REGULATION OF CAMPAIGN FINANCE ACTIVITY IN NEW JERSEY

*by Scott A. Weiner**

Introduction

In 1973, New Jersey embarked upon a course which would place it at the forefront of state efforts to regulate the financing of political campaigns. Through the enactment of the New Jersey Campaign Contribution and Expenditures Reporting Act[1] ("Campaign Finance Reporting Act" or "Act"), New Jersey sought to protect the electoral process from the potentially corrupt influence of money in politics.[2] Administration of this legislative initiative was accomplished by the establishment and operation of the independent Election Law Enforcement Commission ("ELEC" or "Commission").[3] Moreover, the introduction of partial public financing for gubernatorial primaries and elections helped to complement and strengthen its impact.[4] In recent years, however, New Jersey's innovation and leadership in this area has been offset by growing public indifference and legislative inertia towards the regulation of campaign financing.

The past thirteen years have witnessed many different interactions between money and politics which have greatly challenged New Jersey's regulatory program. Increasing campaign costs, the changing nature of campaigns, and the expansion in

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1 N.J. STAT. ANN. §§ 19:44A-1. to -26. (West Supp. 1986) [hereinafter cited as "Campaign Finance Reporting Act"].

2 *See* N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 135 N.J. Super. 537, 343 A.2d 796 (Ch. Div. 1975), *rev'd on other grounds*, 155 N.J. Super. 218, 382 A.2d 670 (App. Div. 1977), *modified on other grounds and aff'd*, 82 N.J. 57, 411 A.2d 168 (1980).

3 N.J. STAT. ANN. § 19:44A-5. (West Supp. 1986).

4 N.J. STAT. ANN. §§ 19:44-27. to -44. (West Supp. 1986).

sources of financial support are evidence of the need for evolution in the regulation of campaign financing and disclosure. Quite simply, New Jersey's statutory and regulatory system has failed to meet these changing needs and has lost much of its effectiveness in controlling campaign financing. This has occurred despite continuing efforts by the ELEC and others to foster such evolution.

The eighteen months preceeding the June 1985 gubernatorial primary elections were marked by both extensive reform and damaging inaction by the New Jersey Legislature and Governor. During that time, the first significant revision of the Campaign Finance Reporting Act was enacted[5] and there were strong indications that the Legislature might also reconsider the financing of elections and the role of political action committees ("PACs").

Unfortunately, the 1985 elections commenced and concluded without any legislative response to the control of their financing. Moreover, the 1985 gubernatorial campaign financing was administered by laws that remained virtually unchanged since their enactment in 1973 and largely outdated.

This article will survey legislative attempts to monitor the influence of money upon New Jersey politics. It must be noted that there are currently four components to the state's program which directly address the potential impact of money upon political activity. They are: (1) disclosure of campaign finance activity; (2) personal financial disclosure by candidates seeking election to the state legislature or Office of Governor; (3) financial disclosure by lobbyists and legislative agents; and (4) partial public financing of gubernatorial elections. Each component will be reviewed in order to provide an understanding of the rationale for the original legislative action. In addition, an assessment of the current effectiveness of these programs, recent statutory amendments, and proposals for future amendments and legislation will be considered. Lastly, comment will be made regarding

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5 This bill, which was a consolidation of A.3099 and A.2290, was sponsored by Assemblymen Bocchini (D-14th Dist.), Zimmer (R-23d Dist.), Franks (R-22d Dist.), Charles (D-31st Dist.) and Assemblywoman Kalik (D-7th Dist.). Act of Jan. 17, 1984, ch. 579, 1983 N.J. Sess. Law Serv. 3280 (West) (amending and codified at N.J. STAT. ANN. §§ 19:44A-3. to -6., -8. to -11., -16., -18. to -20., -22.) (West Supp. 1986); (repealing N.J. STAT. ANN. §§ 19:44A-13. to -15., 16.) (West Supp. 1986) [hereinafter cited as "Campaign Finance Reporting Revision"].

those specific areas which are ripe for legislative consideration and action.

II. Disclosure of Campaign Finance Activity

The statutory framework for New Jersey's program which regulates the financing of political campaigns and related activity is found in the Campaign Finance Reporting Act. During the drafting of this legislation, public policy considerations were used to shape and form its provisions.[6]

In analyzing the overall impact of the Campaign Finance Reporting Act, it is important to keep in mind three structural aspects of the law: (1) it is designed to apply to all New Jersey candidates and elections;[7] (2) except as to gubernatorial candidates, it contains no limitation on the amount of contributions by or to any individual, candidate or political committee; and, perhaps most significantly, (3) it created the opportunity and potential for pre-election disclosure which, if aggressively administered, could provide the public with relevant and pertinent information well in advance of election day.[8]

As originally enacted, the statute sought to regulate the influence of money on politics by limiting the specific dollar amount which could be spent by or on behalf of any candidate.[9] The regulatory scheme was to be implemented through an aggressive and comprehensive program of public disclosure regarding contribution sources and campaign expenditures.

The operation of this general expenditure limit, however, was short-lived and was ultimately voided by the United States

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6 *See* N.J. STAT. ANN. § 19:44A-2. (West Supp. 1986).

> It is hereby declared to be in the public interest and to be the public policy of the State to limit the campaign expenditures by candidates for public office and to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office or to aid or promote the passage or defeat of a public question in any election and to require the reporting of all contributions received and expenditures made to provide political information on any candidate for public office, or on any public question.

Id.

7 N.J. STAT. ANN. §§ 19:44A-2., -4. (West Supp. 1986).

8 N.J. STAT. ANN. §§ 19:44A-8., -16. (West Supp. 1986).

9 N.J. STAT. ANN. § 19:44A-7. (amended 1980).

Supreme Court decision, *Buckley v. Valeo*.[10] Relying upon the reasoning of the *Buckley* court, New Jersey Attorney General Hyland concluded that any general expenditure limit was violative of those rights protected by the first amendment to the United States Constitution.[11] The Attorney General observed that such restraints upon expenditures represented a severe curtailment of protected activity.[12] General Hyland did find, however, that the Campaign Finance Reporting Act remained valid in all other respects, including the imposition of an expenditure limitation upon gubernatorial candidates accepting public funds.[13]

The elimination of this expenditure limit left New Jersey with a program that essentially relied upon public disclosure as the sole means of regulation. Whether by design or as a result of subsequent legislative inaction, New Jersey ultimately opted for a program which allowed non-gubernatorial campaigns and candidates to operate untethered by campaign contribution limitations or restrictions that went beyond public disclosure.[14] This disclosure requirement, however, still provided the public with an opportunity to review the nature of a candidate's finances and include this information in personal decision-making.

Comment must be made at this point that the New Jersey Legislature has, in particular cases, prohibited the making of campaign contributions. While not specifically addressed by the

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10 424 U.S. 1 (1976) [hereinafter cited as "Buckley"]. The court in Buckley found that:

> expenditure limitations operate in an area of the most fundamental First Amendment activities . . . . A restriction on the amount of money a person or group can spend on political communication during a campaign . . . [affects] expression . . . because virtually every means of communicating ideas in today's mass society requires the expenditure of money. . . .[The Act's] expenditure limitations . . . represent substantial rather than merely theoretical restraints in the quantity and diversity of political speech. . . .

Id. at 14-19.

11 10 Op. Att'y Gen. (1976).

12 *Id.* The United States Supreme Court viewed the first amendment as "afford[ing] the broadest protection to . . . political expression . . . [and] protect[ing] political association as well as political expression. . . .In sum, although the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do limitations on financial contributions. Buckley, *supra* note 10, at 14-15, 23.

13 10 Op. Att'y Gen. (1976).

14 N.J. STAT. ANN. §§ 19:44A-7., -8., -16. (West Supp. 1986).

Campaign Finance Reporting Act, this state has had a long-standing public policy prohibiting contributions by certain regulated industries, as well as by individuals controlling or employed by such industries. Since the enactment of the Election Corruption Practices Act in 1911,[15] New Jersey has prohibited political contributions by insurance corporations,[16] telephone companies and other public utilities.[17] Additionally, any majority shareholder in such corporations has similarly been prohibited from making contributions.[18] More recently, the Casino Control Act[19] contained a prohibition on campaign contributions by holders of casino licenses.[20]

While these statutes have not been interpreted in any reported judicial decisions, their restrictive application has been the subject of the New Jersey Attorney General's Formal Opinions and recent legislative initiatives. These statutory prohibitions have been construed to prohibit banks from establishing or maintaining political action committees through the use of corporate funds.[21] In a more recent interpretation concerning contributions by insurance companies, the Attorney General extended this statutory prohibition to any entity within the corporate family, including non-insurance subsidiaries or holding companies which would not otherwise be prohibited from making contributions.[22]

These decisions have had a significant impact upon the participation of affected industries in New Jersey's political process. By contrast, corporations are expressly prohibited under federal law from making *direct* contributions to political candidates or committees.[23] Under certain circumstances, however, the corporation may establish a "separate segregated fund" or PAC through which contributions can be made.[24] Although no corporate resources may be directly used for campaign contributions, a

15 14 Op. Att'y Gen. (1979).
16 N.J. STAT. ANN. § 19:34-32. (West 1964).
17 N.J. STAT. ANN. § 19:34-45. (West 1964).
18 N.J. STAT. ANN. §§ 19:34-45. (West 1964).
19 N.J. STAT. ANN. §§ 5:12-1. to -183. (West Supp. 1986).
20 N.J. STAT. ANN. § 5:12-138. (West Supp. 1986).
21 14 Op. Att'y. Gen. (1979).
22 4 Op. Att'y. Gen. (1983).
23 2 U.S.C. § 441 b. (1982).
24 2 U.S.C. § 441 b.(b)(2)(c) (1982).

corporation may pay for the administrative costs associated with a PAC's operation.[25] This federal provision thus enables insurance companies to establish a PAC and make contributions through the PAC to federal candidates, while underwriting the operating cost of the PAC with corporate funds. Under New Jersey law, however, this type of federally permissible PAC could not contribute to a state or local candidate.[26] Corporate support of such a PAC would violate the State's statutory prohibition[27] and would run counter to the Attorney General's interpretation.[28] This results in preventing corporate officers, directors, shareholders, and employees of regulated industries from utilizing contributions from a PAC organized pursuant to federal law for New Jersey campaign activities.[29]

Significant compliance obstacles have plagued the enforcement of New Jersey's prohibitions on corporate campaign contributions. Corporate officials, when authorizing New Jersey contributions, must determine whether any member of their corporate family is prohibited from making such contributions. Perhaps even more significantly, New Jersey candidates and state enforcement officials are expected to know which corporate contributions are impermissible.

These precise issues were reflected in legislation introduced on March 1, 1984.[30] As originally presented, the bill would have allowed businesses and individuals, otherwise prohibited from making contributions,[31] to solicit contributions for a separate segregated fund and to utilize their own property to operate that fund.[32]

The language specifically authorizing separate segregated funds was deleted by the senate committee which considered the

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25 *Id.*

26 N.J. STAT. ANN. § 19:34-32. (West Supp. 1986).

27 *Id.*

28 14 Op. Att'y Gen. (1979).

29 *See supra* notes 24, 27, 28.

30 S.1444, 201st Leg., 1st Sess. (1984). This bill was introduced by State Senator Christopher J. Jackman (D-33d Dist).

31 Insurance companies, banks, trustees, railroads, telephones, gas companies and canal companies, as well as majority stockholders in such businesses, have been statutorily barred from contributing money or any other thing of value to promote political campaigns of candidates. N.J. STAT. ANN. §§ 19:34-32., -45. (West 1964 & Supp. 1986).

32 S.1444, *supra* note 30, §§ 1., 2. .

bill.[33] Ultimately, the legislature did approve[34] the bill in a form which allowed businesses and individuals to use political committees or continuing political committees, established by them, as contribution sources.[35] This final bill also incorporated a provision which would eliminate the contribution prohibition placed on majority stockholders in favor of a prohibition applicable to individuals and organizations "deriving more than 50% of [their] net income from" a prohibited contribution.[36]

This proposed legislation was vetoed by Governor Kean on November 29, 1984. Governor Kean observed that regulated industries did in fact contribute to New Jersey campaigns through non-corporate PAC's.[37] Additionally, the Governor voiced his objection to the bill's provision which would have permitted regulated industries to pass the costs of operating political committees on to their customers.[38] The Legislature was also admonished for seeking to enact legislation that would further strengthen the imbalances inherent in state elections.[39] Instead, the Governor felt that more appropriate legislation should seek to control the PAC's themselves. However, to this date, no such legislation has been proposed by the Governor.

When examining non-gubernatorial elections, the noticeable absence of any other limitation on contributions emphasizes the state's reliance upon public disclosure to provide for the regulation of campaign finance activity. The New Jersey disclosure program has succeeded because of four factors: (1) the requirement of universal disclosure by all candidates for public office; (2) a low threshold for the identification of contributors; (3) the requirement of timely pre-election disclosure; and (4) administration and enforcement of the program by an independent regulatory agency.

As noted, the Campaign Finance Reporting Act has imposed

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33 SENATE STATE GOV'T, FEDERAL AND INTERSTATE RELATIONS AND VETERANS AFFAIRS COMM. STATEMENT to S.1444, 201st Leg., 1st Sess. (1984).

34 The bill was passed in the New Jersey Senate on June 24, 1984 (with amendments) by a vote of 23-8 and was approved by the Assembly on October 22, 1984 with a vote of 44-14. 72 N.J. LEGIS. INDEX, Jan. 21, 1985, at S33.

35 S.1444, *supra* note 30, §§ 1., 2. .

36 *Id.*.

37 VETO of S.1444, 201st Leg., 1st Sess. (Nov. 29, 1984).

38 *Id.*.

39 *Id.*.

an obligation upon all candidates and political committees to file financial reports.[40] As originally enacted, candidates and committees participating in an election were required to file disclosure reports at intervals of twenty-five (25) days before an election, seven (7) days before an election and periodically after an election until all financial activity was concluded.[41] Additionally, all political party committees were required to file annual reports[42] and to disclose all receipts and expenditures.[43] Significantly, the reports were required to contain the identities of all contributors who donated more than $100.[44] Thus, the Campaign Finance Reporting Act established the potential for citizens to obtain almost unlimited information, on a *pre-election* basis, of campaign finance activity.

The likelihood of achieving the vast public disclosure envisioned by the Campaign Finance Reporting Act was significantly increased by the establishment of the Election Law Enforcement Commission in 1973.[45] The Commission is comprised of four members, with the additional requirement that no more than two of them belong to the same political party.[46] Moreover, no one holding public office or an office in any political party may serve as a commissioner.[47] Perhaps most significantly, the Campaign Finance Reporting Act sought to create an independent commission which would operate free from the influences of the legislative and executive branches of government.[48] In addition to being granted operating independence, the Commission is em-

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40 N.J. STAT. ANN. §§ 19:44A-8., -16. (West Supp. 1986).
41 N.J. STAT. ANN. § 19:44A-16.b. (West Supp. 1986).
42 N.J. STAT. ANN. § 19:44A-8.b.(2) (West Supp. 1986).
43 *Id.*
44 N.J. STAT. ANN. § 19:44A-8.c. (West Supp. 1986).
45 N.J. STAT. ANN. § 19:44A-5. (West Supp. 1986).
46 *Id.*
47 *Id.*
48 *Id.*

For the purposes of complying with the provisions of Article V, Section IV, paragraph I of the New Jersey Constitution, the Election Law Enforcement Commission is hereby allocated with the Department of Law and Public Safety; but, notwithstanding said allocation, the Commission shall be independent of any supervision or control by the department or by any board or officer thereof, it being the intention of this act that the assignment, direction, discipline and supervision of all the employees of the commission shall be so far as possible, and except as otherwise provided in this act, fully determined by the commission or by such officers

powered to retain independent legal counsel[49] and to directly enforce the Campaign Finance Reporting Act through administrative proceedings and the imposition of monetary penalties following any non-compliance with its provisions.[50]

As the title of the New Jersey Campaign Contribution and Expenditures Reporting Act connotes, its underlying purpose and policy is to provide for public access to information concerning contributions and expenditures. In order to reach this goal, the Campaign Finance Reporting Act specifically authorizes and empowers the Commission to develop and implement a system of public disclosure.[51] The program utilized by the Commission consists of the attempt to obtain reports from all candidates and

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and employees thereof to whom the commission may delegate the powers of such assignment, direction, discipline and supervision.

Id.

49 N.J. STAT. ANN. § 19:44A-6.a. (West Supp. 1986).

50 N.J. STAT. ANN. §§ 19:44A-6.b., -22. (West Supp. 1986).

51 N.J. STAT. ANN. § 19:44A-6.b. (West Supp. 1986). The Election Law Enforcement Commission has been authorized to:

(1) Develop forms for the making of the required reports;

(2) Prepare and publish a manual for all candidates, political committees and continuing political committees, prescribing the requirements of the law, including uniform methods of bookkeeping and reporting and requirements as to the length of time that any person required to keep any records pursuant to the provisions of this act shall retain such records, or any class or category thereof, or any other documents, including cancelled checks, deposit slips, invoices and other similar documents, necessary for the compilation of such records;

(3) Develop a filing, coding and cross-indexing system;

(4) Permit copying or photo-copying of any report required to be submitted pursuant to this act as requested by any person;

(5) Prepare and make available for public inspection summaries of all said reports grouped according to candidates, parties and issues, containing the total receipts and expenditures, and the date, name, address and amount contributed by each contributor;

(6) Prepare and publish, prior to May 1 of each year, an annual report to the Legislature;

(7) Ascertain whether candidates, committees, organizations or others have failed to file reports or have filed defective reports; extend, for good cause shown, the dates upon which reports are required to be filed; give notice to delinquents to correct or explain defects; and make available for public inspection a list of such delinquents;

(8) Ascertain the total expenditures for candidates and determine whether they have exceeded the limits set forth in this act; notify candidates, committees or others if they have exceeded or are about to exceed the limits imposed;

(9) Hold public hearings, investigate allegations of any violations

known committees, thus resulting in nearly universal disclosure. Through use and enforcement, campaign finance disclosure has become an inherent part of the political process in New Jersey. For New Jersey candidates, the completion of financial disclosure reports has become as much a part of the campaign process as the nominating petitions themselves.

Although the operation of the Campaign Finance Reporting Act has generally been successful, the Commission periodically reviewed the enactment to determine if disclosure could be improved. No amendment affecting the nature of the disclosure program, however, was approved until 1982.[52]

To promote the amending process, the Commission embarked upon a comprehensive review of the Campaign Finance Reporting Act in 1982.[53] This study led to the publication of a report containing twenty-three recommendations for amendments to the Act.[54] In conducting its research and ultimately publishing the report, the Commission sought to continue the effectiveness of the disclosure program.[55] The attempt to balance

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of this act, and issue subpenas [sic] for the production of documents and the attendance of witnesses;

(10) Forward to the Attorney General or to the appropriate county prosecutor information concerning any violations of this act which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General.

Id.

52 Act of Jan. 1, 1982, ch. 337, § 1, 1981 N.J. Sess. Law. Serv. (West) (codified at N.J. STAT. ANN. § 19:44A-8. (West Supp. 1986)). This provision requires the disclosure of all co-signers of loans made to candidates.

53 Election Law Enforcement Commission Recommendations Proposing Amendments to the Campaign Contributions and Expenditures Reporting Act N.J.S.A. 19:44A-1 *et seq.*, at i (Nov. 1982) [hereinafter cited as "ELEC Recommendations"].

54 *See id.*

55 *Id.* at i.

The Commission's intent in undertaking this review was to insure that New Jersey's campaign finance disclosure program remains as both viable and valuable in the context of current campaign finance activities. To achieve this end, the Commission sought to identify and propose for elimination unnecessary and burdensome reporting requirements which do not produce, by way of public disclosure, meaningful information. On the other hand, the Commission sought to identify refinements to the disclosure program to insure that information pertaining to activity which has a significant impact on election finance activity is provided to the public in a meaningful, timely and usable fashion.

Id.

the burden of regulation with the benefit of disclosure[56] resulted in a series of substantive and technical amendments to the Act. Most significant among the recommendations were proposals to adjust reporting dates,[57] increase disclosure thresholds,[58] and establish a new category of reporting entities to be known as continuing political committees.[59]

As originally enacted in 1973, the statute required candidates to disclose all financial activity up to the day immediately preceeding the filing deadline.[60] This standard imposed a significant burden upon candidates trying to complete their reports on time. In examining this dilemma, the Commission concluded that providing candidates with more time to complete their reports would not only decrease anxiety, but would improve compliance and thereby the quality of information available to the public.[61] Accordingly, the Commission recommended that a candidate be allowed to close their books forty-eight hours prior to the filing deadline.[62]

The Commission also addressed reporting dates by recommending that pre-election reports be filed on the twenty-ninth and eleventh days prior to the election[63] rather than on the existing twenty-five and seven day cycle.[64] By doing so, the Commission attempted to achieve earlier disclosure while at the same time allowing candidates to avoid filing within the crucial last week of a campaign.[65] In order to acquire disclosure of significant activity during the last two weeks of an election, however, the Commission recommended that contributions in excess of $500 be disclosed by a special report within forty-eight hours of receipt.[66]

Candidates with anticipated campaign expenditures of $1,000 or less were already statutorily permitted to meet their

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56 *Id.* at ii.
57 *Id.* at 2.
58 *Id.* at 14, 15.
59 *Id.* at 6-10.
60 N.J. STAT. ANN. § 19:44A-16.a. (West Supp. 1986).
61 *See* ELEC Recommendations, *supra* note 53, at 2.
62 *Id.*
63 *Id.* at 2, 3.
64 N.J. STAT. ANN. § 19:44A-16.b. (West Supp. 1986).
65 ELEC Recommendations, *supra* note 53, at 2, 3.
66 *Id.*

filing obligation through a one-page affidavit, which attested to the fact that they would be spending less than the threshold amount.[67] Although candidates filing such reports were still obligated to disclose the identity of contributors over $100,[68] the burden of disclosure remained comparatively slight since those candidates seldom received contributions in that amount. This one-time filing stood in sharp contrast to the multi-page report required to be filed at least three times during the election by those candidates who spent more than $1,000.[69]

Efforts to lessen the reporting burden caused the Commission to suggest a number of adjustments to disclosure thresholds. In its report, the Commission recommended that the contribution disclosure threshold be raised to $200.[70] It was also recommended that candidates be permitted to file simple affidavits if their expenditures did not exceed $2000.[71] The Commission's report was finally presented in November 1982 to the members of the New Jersey Legislature and Governor Kean.

Legislative response was prompt and separate bills were introduced by Assemblymen Bocchini (D-14th Dist.)[72] and Zimmer (R-23d Dist.),[73] each essentially adopting the recommendations of the Commission.[74] These proposals were then referred to the Assembly State Government Committee, where differences were reconciled and a substitute bill was drafted.[75] Although Assemblyman Zimmer first introduced his bill in December 1982, the Assembly did not approve this amending legislation until December 1983, thus making it one of the last bills considered by the Senate at the close of the legislative session. The bill was eventually signed into law by Governor Kean on January 17, 1984, the last day permitted for such action.[76]

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67 N.J. STAT. ANN. § 19:44A-16.d. (West Supp. 1986).

68 *Id.*

69 N.J. STAT. ANN. §§ 19:44A-16.a., b. (West Supp. 1986).

70 ELEC Recommendations, *supra* note 53, at 15.

71 *Id.* at 14-15.

72 A.3099, 200th Leg., 2d Sess. (1983).

73 A. 2290, 200th Leg., 2d Sess. (1983).

74 In fact, the Zimmer bill was a codification of the ELEC Recommendation Report. The Bocchini bill, on the other hand, incorporated the opinions of the sponsor and of the members of the then Democratic Majority in the Assembly.

75 A.3099, 2290, 200th Leg., 2d Sess. (1983).

76 Campaign Finance Reporting Revision, *supra* note 5.

In many ways, these amendments achieved the balance sought by the Commission. For instance, the threshold for short-form abbreviated filing was increased from $1,000 to $2,000.[77] The Legislature, however, moved away from this balance by rejecting the Commission's recommendation that the disclosure threshold for identification of contributors be increased from $100 to $200.[78]

As originally enacted, the Campaign Finance Reporting Act requires disclosure[79] by not only candidates and political party committees, but also by "political committees", defined generally as two or more people seeking to aid or promote a candidate.[80] This broad definition would, if literally applied, cover all groups, including civic or community organizations, business entities, labor unions, groups of neighbors, or even married couples.

The potential reach of this definition was limited, however, by the Commission's policy[81] and subsequent statutory amendment that a political committee contribution below $1,000 would not meet the test of aiding or promoting a candidacy and thereby trigger the reporting requirement.[82] Consequently, a husband and wife making a contribution from a joint checking account would not be required to file a report.[83] On the other hand, if the couple had collected money from their neighbors, this fund raising activity, along with a subsequent contribution to a candi-

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77 *Id.* at § 16 (codified at N.J. STAT. ANN. § 19:44A-16.d. (West Supp. 1986)).

78 *Id.* This higher disclosure threshold was not included in A.3099 when originally introduced. This bill had maintained the $100 disclosure threshold. During consideration of this legislation, ELEC thus found itself in the seemingly ironic position of supporting greater thresholds for disclosures. *See* ELEC Recommendations, *supra* note 53, at 15, 16. The factors considered by the Commission included the decreased significance and value of $100 contributions since the original adoption of that threshold in 1973. The Commission also observed that increasingly more contributions at the $100 - $200 level were being filed. By increasing the threshold, the Commission reasoned that not only would the reporting burden be decreased, but the disclosed information would be limited to contributions having a greater impact on the electoral process. In addition, the $200 threshold was consistent with the disclosure threshold for federal candidates and would allow federal reports, in certain instances, to satisfy a portion of the New Jersey filing requirement. *Id.* at 15, 16.

79 N.J. STAT. ANN. §§ 19:44A-8., -16. (West Supp. 1986).

80 N.J. STAT. ANN. § 19:44A-3.i. (West Supp. 1986).

81 ELEC Recommendations, *supra* note 53, at 6-10.

82 Act of Jan. 17, 1984, ch. 579, 1983 N.J. Sess. Law Serv. 3280 (West) (codified at N.J. STAT. ANN. §§ 19:44A-3.i., -8. (West Supp. 1986)).

83 *See* ELEC Recommendations, *supra* note 53, at i.

date or other expenditures in excess of $1,000, would have satisfied the threshold for reporting.[84] Similarly, any existing organization, whether business, union or community, which merely made a contribution from its *existing* funds and below the threshold would not be subject to the reporting requirement.[85]

As noted, direct contributions from an organization's existing funds must be disclosed by the recipient together with identification of the organization when the donation exceeds $100.[86] There is, however, no affirmative obligation upon the contributing organization to disclose their own contributions. In contrast, only after the organization solicited earmarked funds or otherwise engaged in any election-related activity in excess of $1,000, would a reporting obligation for that organization arise.[87] The Campaign Finance Reporting Act now requires that separate accounts be established by the contributing entity for retaining those funds and triggers the need for disclosure reporting.[88]

Prior to the 1984 amendments, the Campaign Finance Reporting Act provided for a disclosure system which closely followed election cycles. The sequences for reporting were determined on an individual basis for the particular election in which the organization engaged in financing activity.[89] Therefore, if an organization engaged in significant fund raising activity before an election, that activity would not be subject to disclosure until the first pre-election report was required to be filed, twenty-five days before the election.[90]

This reporting system not only limited the quality of information available to the public but also proved very confusing to organizational contributors. For example, money might be raised without reference to a specific election, yet had to be reported at the first election following receipt. This regulatory and disclosure program for organizational activity was further compounded by the requirement that all political party committees

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84 *Id.*
85 *Id.* at 6-10.
86 N.J. STAT. ANN. §§ 19:44A-8.c., -16.f. (West Supp. 1986).
87 N.J. STAT. ANN. § 19:44A-8. (West Supp. 1986).
88 N.J. STAT. ANN. § 19:44A-10. (West Supp. 1986).
89 N.J. STAT. ANN. § 19:44A-16.b. (West Supp. 1986).
90 *Id.*

file an annual report of financial activity on March 1st for the preceding calendar year.[91] In addition, those committees which engaged in election-related activities were also required to file appropriate pre- and post-election reports.[92]

This reporting system proved confusing at best for both political party committees and other organizations. Uncertainty about an appropriate reporting sequence and which activities were reportable deterred both compliance and public access to information. Probably the most significant and far reaching 1984 amendment to the Campaign Finance Reporting Act created a new reporting entity known as a Continuing Political Committee ("CPC").[93]

CPC's were originally recommended by the Commission to streamline reporting requirements imposed upon non-candidate political committees while at the same time vastly improving the nature, quality and quantity of information available to the public regarding the financial activity of such organizations.[94] The need to distinguish between those committees which existed solely for a particular candidacy or election from those whose existence and campaign-related activity were ongoing, however, was also addressed by the creation of the CPC's. Rather than disclosing financial activity on an election cycle, a CPC would be able instead to file regular quarterly reports of financial activity.[95]

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91 N.J. STAT. ANN. § 19:44A-8.b.(2) (amended by Act of Jan. 17, 1984, ch. 579, 1983 N.J. Sess. Law Serv. 3280 (West)). This amendment created quarterly rather than annual reporting.

92 N.J. STAT. ANN. §§ 19:44A-8., -16. (West Supp. 1986).

93 N.J. STAT. ANN. § 19:44A-3.n.(1), (2) (West Supp. 1986).

94 ELEC Recommendations, *supra* note 53, at 6-10.

95 N.J. STAT. ANN. § 19:44A-8.b.(2) (West Supp. 1986). A continuing political committee was defined as:

> (1) The state committee, or any county or municipal committee, of a political party; or
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> (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. . .for elective public office, or the passage or defeat of a public question. . .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 any other organization has been determined to be a continuing political committee [by the Commission]. . . .

All political party committees, whether at the state, county or municipal levels fell within the definition of a CPC[96] and therefore automatically acquired quarterly reporting status.[97] While this system would vastly simplify the reporting burden and enhance the quality of disclosure by major organizations with significant levels of activity, the potential burden upon local political party committees was significantly increased.

These 1984 statutory provisions not only represented a significant structural alteration to New Jersey's disclosure system but empowered the Commission to make sweeping changes in the reporting system. At the outset, it should be noted that the qualifying test to determine whether CPC status was appropriate was to be based upon future actions rather than a mere objective threshold test.[98] Moreover, not only was an expectation of future activity required, but the statute also gave the Commission the discretion to determine whether such activity need be at the $2,500 annual level or at some other amount.[99] The statutory definition is noteworthy in that it requires the Commission's determination to be based upon criteria not otherwise incorporated into the Act. By adopting this definition, the Commission was afforded wide latitude to use its own expertise in determining the precise reporting requirement which would be imposed upon an organization engaged in campaign finance activity.[100]

This CPC reporting program provided the Commission with a mechanism to vastly expand and hopefully improve the disclosure system. Prior to the creation of the CPC, an organization making direct contributions from its treasury was not subject to disclosure reporting. Presently, however, if that same organization contributes more than $2,500 in a calendar year and expects to make contributions in the future, it *may* be subject to a report-

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Id. at § 19:44A-3.n.(1), (2).

96 N.J. STAT. ANN. § 19:44A-3.n.(1) (West Supp. 1986).

97 N.J. STAT. ANN. § 19:44A-8.b.(2) (West Supp. 1986).

98 *Id.*

99 *Id.*

100 This seemingly broad delegation was appropriate and necessary given the issues to be resolved and the Commission's expertise and responsibility in the area of campaign financing. The Commission had originally recommended to the legislature and Governor that ELEC be permitted to set its own criteria for classifying CPC's. *See* ELEC Recommendations, *supra* note 53, at 6-10.

ing obligation.[101] It must be emphasized that the applicable factual settings are nearly infinite and require further categorization by the Commission. Without clarifying criteria, it would appear that the reporting obligation imposed upon a local political club which contributed $5,000 to municipal candidates would be the same as that imposed upon a multi-national corporation contributing $5,000 to various legislative candidates. If, in fact, the reporting obligation is shown to be identical, it would undoubtedly prove to be either burdensome or substantively insufficient in one or both instances.

The Commission had met this reporting challenge by attempting to balance the goal of disclosure with the nature and extent of an organization's financial activity. The Commission had proposed regulations which would require a CPC, other than a political party committee,[102] to file a Statement of Organization[103] if current and future years contributions were expected to exceed $2,500.[104] Based upon the percentage of total expenditures devoted to election-related activity, the Commission would label each organization as a CPC under one of three "reporting obligation" categories: major purpose, multi-purpose, or peripheral.[105]

These CPC's were differentiated by criteria addressing the amount of money contributed in relation to total organizational expenditures. A major purpose CPC was proposed to include all political party committees and organizations which utilized more than seventy-five percent of their total expenditures for the calendar year on election-related activity.[106] Such CPC's would be required to file full disclosure reports.[107] A multi-purpose CPC

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101 N.J. STAT. ANN. § 19:44A-8.b.(1) (West Supp. 1986).

102 16 N.J. Admin. Reg. 2158 (codified at N.J. ADMIN. CODE tit. 19, § 25-1.7 (1984)).

103 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.6(a) (1984)).

104 16 N.J. Admin. Reg. 2159-60 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.5(a) (1984)).

105 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.5(c)(1984)).

106 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN CODE tit. 19, § 25-4.5(c)1. (1984)).

107 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN CODE tit. 19, § 25-4.6 (1984)); 16 N.J. Admin. Reg. 2159-2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.5 (1984)).

was defined as one which utilized between twenty and seventy-five percent of its total expenditures[108] on election-related activity.[109] By comparison, a CPC would be clasified as peripheral when probable or actual election-related expenditures did not exceed twenty percent of total organizational expenditures.[110] The Commission anticipated that this category would largely include corporations and unions.[111] These organizations would not be required to report receipts unless specifically earmarked for election-related activity beyond contributions to candidates[112] and were not required to file quarterly reports unless their total contributions to candidates in any calendar year exceeded $10,000.[113]

A public hearing regarding these proposed regulations was held on June 12, 1984.[114] In response to comments, the Commission announced various amendments to the proposed regulations and recommended three changes in the CPC program.[115] The Commission decided to relieve peripheral CPC's of their requirement to file Statements of Organization when their election-related expenditures did not exceed $10,000.[116] Moreover, the Commission entertained the idea of eventually eliminating all reporting of contributions made by peripheral CPC's.[117] Since this type of CPC report is essentially a listing of contribution recipients, the Commission noted that such information could also be stored and accessed from a newly-developed computer pro-

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108 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.5(c)2. (1984)).

109 16 N.J. Admin. Reg. 2158 (codified at N.J. ADMIN. CODE tit. 19, § 25-1.7 (1984)).

110 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.5(c)3. (1984)).

111 16 N.J. Admin. Reg. 2155 (1984).

112 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.6(b)1. (1984)).

113 16 N.J. Admin. Reg. 2160 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.6(b)2. (1984)).

114 16 N.J. Admin. Reg. 2154 (1984).

115 *See* 16 N.J. Admin. Reg. 2154-56 (1984).

116 16 N.J. Admin. Reg. 2154-55 (codified at N.J. ADMIN. CODE tit. 19, § 25-4.6(b) 1984)). Under the initially proposed regulations, these CPC's would have been required to file Statements of Organizations when they surpassed the $2,500 threshold. *Id.*

117 16 N.J. Admin. Reg. 2155 (1984).

gram.[118] The Commission indicated that it would no longer be necessary to require reporting if the computer system could provide pre-election reporting and listings of contributions made by CPC organizations.[119]

Secondly, the Commission acted to clarify the definition of "election-related activity."[120] The Commission deemed it to involve only those contributions or expenditures related to New Jersey campaigns or public questions.[121] Accordingly, a CPC could eliminate any expenditures from threshold determinations which were not directed to or made on behalf of New Jersey elections.[122] Recognition was made of the fact that most national PAC's would subsequently be classified as peripheral CPC's and therefore not subject to contribution disclosure unless specifically involving New Jersey election activity.[123] Consequently, the Commission indicated that it would propose a regulation requiring national PAC's which contributed in excess of $2,500 to New Jersey campaigns during any calendar year to file quarterly reports identifying all New Jersey contributors donating in excess of $100 as well as any expenditures related to New Jersey election activity.[124]

Thirdly, the Commission relieved those local political party committees with limited financial activity from full reporting obligations and instead recommended short-form reporting.[125] Since all political party committees were included in the statutory definition of a CPC, these organizations were originally not subject to discretionary classification by the Commission.[126] Thus, full reporting requirements were imposed upon them regardless of their actual financial activity.[127] These quarterly reporting obligations, however, proved to be both inconvenient and burden-

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118 *Id.*

119 *Id.*

120 16 N.J. Admin. Reg. 2155, 2158 (codified at N.J. ADMIN. CODE tit. 19, § 25-1.7 (1984)).

121 *Id.*

122 *Id.*

123 16 N.J. Admin. Reg. 2155 (1984).

124 *Id.* This proposal, however, has not been made by the Commission through Feb. 1986.

125 16 N.J. Admin. Reg. 2156 (codified at N.J. ADMIN. CODE tit. 19, § 25-10.8 (1984)).

126 N.J. ADMIN. CODE tit. 19, § 25-4.4 (1984).

127 *Id.*

some to many local political party committees. Moreover, regulatory definitions included political clubs together with political party committees.[128] In order to provide administrative relief, the Commission proposed a new section which would permit any CPC expending less than $1,000 during a campaign calendar year to file a semi-annual, rather than a quarterly report.[129] More significantly, this report could be abridged to indicate that the amount to be expended would not exceed $1,000.[130]

This Commission-developed CPC program represents the most significant change in the Campaign Finance Reporting Act. Reporting requirements by ongoing committees have been clarified and streamlined. Qualifying CPC's may report their financial activity on a chronological, quarterly basis. They are no longer required to artificially attribute their financial activity to a specific election for the purposes of satisfying disclosure requirements. While reporting obligations have been enlarged to include organizations not previously subject to such requirements, this expansion encompasses only those organizations with activity levels that justify its imposition.

At the same time, the nature and quality of information available to the public has been greatly increased. Organizations, such as corporations and unions which make direct contributions to candidates, may now have an independent reporting obligation. This allows the public to more easily determine the extent to which such organizations devote financial resources to political activity and greatly enhances the public's ability to identify the recipients of those contributions.

Prior to the enactment of the CPC reporting program, it was extremely difficult, if not impossible, to determine an organization's contribution pattern. This difficulty arose from the fact that, before the establishment of an organizational reporting requirement, it was necessary to review every report filed by each candidate to determine whether or not the desired organization was listed as a contributor. Even assuming that each candidate had accurately filed a timely report, such a search often proved impractical, particularly with legislative campaigns. By contrast,

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128 N.J. ADMIN. CODE tit. 19, § 25-1.7 (1984).

129 16 N.J. Admin. Reg. 2156 (codified at N.J. ADMIN. CODE tit. 19, § 25-10.8 (1984)).

130 16 N.J. Admin Reg. 2156 (1984).

the CPC reporting program enables interested parties to quickly determine all the recipients of an organization's contributions.

Although the Campaign Finance Reporting Act has been strengthened by these recent amendments and the Commission's regulatory interpretations, certain areas remain without any clear articulation of public policy. This deficiency threatens to undermine the effectiveness of the disclosure program and the public's confidence in its ability. Specifically, there is an urgent need for the New Jersey Legislature to address and clarify the State's public policy regarding the personal use of campaign funds together with the disclosure and use of those funds to pay for costs associated with holding public office.

At present, there is no express statutory prohibition against the personal use of campaign funds,[131] yet Commission regulations do contain such a ban.[132] This constraint, however, is little more than an articulation of perceived public policy. There exists a troubling degree of uncertainty as to whether candidates may use campaign funds for apparently personal, yet election-related expenditures during campaigns. Similar doubt surrounds the application of surplus campaign funds to non-election related activities. For example, whether a candidate may use campaign funds to reimburse himself for mileage or meal expenses remains unanswered. Similarly, if campaign funds are used to purchase a computer, a telephone or a television for a campaign headquarters, it is equally unclear as to whether the candidate may continue to personally use those items following the election.

Unfortunately, no agency is currently empowered to address these uncertainties. Because the Commission's authority to promulgate regulations stems directly from the Campaign Finance Reporting Act,[133] the Act's silence on these subjects may be viewed as a denial of Commission authority. Candidates, however, still frequently seek the advice of the Commission as to the propriety of their pre- and post-election expenditures.[134] The in-

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131 Actions by criminal law enforcement authorities may be possible based on theories of fraud or accepting money under false pretenses.

132 N.J. ADMIN. CODE. tit. 19, § 25-7.2 (1984).

133 N.J. STAT. ANN. § 19:44A-6.b. (West Supp. 1986).

134 The Commission is authorized to render advisory opinions. N.J. STAT. ANN. § 19:44A-6.f. (West Supp. 1986); N.J. ADMIN. CODE tit. 19, § 25-14 (1984). The Commission is often called upon to provide advisory opinions pertaining to the use

ability of the Commission to offer any legitimate and controlling guidance in this area leaves candidates and office holders to operate without guidance in evaluating the permissibility of their actions.

This statutory and regulatory deficiency continues in a post-electoral setting when campaigns conclude with surplus funds. In order to maintain some restrictions on this type of overrun, the Commission has been asked to render Advisory Opinions with respect to proposed disbursements of such funds.[135]

Again, the Commission is unable to give authoritative advice on the proper use of surplus funds, but can render a warning that personal use of those monies will be referred to the New Jersey Attorney General for appropriate action.[136] In addition, the Commission has adopted a policy that certain uses will not be viewed as personal. These exemptions have been limited to donations to charity, contributions to other candidates,[137] bank account maintenance for future campaigns and pro rata refunds to contributors. The extent of the problem is underscored by the fact that at the end of the 1983 legislative elections over one million dollars remained in campaign accounts.[138]

This general uncertainty regarding the personal use of campaign funds extends to whether surplus campaign funds may be used to pay for those reasonable and necessary expenses associated with public office. Successful candidates often report of their continued use of campaign accounts for office "management."[139] It must be remembered, however, that such disbursements are not campaign-related, should not be made through a

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of campaign funds, including those remaining after elections. *See, e.g.*, 46 Op. N.J. Election Law Enforcement Comm'n 1981; 13 Op. N.J. Election Law Enforcement Comm'n 1984.

135 *Supra* note 134.

136 N.J. STAT. ANN. § 19:44A-6.b.(10) (West Supp. 1986).

137 N.J. ADMIN. CODE tit. 19, § 25-7.3 (1984).

138 General Election Advisory No. 15, N.J. Election Law Enforcement Comm'n (news release Dec. 2, 1983). *See also* N.J. Election Law Enforcement Comm'n, N.J. Campaign Financing—1983 Legislative General Election Volume 2: Candidate Summary Information Sheets—Contributions and Expenditures (Jan. 1985).

139 The Campaign Finance Reporting Act requires the establishment of campaign accounts through which contributions are received and disbursements made. N.J. STAT. ANN. § 19:44A-12. All activity of the account is subject to reporting requirements. N.J. STAT. ANN. § 19:44A-16. (West Supp. 1986). *See also* 13 Op. N.J. Election Law Enforcement Comm'n (1984).

campaign account and are not subject to disclosure as part of the campaign disclosure system.[140]

Candidates may, and frequently do, conclude their campaign finance reporting with an entry that all remaining funds have been transferred to an "office account."[141] These accounts are also no longer a part of election-related activity and, therefore, are not subject to the administration or jurisdiction of the Commission.[142] Additionally, since the candidate has disclosed this "disbursement," compliance with the requirements of the Campaign Finance Reporting Act has occurred.[143]

Consequently, a determination of the propriety of such financial activity falls solely upon criminal law enforcement officials. The complexity and inconsistency of this issue is further compounded by the fact that, by utilizing surplus funds, legislators have acted in direct contradiction to the guidance of the New Jersey Legislature's Joint Ethics Committee, which has maintained the position that legislators may not supplement their allowance for office expenditures from any source, including surplus campaign funds or other personal funds of the office holder.[144]

In 1982, State Senator Steven Perskie attempted to address these inconsistencies and uncertainties by introducing a bill[145] which would have expressly prohibited the personal use of campaign funds and[146] authorized the establishment of "office accounts" by members of the Legislature.[147] In addition, the bill carved out five permissible activities: (1) contributions to charities;[148] (2) pro rata refunds to contributors;[149] (3) contributions to other candidates or political committees;[150] (4) maintenance of

140 13 Op. N.J. Election Law Enforcement Comm'n (1984).

141 *Id.*

142 *Id.*

143 *Id.*

144 Memorandum from Albert Porroni, Secretary and Counsel, N.J. State Legislature Joint Committee on Ethical Standards, to Members of the Legislature (Sept. 5, 1984).

145 S.1195, 200th Leg., 1st Sess. (1982).

146 *Id.* at § 2. .

147 *Id.* at § 5.a. .

148 *Id.* at § 3d. .

149 *Id.* at § 3e. .

150 *Id.* at § 3c. .

campaign accounts for future elections by the candidate;[151] and (5) the use of surplus campaign funds for reasonable and necessary expenses associated with one's public office.[152] The Perskie bill would have also allowed legislators to engage in fund raising for their own campaigns.[153] Perhaps most importantly, the bill would have imposed a requirement of quarterly reporting of all receipts and expenditures for the maintenance and operation of a legislative office.[154]

Although quickly passed by the New Jersey Senate, the Perskie bill was never considered by the full Assembly.[155] While there was no stated opposition to specifically prohibiting the personal use of campaign funds, some legislators noted reservations regarding the use of campaign funds for office activities.[156] Other legislators expressed private concern about the unfair advantage that colleagues with greater fund-raising potential obtained when the personal use of campaign funds remained unregulated. It is both interesting and disturbing to note that, despite these reservations, no specific amendment or proposal which would strictly limit the prohibition to the personal use of funds was forthcoming.

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151 *Id.* at § 3a. .

152 *Id.* at § 3b. .

153 *Id.* at § 4. .

154 *Id.* at § 5b., c. .

155 The bill was approved by the Assembly State Government Committee in May 1982 but was never brought to a vote before the full Assembly.

156 State Senator Leanna Brown (R-26th Dist.) introduced legislation on June 28, 1984 regarding the personal use of campaign funds. S.2070, 201st Leg., 1st Sess. (1984). The bill was specifically designed to permit the use of excess campaign funds by elected officials for charitable and election-related activity, but contained a clear prohibition against personal use of such moneys. *Id.* The bill was released from committee on July 30, 1984, but was not passed by either house of the New Jersey Legislature.

Legislation was also introduced by Senator Paul Contillo (D-38th Dist.) on October 18, 1984 which would have permitted the use of excess campaign funds in certain instances. S.2307, 201st Leg., 1st Sess. (1984). This legislative initiative would have allowed the application of excess campaign contributions towards office expenses. *Id.* § 1. The payment of personal expenses, however, with those same funds was expressly prohibited. *Id.* This provision was added to the bill following committee review. SENATE STATE GOV'T, FEDERAL AND INTERSTATE RELATIONS AND VETERANS AFFAIRS COMM. STATEMENT to S.2307, 201st Leg., 1st Sess. (1984). This bill finally passed in the Senate as amended on December 6, 1984 by a vote of 28-5, but was not voted on by the Assembly before the end of the legislative session. 72 N.J. LEGIS. INDEX, Jan. 21, 1986, at S51.

Under current New Jersey law, a candidate for electoral office is subject to much greater financial disclosure requirements than those imposed upon him or her following election to that office. While a candidate must disclose the identity of any campaign contributor who cumulatively donates in excess of $100,[157] an elected official may, subject only to local ordinances or rules, solicit funds from *any* source. Those funds may then be used for office maintenance and associated activities without being subject to public disclosure.

Quite simply, New Jersey's statutory scheme in this area exerts little, if any, regulatory control. It fails to prohibit the personal use of campaign contributions and does not authorize any official or agency to provide guidance regarding the permissible use of campaign funds. Legislative attempts at regulation have been made but have not proven successful.

By containing pre-election disclosure, low disclosure thresholds, and a general regulatory plan which is not overly burdensome upon candidates or political committees, the Campaign Finance Reporting Act provides the foundation for an effective campaign finance disclosure system designed to promote public confidence in the electoral process. However, to take advantage of this potential, the Election Law Enforcement Commission must continue to aggressively administer disclosure aspects of the Act while still assisting regulated parties to meet their filing obligations. Moreover, both the Commission and the New Jersey Legislature must constantly monitor whether the Campaign Finance Reporting Act remains relevant and responsive to the State's campaign finance system.

As with other governmental programs, campaign finance regulation and disclosure are often subject to hindsight analysis. Unique to this area of campaign finance is the fact that no program can possibly be designed which will strike the perfect balance between public access and minimal burden. Rather, the process of establishing and maintaining an effective finance disclosure system must be viewed as an evolutionary process. Regulators must constantly stay aware of those factors which emphasize a need for change.

The Legislature and the Governor must be responsive to

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157 N.J. STAT. ANN. §§ 19:44A-8.c., -16.f. (West Supp. 1986).

such changes by enacting timely and appropriate amendments to current law. The Commission, in turn, should adopt an annual program of evaluating, analyzing and recommending changes to the Campaign Finance Reporting Act. These reports can prove to be invaluable tools and catalysts for continuing the program's effectiveness.

In addition, the Commission can continue to render advisory opinions and utilize its rulemaking authority to provide guidance in specific factual settings and to clarify the application of the program's provisions. Continued dissemination of advisory opinions, proposed and final rules, and other policy statements will also serve to provide the legislative and executive branches with suggestions for statutory amendments.

Presently, no issues demand the New Jersey Legislature's attention more than prohibiting the personal use of campaign funds by all candidates. If it is indeed the public policy of New Jersey to prevent a candidate from utilizing campaign contributions for personal use, then a clear and unambiguous prohibition against such use should be enacted. No single legislative act can do more to strengthen the public's confidence in a campaign finance system while at the same time providing guidance to candidates throughout New Jersey.

Concurrently, the Commission should be authorized to adopt whatever control mechanisms are necessary to enforce this personal use prohibition. It is time for the New Jersey Legislature to decide whether legislators or other public office holders should be allowed to utilize campaign funds, personal funds or otherwise raise money to defray their office expenses. The public already had access to information about a candidate's campaign financial activity. It is indeed ironic that once the candidate obtains the confidence of the public through election, absent any specific local ordinance or regulation, the public becomes barred from examining how that public official finances his office operations.

III. Personal Financial Disclosure

Public access to information concerning campaign financing was accomplished with the enactment of the Campaign Finance Reporting Act. It was not until some eight years later that the

public obtained limited access to information concerning an individual candidate's personal financial portfolio.[158] Candidates running for Governor or state legislative office became statutorily required to file personal financial disclosure statements[159] which identify all sources of earned or unearned income (other than state wages) for the candidate and his household during the year preceding the election.[160]

Under this act, specific amounts of income are not required to be disclosed.[161] Rather, the candidate need only identify sources of income which exceed more than $1,000 in a specifically designated category.[162] In addition, the source of fees, honorariums,[163] and reimbursements[164] in excess of $100 are also subject to disclosure as are gifts totalling more than $250.[165] The statute also requires that any ownership, as well as holding or controlling interests, of land or buildings in a city with authorized gambling must be revealed on the statement.[166] The Election Law Enforcement Commission administers and enforces this disclosure system and is authorized to investigate and impose penalties for statutory violations.[167] This includes the commencement of an action in superior court to enforce compliance or enjoin violation.[168]

Personal financial disclosure requirements for new legislative candidates have remained similar, but not identical, to those placed upon incumbent members. First, jurisdiction over filings by incumbents is placed in the Joint Legislative Committee on Ethics ("Joint Ethics Committee").[169] Second, a candidate's

158 Act of May 1, 1981, ch. 129, 1981 N.J. Sess. Law Serv. 351 (West) (codified at N.J. STAT. ANN. §§ 19:44B-1. to -10. (West Supp. 1986)).

159 N.J. STAT. ANN. 19:44B-2. (West Supp. 1986).

160 *Id.* § 19:44B-4. .

161 *Id.*

162 N.J. STAT. ANN. § 19:44B-4.a., b. (West Supp. 1986). These categories include: salaries, bonuses, royalties, fees, commissions, profit sharing, rents, dividends and other income received from named investments, trusts and estates. *Id.*

163 *Id.* § 19:44B-4.c. .

164 *Id.* § 19:44B-4.d. .

165 *Id.* § 19:44B-4.e. .

166 *Id.* § 19:44B-4.f. .

167 *Id.* § 19:44B-7. .

168 *Id.* In addition, a willful and knowing failure to file financial statements was made punishable as a crime of the fourth degree. *Id.* § 19:44B-6.a. . A filing of false or inaccurate information was also classified as criminal. *Id.* § 19:44B-6.b. .

169 *See* N.J. Election Law Enforcement Comm'n Public Session Minutes, at 2 (Jan.

statement must be filed within ten days of the filing deadline for the primary election,[170] while an incumbent legislator is required to file his or her form on or before May 15th of that calendar year.[171] Legislators seeking re-election were viewed as both candidates *and* incumbents and therefore obligated to file two forms, on two different dates, containing essentially the same information.

In January 1983, the Commission sought to eliminate or alleviate this duplication by placing personal financial disclosure requirements upon all legislative candidates.[172]As it commenced this project, the Commission found that the current statutory scheme was confusing and inadequate with respect to both its scope and content.[173] For example, the regulatory system required the identification of certain categorized sources of income. Unclear, however, was whether only those individual sources which exceeded $1,000 had to be identified or, alternatively, whether all sources of income needed to be identified when the category total exceeded $1,000.[174] Also considered was whether the identification of income would include a disclosure of clients in addition to those professional associations or business entities from which the candidate derived income.[175] Additional questions were raised regarding the inclusion or exclusion of student loans, alimony, pensions, social security payments and child support.[176]

The Commission initially addressed the disclosure of income sources by proposing a regulatory scheme which contained both a source and category test.[177] The proposed regulations also

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26, 1983) (statement of Edward J. Farrell, N.J. Election Law Enforcement Comm'n General Legal Counsel) [hereinafter cited as "January Minutes"].

170 N.J. STAT. ANN. § 19:44B-2. (West Supp. 1986).

171 Memorandum from N.J. Legislative Joint Comm. on Ethical Standards to Members of the N.J. Senate and General Assembly (Mar. 29, 1982) (discussing filing of financial disclosure statements).

172 *See* January Mintues, *supra* note 169.

173 *See id.*

174 *Id.* at 4, 5.

175 *Id.* at 2, 3.

176 N.J. Election Law Enforcement Comm'n Public Session Minutes (Feb. 2, 1983); January Minutes, *supra* note 169, at 5.

177 15 N.J. Admin. Reg. 327 (1983). Under this test, the $1,000 threshold would have to be exceeded by a particular source in a category. For example, if the XYZ Co. provided $600 of income under one category to a candidate and an additional

sought to clarify the disclosure requirement with respect to certain categories of unearned income.[178] Finally, a public hearing was conducted by the Commission on March 23, 1983.[179] At that hearing, the New Jersey Chapter of Common Cause proposed a test for the disclosure of income which mandated disclosure of *all* sources within a category whenever $1,000 of income was exceeded within that category.[180] The Commission responded to this suggestion by including it in the proposed regulations.[181] After balancing the burden of compliance against the benefit of disclosure, the Commission also recommended the exemption from disclosure of any income source of less than $100.[182]

Defining the concept of income proved to be an area of difficulty for the Commission.[183] The Commission carefully considered whether an individual employed by a partnership, professional corporation, or other business entity may merely disclose the business entity as the source of his or her income without disclosing specific business clients.[184] If mere disclosure of the nominal employer proved adequate, the business entity could serve as a shield against the disclosure of pertinent information necessary to create a more detailed description of a candidate's sources of income.

In contrast, federal law requires the disclosure of an income source where payment is made to the employer of the reporting individual.[185] Disclosure includes both the identification of the payee source and a brief description of the duties performed for that source.[186] The statute, however, does specifically provide

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$600 to that candidate under another, XYZ would not have to be disclosed as an income source.

178 *Id.* These proposed rules sought to establish that when a candidate received unearned income as a joint owner, only the candidate's proportionate share when it exceeded $1,000 was subject to disclosure. Rental income that was subject to disclosure would be calculated as gross, rather than on net basis, and interest income was viewed as disclosable. Other miscellaneous income was not disclosable, unless, derived from named investments, trusts, or estates. In addition, candidates were given the option of utilizing a cash or accrual accounting system. *Id.*

179 15 N.J. Admin. Reg. 1183 (1983).

180 15 N.J. Admin. Reg. 799 (1983).

181 *Id.*

182 *Id.*

183 *See* January Minutes, *supra* note 169, at 2.

184 *Id.* at 2, 3; 15 N.J. Admin. Reg. 326 (1983).

185 Ethics in Gov't Act, 1 U.S.C. § 202.(a)(6)(B)(i) (1982).

186 *Id.* § 202.(a)(6)(B)(ii).

disclosure exemptions when the applicable information is legally considered confidential or where the reporting individual is employed by a business entity and was not directly involved in providing services to the income source.[187] While this disclosure requirement applies only to employees of the federal executive branch,[188] it would appear to be readily adaptable to the part-time legislators of New Jersey.

Following the adoption of the Commission's regulations in June 1983,[189] the staffs of the Joint Ethics Committee and Commission began to analyze potential amendments to the statute and legislative rules that would provide some uniformity in reporting for candidates and incumbent legislators. It had been hoped that such proposals could be presented and enacted by the New Jersey Legislature prior to the 1985 legislative elections. This "deadline" of sorts was never met and thus the Commission and Joint Ethics Committee missed the perfect opportunity to utilize a uniform system of disclosure for candidates' personal finances, to strengthen the state's disclosure program, and to eliminate the unnecessary duplication of an incumbent's filing obligations.

IV. Financial Disclosure by Lobbyists and Legislative Agents

The interplay of money and politics in New Jersey includes the regulation of lobbyists and the disclosure of financial activity associated with lobbying. New Jersey's program for regulating lobbyists and providing for disclosure is currently bifurcated.[190] Administrative and enforcement responsibility is shared between the ELEC and the Attorney General. While responsibility for administering the program of financial disclosure is vested in the Commission,[191] the Attorney General is responsible for overseeing all other aspects of the regulatory scheme.[192]

The State's first comprehensive program of regulating lobbying activity was enacted in 1964,[193] but was superseded by the

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187 *Id.* § 202.(a)(6)(B).
188 *Id.* § 201.(f).
189 15 N.J. Admin. Reg. 1183 (1983).
190 N.J. STAT. ANN. §§ 52:13C-18. to -36. (West Supp. 1986).
191 N.J. STAT. ANN. § 52:13C-22.1. (West Supp. 1986).
192 N.J. STAT. ANN. §§ 52:13C-21., -22., -23., -32., -35., -36. (West Supp. 1986).
193 N.J. STAT. ANN. §§ 52:13C-1 to -17 (repealed 1971).

Legislative Activities Disclosure Act of 1971.[194] This subsequent legislation provides the current statutory framework for New Jersey's program of lobbyist regulation. With this disclosure program, the Legislature sought to balance the competing interests of citizen access and legislative awareness against the identification of those who seek to influence the legislative process and the means utilized by them.[195]This legislative intent to obtain disclosure has, unfortunately, not been matched by an equal willingness to promote access to or disclosure of pertinent information.

It should be noted at the outset of this discussion that a lobbyist is defined as an employer or principal who uses the services of a legislative agent.[196] The legislative agent, in turn, performs the activity known as lobbying. For purposes of statutorily required disclosure, a legislative agent has been viewed as any person who seeks to influence the legislative process and receives compensation, including reimbursements, exceeding $100 in any three month period except when there has been isolated or infrequent activity in relation to the regular employment of that person.[197]

As enacted in 1971, legislative agents are required to file a Notice of Representation with the Attorney General's Office dur-

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194 N.J. STAT. ANN. §§ 52:13C-18. to -36. (West Supp. 1986). For a historical overview of lobbyist regulations in New Jersey, see Upmeyer, *The Sunshine Boys*, N.J. REP., June 1983, at 12-19 [hereinafter cited as "Upmeyer"]; N.J. Election Law Enforcement Comm'n and N.J. Att'y Gen. Kimmelman, The N.J. Legislative Activities Disclosure Act—Analysis and Recommendations for Amendment, Dec. 1982, at 3-13 [hereinafter cited as "Joint Report"].

195 N.J. STAT. ANN. § 52:13C-18. (West Supp. 1986). The New Jersey Legislature enacted this legislation with the specific intent that:

> [T]he preservation of responsible government requires that the fullest opportunity be afforded to the people of the State to petition their government for the redress of grievances and to express freely to individual legislators and to committees of the Legislature their opinion on legislation and current issues. The Legislature finds, however, that the preservation and maintenance of the integrity of the legislative process requires the identification in certain instances of persons and groups who seek to influence the content, introduction, passage or defeat of legislation. It is the purpose of this act to require adequate disclosure in certain instances in order to make available to the Legislature and the public information relative to the activities of persons who seek to influence the content, introduction, passage or defeat by such means.

Id.

196 N.J. STAT. ANN. § 52:13C-20.d. (West Supp. 1986).

197 N.J. STAT. ANN. § 52:13C-20.g. (West Supp. 1986).

ing the thirty days following the effective date of his or her employment.[198] The notice must identify both the agent and the lobbyist for whom the agent will be acting.[199] Additionally, the notice must contain a statement which indicates the length of time during which the agent will be receiving compensation,[200] the type of legislation or the particular legislation which the agent will be promoting or opposing,[201] and the disclosure of whether the agent's compensation is in any way contingent upon the successful influencing of the legislative process.[202]

Legislative agents are also required to file quarterly reports of their lobbying activities.[203] The reports are filed with the Attorney General between the first and tenth days of each calendar quarter[204] and usually include a description of those specific and general areas of legislation that the legislative agent has actively promoted or opposed during the reporting period.[205] New Jersey's statutes also require legislative agents to identify themselves when present in the State House by wearing a descriptive nametag,[206] commonly known as a "Red Badge".

Neither the 1971 act nor its 1964 predecessor required the disclosure of any information pertaining to campaign financing activity by lobbyists or legislative agents. The New Jersey Legislature, however, through the enactment of the Campaign Finance Reporting Act in 1973, attempted to obtain disclosure of this type of activity by any organization which expended funds to influence legislation.[207] That legislation required such organizations to file an annual report of contributions and expenditures with ELEC.[208] The Campaign Finance Reporting Act also created reporting entities known as Political Information Organiza-

198 N.J. STAT. ANN. § 52:13C-21.a. (West Supp. 1986).
199 N.J. STAT. ANN. §§ 52:13C-21.a.(1) to (4) (West Supp. 1986).
200 N.J. STAT. ANN. § 52:13C-21.a.(5) (West Supp. 1986).
201 N.J. STAT. ANN. § 52:13C-21.a.(6) (West Supp. 1986).
202 N.J. STAT. ANN. § 52:13C-21.a.(7) (West Supp. 1986).
203 N.J. STAT. ANN. § 52:13C-22. (West Supp. 1986).
204 N.J. STAT. ANN. §§ 52:13C-22.a., b. (West Supp. 1986).
205 N.J. STAT. ANN. § 52:13C-22.c.(1) (West Supp. 1986).
206 N.J. STAT. ANN. § 52:13C-28. (West Supp. 1986).
207 Act of Apr. 24, 1973, ch. 83, § 8, 1973 N.J. Laws 155, 163 (amended and partially repealed by Act of May 22, 1981, ch. 151, § 4, 1981 N.J. Sess. Law Serv. 450, 453 (West); Act of Jan. 1, 1982, ch. 337, § 1, 1981 N.J. Sess. Law Serv. (West); Act of Jan. 17, 1984, ch. 579, § 11, 1983 N.J. Sess. Law Serv. 3280, 3302 (West)).
208 *Supra* note 207.

tions ("PIO's")[209] and required these organizations to disclose all contributions and expenditures made during the preceding year for the purpose of influencing the content, introduction, passage or defeat of legislation.[210]

The statutory creation of PIO's aided the public's apprisal and awareness of the influence that outside financing has on the legislative process. It was believed by some, however, that this policy was solely created to insure that those organizations *lobbying* for public disclosure of campaign finance activity were also included as part of the campaign finance disclosure scheme.[211]

Regardless of the purpose, the provisions providing for financial disclosure of lobbying activity were repealed in 1981.[212] In fact, following the enactment of the Campaign Finance Reporting Act, litigation was commenced which challenged the constitutionality of the lobbying disclosure provisions.[213] In *N. J. Chamber of Commerce v. N.J. Election Law Enforcement Comm'n*,[214] then Superior Court Judge Irwin Kimmelman concluded that all reporting requirements imposed upon PIO's violated the first amendment since no threshold existed to exempt small grass roots organizations from the regulatory scheme.[215]

All filing requirements and enforcement of this financial disclosure program were suspended pending completion of appeals. Ultimately, the New Jersey Supreme Court considered the potential overbreadth of the statute and limited the regulation of PIO's.[216] This decision was based on the fact that a PIO had been

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209 Act of Apr. 24, 1973, ch. 83, § 3, 1973 N.J. Laws 155, 156 (codified at N.J. STAT. ANN. § 19:44A-3.g. and repealed by Act of Jan. 17, 1984, ch. 579, § 7, 1983 N.J. Sess. Law Serv. 3280, 3284 (West)).

210 *Supra* note 207.

211 *See* Upmeyer, *supra* note 194, at 16-17.

212 *Supra* note 207. The specific section regarding report filing by lobbying organizations was repealed by the Act of May 22, 1981, ch. 151, § 4, 1981 N.J. Sess. Law Serv. 450, 453 (West).

213 *See* Upmeyer, *supra* note 194, at 17.

214 135 N.J. Super. 537, 343 A.2d 796 (Ch. Div. 1975), *rev'd*, 155 N.J. Super. 218, 382 A.2d 670 (App. Div. 1977), *aff'd as modified*, 82 N.J. 57, 411 A.2d 168 (1980) [hereinafter cited as "N.J. Chamber of Commerce v. ELEC"].

215 N.J. Chamber of Commerce v. ELEC, 135 N.J. Super. 537, 551, 343 A.2d 796, 804 (Ch. Div. 1975).

216 N.J. Chamber of Commerce v. ELEC, 82 N.J. 57, 69-82, 411 A.2d 168, 174-80 (1980). The court noted that while it might appear:

> that the Legislature was bent upon regulating political information organizations with respect to all moneys received and spent to influence

statutorily defined as any organization which sought to influence the content, introduction, passage or defeat of legislation.[217] The Supreme Court determined that such a definition should rightfully exclude groups "whose conduct is quite innocuous and who do not have the demonstrative capacity or will to make a tangible impact on the legislative process."[218] The court did conclude, however, that implicit in this statement was "activity which consists of direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage or defeat of, or to affect the content of legislative proposals."[219] Establishment of a monetary threshold for reporting requirements was also delegated to ELEC,[220] with the Commission placing the threshold at $2,500 a year.[221]

As previously mentioned, those provisions of the Campaign Finance Reporting Act which required financial disclosure of lobbying activity were repealed by subsequent legislation.[222] When initially proposed, this second legislative initiative also ran into a roadblock. More specifically, the proposed legislation was passed by the Legislature but conditionally vetoed by Governor Byrne.[223] The Governor's conditional veto did contain several recommendations for amendments including: (1) the continuation of the Commission's role in regulating lobbyist actions; (2)

> legislation, unquestionably the dominant and most important objective . . . was to regulate and monitor those likely to have the greatest impact on the outcome of legislation. . . .Hence, the reporting and disclosure requirements of the act would come into operation only with respect to the receipt and expenditure of significant sums of money used in connection with . . . communications [with legislators]. . . .

Id. at 79, 80, 411 A.2d at 179.

217 *Supra* note 209. Legislation has been defined in the act as:

> all bills, resolutions, amendments, nominations and appointments pending or proposed in either House of the Legislature, and all bills and resolutions which, having passed both Houses are pending approval by the Governor.

N.J. STAT. ANN. § 52:13C-20.b. (West Supp. 1986).

218 N.J. Chamber of Commerce v. ELEC, 82 N.J. 57, 76, 411 A.2d 168, 177 (1980).

219 *Id.* at 79, 411 A.2d at 179. *See supra* note 217.

220 *Id.* at 85, 411 A.2d at 182.

221 12 N.J. Admin. Reg. 443-44 (1980) (codified at N.J. ADMIN. CODE tit. 19, §§ 25-8.4, -8.5 (1980) and recodified at N.J. ADMIN. CODE tit. 19, § 25-20.4 (1984)).

222 *Supra* note 212.

223 Joint Report, *supra* note 194, at 9-10.

the re-establishment of financial threshold and periodic reporting requirements found in the Commission's regulations and the elimination of their unnecessarily onerous aspects; and (3) the clarification of the substantive reporting requirements of the bill so that those expenses incurred while entertaining legislators, for example, would be reportable although only made in relation to rather than expressly for communicating with them.[224] Clearly it was the intent of the Governor to achieve the disclosure of "good will" related expenditures, including those expenditures by lobbyists which did not involve any direct communications with lawmakers.

The New Jersey Legislature subsequently approved the recommendations of the Governor and enacted the legislation.[225] The Commission also proposed regulations that required the reporting of expenditures by lobbyists for the entertainment of legislators, thus following the Governor's suggestions.[226] In response to the Commission's proposal, an amendment to the Lobbying Act was introduced which would limit the scope of reportable lobbying activities to those that "expressly" involved direct communications.[227] The bill sought to limit disclosure to those expenditures which "expressly" related to "direct, express and intentional communication with legislators for the specific purpose of affecting legislation. . . ."[228] While this amendment clearly contradicted Governor Byrne's conditional veto, it was approved by the Legislature during the last meeting of that legislative session and was signed by the Governor at the close of his term.[229]

Although financial disclosure requirements were now incorporated in the same statutory scheme as other lobbying activities, the continued separation of administration and enforcement between the Attorney General and the Commission emphasized the potential for ineffective enforcement. While the Commission was

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224 *Id.* at 10.

225 Act of May 22, 1981, ch. 151, 1981 N.J. Sess. Law Serv. 450 (West) (codified at N.J. STAT. ANN. §§ 19:44A-2. to -4., -8. (West Supp. 1986).

226 12 N.J. Admin Reg. 443 (codified at N.J. ADMIN. CODE tit. 19 §§ 25-8.5(b), -8.6(a)6.ix. (1980) and recodified at N.J. Admin. Code tit. 19 § 25-20.7(b) (1984).

227 Act of Jan. 12, 1982, ch. 513, § 1, 1981 N.J. Sess. Law Serv. (West).

228 *Id.*

229 Act of Jan. 12, 1982, ch. 513, § 1, 1981 N.J. Sess. Law Serv. (West) (codified at N.J. STAT. ANN. § 52:13C-22.1. (West Supp. 1986).

empowered to commence investigations, conduct hearings and impose fines upon violators,[230] the Attorney General could only commence civil actions for enforcement without being able to first use monetary penalties to compel compliance.[231] In certain instances, however, the Attorney General could recover investigation and trial costs, including reasonable attorney's fees, from the legislative agent.[232] The inadequacy of this enforcement mechanism is highlighted by the fact that no Attorney General has brought a suit to compel compliance.[233] Similarly, no Attorney General[234] has utilized the provision which allows for injunctive relief against a legislative agent involved in questionable lobbying activity.[235]

Although criminal sanctions are permissible when a notice of representation or other required report has not been filed with the Attorney General[236] or when false statements have been made in reports to legislators,[237] these sanctions seem disproportionately severe when compared to the nature of the offense.[238] Most violations, in fact, will stem from delinquent or inadequate filings.[239] In short, the procedures and penalties currently provided to the Attorney General are not well suited for an effective program of public disclosure.[240] Rather, the history of the Commission indicates that a program of administratively imposed civil penalties is a more effective deterrent of violations.[241]

Shortly after assuming office in 1982, Attorney General Kimmelman had contacted the Commission with the suggestion that the regulation of lobbying activities be administered in a unified

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230 N.J. STAT. ANN. § 52:13C-22.2. (West Supp. 1986).

231 N.J. STAT. ANN. § 52:13C-32. (West Supp. 1986). The Attorney General, however, was given the authority to investigate violations of the act. N.J. STAT. ANN. §§ 52:13C-23.d., -36. (West Supp. 1986).

232 N.J. STAT. ANN. § 52:13C-36.e. (West Supp. 1986).

233 Joint Report, *supra* note 194, at 15; Telephone interview with George Ciszak, New Jersey Legal Assistant Deputy Attorney General (Apr. 3, 1986).

234 *Supra* note 233.

235 N.J. STAT. ANN. § 52:13C-32. (West Supp. 1986).

236 N.J. STAT. ANN. § 52:13C-33. (West Supp. 1986).

237 N.J. STAT. ANN. §§ 52:13C-30., -31. (West Supp. 1986).

238 Joint Report, *supra* note 194, at 15.

239 *Id.* at 16.

240 *Id.*

241 *Id.* at 14-15.

manner by a single agency.[242] After considering this proposal, the Commission invited the Attorney General to participate in a joint study to evaluate the effectiveness of the recently enacted financial disclosure program as well as all other aspects of New Jersey's lobbyist disclosure program within his jurisdiction.

The effectiveness of the State's program of regulation and disclosure of lobbying activity were analyzed and evaluated in a joint report published by the Commission and Attorney General Kimmelman in December 1982.[243] The report concluded with a recommendation for three substantive changes in the disclosure program. The proposed amendments were: (1) the establishment of a unitary program administered by a single state agency;[244] (2) the repeal of the earlier amendments that had placed the word "expressly" into the program so that "good will" expenditures by lobbyists and legislative agents would then become reportable;[245] and (3) the extension of disclosure requirements to lobbying activities intended to influence the enactment of rules and regulations by administrative agencies.[246]

In assessing the administration of the financial disclosure program, the Commission observed that the current bifurcated system was unduly burdensome to the regulated community and a deterrent to public access to disclosed information.[247] In recognition of these concerns, the Attorney General determined that the Commission should be vested with the overall civil enforcement authority for the program.[248]

It is interesting to note that, at the time of that study, efforts to influence the State's rulemaking process were not subject to any type of disclosure.[249] Administrative rules have the force and effect of law, however, and the report suggested that lobbying activity intended to influence this process should be subject to

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242 At the time of this communication, the author was serving as the Executive Director of the New Jersey Election Law Enforcement Commission.

243 Joint Report, *supra* note 194.

244 *Id.* at 24.

245 *Id.* at 27.

246 *Id.* at 36.

247 *Id.* at 22. *See* Upmeyer, *supra* note 194, at 12.

248 Joint Report, *supra* note 194, at 25-26.

249 *Id.* at 36. Lobbying intended to influence rulemaking is still presently not subject to disclosure requirements.

reporting requirements.[250] Moreover, the report cites to the Administrative Procedures Act[251] and its concern that administrative procedures include "appropriate protections of the public interest."[252] These protections, the report concluded, can be enhanced by providing the public with access to information regarding those activities and expenditures designed to influence the creation of administrative rules and regulations.[253] This is in contrast to the fact that disclosure requirements do not apply to the Executive Branch, except when the Governor, the cabinet, or members of the Governor's staff are lobbied with respect to appointments or legislation.[254]

Following publication of the report, the Commission and Attorney General's Office anticipated a flood of criticism from the regulated community, as well as the introduction of numerous legislative proposals. This wide variety of comment, however, was not forthcoming. In fact, the issuance of the report was met with a deafening silence. In hindsight, it would appear that the regulated community effectively curtailed discussion by simply declining to enter the debate. The report itself was published in 1982, and, since that time, no legislation has been introduced which would implement even those amendments which had the support of the regulated community. Similarly, the Governor had declined to comment upon, let alone endorse, the proposals of his former Attorney General.

Too often, any consideration of lobbying disclosure degenerates into a discussion of the virtues of lobbying and its role in the democratic society. Neither of these points, however, can be disputed. It still must be recognized that, like its campaign finance counterpart, financial disclosure by lobbyists and legislative agents is not intended to uncover wrongdoing. Rather, the program is intended to improve the public's understanding of the process and to enhance public access to information. The current public policy, which permits activity but

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250 *Id.*

251 N.J. STAT. ANN. §§ 52:14B-4.1. to -4.9. (West Supp. 1986); N.J. STAT. ANN. § 52:14F-2. (West Supp. 1986).

252 Joint Report, *supra* note 194, at 37.

253 *Id.*

254 *Id.* at 36.

prevents disclosure, runs the risk of undermining public confidence in the legislative process.

This is a particularly compelling argument in the area of "good will" lobbying. Like lobbyist disclosure in general, the debate concerning the propriety of the disclosure of "good will" expenditures too often focuses on the "wining and dining" of legislators. The interaction of lobbyists and legislators in purely social situations is not unusual, nor need it be prohibited when the public is fully aware of such conduct.[255]

Inadequate disclosure requirements currently exist in New Jersey's lobbying regulatory scheme. Improvement of this system has been at a standstill. Therefore, the Governor should air his views as to the effectiveness of the current lobbying program and the need for amendments in order to stimulate change. Similarly, members of the Legislature should promote public discussions through legislative debate concerning the need for modification of the disclosure program. Regardless of the ultimate outcome, the public policy underlying the program warrants more thorough consideration than that which it was given during the closing hours of the 1982 legislative session. Continuation of the current program, without at least some review of possible amendments, can only lead to a further weakening of public confidence in the legislative process.

V. Public Financing of Gubernatorial Elections

The nation's first publicly financed gubernatorial election was conducted by New Jersey in 1977. This innovative program, implemented during the general election, provided an opportunity for gubernatorial candidates to match privately raised contributions with public funds. Together with the State's aggressive campaign finance disclosure program, public financing put New Jersey in the forefront of attempts to restructure the process of financing political campaigns. This public financing program was enacted in 1974 as an amendment to the Campaign Finance Reporting Act.[256] In enacting the program, the Legislature articu-

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255 The Election Law Enforcement Commission considered the disclosure of "good will" lobbying and rejected any prohibition against such disclosure. Joint Report, *supra* note 194, at 27-30.

256 Act of May 6, 1974, ch. 26, 1974 N.J. Laws 55 (codified at N.J. STAT. ANN. §§ 19:44A-27. to -44. (West Supp. 1986)).

lated a public policy which sought to diminish the potential influence of large campaign contributions, while at the same time providing opportunities to candidates with limited resources.[257]

Following the 1977 gubernatorial election, the public financing program was expanded to include the partial public financing of gubernatorial primaries.[258] To some, this expansion of financing into the public sector represented an unjustified raid upon the public treasury. In any event, almost all observers agreed that the 1981 election was proof of the need for program amendments which would seek to insure that only viable candidates were eligible for funding and that the cost of the program would be reasonable. Unfortunately, no amendments have been enacted.

A review of activity during the five years following the 1981 gubernatorial election highlights a period of legislative and gubernatorial inaction which threatens the future of this program. Despite a clear and compelling need to update the program, it was not until the Fall of 1984 that a package of amendments was presented to the Governor.[259] Those amendments, however, were ultimately subject to Governor Kean's conditional veto on December 13, 1984, less than six months before the 1985 gubernatorial primary.[260] In fact, both the 1985 gubernatorial primary and general election were conducted under the same set of rules that existed in 1981. This did create problems since financial thresholds had become outdated and operational aspects of the

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257 N.J. STAT. ANN. § 19:44A-27. (West Supp. 1986). The New Jersey Assembly, when approving this legislation, stated that:

> It is hereby declared to be a compelling public interest and to be the policy of this state that primary and general election campaigns for the office of Governor shall be financed with public support pursuant to the provisions of this act. It is the intention of this act that such financing be adequate in amount so that candidates for election to the office of Governor may conduct their campaigns free from improper influence and so that persons of limited financial means may seek election to the State's highest office.

Id.

258 Act of July 23, 1980, ch. 74, §§ 3-4, 1980 N.J. Sess Law Serv. 240, 243 (West).

259 S.1523, 201st Leg., 1st Sess. (1984). This bill was introduced by State Senator Carmen Orechio (D-30th Dist.) on April 30, 1984.

260 Memorandum from N.J. Governor Thomas H. Kean to the members of the N.J. State Senate (Dec. 13, 1984) (containing a conditional veto and recommendations for amendments to S.1523) [hereinafter cited as "Kean Memo"].

program were in need of improvement.[261]

The present funding for this program is provided through the State's system of taxation. New Jersey's tax form for individuals contains a box that may be "checked off" by the filing taxpayer, thus designating one dollar of state tax liability for inclusion in the gubernatorial election fund.[262] Funds collected in this manner are then used as matching public funds for qualified candidate contributions.[263]

The public financing program itself is comprised of five major program components. Each of these factors directly influences the operation of the program and circumscribes the program's ability to achieve its desired public policy results. These components involve: (1) a limit on the amount of contributions to a candidate;[264] (2) a limit on the amount of expenditures which may be made by a candidate;[265] (3) qualification criteria which must be met by a candidate before becoming eligible for public financing;[266] (4) the ratio at which private contributions will be matched with public dollars;[267] and (5) a cap or limitation on the amount of public funds which are available to any single candidate.[268] Successful structuring of a public financing program requires that these components function together as part of a unified system. While specific policy objectives can be achieved through any single component, their interrelationship must be complementary. An example of this dynamic can be seen through the qualification criteria, which determines the ease with which a candidate can qualify for public funds, and the matching

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261 Inflation was one of the factors which caused the program to become outdated. Threshold levels were not automatically increased to meet the rising costs of campaigning, including higher media and advertising expenses. *See* N.J. Election Law Enforcement Comm'n, Analysis of Cost of Election Campaigning and Recommendations for Altering Contribution and Expenditure Limits for Gubernatorial Elections, May 1984. *See generally* N.J. Election Law Enforcement Comm'n—Conclusions and Recommendations, June 1982, at 4.5, 4.6 app. [hereinafter cited as "1981 Report"].

262 N.J. STAT. ANN. § 54A:9-25.1. (West Supp. 1986).

263 N.J. STAT. ANN. § 19:44A-30. (West Supp. 1986).

264 N.J. STAT. ANN. § 19:44A-29. (West Supp. 1986).

265 N.J. STAT. ANN. §§ 19:44A-7., -33., -35. (West Supp. 1986).

266 N.J. STAT. ANN. §§ 19:44A-3.m., -33. (West Supp. 1986).

267 N.J. STAT. ANN. § 19:44A-33. (West Supp. 1986).

268 *Id.*

ratio, which delimits the speed at which a candidate will receive this type of financial support.

The contribution limit represents a direct effort by the New Jersey Legislature to limit the influence of large contributions, by both individuals and organizations, upon gubernatorial elections and candidates.[269] In 1977, the limit was set at $600 per contributor,[270] but was subsequently raised to $800 for the 1981 elections.[271] Contrast the federal presidential financing program which permits individual contributions to $1,000[272] and qualified PAC contributions to $5,000.[273]

The New Jersey contribution limit in gubernatorial elections is designed to limit the undue influence of campaign contributions. Such a limit, however, can be set too low as to cause the inadequate funding of campaigns. Thus, a public financing program can be directly influenced by the establishment of contribution limits. The lower the limits, the greater the need to supplement private contributions with public funds.

The application of contribution limitations to campaigns has the effect of narrowing the relative influence of organizational contributions. Such a low contribution limit also has the effect of restricting the amount of funds available to a candidate or campaign. Accordingly, public financing becomes needed to provide adequate funding for candidates instead of reducing the costs of campaigning, which is often supposed.

During 1977, a gubernatorial candidate was required to raise and spend $40,000 in order to become qualified for the receipt of matching public funds.[274] Prior to 1981, this threshold was raised to $50,000 for both the primary and general elections.[275] By evidencing the ability to raise the required amount of funds and de-

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269 N.J. STAT. ANN. § 19:44A-27. (West Supp. 1986).

270 Act of May 6, 1974, ch. 26, § 4, 1974 N.J. Laws 55, 59 (codified at N.J. STAT. ANN. § 19:44A-29. (West Supp. 1986).

271 Act of July 23, 1980, ch. 74, § 5, 1980 N.J. Sess. Law Serv. 240, 243 (West) (codified at N.J. STAT. ANN. §§ 19:44A-29.a., c., d. (West Supp. 1986)).

272 2 U.S.C. § 441a.(a)(1)(A) (1982).

273 2 U.S.C. § 441a.(a)(2)(A) (1982).

274 Act of May 6, 1974, ch. 26, § 8, 1974 N.J. Laws 55, 62 (codified at N.J. STAT. ANN. § 19:44A-33.b. (West Supp. 1986)).

275 Act of July 23, 1980, ch. 74, § 8, 1980 N.J. Sess. Law Serv. 240, 246 (West) (codified at N.J. STAT. ANN. § 19:44A-33. (West Supp. 1986); N.J. STAT. ANN. § 19:44A-3.m. (West Supp. 1986).

voting those resources for election purposes, the program drafters have relied upon a financial test to determine candidate viability and participation in the campaign financing program. Obviously, establishing a higher qualification threshold would make it more difficult for a candidate to participate in the funding program.

Once a candidate's participation in the program is established, the formula by which private contributions will be matched with public funds must be determined. The possible methods of calculation and the related public policy implications, however, are truly unlimited. In 1977 and 1981, all contributions received in excess of the qualification threshold were eligible for a matching ratio of two public dollars for each private dollar.[276] Moreover, the entire contribution, up to the existing contribution limit, was eligible for match.[277] Accordingly, a $600 contribution in 1977 would be supplemented by $1,200 in public funds,[278] while an $800 contribution in 1981 would be supplemented by an additional $1,600 in public funds.[279]

It is obvious that a candidate seeking to establish a fundraising base and campaign legitimacy will benefit from a system which provides money earlier rather than later. By contrast, a program which defers money payments, would be advantageous to the candidate with the more established campaign and financial base. In addition, the structuring of the matching formula presents a prime opportunity to establish policies which utilize publicly favored financial sources for campaigns. For example, a program might be structured which would match individual contributions at a rate higher than organizational or political action committee contributions.[280] Alternatively, a program could be adopted which would match only a portion of a contribution.[281]

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276 *Supra* note 274.

277 *Id.*

278 *Supra* note 270.

279 *Supra* note 271.

280 This type of match was utilized by State Senator Carmen A. Orechio (D-30th Dist.) in the original introduction of his bill on gubernatorial campaign financing. S.1523, 201st Leg., 1st Sess. § 5 (1982).

281 The federal government utilizes a system of partial matching in presidential primaries. Only the first $250 of a contribution is eligible for public match. 26 U.S.C. §§ 9033(b)(4), 9034(a) (1982). Governor Kean also recommended this type of partial match in his conditional veto of Senator Orechio's bill. In addition he

The establishment of a "cap" or limitation on the amount of public funds which are available to candidates serves to delimit program costs and to determine the extent that candidates will be required to rely upon private contributions. While the matching ratio can influence the speed in which a candidate may be eligible to receive funds, it is the cap which will determine the cost of public financial support for the candidate.

The 1977 gubernatorial election, however, was held without statutorily pre-determined limits on the total public funding made available to a qualified candidate.[282] Instead, a limitation was achieved through an overall check on spending by a candidate. Thus, a finite number of dollars could be raised and spent on a campaign which could only be supplemented by a specific amount of public funds in order to reach permissible expenditure levels.[283]

In contrast, the 1981 gubernatorial primary and general elections were administered with the operation of caps on available funds.[284] Formulation of this cap involved the multiplication of 20¢ per voter in the last presidential election to set the primary limit[285] and 40¢ per voter in the last presidential election to establish the general election level.[286] While the public financing program has occasionally been the subject of criticism by those who view it as a potentially unlimited drain upon the state treasury, the establishment of caps have and will continue to insure that only limited funds are available. It must be emphasized that, once the cap is set, the factor that ultimately controls total cost is the number of qualifying candidates.

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recommended a complete exclusion of PAC's and businesses from match eligibility. Kean Memo, *supra* note 260, at 3, 5, 6.

282 *See supra* note 274.

283 *Id.*

284 *Supra* note 275.

285 N.J. STAT. ANN. § 19:44A-33.a. (West Supp. 1986). In the 1984 presidential election, there were 3,217,862 New Jersey voters who cast their ballots. Telephone interview with Peter Nichols, New Jersey Election Law Enforcement Comm'n (Apr. 1, 1986) [hereinafter cited as "Nichols interview"]. This resulted in $643,572.40 being available as public funding for the 1985 New Jersey gubernatorial primary. This was a seven (7) percent increase over 1981 funding, due to a seven (7) percent increase in voters. *Id.*

286 N.J. STAT. ANN. § 19:44A-33.b. (West Supp. 1986). The 1985 New Jersey general election was partially funded with public monies totalling $1,287,144.80. Nichols interview, *supra* note 285.

The remaining component of this financing program is an overall limit upon expenditures by any one candidate.[287] Such a limit has frequently been justified on the basis of fairness and economy.[288] By controlling spending, it has been argued that all candidates will be placed on equal footing and no candidate can spend more than his or her opponent.[289] In addition, expenditure limitations are viewed by some as a means of restricting overall campaign costs.[290] As will be discussed, experience has shown that expenditure limitations are neither fair nor a satisfactory means to control campaign costs and can, if not carefully established, undermine a public financing program.[291]

In addition to the five major program components found in New Jersey's public financing program, a number of other significant features are contained within this regulatory scheme. Based on efforts to restrict the influence of personal wealth, candidates participating in the program since 1981 are limited to utilizing $25,000 out of their own "pockets" in support of their campaigns.[292] There is also a $50,000 limitation on the aggregate amount of loans which may be obtained by any candidate for any campaign[293] and a further requirement that the loans be paid in full prior to election day.[294]

Following the 1977 gubernatorial election, the ELEC conducted a study to evaluate the operation of the program.[295] The Commission's report contained thirteen recommendations concerning the structure of the program.[296] Most notably, the ELEC recommended that New Jersey not only continue the public financing of gubernatorial general elections, but should also expand the program to gubernatorial primary elections.[297] In concluding that the rationale for public financing was equally ap-

287 N.J. STAT. ANN. § 19:44A-7. (West Supp. 1986).
288 1981 Report, *supra* note 261, at 21-22.
289 *Id.* at 21.
290 *Id.*
291 *See id.* at 23-25.
292 N.J. STAT. ANN. § 19:44A-29.g. (West Supp. 1986).
293 N.J. STAT. ANN. § 19:44A-44. (West Supp. 1986).
294 *Id.*
295 N.J. Election Law Enforcement Comm'n, Public Financing in New Jersey—The 1977 General Election For Governor, Aug. 1978 [hereinafter cited as "1977 Report"].
296 *Id.* at 30-40.
297 *Id.* at 30.

plicable to such primary elections, the Commission observed that "without application of similar provisions to the primary election, much of the desirable effect of the general election provisions is diluted."[298]

The Commission also recommended retention of the $40,000 qualification threshold,[299] the $600 contribution limit,[300] and the matching ratio of two to one,[301] while also suggesting significant changes in the program.[302] Noting that in *Common Cause of N.J. v. N.J. Election Law Enforcement Comm'n*[303] the Appellate Division determined that the Campaign Finance Reporting Act contained no limits on the amount of personal funds a gubernatorial candidate could spend on his or her own behalf,[304] the Commission recommended that candidates receiving public funds be limited to making contributions of no more than $25,000 to their own campaigns.[305]

Perhaps most significantly and to many observers surprisingly, the Commission supported the repeal of expenditure limits and suggested, in its place, the establishment of a cap on the amount of public funds available to candidates.[306] In adopting this position, the ELEC began to cut a path that was contrary to conventional public opinion, which viewed expenditure limits as one of the most important aspects of any campaign finance system. However, the Commission concluded "that if the election process includes limits on contributions, loans and a candidate's own personal funds, and a cap on the amount of public funds available to any candidate, then expenditure limits are unnecessary and undesirable."[307]

The New Jersey Legislature utlimately responded to the Commission's report by approving a series of amendments to the

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298 *Id.*
299 *Id.*
300 *Id.* at 31-32.
301 *Id.* at 32-33.
302 *See, e.g., id.* at 33-35. The Commission suggested that a cap be placed on public funds available to gubernatorial candidates based on the multiplication of a set dollar value times the number of voters in the last presidential election. The dollar value would be $0.20 for primaries and $0.40 for general elections. *Id.*
303 155 N.J. Super. 241, 382 A.2d 681 (App. Div. 1978).
304 *Id.* at 243-44, 382 A.2d at 682-83.
305 1977 Report, *supra* note 295, at 36-37.
306 *Supra* note 302.
307 1977 Report, *supra* note 295, at 34.

Campaign Finance Reporting Act in 1980.[308] These amendments not only extended the application of the program to primary elections,[309] but also established a cap on funds available to candidates,[310] increased the contribution limit for individuals and organizations to $800,[311] and continued its application to all contributors.[312] The amendments also limited candidates who accepted public financing to "self-contributions" of no more than $25,000,[313] but did not include a repeal of the expenditure limits.[314]

These amendments helped to strengthen the program in a variety of ways. Monetary thresholds and formulae were updated to reflect changes in economic conditions between the 1977 and 1981 elections, while the program itself continued to limit the undue influence of large contributors and provided an opportunity for viable candidates to participate in the election process. A relatively low qualification threshold combined with an aggressive two to one matching ratio was specifically designed for candidates with limited financial means, but seemingly unlimited potential.

This low qualification threshold greatly increased the ease with which one could qualify for program participation.[315] This can be inferred from the fact that twenty-two candidates entered and qualified for the gubernatorial primaries in 1981 as a result of the State's public financing program.[316] It must be emphasized, however, that no incumbent governor was seeking re-election and large fields of candidates in primary elections are simply not that unusual.

Whether based upon considerations of public policy or political practicality, then Governor Byrne and others, in response to this "candidate growth," recommended an increase in the qualifi-

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308 Act of July 23, 1980, ch. 74., 1980 N.J. Sess. Law Serv. 240 (West) (codified at N.J. STAT. ANN. §§ 19:44A-27. to -37., -39., -40., -44. (West Supp. 1986).

309 N.J. STAT. ANN. §§ 19:44A-27., -28. (West Supp. 1986).

310 N.J. STAT. ANN. § 19:44A-33. (West Supp. 1986).

311 N.J. STAT. ANN. § 19:44A-29. (West Supp. 1986).

312 *Id.*

313 N.J. STAT. ANN. § 19:44A-29.g. (West Supp. 1986).

314 N.J. STAT. ANN. § 19:44A-7. (West Supp. 1986).

315 1981 Report, *supra* note 288, at 1.

316 *Id.*

cation threshold from $50,000 to $150,000.[317] Because this proposal was not presented until the eve of the primary, its enactment was blocked. In addition, some concluded that this increase in the size of the field of candidates was proof of the program's effectiveness and should remain intact.[318] Emphasis was made of the fact that a greater number of individuals had been provided with an opportunity to seek election to New Jersey's highest office.[319]

Irrespective of the causes, the public soon developed the belief that the public financing program was too expensive, too generous and in drastic need of reform. As early as the spring of 1981 and before the conclusion of the gubernatorial primary, discussions were being held regarding the need to increase the qualification threshold and to make other changes in the public financing program. The ELEC also recognized this need and prepared for an effective and comprehensive review of the program.

Immediately following the 1981 primary, the Commission began to evaluate the operation and public policy impact of the public financing program. The timing of this study was specifically designed to capture the opinions and sentiments of the public and candidates immediately following the primary campaigns. It was also hoped that prompt publication of a report would serve as the catalyst for swift legislative action, thus avoiding uncertainty and achieving program stability well in advance of the 1985 election. The project ended with the final publication of the report in June 1982, only twelve months following the 1981 primary election.[320]

In evaluating public campaign financing and arriving at certain conclusions, the Commission found it necessary to balance and reconcile opposing objectives.[321] The statute itself had sought to limit the influence of large contributors and to provide an opportunity for electoral participation by candidates with limited means.[322] On the one hand, these goals could be achieved

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317 *Id.* at 2.1-2.6 app. .
318 *Id.*
319 *See id.* at 1.
320 1981 Report, *supra* note 288.
321 *Id.* at 6-10.
322 *Id.*

through full public financing of elections.[323] In contrast, the 1981 election experience created public sentiment to curtail the cost of public funding and, more specifically, to limit the number of candidates who would seek and ultimately become eligible for public financing of their campaigns.[324] These goals could only be achieved through opposing means, namely, increasing or decreasing contribution limits, qualification thresholds, matching ratios and caps on public funds.[325]

Ultimately the Commission had determined that amendments to the program were appropriate and required, with changes in the five key program components being of utmost importance.[326] The ELEC stressed the fact that its recommendations were intended merely as such and were not to be viewed as the final model.[327] By publishing the report, the Commission had sought primarily to provide a vehicle for public and legislative discussion.

In the report, the Commission recommended a fifty percent increase in permissible contributions, from $800 to $1,200.[328] The Commission also recommended an increase in the qualification threshold from $50,000 to $125,000.[329] The Commission sought, however, to partially offset the impact of this more stringent qualification standard by granting matching funds for some of the qualifying contributions.[330] This was directly in contrast to the system in existence in 1977 and 1981 which had only allowed those contributions raised in excess of the qualification threshold to become eligible for match funding.[331]

Initial and continuing candidate viabilty were two additional issues examined in the Commission's report.[332] Viewing continued fundraising ability as a sign of ongoing viability, the Commission recommended that a "continuing threshold" be

323 *Id.*
324 *Id.*
325 *Id.*
326 *Id.* at 2-3.
327 *Id.* at 5, 10.
328 *Id.* at 11-14.
329 *Id.* at 14-16.
330 *Id.*
331 N.J. STAT. ANN. § 19:44A-33. (West Supp. 1986).
332 1981 Report, *supra* note 288, at 14-16.

adopted.[333] Public funds would only become available when a minimum increment of $25,000 had been raised.[334] Accordingly, if a candidate was unable to raise a minimum of $25,000 in qualifying contributions, he or she would not be eligible to obtain a public match of those contributions. Adoption of this program would thus limit access to public funds to those candidates who had a demonstrated, continuing fundraising capability. Moreover, the requirement could provide a means for a candidate to gracefully withdraw from the campaign. On the other hand, this requirement could promote fundraising when a candidate needed additional money to meet the $25,000 threshold.

Continuation of the matching ratio was advised, however, and the Commission suggested that any increase in the contribution limit beyond $1,200 should be accompanied by a reduction in the percentage of the contribution which could be matched.[335] Additionally, reduction in the matching ratio from 2:1 to 1:1 was recommended in order to reduce reliance upon public funds.[336] For purposes of program simplification, the Commission also advocated that the cap on public funds be established as a finite figure rather than the result of some formula determination.[337] For 1985, the Commission recommended a cap of public funds of $500,000 in the primary and $1,000,000 in the general election which would have been a slight decrease in the maximum amount of funds available to a candidate in 1981.[338]

Repeal of the overall expenditure limitation was also recommended in the Commission's report.[339] ELEC saw this limit as, quite simply, lacking in fairness and a barrier to effective candidate communication with the public.[340] In fact, the Commission observed that an expenditure limit benefits an incumbent or other well-known candidate and that a lesser known challenger will, by necessity, have to spend more funds than the incumbent in order to achieve similar name recognition.[341]

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333 *Id.* at 16.
334 *Id.*
335 *Id.* at 17-18.
336 *Id.* at 16-19.
337 *Id.* at 19-21.
338 *Id.*
339 *Id.* at 21-25.
340 *Id.*
341 *Id.* at 21-22.

Legislative reaction to the Commission report was neither swift nor deliberate. Although Assemblywoman Barbara Kalick (D-7th Dist.) conducted a public hearing concerning public financing in June 1983, no legislative action on any public campaign financing amendments was to take place until almost two years later. In April, 1984 Senate President Carmen Orechio introduced a comprehensive package of amendments to the public financing program.[342] As introduced, the Orechio amendments provided a creative and thoughtful approach to the issues associated with the program.

The bill generally adopted the Commission recommendations including an increase in the qualification threshold to $150,000,[343] the matching of any qualifying contribution in excess of $50,000,[344] caps on public funds,[345] and, most notably, the repeal of the expenditure limits.[346] As originally proposed, the contribution limit would be raised to $1,000 for individuals and $1,500 for organizations.[347] Only contributions from individuals, however, would be eligible for match at the 1:1 rate.[348]

Ultimately, the bill was subject to a series of modifications which eliminated the innovative aspects of the bill and essentially reduced the proposals from being creative reform to mere housekeeping and updating. Despite the opportunity for prompt legislative action, the amended bill was not approved by the New Jersey Legislature until October 1984. As approved, the qualification threshold was set at $125,000,[349] the contribution limit became $1,200 for all contributors,[350] and the matching ratio was reset a 2:1.[351] All qualifying contributions contained in the first $50,000 were deemed ineligible for matching funds,[352] the cap on public funding for candidates was set at $750,000 in the pri-

342 S.1523, 201st Leg., 1st Sess. (1984).
343 *Id.* § 3.m..
344 *Id.* §§ 8.a.(1), 8.b.(1).
345 *Id.* § 8..
346 *Id.*
347 *Id.* § 4.a..
348 *Id.* § 8.a..
349 *Id.* § 3.m..
350 *Id.* § 4..
351 *Id.* § 8..
352 *Id.*

mary and $1,500,000 in the general election,[353] and the expenditure limit was set at $1,500,00 for the primary and $3,000,000 for the general election.[354]

In spite of the timeliness and importance of the issues addressed by the bill, it was not until the last day permitted by law that Governor Kean officially issued his conditional veto.[355] Thus, the timing of the Governor's action was criticized as being based upon mere political considerations, while the substance of the Governor's veto was viewed as an attempt to significantly alter the public policy objectives of the program.[356]

By his conditional veto, the Governor proposed a number of amendments, including expenditure limits of $2,000,000 in primaries and $4,000,000 in general elections,[357] a cap on public funds set at $500,000 and $1,000,000,[358] and a contribution limit of $1,000 for all contributors.[359] Significantly, however, the gubernatorial recommendations placed the qualification threshold at $200,000, with only those contributions in excess of the first $200,000 eligible for "match".[360]

While the conditional veto message referred to the legislatively approved Orechio bill as a "fat cat" bill,[361] the utilization of the Governor's recommendations would have provided funding that was, quite simply, too little, too late. By establishing a $200,000 qualification threshold, potentially viable candidates, without very significant financial bases are deterred from seeking office. Moreover, the operation of the threshold and matching recommendations results in a situation that candidates would have to raise $225,000 to possibly be eligible for only $6,250 in matching funds.[362]

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353 *Id.*

354 *Id.* § 7..

355 N.J. CONST. art. V, § 1, 14(c).

356 *See generally Crocodile Tears, Mr. Kean?*, The Record, Mar. 5, 1980, (Editorial), at A-14, col. 1.

357 Kean Memo, *supra* note 244, at 4.

358 *Id.* at 2.

359 *Id.* at 2, 4-5.

360 *Id.* at 2, 5-7.

361 *Id.* at 2.

362 The governor's proposal adopted the "continuing threshold" method to obtain public funds, which requires submissions for public funds to be made in increments of not less than $25,000. Accordingly, a candidate would have to raise $225,000 in order to qualify for an initial submission of $25,000 for public funding.

The 1985 gubernatorial primary and election were conducted under basically the same program design as was the 1981 election. Such a situation would have been considered inconceivable as late as the Fall of 1984. Candidates running for Governor in 1985 found themselves entering the race without knowing which restrictions would be imposed upon their fundraising programs or the extent that their expenditures would be limited. There can be little question or argument that costs associated with campaigning for the office of Governor have increased dramatically since 1981.[363] Even with this predicted increase, gubernatorial candidates were restricted to the same spending level present in 1981.[364]

No greater threat to the public financing program or public confidence in that program is presented than by an underfunded campaign which must seek alternative sources of funding. The value and importance of a candidate's personal wealth or other fund-raising ability increases dramatically in contrast with less wealthy or lesser known challengers left with insufficient funds to mount an effective campaign. Accordingly, the election process may become one limited to those with financial resources or those who have previously established public recognition.

VI. Financing of Legislative Elections

Over the past four years there has been no more significant election-related occurrence in New Jersey than the evolution and development of political action committees (PAC's). At the outset, it is important to note that political action committees do not formally exist in New Jersey.[365] The PAC, however, has been recognized in federal elections as essentially a separate fund established by corporations, unions, or other organizations through

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In addition, only the first $250 of a contribution is matchable. Therefore, if the initial $25,000 was comprised of 25 $1,000 contributions, only $6,250 ($250 x 25) would qualify for public match at a rate of one to one. Of course, 100 contributions of $250 would result in the receipt of $25,000 in public funds.

363 *Supra* note 261.

364 *Id.*

365 There is no statutory recognition of PAC's in New Jersey. Although such entities are mentioned in the Campaign Finance Reporting Act (*see, e.g.*, N.J. STAT. ANN. § 19:44A-3.n.(2) (West Supp. 1986)), PAC's have no specific statutory or regulatory definition.

which campaign contributions by permitted individuals[366] are re-

366 Individuals permitted under the federal statute to make contributions are:

(4)(A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor

ceived and distributed.[367]

By contrast, corporations, unions, and other organizations may directly contribute to candidates in New Jersey.[368] They may, however, as a matter of individual preference, establish separate, segregated funds from which contributions can be made. These funds may be called PAC's by their organizers, therefore, for the purposes of the following analysis, state PAC's will be deemed to include all organized economic interests through which contributions to candidates are made.

It is important to keep in mind that with non-gubernatorial elections, including legislative elections, PAC activity in New Jersey is essentially unregulated. There is no limit on contributions made into a PAC and, more significantly, by a PAC to a candidate. Thus, the potential for influencing the conduct and financing of legislative elections may go beyond the theoretical and, instead, become actual. It does not follow, however, that the legislative process has, in fact, been adversely affected.[369] It is not the purpose of this article to assert that campaign contributions are convertible into specific legislative results. Rather the point need merely be made that public confidence in the legislative process is subject to errosion when incumbent legislators and other candidates rely heavily upon single sources to finance their campaigns.

The potential threat to public confidence is further evidenced by the fact that over $1,000,000 remained in surplus campaign funds at the conclusion of the 1983 election.[370] These funds were essentially unregulated and therefore could be used by the successful or unsuccessful candidate for almost any purpose, including personal. The major concern, however, is not

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organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

2 U.S.C. §§ 441 b.(b)(4)(A)-(D), b.(b)(5)-(7) (1982).

367 2 U.S.C. §§ 441 b.(b)(2)(C), 441 c.(b).

368 *But see* N.J. STAT. ANN. §§ 19:34-32., -45. (West Supp. 1986); N.J. STAT. ANN. § 5:12-138. (West Supp. 1986). *See also* Narus, *PACS Vobiscum*, N.J. REP., Nov. 1982, at 6.

369 *Id.* at 9-11.

370 *Supra* note 138.

one of corruption, but rather one of balance. While the State's campaign finance disclosure system provides for public awareness of funding sources, nothing within that program specifically protects against any single source from achieving an overwhelming role in the financing of elections.

The system of campaign finance regulation in New Jersey does, however, provide an opportunity for the legislature to check this influence while also promoting public policies through the development and enforcement of campaign contribution limitations.[371] For example, a system which establishes different levels of contribution limits for specific categories of contributors could provide both competitive advantages and disadvantages within the financing system to each donor class.

One model program seeking to achieve such results was introduced to the legislature in the Spring of 1983.[372] This proposal would have limited contributions to legislative candidates to a maximum of $800,[373] except that state and county political party committees could contribute up to $8,000 per legislative candidate.[374] The Hirkula and Kalick bills represented the first significant proposals to regulate the financing of legislative elections. Unfortunately, these proposals have never been the subject of full debate or committee hearing.[375]

The Hirkula-Kalick proposals also addressed the role of political party organizations in general campaign conduct and campaign financing.[376] By allowing party organizations to contribute ten times more than any other category of contributor, the proposals provided political party organizations with an obvious advantage.[377] Moreover, individuals or PAC's would not be limited or prevented from contributing to political parties, with

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371 *See, e.g.*, N.J. STAT. ANN. § 19:44A-29. (West Supp. 1986).

372 The program was introduced by Assemblywoman Barbara Kalick (D-7th Dist.) (A.3580, 200th Leg., 2d Sess. (1983)) and Senator Joseph Hirkala (D-36th Dist.) (S.3348, 200th Leg., 2d Sess. (1983)). Senator Hirkala has since reintroduced his program. S.761, 201st Leg., 1st Sess. (1984).

373 A.3580, 200th Leg., 2d Sess. § 4.a. (1983); S.3348, 200th Leg., 2d Sess. § 4.a. (1983).

374 A.3580, 200th Leg., 2d Sess. § 4.b.(1) (1983); S.3348, 200th Leg., 2d Sess. § 4.b.(1) (1983).

375 70 N.J. LEGIS. INDEX, Jan. 17, 1984, at S64, A76.

376 *See* STATEMENT to A.3580, 200th Leg. 2d Sess. (1983); STATEMENT to S.3348, 200th Leg., 2d Sess. (1983).

377 *Supra* note 376.

those parties then aggregating the funds and forwarding them to candidates. In fact, the political party committees would simply continue to perform one of their traditional roles in campaign finance activity.

This legislation can be viewed as generally presenting the foundation of a workable program for the imposition of limitations on contributions to legislative candidates while, at the same time, providing a vehicle which would potentially increase the role of political party organizations in the financing of legislative campaigns. As previously noted, however, the bill has never been approved by either house of the New Jersey Legislature.

In any subsequent legislative initiative, I feel that several general issues must be addressed. More precisely, any future proposal must take into account: (1) the specific class of contributors to be permitted; (2) a definition for the concept of Political Action Committees; (3) restrictions or regulations upon fundraising activity; and (4) contribution limitations. If examined in future bills, these issues could help to create the backbone for feasible legislation that should ultimately be enacted.

VII. Conclusion

As has been discussed in this article, New Jersey's system of campaign finance regulation has been vested with the potential to provide public access to essential information in the context of a program which balances the public interest with the burden of compliance. This program was born of the recognition that public confidence in the financing of the political process lies at the heart of our democracy. To be effective, the regulatory program must be attuned to the public policy and sentiment of the times. This requires a constant vigilence and a willingness to regularly amend, refine and improve the program. Just as the Watergate scandal of the early 1970's shaped campaign finance regulation for almost 15 years, recent disclosures emanating from New York City will undoubtedly result in a new spurt of regulatory "reform". One can only wonder if the scandal could have been avoided by a campaign finance system of limitation and disclosure which had been more vigilant.

To remain effective, the regulatory program must be constantly monitored and amended. In this regard, New Jersey has

lost its position of national leadership. Our State Legislature must be willing to assume the challenging and difficult task of regulating not only some of its institutional activity but the method by which individual members are elected to the office from which they must act. Continued failure to exercise the leadership and courage to address issues such as a prohibition on the personal use of campaign funds and revisions to the gubernatorial public financing program can only further erode public confidence. Similarly, public and legislative debate regarding regulation of financial activity by lobbyists and the financing of legislative elections must take place as soon as possible.

During this period of inertia, the significance and importance of the Election Law Enforcement Commission, as an independent agency providing meaningful and timely access to information, grows all the more critical. The success of the Commission should be measured by the amount of information which is received and disseminated in a timely and meaningful form.

New Jersey must be commended for its innovation and leadership in the field of campaign finance regulation and disclosure. We should not allow that reputation to dwindle but rather to serve as a foundation for further action.