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 Albert Burstein, Commissioner  
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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 Chair

### Jerry Fitzgerald English

#### The Governor's Gain is the Commission's Loss.

At our January meeting, Vice Chair Peter J. Tober made the surprise announcement that he was resigning from the Commission to assume a position in the Governor's Office.

The Vice Chair did not participate in the meeting, choosing to resign prior to its start. True to the nature of the Commission and to his character, Vice Chair Tober wanted to avoid any appearance of a conflict of interest.

To say the least, Vice Chair Tober will be missed. He was the most experienced member of the Commission, always displaying a level-headed approach to the business of ELEC.

Peter Tober was initially appointed to the Commission in January 2002 and reappointed in 2004. Prior to his stint on the Commission he served as Senior Assistant Counsel to former Governor Christine Todd Whitman and former Governor Donald T. DiFrancesco.

He was elected by the Commissioners to be Vice Chair in October, 2004.

During his time on the Commission, Peter Tober served the citizens of New Jersey with distinction, always being guided by the principles of fairness and neutrality. This trait is imperative when serving on the Commission.

In the same way that a justice must leave his or her partisanship at the door, so too must a Commissioner who oversees the financial activities of candidates, political parties, etc.

Peter Tober's resignation leaves a big void in the Commission. However, we know that in his new capacity in the Governor's Office, he will contribute greatly to the well being of the people of New Jersey. I speak for everyone at the Commission in wishing him well.

The New Jersey Election Law Enforcement Commission is by statute an independent agency. According to statute, no more than two Commissioners can be from the same political party.

Peter Tober's departure leaves a Commission of three members, two of whom are Democrats and one of whom is a Republican.

In order for the Commission to conduct all of its business efficiently it needs a fourth member. Moreover, the people of New Jersey are best served when there is truly a partisan balance on the Commission.

With great optimism, we look forward to a fourth member to be nominated who will serve in the distinctive fashion as Peter Tober.

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## Executive Director's Thoughts Jeff Brindle

### U.S. Supreme Court in Citizens United v. FEC

Last week, the U.S. Supreme Court in Citizens United v. Federal Election Commission (FEC) issued a broad ruling on campaign finance law. Some wonder just how will it impact New Jersey's campaign finance laws?

Before answering, a few points of clarification.

First, the State's campaigns are subject to the "New Jersey Campaign Contributions and Expenditures Reporting Act" (Campaign Act). It regulates financial activity involving elections for local and state offices, not for federal office.

Second, the court's decision centered on federal law. It addressed specifically the ban on corporate and union independent spending and the blackout period under the Bi-partisan Campaign Reform Act (BCRA), or McCain/Feingold. It impacts Congressional, Senate, and Presidential races.

Third, statutes banning donations from regulated industries, i.e., banks, insurance companies, utilities, and casinos are contained in separate law from the Campaign Act. Jurisdiction over regulated industries lies with the Attorney General.

The U.S. Supreme Court, in Citizens United v. FEC, involved restrictions on the airing of a documentary about Hillary Clinton when she was attempting to become the Democratic nominee for President.

Under Section 203, Electioneering Communications provision of the BCRA, or McCain/Feingold, independent political advertising was suspended during the periods 30 days before the primary and 60 days before the general.

The FEC imposed these restrictions on the group's documentary. Subsequently, Citizens United challenged Section 203 as well as disclosure requirements involving independent expenditures.

The court at first focused on the issue brought by Citizens United but then expanded the scope of the case to address the issue of a ban in federal law on corporate and union spending generally.

The court addressed several issues. However, its decision in four of them stands out:

**First**, the ban on corporate and union spending sustained in the 1990 decision Austin v. Michigan Chamber of Commerce was found unconstitutional.

**Second**, the blackout period in McCain/Feingold was deemed an abridgement of free speech by the court. Advertisements containing express advocacy that urge votes for or against candidates are now allowed at all times.

**Third**, the justices came out strongly in favor of disclosure, upholding requirements that sources of spending, and even contributions, be identified.

In essence, the court made the need for strong disclosure laws more important than ever.

**Fourth**, the federal ban on direct contributions by corporations and unions was not touched by the decision. The court left those bans in place.

So what to expect in New Jersey?

The decision is almost certain to drive up spending in the congressional elections this fall. The freedom granted corporations and unions to spend independently in federal elections will be manifested in the 13 congressional races.

There are no legislative or gubernatorial races this year in New Jersey. But there are local races. They should be unaffected by the ruling. Local races include elections for municipal and county offices.

Of course, any law can be challenged. But in New Jersey, state campaign finance law is consistent with the federal ruling. New Jersey law emphasizes disclosure; it contains no outright ban on corporate or union giving.

If anything, the court's decision is an argument in favor of the judicious way our elected officials have fashioned the Garden State's statutes.

With a strong disclosure law, reasonable contribution limits and a nationally respected Gubernatorial Public Financing Program, our statutes are well positioned to withstand the strong winds from Washington.

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## Executive Director's Thoughts Jeff Brindle

### U.S. Supreme Court in Citizens United v. FEC

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There are legitimate concerns that the ruling threatens state pay-to-play laws and laws banning activity by regulated industries and casinos.

Regarding pay-to-play, New Jersey does not ban contributions from contractors. It restricts contributions to \$300. And, the law has been upheld by one New Jersey Appellate Court.

While regulated industries (banks, insurance companies and utilities) cannot make direct donations, their employees can create PACs under existing state law. Casinos and their employees do face a total ban. But again, it should be remembered that both groups are under the jurisdiction of the Attorney General and are subject to regulation and licensing by the State. They are not just restricted under campaign finance law.

Therefore, on balance, New Jersey's campaign finance laws should remain intact and remain the source of trust for the state's citizens.

## Reform Update Nationally

### By Joseph Donohue, Deputy Director

While some fear a U.S. Supreme Court decision last month could unleash a tidal wave of new campaign spending, it will run smack into national counter-trend-movements in many states that are seeking to curtail the flow of campaign cash.

The "Citizens United versus Federal Election Commission" ruling allows unlimited corporate spending on election-related advertisements in federal races as long as the expenditures are publicly disclosed to the public.

Even before the ruling, campaign finance law was in a state of flux across the nation.

Campaign finance law is ever-evolving. It has been shaped and reshaped primarily by a constant tug-of-war between advocates of maximum free speech, who want the fewest possible controls on campaign spending, and others who fear unregulated political donations can have a corrupting, and often costly, influence on democracy.

Along with Citizens United, other major challenges are pending that have been filed by First Amendment advocates.

James Bopp, Jr., the Indiana attorney who prepared the original Citizens United complaint, also has a lawsuit pending before a federal appeals court in the District of Columbia. It seeks to overturn some limits on direct corporate contributions to political parties.

Another federal court in New Orleans is weighing whether federal officials can limit what state and national parties can spend in coordinated efforts for a candidate. In the wake of "Citizens United," laws in some states, such as Colorado, that forbid corporate and union spending on election-related advertisements are being targeted since the new precedent essentially invalidated such bans.

While these challenges are looming against both federal and state laws, several states recently have tightened controls on campaign funding or are planning to do so.

In December, Illinois enacted the state's first-ever contribution limits. Pennsylvania recently reinstated a ban on casino donations and the Governor has vowed to push for the state's first-ever limit on contributions during his last year in office.

New York's Governor recently recommended the enactment of a pay-to-play law, a drastic reduction in contribution limits, and an even tighter limit on lobbyist donations. Missouri's Governor wants to reinstate campaign contribution limits in his state and prohibit transfers between committees.

Federally, some believe Congress has the power to forbid tens of thousands of federal contractors from financing campaign advertisements despite the "Citizens United" edict.

Public finance programs in Arizona and Connecticut are facing their own legal challenges. But the "Citizens United" case prompted many, including CEOs whose companies benefited from the decision, to call for expanded public financing nationally.

While campaign finance law faces some turbulence across the nation, New Jersey's statutes should endure unscathed. The state's emphasis on strong disclosure rather than outright bans, reasonable contribution limits and a nationally respected Gubernatorial Public Financing Program should help its campaign finance laws to continue to pass Constitutional muster in the future. New Jersey also enacted two clean elections pilot programs involving legislative elections.

## Municipal and County Candidates this Spring Need to Remember the "90-Day Rule"

By Evelyn Ford, Compliance Director

A political communication, in general, is a communication that contains an explicit appeal for the election or defeat of a candidate that is circulated to voters. "Vote for John Smith," "Elect Mary Jones," or "Defeat Jane Doe" and other similar explicit political directives constitute examples of an appeal for the election or defeat of a candidate.

However, with elections looming this spring, candidates must keep in mind 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.

These are communications that occur within 90 days of an election that meet certain conditions.

Here are the conditions under which the so-called "90-Day Rule" applies:

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

For the upcoming non-partisan municipal elections to be held in May, which includes campaigns in Newark, Bayonne and Trenton, the 90-day period begins on February 10, 2010.

For the June primary elections, the 90-day period begins on March 10, 2010.

The costs of political communications when made by the candidate are reported by that candidate as campaign expenditures. The costs of political

communications made on behalf of a candidate by another are reportable by the candidate as an in-kind contribution.

The "90-Day Rule" often affects incumbent officeholders when they communicate with their constituents during this 90-day period. A common example is when a mayor runs for re-election and his municipality pays for the preparation and distribution of a municipal newsletter. If the municipal newsletter is distributed within 90 days of the election to persons eligible to vote for the mayor, and it contains statements concerning the governmental/political objectives or achievements of the mayor, and the newsletter has been coordinated with the mayor, the municipality's cost of producing and distributing the newsletter becomes an "in-kind" contribution from the municipality to the mayor. Aside from disclosure, the Commission has no jurisdiction to consider the legality of the use of public funds in this context.

As with any rule, there are exceptions. 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 received from that constituent. Similarly, there is no requirement to report a communication if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring constituents to make applications or take other actions before the date of the upcoming election, or communicating facts relevant to a bona fide public emergency.

Also, there is no requirement to report a communication by a candidate seeking nomination for election in a primary election if that candidate is not opposed by another candidate seeking nomination for election in that primary election.

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## Municipal and County Candidates this Spring Need to Remember the "90-Day Rule"

By Evelyn Ford, Compliance Director

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*The term "political communication" means any written or electronic statement, pamphlet, advertisement or other printed or broadcast matter or statement, communication, or advertisement delivered or accessed by electronic means, including, but not limited to, the Internet, containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate. See N.J.A.C. 19:25-10.10 and 10.11 for complete information on political communications.*

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## Treasurer Training for Candidates and Committees

Treasurer training seminars have been scheduled for the upcoming 2010 calendar year and the dates/times are listed below. The seminars will be held at the Election Law Enforcement Commission, 28 West State Street, 8<sup>th</sup> Floor, Trenton, New Jersey at 10:00 a.m. Participants will include treasurers for municipal and county candidates, i.e. mayor, council, freeholder, county executive, etc.

### Treasurer Training Seminar for Candidates and Joint Candidates Committees

Tuesday, March 9	Tuesday, May 4
Wednesday, March 24	Monday, September 13
Wednesday, April 21	Wednesday, September 29

### Treasurer Training Seminar for Political Party Committees and PACs

Thursday, March 25	Monday, September 27
Thursday, June 24	Thursday, December 9

## Public Hearings

The New Jersey Election Law Enforcement Commission will hold two public hearings early in the new year.

Pursuant to the Sunset Law, the Commission's regulations will expire and need to be readopted. The Commission will conduct a hearing on the Sunset proposals on February 16, 2010, at 11:15 a.m.

At its meeting on April 20, 2010, the Commission will hold a public hearing concerning the Gubernatorial Public Financing Program.

Contact Administrator Elbia Zeppetelli at (609) 292-8700 to reserve time to speak at either public hearing.

For the Sunset regulations, reserve time to speak by early February. Written comments should be submitted to Associate Legal Director Michelle R. Levy, Esq., by February 19, 2010 for the Sunset regulations.

## Leonard Gicas “Profile” Director of Review and Investigation

Tall and lean with a ready smile, Leonard Gicas is a long-distance runner. He has competed in marathons in New York City and Scranton, and usually runs 4 to 6 miles daily.

His pastime requires some of the same traits demanded by his career as ELEC’s Director of Review and Investigation—steadiness, mental toughness and doggedness.

While ELEC primarily is a disclosure agency, it wouldn’t be nearly as effective without Gicas and the other seven members of its Review and Investigation Section.

“We are the part of the agency that makes sure there is disclosure and compliance,” said Gicas, a New Jersey native who has worked at ELEC since 2005. “We are considered the watchdog for the watchdog agency.”

The Commission can decide to open an investigation based on requests from the public, internal reviews of reports and filing status, and reviews of newspaper articles. “We are one of the few agencies that not only accepts citizen complaints but turns them into action. People see results,” he said.

In 2008, 49 investigations were closed by the Review and Investigation Section.

The unit typically recommends action against candidates and treasurers who fail to file reports before or after elections, or file incomplete reports. It assists in preparation for cases where candidates request hearings before the Office of Administrative Law. It also assists sister investigative agencies such as the Attorney General’s Office and the U.S. Attorney’s Office.

ELEC has authority over civil matters. Cases that involve criminal matters are turned over to the Attorney General’s Office.

Since he became Executive Director in July, Jeff Brindle has worked with Gicas and other ELEC staff members to streamline investigation procedures and make the unit even more aggressive without abandoning the need for fairness in dealing with candidates and fundraising committees.

“Leonard is a true professional. He’s dedicated to strong enforcement of campaign laws,” said Brindle. “His efforts are already making a difference, redounding to the benefit of the public.”

Gicas, who is married with two children, earned his undergraduate degree in psychology and political science while attending the University of Wisconsin. He received his law degree at Seton Hall Law School.

Along with watching Wisconsin sports events on the Big Ten Network, he is a big Yankees fan.

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### *ELEC Directors*

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- Jeffrey M. Brindle.....Executive Director
- Joseph W. Donohue....Deputy Director
- Carol L. Hoekje .....Legal Director
- Evelyn Ford.....Compliance Director
- Carol Neiman .....Director of Information Technology
- Amy F. Davis.....Director of Special Programs
- Linda White .....Director of Lobbying
- Leonard Gicas.....Director of Review & Investigation
- Todd J. Wojcik .....Director of Campaign Financing
- Steven M. Dodson .....Director of Finance & Administration

## DATES TO REMEMBER

<b>2010 REPORTING DATES</b>	
<b>SCHOOL BOARD ELECTION</b>	
	<b>DATE: APRIL 20, 2010</b>
29-day pre-election	March 22, 2010
11-day pre-election	April 9, 2010
20-day post-election	May 10, 2010
<b>MUNICIPAL ELECTION</b>	
	<b>DATE: MAY 11, 2010</b>
29-day pre-election	April 12, 2010
11-day pre-election	April 30, 2010
*20-day post-election	June 1, 2010
<b>RUNOFF ELECTION</b>	
	<b>DATE: JUNE 15, 2010</b>
29-day pre-election	*No report required
11-day pre-election	June 4, 2010
20-day post-election	July 6, 2010
<b>PRIMARY ELECTION</b>	
	<b>DATE: JUNE 8, 2010</b>
29-day pre-election	May 10, 2010
11-day pre-election	May 28, 2010
20-day post-election	June 28, 2010
<b>GENERAL ELECTION</b>	
	<b>DATE: NOVEMBER 2, 2010</b>
29-day pre-election	October 4, 2010
11-day pre-election	October 22, 2010
20-day post-election	November 22, 2010
<b>PACs &amp; CAMPAIGN QUARTERLY FILERS</b>	
1 <sup>st</sup> Quarter	April 15, 2010
2 <sup>nd</sup> Quarter	July 15, 2010
3 <sup>rd</sup> Quarter	October 15, 2010
4 <sup>th</sup> Quarter	January 18, 2011

### ANNUAL LOBBYING FILING

February 16, 2010

### ANNUAL PAY-TO-PLAY FILING

March 30, 2010

\*A candidate committee or joint candidates committee that is filing in the 2010 Runoff election is not required to file a 20-day post-election report for the 2010 Municipal election.

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

[Political communications are subject to the 90-Day Rule \(see N.J.A.C. 19:25-10.10 and 10.11\)](#)