounting to more than \$300 must be identified on the reports. Contributions of \$300 or less are reported as a lump sum, though the identity of those donors must be maintained by the campaign.

Expenditures must be reported as well as loans to the committee. All loans, except those personally made by the candidate, are subject to contribution limits.

In spending on the campaign, candidates and treasurers must be aware of the fact that there are guidelines as to the proper use of those funds.

Campaign funds can be used in connection with the campaign. In addition, they can be used for administrative purposes, for contributing to other candidates, and for charity. Funds may be returned to contributors on a pro rata basis, and for an officeholder's ordinary and necessary expenses of holding public office.

Campaign funds cannot be used for personal use or for defending in a criminal matter.

The foregoing is a snapshot view of the guidelines for reporting and managing the financial aspects of a campaign.

Executive Director's Thoughts Jeff Brindle

Legislation needed to restore balance in election financing

Reprinted from politickernj.com

Much has been written about the magnitude of campaign spending by independent special interest groups.

But until now, there has been little discussion about the impact.

During the 2012 Presidential and Congressional contests, the Center for Responsive Politics estimated over \$1 billion was spent independently.

In New Jersey last year a record \$41 million was spent by outside groups participating in the gubernatorial and legislative elections.

Outside group spending is now filtering down to the local level, with about \$2.7 million spent in the Newark and Trenton mayoralty races this spring.

Yet, what kind of influence do these groups actually have over our electoral process?

A new study on outside spending in Congressional elections by Daniel P. Tokaji and Renata E.B. Strause attempts to answer this question.

Through interviews with campaign staffers, members of and candidates for Congress, and outside group operatives, this Ohio State University Muritz College of Law team provide some interesting findings.

Though directed toward federal campaigns, the study is instructive for New Jersey as well.

According to the study, outside spending changed campaign fund-raising in one of two ways.

Either candidates "felt pressure to raise more money than ever before" or complained that independent groups made it more difficult to raise money for their own campaigns.

Further, some candidates decided to run because they were assured of independent group support. Others, like North Dakota Senator Kent Conrad, a Democrat, bowed out because too much time would have to be spent fundraising.

The abundance of independent spending also diminished the role of candidates.

According to Tokaji and Strause among the common complaints were: candidates became “bit players in their own campaigns,” they “lost control of the message,” and “independent expenditures drove the agenda.”

They also state that “independent spending made the campaign ‘dumber and sillier,’ forcing candidates to spend their resources addressing non-substantive allegations, rather than issues.”

Finally, the study noted that traditionally candidates depended on political parties for support in campaigns but that now independent groups are shoving them aside.

Because of independent spending, the political party system, both at the federal and state levels, has weakened. Moreover, top political operatives now gravitate toward independent groups and away from parties because “that’s not where the action is anymore.”

These findings reinforce the need for the Legislature to take a serious look at the influence of outside group spending on campaigns in New Jersey.

With record spending by outside groups last year reaching \$41 million, it is not beyond the realm of possibility that in the 2017 election for Governor and Legislature that figure could top \$80 million.

At that rate, the electoral process will be consumed by outside spending with candidates and political parties relegated to the status of second class citizens, having less and less say in their own campaigns and their own messages, let alone the outcome of their hard fought campaigns.

It’s difficult to imagine the total transformation of the electoral landscape in New Jersey if legislation is not enacted to offset the impact of these groups.

Fortunately, legislation has been introduced that would require independent groups to play by the same campaign finance disclosure rules as candidates and parties. Some independent groups are using the fact that they can hide the names of their contributors to draw money away from traditional fund-raising committees.

The bill also would strengthen political parties by adjusting party and candidate contribution limits higher to offset inflation, and through common sense pay-to-play reform that would permit public contractors to make slightly larger contributions while still keeping their influence in check.

Independent groups certainly deserve to participate in electoral politics. In fact, their participation is protected by the First Amendment.

But they should not be treated more favorably than political parties and candidates in terms of disclosure.

And legislative steps are necessary to restore some balance in how we finance our elections.

Brindle will participate as a speaker at the Inaugural Public Policy Forum

Sponsored by New Jersey Appleseed

ELEC’s Executive Director Jeff Brindle will participate as a speaker faculty at the Inaugural Public Policy Forum titled: Accountability, Ethics & Public Contracting sponsored by New Jersey Appleseed. His topic of discussion will be centered around **Examining How New Jersey’s Political Climate Can Play a Role in Misconduct; To What Extent is Enforcement Working, Not Working or Selective?**

The public forum will take place on October 20 at Seton Hall University School of Law in Newark.

Arizona Court of Appeals upholds disclosure

By Joe Donohue

The Arizona Court of Appeals on August 7, 2014 upheld a state law requiring a group to publicly disclose its contributors even though its television ads didn't explicitly call for the defeat of candidate Tom Horne in the 2010 Attorney General race.

A key focus of the case was to decide whether an issue-oriented advertisement that lacked direct language like "vote for" or "vote against" really was a campaign attack ad and not simply intended to sway public opinion on an issue.

In a long series of rulings since 1976, the U.S. Supreme Court has deemed it Constitutional to require groups that engage in "express advocacy," meaning direct appeals for voters to elect or defeat a candidate, to disclose their contributions and expenses.

On the other hand, the Supreme Court has been hesitant due to free speech concerns to impose similar disclosure requirements on groups that engage strictly in issue advocacy. Since 2003, however, it has acknowledged that some issue ads do cross the line into express advocacy and their sponsors can be subject to disclosure rules.

The problem for regulators and the courts is that while many groups have come to rely on issue style ads to attack or promote candidates, many escape the disclosure requirements faced by those who use more direct wording because local laws haven't been updated to reflect Supreme Court precedent. Arizona's law is more up-to-date but this appears to be the first test of how far state officials can go in regulating issue ads.

In Arizona, the three judges unanimously declared that a \$1.5 million ad sponsored by Committee for Justice and Fairness against Horne was the "functional equivalent" of express advocacy even though it didn't use the so-called magic words like "elect" or "defeat."

According to news reports, the ad was sponsored by the Democratic Attorney Generals Association, which backed Horne's opponent.

The appeals court overruled a lower court judge who had concluded the ad didn't meet disclosure requirements because it didn't specifically mention that Horne was running for Attorney General. The three-judge panel said that wasn't necessary since it was widely known he was a candidate.

Under Arizona law, an ad represents express advocacy if it directly tries to entice voters to elect or defeat a candidate, or includes "a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates."

The ad also must target the electorate of the candidate, must be judged on whether it places the candidate in a favorable or unfavorable light or includes statements by the candidate or opponents. The timing and placement of the ad also is relevant.

In Arizona, all ads that mention "one or more clearly identified candidates" and appear within 16 weeks of the campaign are considered express advocacy.

The advertisement in question, which did occur within that period, claimed Horne "voted against tougher penalties for statutory rape" when he was a state legislator. It also claimed when Horne was on the Arizona Board of Education, he used his vote to allow "back in the classroom" a teacher who had been caught by students "looking at child pornography on a school computer."

In their decision, the judges gave more context to these accusations, which were clearly intended to sway voters against Horne. They noted that he was one of 41 House members who voted down the anti-rape bill because of concerns it went too far (12 voted for it.)

They also pointed out that the teacher mentioned by the ad was recertified 6-5 by the State Board of Education four years after he resigned because education officials were convinced he had been rehabilitated. A forensic analysis of the teacher's computer found that an early allegation of child pornography was false although adult pornography was found.

The appeals court agreed with an administrative law judge who had concluded: "...the only reasonable purpose for running an advertisement, during an election campaign, which cost approximately \$1.5 million to produce and broadcast, to critique Tom Horne's past actions as a former member of the legislature and as an occupant of a post he would soon vacate, was to advocate his defeat as candidate for Attorney General."

While hard-hitting, the ad didn't stop Horne from being elected Attorney General. He did lose his reelection bid on August 26, 2014.

Though the Arizona case still can be appealed, Arizona Secretary of State Ken Bennett, a Republican like Horne, hailed the decision. "For big money spending groups, there is no constitutional right to anonymous speech," Bennett said in a press release issued the day of the ruling. "The people of Arizona have a right to know who is funding advertisements attempting to influence elections."

Lessons for New Jersey

The Arizona case has relevance to New Jersey because the Election Law Enforcement Commission has urged the Legislature to require more disclosure by independent groups that now can anonymously run ads similar to the one attacking Horne.

Currently in New Jersey, groups that engage in "express advocacy" that use explicit terms in their ads like "vote for" or "vote against" must file a detailed spending report with ELEC. Under ELEC's bipartisan legislative proposal, those groups also would have to detail their contributions.

ELEC also would require full disclosure by groups that obviously use issue-oriented ads to attack or promote candidates. Multiple bills are pending in the Legislature.

For more details on ELEC's proposal, see the recommendations section beginning on page 63 of "White Paper No. 24- Independents' Day- Seeking Disclosure in a New Era of Unlimited Special Interest Spending."

<http://www.elec.state.nj.us/pdffiles/whitepapers/white24.pdf>.

TRAINING SEMINARS

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

PAY-TO-PLAY TRAINING SEMINARS	
September 19, 2014	10:00 a.m.
November 14, 2014	10:00 a.m.
TREASURER TRAINING FOR CANDIDATES AND JOINT CANDIDATES COMMITTEES	
September 11, 2014	10:00 a.m.
September 30, 2014	10:00 a.m.
TREASURER TRAINING FOR POLITICAL PARTY COMMITTEES AND PACS	
September 23, 2014	10:00 a.m.
December 10, 2014	10:00 a.m.
R-1 ELECTRONIC FILING SOFTWARE (REFS) TRAINING	
September 9, 2014	10:00 a.m.
October 1, 2014	10:00 a.m.

LOBBYING REPORTING DATES		
Lobbying Quarterly Filing	INCLUSION DATES	ELEC DUE DATE
3 rd Quarter	7/1/14 – 9/30/14	10/10/14
4 th Quarter	10/1/14 – 12/31/14	1/12/15

REPORTING DATES

	INCLUSION DATES	REPORT DUE DATES
Fire Commissioner - 2/15/2014		
29-day pre-election	Inception of campaign* - 1/14/14	1/17/2014
11-day pre-election	1/15/14 - 2/1/14	2/4/2014
20-day post-election	2/2/14 - 3/4/14	3/7/2014
48 Hour Notice Reports Start on 2/2/2014 through 2/15/2014		
School Board Election - 4/23/2014		
29-day pre-election	Inception of campaign* - 3/22/14	3/25/2014
11-day pre-election	3/23/14 - 4/9/14	4/14/2014
20-day post-election	4/10/14 - 5/10/14	5/13/2014
48 Hour Notice Reports Start on 4/10/2014 through 4/23/2014		
May Municipal Election - 5/13/2014		
29-day pre-election	Inception of campaign* - 4/11/14	4/14/2014
11-day pre-election	4/12/14 - 4/29/14	5/2/2014
**20-day post-election	4/30/14 - 5/30/14	6/2/2014
48 Hour Notice Reports Start on 4/30/2014 through 5/13/2014		
Runoff Election (June)** - 6/10/2014		
29-day pre-election	No Report Required for this Period	
11-day pre-election	4/30/14 - 5/27/14	5/30/2014
20-day post-election	5/28/14-6/27/14	6/30/2014
48 Hour Notice Reports Start on 5/28/14 through 6/10/14		
Primary Election - 6/3/2014		
29-day pre-election	Inception of campaign* - 5/2/14	5/5/2014
11-day pre-election	5/3/14 - 5/20/14	5/23/2014
20-day post-election	5/21/14 - 6/20/14	6/23/2014
48 Hour Notice Reports Start on 5/21/14 through 6/3/14		
90 Day Start Date: 3/5/14		
General Election - 11/4/2014		
29-day pre-election	6/21/14 - 10/3/14	10/6/2014
11-day pre-election	10/4/14 - 10/21/14	10/24/2014
20-day post-election	10/22/14 - 11/21/14	11/24/2014
48 Hour Notice Reports Start on 10/22/14 through 11/4/14		
Runoff Election** - 12/2/2014		
29-day pre-election	No Report Required for this Period	
11-day pre-election	10/22/14 - 11/18/14	11/21/2014
20-day post-election	11/19/14 - 12/19/14	12/22/2014
48 Hour Notice Reports Start on 11/19/14 through 12/2/14		
PACs, PCFRs & Campaign Quarterly Filers		
1st Quarter	1/1/14 - 3/31/14	4/15/2014
2nd Quarter***	4/1/14 - 6/30/14	7/15/2014
3rd Quarter	7/1/14 - 9/30/14	10/15/2014
4th Quarter	10/1/14 - 12/31/14	1/15/2015

* Inception Date of Campaign (first time filers) or from January 1, 2014 (Quarterly filers).

** A candidate committee or joint candidates committee that is filing in a 2014 Runoff election is not required to file a 20-day post-election report for the corresponding prior election (May Municipal or General).

*** A second quarter report is needed by Independent General Election candidates if they started their campaign before May 6, 2014.