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Donald Scarinci*

I. Introduction

The debate over reform in the election process continues. At a period when public confidence in elected officials and public institutions is at its lowest level in modern times,¹ the movement for change is compelling.² Both first-time politicians entering the process and veteran incumbents returning to office agree that the systems and institutions of government must be reformed. The public, perceiving corruption among public officials, has grown impatient with the process and has demanded reform measures that define ethics in government,³ require public disclosure of private

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¹ In a 1990 public opinion poll conducted by the Gordon S. Black Corp. and sponsored by *U.S.A. Today*, 86% of the people polled stated that the questionable ethics of public officials is a very serious or somewhat serious threat to American democracy. Public Opinion Research Poll, Gordon S. Black Corp./U.S.A. TODAY, June 1990, available in Westlaw, Poll Database (search for polls containing "democracy," "elections," and "ethics"). Additionally, in a 1989 *Harris Poll*, 81% of the people polled opined that individuals, corporations and groups which contribute funds to political campaigns have too much influence over the officials to whom they contribute. Public Opinion Research Poll, Harris Poll, May 7, 1989, available in Westlaw, Poll Database (search for polls containing "elections" and "ethics").

² See, e.g., Theodore H. White, *The Shaping of the Presidency 1984*, TIME, Nov. 19, 1984, at 70, 80 ("The flood of money that gushes into politics today is a pollution of democracy."). See also Paul G. Chevigny, *The Paradox of Campaign Finance*, 56 N.Y.U. L. REV. 206 (1981). In his essay, Chevigny reviews an extensive study that found a direct correlation between the total amount of money spent on a campaign and the probability of success. *Id.* (citing GARY JACOBSON, MONEY IN CONGRESSIONAL ELECTIONS 34 (1980)).

³ See Exec. Order No. 12,834, 58 Fed. Reg. 5911 (1993), to be reprinted in 5 U.S.C.A. § 7301 (requiring executive branch appointees to take ethical pledges). See also Exec. Order No. 1, 22 N.J. Reg. 587 (1990) (requiring public officials to file disclosure statements).

assets,⁴ and increase competition for public contracts for professional services.⁵ As the pressure builds, legislators rush to pass laws that might otherwise have been more carefully constructed. An example of such legislation is the amendments to the New Jersey Campaign Contributions and Expenditures Reporting Act (CERA),⁶ a law that probably would not have been passed had the issue been properly studied.

One area where every senator and assemblyperson can rightly claim to be an expert is in raising and spending election funds. In the rush for reform, however, the New Jersey Legislature passed a law which the Election Law Enforcement Commission (ELEC) concluded could not be properly enforced.⁷ "There are potential administrative and enforcement problems with the contribution limit provisions. They create perhaps the most complicated such scheme in the nation and may be very difficult for candidates and committees to observe and for ELEC to enforce."⁸ The amendments to CERA have made it difficult, if not impossible, to obtain the cumulative campaign records of any office seeker who knows how to manipulate the new amendments.⁹ The criminal penalties are almost impossible to enforce.¹⁰ Without proper funding ELEC

⁴ See, e.g., N.J. STAT. ANN. § 40A:9-22.6 (West 1993) (requiring local governmental officers to file financial disclosure statements annually).

⁵ See Exec. Order No. 79, 25 N.J. Reg. 391 (1993) (creating procedures for using a modified competitive process for particular purchases, agreements and contracts); Exec. Order No. 92, 25 N.J. Reg. 2155 (1993) (declaring that public trust and confidence is of the utmost importance in government contracting and establishing competitive bidding for the issuance of bond, notes and like instruments).

⁶ Campaign Contributions and Expenditures Act, ch. 65, 1993 N.J. Sess. Law Serv. 152 (West) (amending N.J. STAT. ANN. §§ 19:44A-1 to -29 (West 1989)).

⁷ Letter from ELEC to James J. Florio, Governor of New Jersey (Feb. 25, 1993) [hereinafter ELEC letter] (on file with the *Seton Hall Legislative Journal*). ELEC urged the Governor to conditionally veto the law because of its unenforceable nature. *Id.*

⁸ *Id.* The letter continues:

S-70 [establishing filing fees for PACs, etc.] has passed the Senate and is presently in the Assembly State Government Committee. There is no guarantee that after A-100 is enacted that S-70 will also be enacted. Even if enacted, S-70 would not provide *current* funding for ELEC because implementation of S-70 will require at least a year to generate significant supplemental funding.

Id.

⁹ But see Campaign Contributions and Expenditures Act, ch. 65, sec. 13, § 22, 1993 N.J. Sess. Law Serv. 152, 170 (West), which attempts to prevent collusion.

¹⁰ Besides the enforcement issue, one may question the soundness of imposing criminal penalties against office seekers. The amendments criminalize violations of sections 7, 11 and 20 of CERA, making such violations crimes of the fourth degree,

will have enormous difficulty enforcing the amendments to CERA.¹¹ If the new law withstands constitutional scrutiny, first-time office seekers and many veteran office holders will not only need to hire a campaign manager, but will also need to retain a campaign attorney to help them navigate through the complexities of the law. Finally, the amendments to CERA alter the very fabric of campaign structures and shift the emphasis of campaign organizations from the grass roots level back to the political parties.¹²

II. Legislative Synopsis

The amendments to CERA, which became effective on April 7, 1993, were sponsored by Assemblyman Robert Martin and ultimately joined by assemblypersons from both political parties.¹³

which carries a penalty of a maximum of 18 months in prison. See sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169. This requires the actor to have "purposely" performed the wrongful conduct. *Id.*

As of the time of this writing, only one ELEC investigator was assigned to review and issue complaints with respect to all of the provisions of CERA. The Office of the Attorney General also has not received supplemental funding to perform its additional policing requirements under the amendments. The Senate Judiciary Committee originally included a provision "permitting the Election Law Enforcement Commission to employ additional personnel to implement the bill's provisions." SENATE JUDICIARY COMM., STATEMENT TO ASSEMBLY COMM. SUBSTITUTE FOR A. 100 (3d Reprint Jan. 12, 1993) [hereinafter SJU STATEMENT 3R]. However, the Senate Judiciary Committee later decided it "would delete the provisions permitting the Election Law Enforcement Commission to employ such personnel as it deems necessary to implement the bill, notwithstanding the present hiring freeze." SENATE JUDICIARY COMM., STATEMENT TO ASSEMBLY COMM. SUBSTITUTE FOR A. 100 (4th Reprint Feb. 1, 1993) [hereinafter SJU STATEMENT 4R].

¹¹ See ELEC letter, *supra* note 7. ELEC explained that it would be impossible for it to administer or enforce the new law with its present staff and budget. *Id.* It estimated that it would need at least \$300,000 in additional funding just for 1993. *Id.* See also *supra* notes 31-32 and accompanying text.

¹² For another discussion of the 1993 amendments to the Campaign Contribution and Expenditures Reporting Act, see Donald Scarinci, *Contribution-Limits Law Sets Complex Standards*, 134 N.J. L.J. 11 (1993). It was noted that "[t]he new reporting act amendments probably will face serious legal challenge by residents, winning and losing candidates, and the Election Law Enforcement Commission itself. The governor signed the amendments without making any public comment about ELEC's concerns." *Id.* at 34.

¹³ See A. 100 (6th Reprint), 205th N.J. Leg., 2d Sess. (1992) [hereinafter A. 100 6R], which lists the sponsors of the bill as Assemblymen Robert Martin; Garabed (Chuck) Haytaian; Bob Franks; David C. Russo; Assemblywoman Harriet Derman; Assemblymen Stephen A. Mikulak; Joseph V. Doria; Wayne R. Bryant; Byron M. Baer; Patrick J. Roma Jr.; George F. Geist; Frank LoBiondo; Monroe J. Lustbader; Assemblywoman Maureen B. Ogden; Assemblymen John Hartmann; Richard H. Bagger;

The amendments limit campaign contributions for the first time,¹⁴ require contributors to report more information,¹⁵ and create additional penalties for violations.¹⁶ In the past, an elected official had to be convicted of a first, second or third degree crime before being forced to forfeit his office.¹⁷ Now, some violations of CERA may lead to forfeiture as well.¹⁸

The legislation was amended six times after its initial introduction.¹⁹ It was pre-filed for introduction and referred to the Assembly State Government Committee.²⁰ After its release, it was adopted on May 14, 1992,²¹ amended on the Assembly floor on May 28,²² June 18²³ and December 14, 1992.²⁴ The Senate Judiciary Committee made further amendments on January 12²⁵ and February 1, 1993.²⁶ The final amendments were adopted on the floor of the Senate on February 9, 1993.²⁷

John F. Gaffney; Assemblywomen Marion Crecco; Priscilla B. Anderson; Assemblymen Paul R. Kramer; T. Smith; Lee A. Solomon; and Assemblywoman Barbara Wright.

¹⁴ See sec. 18-20, 1993 N.J. Sess. Law Serv. at 174-81.

¹⁵ See sec. 3, § 8, 1993 N.J. Sess. Law Serv. at 156. This amendment requires the report of an individual contributor to include the individual's occupation and the name and address of the individual's employer. *Id.*

¹⁶ See sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 170.

¹⁷ N.J. STAT. ANN. § 2C:51-2 (West 1982) provides for forfeiture of office for conviction of a first, second or third degree crime or a crime involving dishonesty or touching a public office. N.J. STAT. ANN. § 19:44A-40 (West 1989) mandates forfeiture of office in matters involving gubernatorial finance, likely under the theory that public funds were used to match money raised by the candidates.

¹⁸ See, e.g., sec. 13(f), § 22, 1993 N.J. Sess. Law Serv. at 171.

¹⁹ A. 100 6R, *supra* note 13.

²⁰ *Id.*

²¹ *Id.* See also ASSEMBLY STATE GOVERNMENT COMM., STATEMENT TO ASSEMBLY COMM. SUBSTITUTE FOR A. 100 (May 11, 1992) [hereinafter ASGC STATEMENT] (reflecting that the "Assembly State Government Committee reports favorably on Assembly Committee Substitute for Assembly Bill Nos. 100, 195, 196, 646, 659 and 869.").

²² See A. 100 6R, *supra* note 13.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* The statement to the Senate Floor amendment of February 9, 1993 states that the amendments (1) change the basis of contribution limits from an annual to an election basis; (2) include a statement of legislative declarations and findings in an effort to clarify the foundation for placing limits on contributions to legislative candidates from county committees when only a specific part of the legislative district is located in the county; and (3) technically correct the title. STATEMENT TO SENATE FLOOR AMENDMENT FOR A. 100 (Feb. 9, 1993).

Over the course of its legislative history, provisions were inserted, removed, then inserted again.²⁸ The final version of the bill consisted of fifty-three pages with footnoted markings that reflected its contorted evolution.²⁹

ELEC called the 1993 reporting act amendments "perhaps the most complicated such scheme in the nation."³⁰ In its February 25, 1993 letter to Governor Jim Florio, ELEC said, "[i]t would be a fraud on the public to enact legislation which cannot be properly enforced. It is obvious that a supplemental appropriation is required if A-100 is going to be any more than a theoretical exercise."³¹ ELEC has estimated that in 1993 it would need at least \$300,000 in additional funding to enforce the amendments.³²

During ELEC's public meeting, Fred Herrmann, Executive Director of ELEC, reported that he would approach the Legislature regarding the staffing and budgetary exigencies.³³ Herrmann explained that ELEC would need additional staff to handle the immense inquiries regarding the proper method of reporting under the new law.³⁴ The impact analysis prepared by the Office of Legis-

²⁸ See A. 100 6R, *supra* note 13.

²⁹ *Id.*

³⁰ ELEC letter, *supra* note 7.

³¹ *Id.* at 2.

³² *Id.*

³³ Minutes from the Election Law Enforcement Commission, Public Session 4 (Mar. 15, 1993) [hereinafter Public Sess. Minutes] (on file with the *Seton Hall Legislative Journal*). It was further suggested during the public session

that the Commission support the filing fee bill that should provide ELEC with an "additional source" of steady funds for the future. Moreover, Executive Director Herrmann suggested that the Commission support a \$300,000 start-up appropriation being discussed for FY-94. He noted that the filing fee bill will not be able to raise usable funds for at least a year.

Id.

³⁴ *Id.* Specifically, it was suggested that the additional funding will be used primarily to fill some of ELEC's ten vacant positions. The Executive Director mentioned that the Commission needs more staff immediately to deal with the flood of questions about how to report under the new law and to review reports. The Executive Director said that following the receipt of the money, the Commission should approach the administration to lift the hiring freeze and allow expedited hiring procedures.

In explaining Phase II, which will cover the general election, Executive Director Herrmann said that the first step would be to update the fact sheet. He advised the Commission that staff would present the Commissioners with draft regulations in stages between June and December, making use of written questions and staff research.

lative Services (OLS) voiced similar concerns. OLS stated that an incremental increase in staff, facilities and computer capabilities would be justified due to the increase in reporting requirements.³⁵

The burden on ELEC was compounded by a section of the law that required ELEC to adopt necessary regulations to ensure that the new law applied to the June 1993 primary election.³⁶ The rush to enforce the nation's most complicated campaign finance and reporting scheme without adequate funding for either ELEC or for the Office of the Attorney General may jeopardize the public's confidence in this reform measure. ELEC has been placed in the difficult position of having to both explain and enforce the provisions with no new staff resources to do so.³⁷ Moreover, candidates are

According to Executive Director Herrmann, Phase III would follow in the spring of 1994. He said that at that time staff would design new forms and write new manuals and answer advisory opinions on the basis of the new regulations. Executive Herrmann added that during Phase III the Commission would approach the Legislature for a one-time special appropriation with carryover language for a new combined electronic reporting-image retrieval system.

Id.

³⁵ See FISCAL NOTE TO ASSEMBLY COMMITTEE-SUBSTITUTE FOR A.100, June 4, 1992 (1992).

³⁶ See sec. 26, 1993 N.J. Sess. Law Serv. at 185. Due to the severe time constraints, ELEC noted at its first meeting after the passage of the law that it did not intend to apply the new statute to the May 1993 municipal elections. See also Public Sess. Minutes, *supra* note 33, at 4. It was also noted that the new law would not apply to elections for school boards for the same reason. *Id.*

³⁷ The public session minutes summarized Executive Director Herrmann's concerns as follows:

1993 will be the most busy election year since 1981, with a Gubernatorial, Senate and Assembly election happening at the same time. He advised the Commission that its budget has been reduced by one-third in inflated dollars in the last half-decade. Likewise, continued the Executive Director, about one-third of its staff has been lost during that time. Executive Director Herrmann said that regrettably, ELEC has to implement a complex, new law with virtually no lead time. He cautioned the Commission that the only responsible way to deal with this situation is to phase the new law in deliberately over a reasonable period. Executive Director Herrmann explained that good planning is absolutely essential.

The Executive Director advised the Commission that each phase will be done sequentially in logical order with the goal of giving filing entities as much guidance as quickly as possible. According to the Executive Director, fact sheets come first, followed by the regulations, followed by new forms and manuals, and then followed by a new computer system.

"ELEC cannot do everything at the same time," declared the Executive Director, "everything must be done in order so as not to put the cart before the horse."

required to review and comply with a complex law before the proper explanatory materials can be published or seminars can be held. Their failure to comply may mean criminal penalties, fines or forfeiture of office at worst. At the very least, their failure to comply with the amendments could result in public and political embarrassment.

III. The New Statutory Scheme

A. An Overview

The amendments to CERA create and redefine political party committees;³⁸ political committees;³⁹ candidate committees;⁴⁰ joint candidate committees;⁴¹ legislative leadership committees;⁴² and

Executive Director Herrmann emphasized that staff believes that if the plan is followed, it will be able to accomplish the purposes of the new campaign finance law in the best and fairest manner possible.

Public Sess. Minutes, *supra* note 33, at 4-5.

³⁸ See sec. 2(p), § 3, 1993 N.J. Sess. Law Serv. at 156. The amendments define a political party committee as "the State committee of a political party, as organized pursuant to R.S. 19:5-4, any county committee of a political party, as organized pursuant to R.S. 19:5-3, or any municipal committee of a political party, as organized pursuant to R.S. 19:5-2." *Id.*

³⁹ The present statute provides:

The term "political committee" means any two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does, aid or promote the passage or defeat of a public question in any election, if the persons, corporation, partnership or incorporated or unincorporated association raises or expends \$1,000.00 or more to so aid or promote the nomination, election or defeat of a candidate or candidates or the passage or defeat of a public question; provided that for the purposes of this act, the term "political committee" shall not include a "continuing political committee" as defined by subsection n. of this section.

N.J. STAT. ANN. § 19:44A-3(i) (West 1989). The amendments merely add that a political committee does not include a political party committee, a candidate committee, a joint candidates committee, or a legislative leadership committee. See sec. 2(i), § 3(i), 1993 N.J. Sess. Law Serv. at 154.

⁴⁰ See sec. 2(q), § 3, 1993 N.J. Sess. Law Serv. at 156. This section defines a candidate committee as "a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) for the purpose of receiving contributions and making expenditures." *Id.*

⁴¹ See sec. 2(r), § 3, 1993 N.J. Sess. Law Serv. at 156. This amendment states:

The term "joint candidates committee" means a committee established pursuant to subsection a. of section 9 of P.L.1973, c.83 (C.19:44A-9) by at least two candidates for the same elective public offices in the same elec-

continuing political committees.⁴³

Candidates for public office who raise or spend more than \$2,000, or receive contributions in excess of \$200 per contributor, are required to file a report with ELEC.⁴⁴ Even candidates who do not reach the limits are compelled to file a sworn statement with ELEC that certifies that the full amount to be expended on behalf of the candidate by any committee or person does not exceed \$2,000 in the aggregate.⁴⁵

tion in a legislative district, county, municipality, or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purpose of this subsection, the offices of member [sic] of the Senate and members of the General Assembly shall be deemed to be the same elective public offices in a legislative district.

Id.

⁴² See sec. 2(s), § 3, 1993 N.J. Sess. Law Serv. at 156. The amendments to CERA define a legislative leadership committee as "a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993 c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures." *Id.*

⁴³ See sec. 2(n), § 3(n), 1993 N.J. Sess. Law Serv. at 155. The prior law defined a continuing political committee as:

(1) the State committee, or any county or municipal committee, of a political party; or

(2) any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$2,500.00 to the aid or promotion of the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined to be a continuing political committee under subsection b. of section 8 of P.L.1973, C.83 (C.19:44-8).

N.J. STAT. ANN. § 19:44A-3(n) (West 1989). The amendments deleted subsection (1) and added that the phrase "continuing political committee" does not include a "political party committee" or a "legislative leadership committee." See sec. 2(n), § 3(n), 1993 N.J. Sess. Law Serv. at 155.

⁴⁴ See sec. 9(d), § 16(d), 1993 N.J. Sess. Law Serv. at 166. In the case of two candidates forming a joint candidates committee, a report need not be filed if the total amount expended does not exceed \$4,000. *Id.* If three or more candidates comprise the joint candidates committee, a report does not have to be filed if the total amount expended does not exceed \$6,000. *Id.*

⁴⁵ *Id.* For a joint candidates committee including two candidates, the sworn statement must certify that no more than \$4,000 was expended. *Id.* For a joint candidates

As under the previous law, candidates must file the names and addresses of their campaign treasurer and depository.⁴⁶ The amendments to CERA attempt to eliminate campaign committees with general or amorphous titles that make access to information difficult for the public to obtain.⁴⁷ All contributions received by a candidate must be deposited in an account that includes the words "Election Fund of" and the name of the candidate(s) or the committee.⁴⁸ Legislative leadership committees, continuing political committees and political committees must have a title that "clearly reflects the political interests, objectives and composition of the committee and provide the names, mailing addresses, occupations and employers of the officers of the committee."⁴⁹

No individual can contribute more than \$1,500 to a candidate committee per election.⁵⁰ For the purposes of this section, a primary election, either general or non-partisan, and a

committee including three or more candidates the statement must certify that no more than \$6,000 was expended. *Id.* Additionally, the amendments reaffirm the present rule requiring the sworn statement to be filed by the 29th day prior to the election. *Id.* See N.J. STAT. ANN. § 19:44A-16(d) (West 1989).

The one exception that applies to candidates for local boards of education is the exemption from filing reports or sworn statements if the total amount expended by them does not exceed \$2,000 per election and provided that the candidate does not receive more than \$200 from a single source. See sec. 9(e), § 16(e), 1993 N.J. Sess. Law Serv. at 166-67.

⁴⁶ See sec. 4(e), § 9(e), 1993 N.J. Sess. Law Serv. at 159-61.

⁴⁷ See, e.g., sec. 8, § 12, 1993 N.J. Sess. Law Serv. at 164.

⁴⁸ *Id.*

⁴⁹ ASGC STATEMENT, *supra* note 21. New Jersey's Administrative Code which requires considerable descriptive information for continuing political committees, including: the general organizational category of the future continuing political committee; a descriptive statement; the names and addresses of persons who maintain control over the future continuing political committee; the names and addresses of other persons who took part in the original organization of the committee, personally or through an agent; the occupation and home address of the named individuals and the names and addresses of their employers; and the economic, political or specific interests and goals of the future continuing political committee.

25 N.J. Reg. 3434 (1993) (to be codified at N.J. ADMIN. CODE tit. 19, § 25-4.5(b)(6)-(7)).

⁵⁰ Sec. 18(a), 1993 N.J. Sess. Law Serv. at 174-75.

run-off election are considered separate elections.⁵¹ Additionally, a contributor's spouse may contribute up to \$1,500.⁵²

A new provision of CERA requires the disclosure of the name and address of the contributor's employer.⁵³ This has been required by federal election law since 1971.⁵⁴ In New Jersey, however, this is a totally new provision that will require an adjustment period for candidates, treasurers and contributors.

Also similar to federal law is the provision requiring political committees and continuing political committees which receive contributions or make expenditures over \$500 within thirteen days prior to an election to file a report with ELEC.⁵⁵ The report must be made within two days of receiving the contribution or making or incurring the expenditure and must be in writing or by telegram.⁵⁶

The amendments to CERA shift the emphasis of political committees back to parties.⁵⁷ State and county political party commit-

⁵¹ See ELECTION LAW ENFORCEMENT COMMISSION, REVISED FACT SHEET, (Aug. 1, 1993) [hereinafter ELEC FACT SHEET] (on file with the *Seton Hall Legislative Journal*). The fact sheet states:

While a candidate and/or joint candidates committee can retain funds from one election to another (i.e., primary to general), a candidate and/or joint candidates committee cannot simultaneously accept contributions for more than one election. An election cycle begins on the 18th day following a candidate's most recent past election, and ends at midnight on the 17th day following the candidate's current election.

Id. at 3.

⁵² See sec. 14(c), § 4(c), 1993 N.J. Sess. Law Serv. at 172.

⁵³ See sec. 3, § 8, 1993 N.J. Sess. Law Serv. at 156.

⁵⁴ See Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended at 2 U.S.C. § 434 (1976 & Supp. V 1981)).

⁵⁵ Compare sec. 3, § 8, 1993 N.J. Sess. Law Serv. at 157-58 with 2 U.S.C. § 434(a)(6)(A) (requiring notification of contributions made 2 to 20 days prior to an election that equal \$1,000 or more).

⁵⁶ *Id.*

⁵⁷ ELEC explained that the section regarding legislative leadership committees would dramatically change New Jersey's traditional system of democratic government by granting legislative leaders immense fundraising ability, which is disproportionate to the fundraising ability of other legislators and the political parties. ELEC letter, *supra* note 7. ELEC has repeatedly opined that the two-party system should be strengthened, however, the leadership committees established by the new legislation tend to weaken the two-party system. *Id.* In contrast, the author believes that legislative leadership committees are extensions of the state party system. Because legislative leaderships are likely to remain members of either the Democratic or Republican party for the foreseeable future, it adds even greater strength to Democratic and Republican politics in New Jersey.

tees are new entities with the ability to accept \$25,000 per year from a contributor and to spend money in unlimited amounts.⁵⁸ The municipal party committee can accept \$5,000 per year from an individual contributor and spend money in unlimited amounts.⁵⁹

Legislative leadership committees are for the use of the Senate majority and minority and the Assembly majority and minority.⁶⁰ They give legislative leaders new tools in the campaign process and establish a powerful source of influence that never existed before. These committees can accept contributions from individuals up to \$25,000 per year and spend money in unlimited amounts in support of the candidates of their choice.⁶¹

Candidate committees and joint candidates committees are designed to be the workhorses of the new statutory scheme. As originally proposed, the amendments to CERA would have permitted candidates to have an interest in either a single candidate committee or a joint candidates committee, but not both.⁶² The Senate Judiciary Committee, however, adopted an amendment that permits a candidate to have both committees.⁶³ The intention of the

⁵⁸ See sec. 19(a), 1993 N.J. Sess. Law Serv. at 178. See also *infra* note 167.

⁵⁹ See sec. 19(c), 1993 N.J. Sess. Law Serv. at 179-80.

⁶⁰ See sec. 2(s), § 3, 1993 N.J. Sess. Law Serv. at 156.

⁶¹ See sec. 19(a), 1993 N.J. Sess. Law Serv. at 178-79.

⁶² A. 100 6R, *supra* note 13, § 4(a). As introduced, the amendments to CERA consisted of the recommendations by the Ad Hoc Commission on Legislative Ethics and Campaign Finance that required candidates to be restricted to one campaign committee or continuing political committee for raising and spending money in furtherance of that candidate's political activities. See AD HOC COMMISSION ON LEGISLATIVE ETHICS AND CAMPAIGN FINANCE, REPORT TO THE NEW JERSEY LEGISLATURE, at vii (Oct. 22, 1990) [hereinafter AD HOC COMM. RECOMMENDATIONS]. See also ASGC STATEMENT, *supra* note 21 (noting that the bill includes most of the recommendations of the Ad Hoc Commission).

⁶³ A. 100 6R, *supra* note 13, § 4. In regard to its amendments of the bill, the Senate Judiciary Committee stated:

The amendments would permit a candidate to establish both a candidate and a joint candidates committee. In order to ensure that contribution limits cannot be exceeded by the creation of both committees, the total amounts of contributions that can be made to or by a candidate who has established both committees is limited to the amounts that can be given to or by a candidate committee. As previously released, the bill would have permitted a candidate to establish either a candidate committee or a joint candidate committee but not both.

SJU STATEMENT 4R, *supra* note 10.

amendment appears to have been to permit candidates who are running for related offices to run a joint campaign.⁶⁴

If a candidate sets up a joint candidates committee, contributors may contribute the \$1,500 limit to each candidate in the committee.⁶⁵ Interesting issues arise if one member of a joint candidates committee seeks to withdraw or allow himself to be replaced with another candidate. Regulations are needed in this area to clarify the issue.

Notwithstanding the creation of new types of fundraising vehicles, the one that is not new to the political landscape has changed the most. The continuing political committee (CPC), once a fixture for partisan and non-partisan political entities and the house account for incumbent elected officials, is now relegated to the political attic.⁶⁶ Typically, incumbents would have "friends of" accounts or "civic association" accounts that would serve as a standing committee to raise funds for their election. As an election approached, funds would be transferred from these accounts into the campaign fund. After the election, the campaign fund would be collapsed, but the continuing political committee would continue to serve as the account used to promote the candidate. Tickets to events, journal ads, flowers, cards, and similar items would be purchased through the CPC. The amendments to CERA eliminate this practice by prohibiting candidates with an interest in

⁶⁴ The amendments deem candidates running for the offices of the Senate and Assembly in the same election district to be running for the same office. *See* sec. 18(c)(4), 1993 N.J. Sess. Law Serv. at 178.

⁶⁵ *See* sec. 18(a), 1993 N.J. Sess. Law Serv. at 174-75.

⁶⁶ The new law states:

On and after the 366th day following the effective date of P.L.1993, c. 65, no candidate shall establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any political committee or any continuing political committee. Within one year after the enactment of this act, every candidate who maintains, or who participates either directly or indirectly in the management or control of, one or more political committees or one or more continuing political committees, or both, shall wind up or cause to be wound up the affairs of those committees in accordance with the provisions of Section 8 of P.L.1973, c. 83 (C.19:44a-8) and transfer all of the funds therein into a candidate committee or a joint candidates committee. All funds thus transferred shall be subject to the provisions of Section 17 of P.L.1993, c. 65 (C.19:44A-11.2).

Sec. 4(h)(1), § 9, 1993 N.J. Sess. Law Serv. at 161.

single or joint candidates committees from also having a stake in a CPC.⁶⁷

In regard to the reporting timetable, the amendments to CERA make no substantive changes. As under the prior law, the campaign treasurer has an obligation to file a campaign report twenty-nine days before an election, eleven days before an election and twenty days following an election.⁶⁸ The campaign treasurer must continue to file reports until the dissolution of the candidate committee or joint candidates committee.⁶⁹ Additionally, continuing political committees must file reports every quarter.⁷⁰

B. *The Lawful Uses Of Campaign Funds*

The CERA amendments allow campaign contributions to be used for the payment of campaign expenses,⁷¹ overhead and administrative expenses related to the management of the commit-

⁶⁷ *Id.* ELEC has explained:

Additional candidate-controlled committees, such as a personal PAC or a joint candidates committee with candidates from different offices, in existence before April 7, 1993, must be wound up and dissolved within 366 days of that date. These candidate-controlled committees cannot collect additional funds on or after April 7, 1993, or make contributions, except transfers to their own candidate or joint candidates committees, which transfers are not subject to the contribution limits. All financial transactions on or after April 7, 1993, must be for the purpose of winding up activities within the 366-day limit. If a candidate-controlled committee has debts, the treasurer should contact the Commission for further guidance.

ELEC Fact Sheet, *supra* note 51, at 3.

⁶⁸ Sec. 9(b), § 16(b), 1993 N.J. Sess. Law Serv. at 165. *See also* N.J. STAT. ANN. § 19:44A-16(b) (West 1989).

⁶⁹ *See* sec. 9(b), § 16(b), 1993 N.J. Sess. Law Serv. at 165. *See also* N.J. STAT. ANN. § 19:44A-16(b) (West 1989).

⁷⁰ Sec. 3(b)(2), § 8(b)(2), 1993 N.J. Sess. Law Serv. at 157. Under the amendments political party committees and legislative leadership committees must also file reports quarterly. Sec. 3(c), § 8(c), 1993 N.J. Sess. Law Serv. at 158.

⁷¹ The term "campaign expenses" is defined as:

[A]ny expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate or any of the members of the legislative leadership committee.

Sec. 17(a), 1993 N.J. Sess. Law Serv. at 174. Absent from this definition is the answer to whether a "campaign" commences on announcement of a candidacy or upon filing of a petition. It would appear logical that a "campaign" commences upon filing a candidate committee with ELEC; this area, however, remains unsettled.

tee, and "the ordinary and necessary expenses of holding public office."⁷² The amendments also permit using campaign contributions for donations to specified charities and other candidates and for the pro-rata repayment of contributors.⁷³ Campaign money is not to be used, however, for "the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with that person's official duties as an elected official."⁷⁴ In other words, while a candidate may take a constituent for dinner or host a reception using campaign funds, she may not use the funds to purchase a picture frame or a coffee maker for her office.

The amendments use the terms "campaign expenses" rather than "political expenses" to refer to the purposes for which campaign contributions may be used.⁷⁵ Additionally, for the first time they allow "[t]he payment of ordinary and necessary expenses of holding public office."⁷⁶ ELEC has not yet defined these terms⁷⁷ and the new language is ambiguous as to whether it approves the use of campaign funds well in advance of a "campaign" if an incumbent engages in activity that promotes himself.⁷⁸ However, flowers, photographs, tickets to events, journal ads, trips, telephone expenses, auto expenses, advertisements, and just about anything that is not purely personal or inextricably connected to the individual's official duties would fall within the provisions of this section.

Under the prior law, surplus campaign funds could not be converted to personal use.⁷⁹ Candidates with surplus funds relied

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Sec. 17(b), 1993 N.J. Sess. Law Serv. at 174.

⁷⁵ See sec. 17(a)(1), 1993 N.J. Sess. Law Serv. at 174.

⁷⁶ Sec. 17(a)(6), 1993 N.J. Sess. Law Serv. at 174.

⁷⁷ The new statute does, however, define "campaign expenses." See *supra* note 71.

⁷⁸ See *supra* note 71.

⁷⁹ N.J. ADMIN. CODE tit. 19, § 25-7.4(a) (1990), amended by 25 N.J. Reg. 3437 (1993). However, surplus campaign funds could be used for:

1. The payment of outstanding campaign expenses;
2. Transmittal to another candidate, political committee, or continuing political committee for the lawful purpose of such other candidate or committee;
3. The pro rata repayment of contributors, except that contributors of less than \$100.00 may be excluded from repayment;
4. The repayment of loans made by a candidate to his campaign where the loan is documented and reported as such at the time it is made;

upon advisory opinions to help determine how these funds could be used without constituting a conversion to personal use. The advisory opinions held that continuing political committees could use contributions to acquire an investment equity.⁸⁰

ELEC's advisory opinions turned largely on the reasonableness of the expenditure towards the promotion of the candidate's viability as a candidate. Generally, the candidate must have had no financial interest in the expenditure of campaign funds. Earth Day expenditures for such items as food for participants, printing expenses for workshop materials, transportation expenses of speakers and a rental fee for the use of a facility did not constitute a conversion for personal use provided the person controlling the continuing political committee did not have some financial interest in the expenditures.⁸¹ It was also not considered a conversion for personal use for a continuing political committee to purchase a computer to be used for such tasks as letter writing to constituents, keeping a log of constituents, voter registration information and bookkeeping provided that an annual affidavit was filed with ELEC stating that no one had used the computer for personal purposes.⁸² The purchase of tickets to political and social functions for the candidate's use was allowable provided the candidate's attendance at those functions is reasonably in furtherance of his candidacy.⁸³

Contributions could be used to pay for: lunch at legislative caucuses;⁸⁴ reasonable travel and lodging expenses incurred by del-

5. Donation to any organization described in section 170(c) of the Internal Revenue Code of 1954;

6. Retention by a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, in a separate campaign account established pursuant to N.J.S.A. 19:44A-12 for a future election campaign of such candidate, political committee, or continuing political committee serving as the campaign committee of a candidate.

(c) The commission has no jurisdiction over the question whether or not surplus campaign funds may be used for the operation and staffing of legislative district offices.

Id. § 25-7.4(b)-(c).

⁸⁰ ELEC, Op. No. 02-1989 (Jan. 17, 1989).

⁸¹ ELEC, Op. No. 02-1990 (Mar. 20, 1990).

⁸² ELEC, Op. No. 03-1990 (Apr. 23, 1990).

⁸³ ELEC, Op. No. 46-80 (June 9, 1981).

⁸⁴ ELEC, Op. No. 10-1992 (Nov. 20, 1992) (noting cost of lunch must be reasonable). *Id.*

legates to a national political party convention;⁸⁵ state and federal taxes on dividends generated;⁸⁶ funeral expenses of a volunteer campaign worker;⁸⁷ and counsel fees and costs pertinent to litigation arising out of an election.⁸⁸

However, candidates could not use contributors' funds to purchase and install a car telephone because it could not be determined how much of the car phone would be used for campaign purposes.⁸⁹ Nor could such funds be used to purchase memberships in private fraternal associations, such as the Rotary or Lions Club, in the absence of a clear campaign purpose or objective.⁹⁰ Finally, contributions could not be used to lend money to a person subject to a payback schedule.⁹¹

The lawful uses of campaign contributions that the Legislature adopted in the amendments to CERA are broader than the recommendations of the Ad Hoc Commission on Legislative Ethics and Campaign Finance.⁹² While little may actually change with respect

⁸⁵ ELEC, Op. No. 08-1992 (June 17, 1992). The use of funds to pay the reasonable expenses of delegates for attendance at a national convention does not under ordinary circumstances present a personal use issue. *Id.*

⁸⁶ ELEC, Op. No. 02-1992 (Mar. 26, 1992). In its opinion, ELEC informed the petitioning senator that as long as he filed a Candidate Designation of Campaign Treasurer and Depository (Form D-1) to record the status of the Fidelity Cash Reserves account as his primary election account, using the account funds to pay state and federal tax liabilities produced from the account's dividends was a proper campaign expense. *Id.*

⁸⁷ ELEC, Op. No. 04-1990 (June 14, 1990).

⁸⁸ ELEC, Op. No. 06-1989 (Mar. 21, 1989).

⁸⁹ ELEC, Op. No. 15-1989 (July 18, 1989). ELEC, however, suggested it would be permissible for the candidate to lease a car phone for the time period when the candidate was actively campaigning. *Id.*

⁹⁰ ELEC, Op. No. 03-1989 (Feb. 21, 1989). ELEC opined:

There is a qualitative difference between merely attending events hosted by a private association of the type [] describe[d] and embracing membership in such an association. Membership in a private association is an expression of an individual's personal commitment to the goals and objectives of the association, and not directly undertaken to promote a political candidacy.

Id.

⁹¹ ELEC, Op. No. 09-1989 (May 16, 1989) (fact that funds will be disbursed as loan instead of outright gift fails to overcome ban against personal use of funds, having no campaign purpose). *Id.*

⁹² In regard to the allowable uses of campaign contributions, the Ad Hoc Commission recommended that the uses be restricted to: (1) paying campaign related expenses and overhead and administrative expenses associated with the management of the campaign committee or continuing political committee of the candidate; (2) contributing to charities and other candidates, political committees or continuing polit-

to the inappropriateness of converting campaign funds, the new regulations eliminate language in New Jersey's Administrative Code that prohibited the conversion of surplus campaign funds for personal use.⁹³ Oddly, this comes at a time when the Federal Election Commission is proposing a rule to prevent conversion of funds for personal use for those candidates running for federal office.⁹⁴

ical committees; and (3) refunding contributors pro rata. AD HOC COMM. RECOMMENDATIONS, *supra* note 62, at vii.

⁹³ 25 N.J. Reg. 3437 (1993) (to be codified at N.J. ADMIN. CODE tit. 19, § 25-6.5).

⁹⁴ The Federal Election Commission has issued a notice of proposed rule making. 58 Fed. Reg. 45,463 (1993) (proposed Aug. 30, 1993). This proposed rule states: § 113.1 Definitions (2 U.S.C. 439a).

(g) *Personal use.* *Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder.

(1) *Personal use* includes but is not limited to the use of funds in a campaign account for:

(i) Mortgage, rent, or utility payments on property not owned or leased by the committee;

(ii) Loan or lease payments on a vehicle not owned or leased by the committee;

(iii) The purchase of clothing or household food items;

(iv) Tuition payments for a child's education;

(v) Dues, fees or gratuities paid to a country club, tennis club, health and fitness club, or other social organization, to its employees, or to persons working on its premises, unless the payment is part of the costs of a fundraising event held on club premises;

(vi) Funeral, cremation or burial expenses;

(vii) The payment of a salary to the candidate;

Alternative A-1

(viii) The payment of a salary to a candidate's spouse or family member, unless the spouse or family member was hired to provide services to the committee that he or she has previously performed in a professional capacity outside of the campaign; and

Alternative A-2

(viii) The payment of a salary to a candidate's spouse or family member, unless the spouse or family member was hired to provide bona fide services to the committee at fair market value; and

Alternative B-1

(ix) Payments for the use of a residence, office or other property owned or leased by the candidate;

Alternative B-2

(x) Payments for the use of a residence, office or other property owned or leased by the candidate, except for bona fide payments at fair market value.

The revised regulations⁹⁵ delete several sections of the New Jersey Administrative Code, which permitted the repayment of loans incurred by a candidate for his campaign;⁹⁶ donations to specified organizations;⁹⁷ and allowed a candidate, continuing

(2) Occasional use of campaign committee vehicles or office equipment for purposes unrelated to the campaign is not personal use so long as the campaign committee is reimbursed by the user within thirty days at the usual and normal rental charges as defined in 11 CFR 100.7(a)(1)(iii)(B).

(3) Transfers of campaign committee assets for adequate consideration are not conversions to personal use. However, any depreciation in the value of the asset that takes place before the transfer, and any amount spent that enhances the asset's value but is not fully reflected in its fair market value must be allocated between the committee and the transferee based on the useful life of the asset, with the committee bearing only those portions of the depreciation and enhancement costs that are attributable to the time period during which it uses the asset. In order to be adequate, the consideration given for the asset must include the fair market value of the asset plus the allocated depreciation and enhancement costs that are not attributable to the committee's period of use.

(4) Notwithstanding that payment of a particular expense would be a personal use if made from a campaign account, payment of that expense by any person other than the candidate, the candidate's spouse or the candidate's committee shall be considered a contribution to the candidate unless the payment would have been made irrespective of the candidacy or the funds used are the candidate's or the candidate's spouse's personal funds as defined in 11 CFR 110.10(b).

5. Section 113.2 would be amended by revising paragraph (a), and the introductory text is republished to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period not to exceed 60 days after he or she leaves office

Id.

⁹⁵ See 25 N.J. Reg. 3437 (1993).

⁹⁶ N.J. ADMIN. CODE tit. 19, § 25-7.4(b)(4) (1990). The loan was required to be documented and reported when it was made. *Id.*

⁹⁷ *Id.* § 25-7.4(b)(5). This provision permitted donations to particular charities delineated in the Internal Revenue Code of 1954, Section 170(c). *Id.* An almost identical provision has been included in the new statute. See sec. 17, 1993 N.J. Sess. Law Serv. at 174.

political committee or political committee to retain the services of the campaign committee in a separate campaign account for a future election campaign.⁹⁸

It is uncertain what impact these new regulations will have on the use of campaign contributions in the everyday setting. One thing is certain, however, the new language will keep ELEC busy writing advisory opinions.

C. *The Contribution Limits*

The amount of money that election entities, individuals and political action committees can contribute differs. Individuals can contribute \$1,500 per election to a candidate who has formed only a candidate committee,⁹⁹ \$5,000 per year to a municipal party committee¹⁰⁰ and \$25,000 per year to a legislative leadership committee and a state political party committee.¹⁰¹

Political committees, continuing political committees, corporations and other associations are treated as individuals for purposes of applying the limits expressed in the amendments to CERA. They can contribute up to \$5,000 per election to a candidate who has only set up a candidate committee¹⁰² and \$5,000 per election to political committees designed to support issues rather than candidates.¹⁰³

The new statute also addresses contributions by national party committees. A national political party committee is limited to contributing \$50,000 annually to the state political party committee

⁹⁸ N.J. ADMIN. CODE tit. 19, § 25-7.4(b)(6).

⁹⁹ Sec. 18(a), 1993 N.J. Sess. Law Serv. at 174-75. In the case of a joint candidates committee, an individual can contribute \$1,500 for each candidate per election. *Id.* In the event a candidate forms both a joint candidates committee and a candidate committee, the individual is limited to contributing \$1,500 per election. *Id.* See also sec. 14, § 4, 1993 N.J. Sess. Law Serv. at 171 (\$1,500 limit for the election of a governor).

¹⁰⁰ Sec. 19(c), 1993 N.J. Sess. Law Serv. at 179.

¹⁰¹ Sec. 19(a), 1993 N.J. Sess. Law Serv. at 178.

¹⁰² Sec. 18(b), 1993 N.J. Sess. Law Serv. at 175. This contribution limitation does not apply to a contribution to a gubernatorial candidate. *Id.*

¹⁰³ Sec. 20(b), 1993 N.J. Sess. Law Serv. at 181. This limitation does not apply to a contribution to another political committee "which is organized to, or does, aid or promote the passage or defeat of a public question in any election." *Id.*

and is limited to the same amounts that a continuing political committee can contribute when it contributes to other committees.¹⁰⁴

Additionally, the amendments require candidates with candidate committees to divest their interest or control in political committees and continuing political committees.¹⁰⁵ It affords candidates with a winding down period of one year beginning April 7, 1993, the effective date of the amendments.¹⁰⁶

The winding down period has been the subject of much confusion. Prior to April 7, 1993, the law allowed unlimited transfers of money between continuing political committees and political party committees or candidate committees. ELEC has allowed candidates to make the transfer of funds from continuing political committees after the April 7, 1993 deadline, provided the candidate's name was listed in the table of organization or in the title of the continuing political committee.¹⁰⁷ Unfortunately, because many continuing political committees do not carry the name of the individual they benefit, and that person or group of persons is not defined by any document filed with ELEC, transfers of money over the contribution limits will be subject to challenge.¹⁰⁸ Those candidates who expect to benefit from transfers in excess of the cam-

¹⁰⁴ ELEC Fact Sheet, *supra* note 51, app. at 3. Specifically, the new section of CERA states:

No national committee of a political party shall pay or make any contribution of money or other thing of value to the campaign treasurer, deputy treasurer, or other representative of the State committee of a political party which in the aggregate exceeds \$50,000 per year, and no campaign treasurer, deputy campaign treasurer, or other representative of a State committee of a political party shall knowingly accept from the national committee of a political party any contribution money or other thing of value which in the aggregate exceeds \$50,000 per year.

Sec. 19(a)(2), 1993 N.J. Sess. Law Serv. at 179.

¹⁰⁵ See sec. 4(h)(1), § 9, 1993 N.J. Sess. Law Serv. at 161.

¹⁰⁶ *Id.*

¹⁰⁷ See *supra* note 49 and accompanying text.

¹⁰⁸ For example, Guy Goode is an incumbent mayor who has used a continuing political committee called People Who Love Good Candidates where he has raised approximately \$200,000 in campaign contributions. On May 1, 1993, Guy Goode read the amendments to the Campaign Expenditures and Reporting Act and decided to form a single candidate committee. However, when he attempts to transfer the \$200,000 from People Who Love Good Candidates, the treasurer of that committee, Girl Goode, correctly tells him that he can only receive a \$1,500 contribution to his single candidate committee. She also informs him that because his name does not appear anywhere in the organizational structure of People Who Love Good Candidates, there is nothing that she can do to allow him to have more money.

paigned limits will find themselves in uncomfortable, and probably unsuccessful, litigation.

D. *The Politics Of Crime And Punishment*

Perhaps the most interesting sections of the amendments to CERA are the sections containing criminal and civil penalties.¹⁰⁹ The Legislature furnished its campaign finance law with strong deterrents against violations. The civil penalties were doubled or tripled¹¹⁰ and for certain sections, the criminal penalties were expanded to include more fourth degree crimes.¹¹¹ The Legislature also included an expanded forfeiture of office provision¹¹² and created a new cause of action for injunctive relief in superior court.¹¹³

On January 12, 1993, the Senate Judiciary Committee raised the general requirement of culpability in the criminal sections from "willfully and knowingly" to "purposely"¹¹⁴ and provided a liability requirement in the civil sections of "willfully and intention-

¹⁰⁹ See, e.g., sec. 11, § 20, 1993 N.J. Sess. Law Serv. at 169; sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169-70; sec. 13, § 22, 1993 N.J. Sess. Law Serv. at 170-71; sec. 15, 1993 N.J. Sess. Law Serv. at 173; sec. 24, 1993 N.J. Sess. Law Serv. at 185.

¹¹⁰ See, e.g., sec. 13, § 22, 1993 N.J. Sess. Law Serv. at 170.

¹¹¹ See, e.g., sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169-70.

¹¹² See sec. 13(f), § 22(f), 1993 N.J. Sess. Law Serv. at 171.

¹¹³ See sec. 24, 1993 N.J. Sess. Law Serv. at 184-85.

¹¹⁴ See A. 100 6R, *supra* note 13, § 12. See also sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169. The "knowingly" standard requires awareness of the circumstances leading to the criminal activity or behavior. See N.J. STAT. ANN. § 2C:2-2(b)(2) (West 1982). The statute states:

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

Id. In contrast, the "purposely" standard requires a conscious objective to engage in conduct or to cause a result that is criminal in nature. See N.J. STAT. ANN. § 2C:2-2(b)(1) (West 1982), which states:

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

Id.

ally."¹¹⁵ The amendments also included a provision requiring clear and convincing evidence to sustain a finding to assess a civil penalty.¹¹⁶

ELEC expressed its concern over the higher culpability standard required by the amendments to CERA, although it seems to have misunderstood the January 12, 1993 change. ELEC feared that its enforcement of the civil penalties would be impaired by requiring it to demonstrate that an entity violated the statute "knowingly."¹¹⁷ Even though the standard of civil liability is not "knowingly," but "willfully and intentionally," ELEC's point is well taken. It will be difficult to show that anyone would intentionally violate CERA.

1. The Criminal Penalties

Certain violations of CERA are now crimes of the fourth degree.¹¹⁸ The maximum penalty for a fourth degree crime is imprisonment for a period of time not in excess of eighteen months.¹¹⁹ Anyone who participates in the crime, including the treasurer who reports the erroneous information to ELEC, is culpable.¹²⁰

Additionally, a new section added to CERA details the proper use and reporting of testing-the-waters committees.¹²¹ These committees, used by candidates for the sole purpose of deciding whether they should run,¹²² existed before the amendments to CERA and permitted candidates to raise and spend money without reporting to ELEC.¹²³ Under the present law, if a prospective candidate decides to run and declares his candidacy, he must allocate the funds spent to test the waters and report them to ELEC.¹²⁴ The

¹¹⁵ See A. 100 6R, *supra* note 13, § 13. See also sec. 13, § 22, 1993 N.J. Sess. Law Serv. at 170-71.

¹¹⁶ See sec. 13, § 22, 1993 N.J. Sess. Law Serv. at 170.

¹¹⁷ ELEC letter, *supra* note 7. ELEC stated that it was concerned with the provisions of the bill that created a criminal standard in civil prosecutions. *Id.* "Under A-100, ELEC must prove that an entity has knowingly violated the law in order to impose civil penalties. Such a standard will greatly weaken ELEC's enforcement role." *Id.*

¹¹⁸ See sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169-70.

¹¹⁹ N.J. STAT. ANN. § 2C:43-6 (West 1982).

¹²⁰ See sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169-70. See also sec. 11, § 20, 1993 N.J. Sess. Law Serv. at 169.

¹²¹ See sec. 7, § 8, 1993 N.J. Sess. Law Serv. at 163-64.

¹²² *Id.*

¹²³ See N.J. STAT. ANN. § 19:44A-11.1 (West 1989).

¹²⁴ See sec. 7, § 8, 1993 N.J. Sess. Law Serv. at 163.

criminal penalty for misusing the testing-the-waters provision existed before the amendments, but now, candidates who maintain a candidate committee or joint candidates committee can no longer utilize this provision. If they do, they are subject to criminal prosecution.¹²⁵

Section 11 of the amendments retains the pre-existing criminal penalty for using fictitious names or anonymous contributions and criminalizes contributions of money that do not actually belong to the candidate.¹²⁶ This section also includes a new provision which prohibits advancing money to another for the purpose of inducing that person to make a campaign contribution.¹²⁷

By way of example, an employer may not give bonus money to an employee if the purpose of the bonus is to enable the employee to write a check for a political contribution. Similarly, one association or group cannot make a political contribution with money that it receives from another association or group if the contributing group directs or earmarks its funds for the purpose of making the political contribution. In both of the above situations, the individual or the association leaders who induce the contribution and the individual or the association leaders who make the contribution are all criminally culpable.

A completely new section of CERA prohibits labor organizations or corporations from paying officers, directors, attorneys, agents or employees any additional salary to induce or enable them to make a campaign contribution.¹²⁸ This provision falls within the

¹²⁵ See sec. 12(a), § 21(a), 1993 N.J. Sess. Law Serv. at 169.

¹²⁶ Sec. 11, § 20, 1993 N.J. Sess. Law Serv. at 169. See also N.J. STAT. ANN. § 19:44A-20 (West 1989).

¹²⁷ Sec. 11, § 20, 1993 N.J. Sess. Law Serv. at 169. This provision states:

No individual, either alone or jointly with one or more other individuals, and no corporation, partnership, membership organization or other incorporated or unincorporated association shall loan or advance to any individual, group or individuals, corporation, partnership, membership organization or other incorporated or unincorporated association any money or other thing of value expressly for the purpose of inducing the recipient thereof, or any other individual group, corporation, partnership, organization or association to make a contribution, either directly or indirectly, of money or other thing of value to a candidate or the candidate committee or joint candidates committee of a candidate.

Id. This provision was inserted by the Senate Judiciary Committee on January 12, 1993. See A. 100 6R, *supra* note 13, § 11.

¹²⁸ Sec. 15, 1993 N.J. Sess. Law Serv. at 173. This section provides:

general philosophy that money that is contributed to a candidate must be the property of the contributor. The Legislature's multiple restatement of this concept in three separate sections¹²⁹ could be viewed as a strong statement of legislative intent to punish this conduct as an essential component to enforcing the statutory scheme. Surely, if this language were not so strong, it might be very easy indeed to circumvent the contribution limits.

Another criminal provision that existed before, but was strengthened by the amendments to CERA, is the provision penalizing the filing of false, inaccurate or incomplete reports with ELEC.¹³⁰ The Senate Judiciary Committee raised the standard of culpability from "willfully and knowingly" to "purposely" and changed the classification of the offense from a misdemeanor to a crime of the fourth degree.¹³¹

No corporation or labor organization of any kind shall provide to any of its officers, directors, attorneys, agents or other employees any additional increment of salary, bonus or monetary remuneration of any kind which, in whole or in part, is intended by that corporation or labor organization to be used for the express purpose of paying or making a contribution, either directly or indirectly, of money or other thing of value to any candidate, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee.

Any corporation or labor organization of any kind found to be in violation of this subsection shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$3,000 for the first offense and not more than \$6,000 for the second and each subsequent offense. Any officer, director, attorney, agent or other employee of a corporation or labor organization that provides to another employee of that corporation or labor organization any additional increment of salary, bonus or monetary remuneration of any kind for the purpose described in this subsection is guilty of a crime of the fourth degree.

Sec. 15(a), 1993 N.J. Sess. Law Serv. at 173. This amendment also forbids an "officer, director, attorney, agent or other employee of a corporation or labor organization" from using salary increases or bonuses for contributions if they were given by the corporation or labor organization for that purpose. Sec. 15(b), 1993 N.J. Sess. Law Serv. at 173.

¹²⁹ See, e.g., sec. 3(d), § 8(d), 1993 N.J. Sess. Law Serv. at 159; sec. 6(d), § 11(d), 1993 N.J. Sess. Law Serv. at 162; sec. 15, 1993 N.J. Sess. Law Serv. at 169.

¹³⁰ See sec. 12(b), § 21(b), 1993 N.J. Sess. Law Serv. at 169.

¹³¹ See A. 100 6R, *supra* note 13, § 12(b). See also sec. 12(b), § 21(b), 1993 N.J. Sess. Law Serv. at 169.

2. The Monetary Penalties

In addition to raising the various penalties from \$1,000 to \$3,000 for a first offense¹³² and from \$2,000 to \$6,000 for a subsequent offense of the existing law,¹³³ the amendments to CERA add monetary penalties for willfully and intentionally violating the contribution limits.¹³⁴ The existing law has always allowed ELEC to assess a monetary penalty for violations of its provisions.¹³⁵ ELEC has used this authority in the past to assure substantial compliance with reporting requirements, such as ensuring that contributions are reported within ten days of receipt or that reports are filed on time. However, the amendments to CERA broaden ELEC's power to fine candidates and substantially increases the severity of penalties for violating the new law.¹³⁶ Willful and intentional violations of the contribution limits now permit ELEC to assess a sliding scale of monetary fines which range from \$5,000 to \$100,000.¹³⁷

The problem of collusion between and among different candidates and committees was also addressed by the amendments to CERA.¹³⁸ A new provision prohibits one candidate or committee from contributing to another upon the condition that the recipient contribute funds in return.¹³⁹ The provision carries treble damages after a finding of collusion based on clear and convincing evidence.¹⁴⁰

¹³² See sec. 13(a)(1), § 22(a)(1), 1993 N.J. Sess. Law Serv. at 170.

¹³³ *Id.*

¹³⁴ See sec. 13(e), § 22(e), 1993 N.J. Sess. Law Serv. at 171.

¹³⁵ See N.J. STAT. ANN. § 19:44A-22(b)-(d) (West 1989).

¹³⁶ See sec. 13(e), § 22(e), 1993 N.J. Sess. Law Serv. at 171.

¹³⁷ *Id.*

¹³⁸ See sec. 13(a)(2), § 22(a)(2), 1993 N.J. Sess. Law Serv. at 170.

¹³⁹ *Id.* The new law states:

No person shall willfully and intentionally agree with another person to make a contribution to a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee with the intent, or upon the condition, understanding or belief, that the recipient candidate or committee shall make or have made a contribution to another such candidate or committee

Id. This language clearly forbids any individual from coordinating an exchange of campaign contributions to circumvent the contribution limits. However, this provision is not applicable to county or municipal party committees. See *id.*

¹⁴⁰ *Id.*

3. Forfeiture of Office

Historically, courts have been reluctant to remove public officials from an office to which they have been duly elected, absent some clear statutory authority.¹⁴¹ One such authority had been the forfeiture of office provision for commission of a first, second or third degree crime.¹⁴² Another such authority could be found in the election law for "willfully and knowingly" violating sections 4, 9, 10 or 17 of CERA.¹⁴³ These sections deal with gubernatorial campaign limits,¹⁴⁴ deposits of funds¹⁴⁵ and expenditures from election funds¹⁴⁶ for gubernatorial campaigns.¹⁴⁷

The amendments to CERA confer upon the judiciary additional authority to remove an elected official from office for election violations. Specifically, the law states that "a person holding any elective public office shall forfeit that public office if ELEC determines that the cumulative total amount of the illegal contributions was more than \$50,000.00 and that the violation had a significant impact on the outcome of the election."¹⁴⁸ Forfeiture is mandatory if a penalty is imposed upon a candidate for willfully and intentionally making or accepting a contribution in violation of specified sections of CERA and if ELEC finds that the violation significantly impacted the election outcome.¹⁴⁹ In other words, the accumulation of intentional violations of the campaign over the \$50,000 limit will cause forfeiture of office.¹⁵⁰

¹⁴¹ "The right to hold [public] office is a valuable one and its exercise should not be declared prohibited or curtailed except by plain provisions of the law." *Stothers v. Martini*, 79 A.2d 857, 859 (N.J. 1968) (citations omitted). See also *State v. Musto*, 454 A.2d 449 (N.J. Super. Ct. Law Div. 1982) (applying the forfeiture provision of N.J. STAT. ANN. § 2C:51-2 to the federal criminal conviction of State Senator and Mayor William V. Musto). The court found that Musto forfeited both of his public offices upon conviction of this crime. *Id.*

¹⁴² N.J. STAT. ANN. § 2C:51-2 (West 1982) (allowing forfeiture of public office if the public official is convicted of a crime involving dishonesty or touching upon public office or up to a third degree crime).

¹⁴³ N.J. STAT. ANN. § 19:44A-40(a) (West 1989).

¹⁴⁴ *Id.* § 19:44A-29.

¹⁴⁵ *Id.* § 19:44A-34.

¹⁴⁶ *Id.* § 19:44A-35.

¹⁴⁷ *Id.* § 19:44A-31 (repealed 1980).

¹⁴⁸ Sec. 13(f), § 22(f), 1993 N.J. Sess. Law Serv. at 171.

¹⁴⁹ *Id.* See sec. 13(e), § 22(e), 1993 N.J. Sess. Law Serv. at 171.

¹⁵⁰ See sec. 13(f), § 22(f), 1993 N.J. Sess. Law Serv. at 171.

In light of the forfeiture provision, fines, and heavy civil and criminal penalties, every committee must assemble an educated campaign and fundraising staff. Allocation issues will be very common, but ELEC does not have the financial resources to quickly issue advisory opinions pursuant to the administrative code.¹⁵¹ Whenever a candidate discovers questionable practices in a coordinated campaign, he should act conservatively or he will be placed in considerable peril.

4. Injunctive Relief

In the past, courts have generally abstained from issuing injunctive orders for failure to comply with CERA because an administrative remedy existed with ELEC to resolve election finance disputes.¹⁵² Those sections of the election law that are criminal are not for private litigants, but for the Attorney General. Therefore, even local prosecutors have refrained from becoming involved in election disputes involving finance or disclaimer issues. However, a new section of CERA places additional weapons in the arsenal of the election lawyer.¹⁵³ The courts are explicitly directed to consider injunctive relief for candidates who have been aggrieved by their opponent's violation of the contribution limits.¹⁵⁴ Along with

¹⁵¹ See N.J. ADMIN. CODE tit. 19, § 25-14.1 (1989) ("Commission is authorized through its legal counsel to render advisory opinions as to whether a given and specific set of facts and circumstances would constitute a violation of any of the provisions of the act or render any person subject to any of its reporting requirements."). See also N.J. ADMIN. CODE tit. 19, § 25-14.2 (1989), which allows an extension of time by consent of the parties; otherwise, ELEC must

render its advisory opinion within 10 days of receipt of the request therefor. Failure of the commission to reply to a request for an advisory opinion within the time so fixed or agreed to shall preclude it from instituting proceedings for imposition of a penalty upon any person for a violation of this act occurring prior to receipt of the advisory opinion by such person and arising out of the particular facts and circumstances set forth in such request, except as such facts and circumstances may give rise to a violation when taken in conjunction with other facts and circumstances not set forth in such request.

Id.

¹⁵² See N.J. ADMIN. CODE tit. 19, § 25-20.17 (1992) (granting ELEC the power to conduct investigations, initiate complaint proceedings, issue subpoenas and hold hearings or direct the Office of Administrative Law to hold hearings).

¹⁵³ See sec. 24, 1993 N.J. Sess. Law Serv. at 184-85.

¹⁵⁴ *Id.*

ELEC, courts may now resolve allocation issues by way of orders to show cause with restraints.¹⁵⁵

In the event that a continuing political committee or a political committee makes a contribution or expenditure in violation of CERA to oppose or defeat a candidate, the aggrieved candidate can apply for an injunction.¹⁵⁶ The court is required to make a decision on the application of an aggrieved party within forty-eight hours of the filing of the application.¹⁵⁷ Additionally, the court may order a waiver of campaign limits for the aggrieved party.¹⁵⁸ It does not appear, however, that the court can directly impose any penalties or order forfeiture of office without first directing the matter back to ELEC.¹⁵⁹

IV. *Ramifications of the Amendments to CERA*

A. *The End Of Public Disclosure*

While the most noticeable change in the law has been the imposition of limits on campaign contributions, this is far from the most significant change in the campaign apparatus in New Jersey. Instead, the real import of the amendments shifts the emphasis of politics in New Jersey back to the political parties.¹⁶⁰

The more organized and older political machinery will most certainly have the upper hand in the fast-paced election environment. They will be in a superior position to mobilize the economic resources of established donors and channel them into different campaign organizations for the benefit of a particular party choice or candidate.

It is illegal for a candidate to maintain an interest in a continuing political committee.¹⁶¹ A political group, however, can create many separate continuing political committees, with different peo-

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* If the petitioner's application for an injunction is found to be frivolous, the court can award costs and attorney's fees to the political committee or continuing political committee. *Id.*

¹⁵⁷ *Id.* Furthermore, the court is directed to grant the injunction if the candidate makes the proper demonstration. *Id.*

¹⁵⁸ See sec. 24, 1993 N.J. Sess. Law Serv. at 184-85.

¹⁵⁹ *Id.*

¹⁶⁰ See *supra* note 58 and accompanying text.

¹⁶¹ See sec. 4(h), § 9, 1993 N.J. Sess. Law Serv. at 161. See also *supra* notes 105-06 and accompanying text.

ple in the table of organization and with different treasurers, to perform specialized tasks. For instance, one continuing political committee could organize voter registration. Another could be established to bring public awareness to a specific issue that concerns local residents. Still another could be created to support a local association or group and contribute to candidates of its choice. The possibilities for continuing political committees are endless. Combined with the flexibility of political party committees, a labyrinth of paper organizations may exist.¹⁶²

Thus, the public may be deprived of full and accurate information about a candidate's base of financial support and contributors can, in turn, hide behind their contributions to multiple committees. For example, a contributor might give \$25,000 per year to a county political party committee, \$5,000 per year to any number of continuing political committees and \$3,000 per election cycle (primary and general) to an individual candidate. While it might appear that the individual contributor had given a candidate only \$3,000, in reality over a four year period the contributor might well have given as much as \$130,000 or more. As a practical matter, the press and the public are now denied access to this information.

Political party bosses and established political organizations gain an advantage under the new law due to the creation of political party committees and legislative leadership committees.¹⁶³ Within the rubric of political party committees, there are state, county and municipal committees.¹⁶⁴ All three types may spend money in unlimited amounts to support candidates of their choos-

¹⁶² However, note that the amendments do create a penalty for collusion between or among campaign committees designed to circumvent the election law. See sec. 13(a)(2), § 22(a)(2), 1993 N.J. Sess. Law Serv. at 170.

¹⁶³ See N.J. STAT. ANN. §§ 19:5-2 to -4 (West 1989) (permitting the establishment of municipal, county and state political committees respectively). See also sec. 16, 1993 N.J. Sess. Law Serv. at 173 (permitting the establishment of legislative leadership committees).

¹⁶⁴ See N.J. STAT. ANN. §§ 19:5-2 to -4. Questions remain unanswered as to the procedural requirements needed to be followed by the elected county committeepersons to authorize a political party committee both by the amendments to CERA and by the regulations promulgated on August 17, 1993. The current law defines "political party" as an association which polls 10% of the "votes cast in the state for members of the General Assembly at the next preceding general election, held for the election of all of the members of the General Assembly." N.J. STAT. ANN. § 19:5-1. However, unless a resolution is formally adopted at a meeting of the municipal, county or state committee, the potential exists for litigation over the delegation of authority and the proper use of party money.

ing.¹⁶⁵ They are also the only committees that can be controlled directly or indirectly by a candidate who also has a single or joint candidates committee, or both.¹⁶⁶

The draft of the original bill included a \$25,000 per year limit on state committees of each political party and legislative leadership committees, a \$10,000 limit on county political parties and a \$5,000 limit on municipal committees.¹⁶⁷ However, an assembly floor amendment equalized the county committee limit and the state committee limit at \$25,000.¹⁶⁸ Thus, party leaders have been given a tremendous advantage in defeating non-party candidates.

On February 1, 1993, the Senate Judiciary Committee inserted what the press calls the "Norcross Amendment" to address the issue of contributions by county committees to legislative candidates whose districts straddle more than one county.¹⁶⁹ The language allows county political party committees to contribute unlimited funds to a legislative candidate if 40% or more of that candidate's legislative district is within one county.¹⁷⁰ If between 20% and 40% of the county is within the legislative district, the county committee can contribute \$25,000¹⁷¹ and if less than 20% of the county is in the legislative district, the county committee can contribute \$5,000.¹⁷²

B. *The New Problem Of Allocating Resources*

Some of the more complex campaign finance issues are not in the area of fundraising or contribution limits, but in the realm of

¹⁶⁵ The new legislation does not have a general provision limiting the amount of money political party committees can spend. *But see* sec. 14(e), § 4(e), 1993 N.J. Sess. Law Serv. at 172 (limiting the expenditures of county and municipal political party committees to \$10,000 in the aggregate); sec. 18(b)(2), 1993 N.J. Sess. Law Serv. at 175-76 (applying the Norcross Amendment to county political party committees); sec. 19(c), 1993 N.J. Sess. Law Serv. at 179-80 (prohibiting a county committee from contributing more than \$5,000 to a municipal committee which is not located in the same county).

¹⁶⁶ *See* sec. 4(a), (h) § 9(a), (h) 1993 N.J. Sess. Law Serv. at 160-61.

¹⁶⁷ ASGC STATEMENT, *supra* note 21.

¹⁶⁸ *See* A. 100 6R, *supra* note 13, § 19.

¹⁶⁹ *See* A. 100 6R, *supra* note 13, § 18(b).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

allocation problems arising from coordinated campaigns¹⁷³ and calculations of in-kind contributions.

Candidates running for related offices (i.e., councilpersons, legislators, or members of a board of education), can create joint candidates committees.¹⁷⁴ Additionally, any candidate committee may spend an unlimited amount of money in support of candidates running for related offices.¹⁷⁵ Unless the offices are related, however, the contribution limits will place the same constraints on candidates running in a coordinated campaign as they do to individual contributors looking to support them.

Allocation issues for all candidates running together in a coordinated campaign must now be reconsidered. The new regulations do not yet address these issues, but one can suppose that ELEC will look for guidance in their advisory opinions on gubernatorial elections or to other precedent already established by the Federal Election Commission. For office seekers, especially first-time candidates, the concept of allocating certain expenditures, like campaign headquarters, telephones and campaign literature, may present insurmountable difficulties and be overly time consuming and frustrating for the campaign treasurer.

Another serious logistical problem caused by the new law is the "paid-for" attribution provision on printed materials.¹⁷⁶ While not within the purview of ELEC, the Attorney General is empow-

¹⁷³ Coordinated campaigns are groups of candidates running for different offices on the same line or under the same banner.

¹⁷⁴ See sec. 4(a), § 9(a), 1993 N.J. Sess. Law Serv. at 160. See also sec. 2(r), § 3, 1993 N.J. Sess. Law Serv. at 156.

¹⁷⁵ See sec. 18(c)(4), 1993 Sess. Law Serv. at 178.

¹⁷⁶ See N.J. STAT. ANN. §§ 19:34-38.1 to .5 (West 1989). The statute provides:

No person shall print, copy, publish, exhibit, distribute or pay for the printing, copying, publishing, exhibiting or distribution or cause to be distributed in any manner or by any means, any circular, handbill, card, pamphlet, statement, advertisement or other printed matter having reference to any election or to any candidate or to the adoption or rejection of any public question at any general, primary for the general, or special election unless such circular, handbill, card, pamphlet, statement, advertisement or other printed matter shall bear upon its face a statement of the name and address of the person or persons causing the same to be printed, copied or published or of the name and address of the person or persons by whom the cost of the printing, copying, or publishing thereof has been or is to be defrayed and of the name and address of the person or persons by whom the same is printed, copied or published.

Id. § 19:34-38.1.

ered to enforce the law that requires all printed material to contain a disclosure statement listing the name and address of the person or group who paid for the material.¹⁷⁷ Failure to publish the attribution line could result in the materials being confiscated, and for habitual offenders, an injunction can be issued restraining them from further violations.¹⁷⁸

While there is currently no regulation or advisory opinion on the subject, it would seem logical that if a piece of campaign material promotes the candidacy of three separate offices, such as clerk, surrogate and sheriff, then there should be a paid-for disclaimer for each of the three separate candidate committees, unless the material is funded by a political party committee. Additionally, there must be some fair allocation as to the percentage of the total expenditure that must be assessed to each campaign. Separate checks must be issued to the printer, the mailing house, the public relations firm and the composition lab.

However, the new law prohibits the use of a joint candidates committee for candidates running for different offices.¹⁷⁹ Therefore, if a group runs for clerk, sheriff and surrogate, and wishes to pool their resources and run a consolidated campaign, they have only two options. First, they could be fortunate enough to be sponsored by a county or a municipal political party committee which can spend unlimited funds¹⁸⁰ to secure their election without regard to allocation issues. Second, committees for the candidates could carefully allocate their resources and have a good treasurer who vigilantly observes that each single candidate pays his fair share of the expenses and that any disparity does not exceed \$5,000 in any one candidate's favor.¹⁸¹

Of all of the complexities arising from the campaign legislation, this item is the most harrowing because of the criminal and civil penalties¹⁸² and the forfeiture of office provision.¹⁸³ Misallo-

¹⁷⁷ *Id.* § 19:34-38.5.

¹⁷⁸ *Id.*

¹⁷⁹ *See* sec. 2(r), § 3, 1993 N.J. Sess. Law Serv. at 156.

¹⁸⁰ *See supra* note 164.

¹⁸¹ The \$5,000 is the campaign limit of a candidate committee contributing to another candidate committee. Sec. 18(c), 1993 N.J. Sess. Law Serv. at 177.

¹⁸² *See* sec. 11, § 20, 1993 N.J. Sess. Law Serv. at 169; sec. 12, § 21, 1993 N.J. Sess. Law Serv. at 169-70; sec. 13, § 22, 1993 N.J. Sess. Law Serv. at 170-71; sec. 15, 1993 N.J. Sess. Law Serv. at 173; sec. 24, 1993 N.J. Sess. Law Serv. at 185.

¹⁸³ Sec. 13(f), § 22(f), 1993 N.J. Sess. Law Serv. at 171.

cation of resources in excess of \$50,000 by a winning candidate could result in civil penalties and forfeiture of office.¹⁸⁴

It will be interesting to follow the courts as they wrestle with the balance between liberally construing the election laws so as not to deny voters their right to vote¹⁸⁵ and enforcing the intent of the legislature "to limit political contributions and to require the reporting of all contributions received and expenditures made."¹⁸⁶

V. But Is It Reform? The Question Of Legitimacy

If one views the federal election law as a model of disclosure and public access to contributor information, then there are many positive aspects of the amendments. However, without properly funding ELEC to give it the ability to access contributors or employers through a computer search¹⁸⁷ and hire additional staff to assist the public, the New Jersey State Legislature has taken a giant leap in the wrong direction, all in the name of campaign reform.

The creation of legislative leadership committees,¹⁸⁸ the existence of some committees with annual contribution limits while

¹⁸⁴ See sec. 13(e)-(f), § 22(e)-(f), 1993 N.J. Sess. Law Serv. at 171.

¹⁸⁵ See generally *Wene v. Meyner*, 98 A.2d 573, 578-79 (N.J. 1953) (stating that the logic behind a statute prevails over a literal reading of its terms and that the election statutes should not be interpreted to rob voters of their franchise); *Stone v. Wyckoff*, 245 A.2d 215, 218-19 (N.J. Super. Ct. App. Div. 1968) (liberally construing the election laws, the court held that petitions to recall two elected councilmen were valid even though the signers omitted on their petitions their complete addresses).

¹⁸⁶ Sec. 1, § 2, 1993 N.J. Sess. Law Serv. at 153.

¹⁸⁷ ELEC's public session held on March 15, 1993, contained a discussion of computerization:

Executive Director Herrmann said that it would be a long-term process and that a computer installation would have to be carefully planned as the one in the mid-80's was. ELEC cannot possibly begin an installation until it has reworked its current procedures, regulations, forms, and manuals that will be the basis for designing new software and ordering new hardware. A mistake in such planning could cost tens of thousands of dollars if a system did not work and would have to be replaced. At least a year of experience under the new law will be necessary before the Commission can responsibly determine its new computer and related equipment needs. After that period, the time for the installation itself could not be determined right now, but at least a couple of years would appear to be the norm.

Public Sess. Minutes, *supra* note 33, at 6.

¹⁸⁸ See sec. 2(s), § 3, 1993 N.J. Sess. Law Serv. at 156; sec. 16, 1993 N.J. Sess. Law Serv. at 173-74.

others have election cycle limits,¹⁸⁹ and the adoption of the Norcross Amendment setting arbitrary classifications for the amounts that political committees can contribute to legislative candidates¹⁹⁰ will eventually force the New Jersey courts to examine the constitutionality of the entire statutory scheme. If the court does so in the context of *Eu v. San Francisco County Democratic Control Committee*,¹⁹¹ it may find that the existence of the aforementioned issues so dilutes and contorts the interests of the state as to render the campaign finance amendments unconstitutional and allow political parties the freedom to govern their internal affairs and set their own contribution limits.

A. Constitutional Precedent

The constitutionality of campaign finance reform was addressed decisively by the United States Supreme Court in the seminal case, *Buckley v. Valeo*.¹⁹² The Court in *Buckley* addressed two issues: (1) the limitation on campaign contributions and expenditures; and (2) the sufficiency of the state interest that was asserted in imposing the restrictions.¹⁹³ In *Buckley*, the constitutionality of several sections of the Federal Election Campaign Act of 1971¹⁹⁴ were challenged. The challenged sections of the act proscribed individual contributions to a candidate in excess of \$25,000 annually, \$1,000 per election and prohibited expenditures in excess of \$1,000 annually.¹⁹⁵ The limitations on contributions were found to be valid because they involved little direct restraint on speech, and such limitations were deemed to be like those of "associational" rights in the First Amendment.¹⁹⁶ *Buckley* and the cases that followed¹⁹⁷ used a less stringent test than strict scrutiny to decide the

¹⁸⁹ See *infra* notes 215-16 and accompanying text.

¹⁹⁰ See *infra* notes 218-19 and accompanying text.

¹⁹¹ 489 U.S. 214 (1989). See *infra* notes 221-22 and accompanying text.

¹⁹² 424 U.S. 1 (1976) (per curiam).

¹⁹³ *Id.* at 12, 60.

¹⁹⁴ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended at 2 U.S.C. §§ 431-56 (1976 & Supp. V 1981)).

¹⁹⁵ 424 U.S. at 13 (citing 18 U.S.C. § 608(a) & (e) (1970 & Supp. IV 1974)).

¹⁹⁶ *Id.* at 20, 24.

¹⁹⁷ See, e.g., *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990); *Eu v. San Francisco County Democratic Control Comm.*, 489 U.S. 214 (1989); *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981); *Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992), *cert. denied*, 112 S. Ct. 3056 (1992).

constitutionality of contribution limits; however, the test is a rigorous one.¹⁹⁸ A ban on contribution limitations may be sustained only if the state "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedom."¹⁹⁹ That interest was articulated as the prevention of actual or perceived corruption of elected officials arising from their indebtedness to large campaign donors.²⁰⁰ The subsequent cases are, therefore, a balancing of the First Amendment rights of association with the state's interest in avoiding the appearance or actual corruption of public officials.

The Court revisited the contribution limitations issue in *California Medical Ass'n v. FEC*.²⁰¹ In that case, the California Medical Association (CMA), an unincorporated association of doctors, formed the California Medical Political Action Committee (CALPAC). The Federal Election Commission accused CMA of making a contribution in excess of \$5,000 to CALPAC in violation of the Federal Election Campaign Act of 1971. That act prohibited individuals and unincorporated associations from contributing more than \$5,000 per year to any multi-candidate political committee such as CALPAC.²⁰² The Court upheld this provision, stating that the "speech by proxy" that CMA sought to achieve through its contributions to CALPAC was not the sort of political advocacy that the Court in *Buckley*²⁰³ found should be entitled to full First Amendment protection.²⁰⁴ Because the act's provisions limited contributions to committees rather than expenditures by committees, the impact on First Amendment rights was not as great as that upheld in *Buckley*.²⁰⁵ The Court therefore subjected the provisions to a standard less than strict scrutiny, and found the provision valid in furthering the legitimate government interest in preventing actual or perceived corruption.²⁰⁶

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 25.

²⁰⁰ *Id.* at 27.

²⁰¹ 453 U.S. 182 (1981).

²⁰² *Id.* at 185 (citing 2 U.S.C. § 441a(a)(1)(C) (1976 & Supp. III 1979)).

²⁰³ *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam).

²⁰⁴ 453 U.S. at 196.

²⁰⁵ *Id.* at 196-97.

²⁰⁶ *Id.* at 197. The Court stated:

If the First Amendment rights of a contributor are not infringed by limitations on the amount he may contribute to a campaign organization which advocates the views and candidacy of a particular candidate, the rights of a

In the same year that the *CMA* case was decided, the Court struck down a \$250 limit on individual contributions to committees formed to support or oppose ballot measures in *Citizens Against Rent Control v. Berkeley*.²⁰⁷ The ordinance in *Berkeley* permitted unlimited expenditures by an individual on a ballot measure. The Court found that this differentiation imposed a significant restraint on the freedom of association because the ordinance allowed unlimited individual contribution but disallowed that contribution when joined with others to advocate common views.²⁰⁸

More recently, the Ninth Circuit Court of Appeals applied *Buckley v. Valeo*²⁰⁹ to a challenge brought against a California statute that created annual limits on campaign contributions. In *Service Employees International Union v. Fair Political Practices Commission*,²¹⁰ it was argued that annual limits on campaign contributions instead of election cycle limits benefit incumbents.²¹¹ Incumbents are more likely to announce their intentions early and start raising funds at the beginning of the year. Challengers, however, commonly lose part of the year because the filing date is always in the same calendar year as the election. Therefore, the argument follows that there is an unfair advantage to incumbents.

In *Service Employees International*, the Court noted that contributing money is protected by the First Amendment as a right of association between a contributor and a candidate who believe in the same principles.²¹² There must be a compelling state interest to justify infringing on a constitutional right to associate.²¹³ The Court held that annual contribution limits do not promote the

contributor are similarly not impaired by limits on the amount he may give to a multicandidate political committee, such as CALPAC, which advocates the views and candidacies of a number of candidates.

Id.

²⁰⁷ 454 U.S. 290 (1981).

²⁰⁸ *Id.* at 299. The Court stated that "[t]he contribution limit thus automatically affects expenditures, and limits on expenditures operate as a direct restraint on freedom of expression of a group or committee desiring to engage in political dialogue concerning a ballot measure." *Id.*

²⁰⁹ *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam).

²¹⁰ 955 F.2d 1312 (9th Cir. 1992), *cert. denied*, 112 S.Ct 3056 (1992). For an analysis of the Ninth Circuit's decision, see Laurence M. Bogert, *Buckley v. Valeo and Campaign Finance Reform After California's Proposition 73: Why Don't You Love Me Like You Used To Do?*, 29 IDAHO L. REV. 235 (1992-93).

²¹¹ 955 F.2d at 1316.

²¹² *Id.*

²¹³ *Id.* at 1319.

state's interest in preventing the actuality or appearance of corruption.²¹⁴ Absent a compelling state interest, the annual contribution limits were unconstitutional.²¹⁵

B. *Election Cycle vs. Annual Limits and the Legislative Leadership Committees*

The amendments to CERA establish election cycle contribution limits for candidate committees²¹⁶ and annual limits for political party committees and legislative leadership committees.²¹⁷ This difference in treatment does not satisfy the constitutional test. In fact, one might argue that the difference is arbitrary and discriminatory because it gives legislative associations and political committees a serious advantage over candidates not aligned with any political party organization or legislative leadership group.

Consider the following hypothetical: John Q. Public and Wanda B. Safe strongly favor increased gun control regulation. They have seen their neighborhoods torn apart by the fear of guns. Therefore, they decide to form a group to support local legislative candidates who favor stronger gun control, including a ban on handgun possession and sale. They create a political committee called "People Against Guns." Through diligent fundraising efforts, they manage to raise \$50,000.

There are two slates of candidates running for the Assembly and the Senate in the "People Against Guns" district, both comprised of two Assembly candidates and one Senate candidate. One slate is headed by Flo R. Child, a renowned activist for peaceful coexistence. The other is headed by Smith N. Wesson, a relative newcomer to the political arena, but a world-famous gun collector and hobbyist. After a review of the respective platforms, "People Against Guns" decides to support Ms. Child's campaign. They send Ms. Child's single candidate committee a check for \$40,000. Because Ms. Child runs a scrupulous campaign, the check is returned because the maximum contribution allowed by a political committee is \$5,000.

²¹⁴ *Id.* at 1321.

²¹⁵ *Id.*

²¹⁶ See sec. 18(a), 1993 N.J. Sess. Law Serv. at 174-75.

²¹⁷ See sec. 19, 1993 N.J. Sess. Law Serv. at 178-80.

Mr. Wesson, on the other hand, is a close friend of Assembly Majority Leader Win D. Baggs, from their days at the Rifleman's Gun Club. Assemblyperson Baggs knows that Smith N. Wesson will require large sums of money to combat the anti-gun climate in a majority of his district. Accordingly, Mr. Baggs sends Mr. Wesson a contribution for \$100,000 from his legislative leadership committee, along with a note saying, "Just call me if you need any more money. Win D."

The above hypothetical shows the patent absurdity of the legislative leadership committees. These committees, under the control of one person, can contribute unlimited amounts to candidates. A political committee comprised of citizens with legitimate concerns in their own districts may only expend \$5,000.

This situation does not meet the scrutiny applied to such statutes. As found in *Buckley*, the right to contribute and spend monies on a political campaign is a protected activity.²¹⁸ Therefore, the government must show that it is attempting to avoid corruption or its appearance by limiting contributions. No rational argument can be made to demonstrate that a legislative leader who can spend unlimited amounts of money can avoid any appearance of impropriety or corruption.

C. *The Norcross Amendment*

Perhaps the most noticeable constitutional problem with the amendments to CERA rests with the section known as the Norcross Amendment.²¹⁹ This section limits the amount of money that a county political party committee may contribute to a legislative candidate based upon the percentage of the county's population residing in a legislative district that straddles two or more counties.²²⁰

²¹⁸ *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (per curiam). The Court stated that "[b]eing free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline." *Id.* at 19 n.18.

²¹⁹ See sec. 18(b)(2), 1993 N.J. Sess. Law Serv. at 175-76.

²²⁰ *Id.* This section states:

The limitation upon the knowing acceptance by a candidate, campaign treasurer, deputy campaign treasurer, candidate committee or joint candidates committee of any contribution of money or other thing of value from a political committee or continuing political committee under the provisions of paragraph (1) of this subsection [\$5,000.00 limit] shall

Applying the *Buckley* analysis, there can be no state interest in preventing the actuality or appearance of corruption by classifying legislative districts with respect to populations for purposes of receiving contributions from a county political party.²²¹

The most readily apparent constitutional problem with the Norcross Amendment lies in the First Amendment rights of freedom of association. The United States Supreme Court in *Eu v. San Francisco County Democratic Control Committee*,²²² found it unconstitutionally restrictive for a state to regulate the internal affairs and

also be applicable to the knowing acceptance of any such contribution from the county committee of a political party by a candidate or the campaign treasurer, deputy campaign treasurer, candidate committee or joint candidates committee of a candidate for any elective public office in another county or, in the case of a candidate for nomination for election or for election to the office of member of the Legislature, in a legislative district in which, according to the federal decennial census upon the basis of which legislative districts shall have been established, less than 20% of the population resides within the county of that county committee. In addition, all contributor reporting requirements and other restrictions and regulations applicable to a contribution of money or other thing of value by a political committee or continuing political committee under the provisions of P.L.1973, c.83 (C.19:44A-1 et seq.) shall likewise be applicable to the making or payment of such a contribution by such a county committee.

The limitation upon the knowing acceptance by a candidate, campaign treasurer, deputy campaign treasurer, candidate committee or joint candidates committee of any contribution of money or other thing of value from a political committee or continuing political committee under the provisions of paragraph (1) of this subsection, except that the amount of any contribution of money or other thing of value shall be in an amount which in the aggregate does not exceed \$25,000, shall also be applicable to the knowing acceptance of any such contribution from the county committee of a political party by a candidate, or the campaign treasurer, deputy campaign treasurer, candidate committee or joint candidates committee of a candidate, for nomination for election or for election to the office of member of the Legislature in a legislative district in which, according to the federal decennial census upon the basis of which legislative districts shall have been established, at least 20% but less than 40% of the population resides within the county of that county committee. In addition, all contributor reporting requirements and other restrictions and regulations applicable to a contribution of money or other thing of value by a political committee or continuing political committee under the provisions of P.L.1973, c.83 (C.19:44A-1 et seq.) shall likewise be applicable to the making or payment of such a contribution by such a county committee.

Id.

²²¹ See *Buckley*, 424 U.S. at 45.

²²² 489 U.S. 214 (1989).

composition of a political party because such regulation violated a political party's associational rights.²²³

The Norcross Amendment²²⁴ underscores the state's attempt to regulate the manner and ability of a political party to support its own candidates on the basis of an arbitrarily assigned percentage of population. Those members of one county political party committee having a smaller population in a legislative district are deprived of the opportunity to contribute to the success of their legislative candidate to the same extent as the members in the neighboring county political party committee solely on the basis of an arbitrary classification by population figures.

The Norcross Amendment also violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.²²⁵ *Buckley* affirms that political association and speech is a protected activity and a fundamental right, requiring strict scrutiny.²²⁶ The only rationale for limiting political association and speech is to avoid real or perceived corruption. Absent some showing that corruption may exist if all county political party committees may contribute with equal limitations to a legislative candidate, the Norcross Amendment is unconstitutional. There is no persuasive argument that suggests that the Norcross Amendment is necessary to prevent corruption, either real or perceived, as required by *Buckley*.²²⁷

²²³ *Id.* at 229-30.

²²⁴ See sec. 18(b)(2), 1993 N.J. Sess. Law Serv. at 175-76.

²²⁵ The Equal Protection Clause of the Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

²²⁶ *Buckley*, 424 U.S. at 15-16.

²²⁷ The Legislature attempts to satisfy *Buckley* with the following language:

With respect to the limitations in this paragraph, the Legislature finds and declares that:

(a) Persons making contributions to the county committee of a political party have a right to expect that their money will be used, for the most part, to support candidates for elective office who will most directly represent the interest of that county;

VI. Conclusion

The amendments to CERA create an unfair advantage for incumbents and established politicians with access to political party committees or legislative leadership committees; place an undue risk of criminal prosecution on candidates and their volunteers; create the threat of forfeiture of office regardless of the will of the voters; and force candidates to shoulder an extraordinary burden in an effort to understand and comply with a complex law.

Even after the Senate and Assembly rushed to pass its version of election reform, the public's taste for change and reform of the institutions of government remains unsatisfied. In this rush to satisfy a frustrated public, perhaps it is wiser to pause and to reflect anew on the old, daunting problems that are more at the root and less at the surface of the public's skepticism. Perhaps one might find that the issue of campaign finance reform is not as much of a problem as it is a symptom that irritates an already cynical public.

There can be no doubt that the New Jersey State Legislature should authorize a commission to restudy the new Campaign Contribution and Expenditures Reporting Act in order to make recommendations for corrective amendments. Perhaps it is time not only to review the specific sections of Title 19 which involve campaign finance but the opportunity should also be taken to review all of

(b) The practice of allowing a county committee to use funds raised with this expectation to make unlimited contributions to candidates for the Legislature who may have a limited, or even nonexistent, connection with that county serves to undermine public confidence in the integrity of the electoral process;

(c) Furthermore, the risk of actual or perceived corruption is raised by the potential for contributors to circumvent limits on contributions to candidates by funnelling money to candidates through county committees;

(d) The State has a compelling interest in preventing the actuality or appearance of corruption and in protecting public confidence in democratic institutions by limiting amounts which a county committee may contribute to legislative candidates whose districts are not located in close proximity to that county; and

(e) It is, therefore, reasonable for the State to promote this compelling interest by limiting the amount a county committee may give to a legislative candidate based upon the degree to which the population of the legislative district overlaps with the population of that county.

Sec. 18(b)(2), 1993 N.J. Sess. Law Serv. at 176.

the election laws in light of the Supreme Court's decision in *Eu*²²⁸ and current election practices in the State of New Jersey.

²²⁸ *Eu v. San Francisco County Democratic Control Comm.*, 489 U.S. 214 (1989).

Contribution Limits of Chapter 65, P.L. 1993

Entities Making Contributions	Candidate (1)	Entities Receiving Contributions				
		Political Committee	CPC (other than political party or leadership)	State Party Committee	Legislative Leadership	County Party Committee
Individual to:	\$1,500 per election	No Limit	No Limit	\$25,000 per year	\$25,000 per year	\$25,000 per year
Corporation or Union to:	\$1,500 per election	No Limit	No Limit	\$25,000 per year	\$25,000 per year	\$25,000 per year
Association or Group to:	\$1,500 per election	No Limit	No Limit	\$25,000 per year	\$25,000 per year	\$25,000 per year

NOTES on Contribution Limit Chart (not applicable to gubernatorial candidates who have separate limits).

(1) A candidate may establish a candidate committee, a joint candidates committee, or both.

A joint candidates committee can accept a contribution from a contributor in an amount equal to the applicable contribution limit times the number of candidates participating in the joint candidates committee. Thus, the joint committee can receive \$1,500 times the number of candidates in the joint committee.

A candidate who has both a candidate committee and a joint candidates committee cannot accept contributions to both entities that in the aggregate exceed the applicable limit. When candidates have both individual candidate committees and a joint candidates committee, contributors and candidates must pay close attention to the amount of the contribution given to any of the individual candidate committees, or to the joint candidates committee, because a contribution made to one such committee affects what may be contributed by that contributor to another committee. For example, if \$1,500 is contributed to candidate (A), that contributor cannot make any contribution to a joint candidates committee consisting of candidates A, B, and C because one-third of any contribution made to ABC would have to be attributed to candidate A, who already received a maximum \$1,500 contribution. If \$1,500 is contributed to joint candidates committee ABC, only \$1,000 can be given to any individual candidate committee maintained by candidates A, B, or C because one-third of the \$1,500 (i.e., \$500) must be attributed to each of the three candidates. A contribution made to a joint candidates committee must, for contribution limit purposes, be divided equally among all candidates in the joint candidates committee (i.e., "equal attribution" requirement).

A candidate who has debt remaining from a candidacy prior to the effective date of these limits can accept contributions in excess of the limits up to an amount not to exceed the carryover debt.

Contribution Limits of Chapter 65, P.L. 1993

Entities Making Contributions	Entities Receiving Contributions						
	Candidate (1)	Political (3) Committee	CPC (other than political party or leadership)	State Party Committee	Legislative Leadership Committee	County Party Committee	Municipal Party Committee
Candidate (2) to:	\$5,000 per election	\$5,000 per election	\$5,000 per year	\$25,000 per year	\$25,000 per year	\$25,000 per year	\$5,000 per year
Political Committee (3) to:	\$5,000 per election	\$5,000 per election	\$5,000 per year	\$25,000 per year	\$25,000 per year	\$25,000 per year	\$5,000 per year
CPC (other than party or leadership) to:	\$5,000 per election	\$5,000 per election	\$5,000 per year	\$25,000 per year	\$25,000 per year	\$25,000 per year	\$5,000 per year

(2) The contribution limit is multiplied by the number of candidates participating in a joint candidates committee for both giving and receiving purposes. For example, assume a sole candidate wants to contribute to a joint candidates committee (ABC), which consists of three candidates. The contribution limit is \$5,000 times 3, or \$15,000. Assume ABC wants to give to a sole candidate. The contribution limit is again \$15,000. Assume ABC wants to contribute to another joint candidates committee (DEFG), that consists of 4 candidates. The contribution limit is \$5,000 times the 3 ABC candidates, or \$15,000, times the 4 DEFG candidates, for a total limit of \$60,000. If the candidates in that joint candidates committee also have individual candidate committees, no further contributions can be made to any of the individual candidate committees because a maximum level contribution (i.e., \$60,000) was made to DEFG.

The candidate-to-candidate limits do not apply to expenditures by one candidate on behalf of another if the giving and recipient candidates are both seeking seats in the same legislative district, or for the same office in a political subdivision. For example, there is no limit on the amount one candidate for a city council seat can spend to aid the election of another candidate also running for council.

(3) A political committee aiding or promoting the passage or defeat of a public question is not subject to any contribution limits.

Contribution Limits of Chapter 65, P.L. 1993

Entities Making Contributions	Entities Receiving Contributions						
	Candidate (1)	Political Committee	CPC (other than political party or leadership)	State Party Committee	Legislative Leadership Committee	County Party Committee	Municipal Party Committee
State Party Committee to:							
Legislative Leadership Committee to:							
County Party Committee (4) to:							
Municipal Party Committee to:							
National Party Committee (5) to:	\$5,000 per election	\$5,000 per election	\$5,000 per year	\$50,000 per year	\$25,000 per year	\$25,000 per year	\$5,000 per year

NO LIMITS, except those listed in note (4) below

- (4) A county party committee is limited to a contribution of \$5,000 per election if it contributes to a candidate running in another county. Further, if the candidate is running for Legislature and less than 20 percent of the legislative district's population resides in that county, the limit is \$5,000 per election, but if at least 20 percent and less than 40 percent of the legislative district's population resides in the county, the contribution limit is \$25,000 per election. There is no limit if 40 percent or more of the legislative district's population resides in the county. Also, a county party committee is limited to a contribution of \$5,000 per year to a municipal party committee in another county.
- (5) A national political party committee cannot contribute more than \$50,000 per year to the State political party committee. For the purposes of the other contribution limits, the national political party committee is subject to the limits of a continuing political committee (i.e., an association spending \$2,500 or more in a calendar year to aid or promote New Jersey candidates), although the law does not address this situation explicitly.

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