
Commission Meeting

of

NEW JERSEY CITIZENS' CLEAN ELECTIONS COMMISSION

*“Briefing by officials from the New Jersey Election Law Enforcement Commission
on the New Jersey Fair and Clean Elections Pilot Project;
followed by open discussion, with public participation”*

LOCATION: Trayes Hall
Douglass College
Rutgers University

DATE: April 26, 2005
3:00 p.m.

MEMBERS OF COMMISSION PRESENT:

William E. Schluter, Chair
Steven Lenox, Vice Chair
Senator Anthony R. Bucco
Assemblywoman Linda R. Greenstein
Assemblyman Bill Baroni
Victor DeLuca
Carol J. Murphy

ALSO PRESENT:

Frank J. Parisi
Commission Secretary



Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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SENATOR WILLIAM E. SCHLUTER (Chair): Mr. Secretary -- if we could come to order -- we do have a quorum. If you can call the roll, please?

MR. PARISI (Commission Secretary): Certainly, Mr. Chairman. Senator Bucco?

SENATOR BUCCO: Here.

MR. PARISI: Senator Scutari? (no response)

Assemblyman Baroni? (no response)

Assemblywoman Greenstein? (no response)

Mr. DeLuca?

MR. DeLUCA: Here.

MR. PARISI: Mr. Lenox?

MR. LENOX: Here.

MR. PARISI: Honorable Carol Murphy?

ASSEMBLYWOMAN MURPHY: Yes.

MR. PARISI: Chairman Schluter?

SENATOR SCHLUTER: Yes.

MR. PARISI: You have a quorum, Mr. Chairman.

SENATOR SCHLUTER: Thank you.

We did get notice that Senator Scutari cannot make it this afternoon.

Are there any other absences, Mr. Secretary?

MR. PARISI: Yes, Mr. Chairman. I have been notified that Curtis Tao is not going to be here and Senator Scutari are not going to be here, and I have not heard from Assemblyman Baroni or Assemblywoman Greenstein's

office as of yet -- I did hear from Assemblywoman Greenstein's office that she would be here. She may be delayed, because there is a meeting of the Assembly Appropriations Committee, of which she is a member.

SENATOR SCHLUTER: Thank you, Mr. Secretary.

The next order of business is to review the minutes of the March 2 meeting. Everyone has received copies of those minutes. Are there any comments, corrections?

SENATOR BUCCO: Move for the acceptance.

MR. DeLUCA: Second.

SENATOR SCHLUTER: Moved that they be accepted as written.

All in favor, signify by saying aye. (Ayes respond)

Opposed? (no response)

So ordered.

I have a few opening remarks, and I'd like to save a lot of remarks for the testimony of Mr. Herrmann and ELEC, and questioning about the operation of the bill. But there are a couple of housekeeping items that I think we might take care of.

First of all, at the last meeting we talked about whether or not we should have by-laws, and it was, sort of, an open question. Is there any sentiment among the Commission members that we should have a separate type of by-laws?

MR. DeLUCA: I don't think so, Mr. Chairman.

SENATOR SCHLUTER: Hearing no support for that, I will conclude then that we do not have a separate set of by-laws. We go by

standard procedure, which is the legislative procedure, which can be explained to us as we go along.

And let the record show that Assemblywoman Greenstein is here and Assemblyman Baroni is here, giving us seven. And this is the full compliment for this afternoon's meeting.

We have just gotten started, and we've approved the minutes of the last meeting. Did either of you two have any objections to the minutes?

ASSEMBLYMAN BARONI: No, Chairman.

SENATOR SCHLUTER: Exceptions? (no response)

Fine.

And we have just said that we were not going to have a separate set of by-laws to operate under.

Another question which was raised at the first meeting, and that was whether or not it is useful for Commission members to receive the transcript of the previous meeting. And we all have received the transcripts, and I personally found them very useful. And I wonder what the other feelings are.

ASSEMBLYWOMAN MURPHY: I found them of great use, also, myself, Mr. Chairman.

SENATOR SCHLUTER: Mr. Lenox?

MR. LENOX: Absolutely.

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. DeLUCA: I agree.

SENATOR SCHLUTER: There seems to be 100 percent accord to continue with having transcripts of the meeting go to members.

In the transcripts, there were some -- I know that there were some ideas proposed by members of the Commission which weren't in the minutes -- not that they should have been in the minutes -- but I thought they were of value because these particular comments referred to, perhaps, new ideas for reform which this Commission might want to study as it concludes its work, and if it recommends to the Legislature that it should continue and what other issues need to be addressed. And I would recommend that our Secretary keeps a file on any of these new ideas that don't pertain to specific pilot projects on clean elections, but are in the nature of new ideas, so that we may review them when we are doing our final report. If that's all right with everybody, we can continue on that basis. And anybody that does have a new idea be sure to get it on the record so that Secretary Parisi can keep it in his lockbox.

Are there comments, before we start with the Election Law Enforcement Commission, by Commission members? I think after this we ought to be very pure in the way the Property Tax Convention Task Force did it, as -- we ought to line everybody up alphabetically, so then we can go down the alphabet in the roll of the order in which they speak. So maybe that might be a seating arrangement in the next meetings.

But we'll start over here with Mayor DeLuca. Do you have any comments?

MR. DeLUCA: No, I don't. Not today.

SENATOR SCHLUTER: Assemblywoman?

ASSEMBLYWOMAN GREENSTEIN: Just looking forward to hearing today's testimony.

SENATOR BUCCO: Just looking forward to the meeting.

SENATOR SCHLUTER: Assemblyman?

ASSEMBLYMAN BARONI: Well, I know that Fred and Nedda have been up, around the clock, for about two weeks now -- 24 hours a day preparing -- so we're looking forward to it's allowing you to go to sleep. So I'm looking forward to it. (laughter)

ASSEMBLYWOMAN MURPHY: As are we all -- interested in participation, yes.

SENATOR SCHLUTER: Mr. Lenox?

MR. LENOX: No.

SENATOR SCHLUTER: We do have one other item. And that is in case your Chair is not able to come to a meeting, it's always good to have a Vice Chair for carrying on the business of this Commission. And I would like to entertain nominations for a Vice Chair. But I would say that I think the Vice Chair should be of another political persuasion than the Chair, and I think it would be helpful if the Vice Chair were a public member, as opposed to an elected official. So -- but I could be overruled by that. So are there any--

ASSEMBLYWOMAN GREENSTEIN: Mr. Chair, I'd like to nominate Steve Lenox.

ASSEMBLYWOMAN MURPHY: I second the nomination. It deprives me of a seatmate, but nonetheless. (laughter)

SENATOR SCHLUTER: Steven Lenox has been nominated and seconded for the Vice Chair.

Any other nominations? (no response)

Hearing none, I'd like to have-- All those in favor of Steve Lenox being Vice Chair say aye? (ayes respond)

Opposed? (no response)

So ordered.

That will double your salary for this Commission work, Mr. Lenox.

(laughter)

Now, if the Secretary could give us a brief review of the time line that has been supplied to us in a couple of different forms, leaving enough time, of course, for Mr. Herrmann and Ms. Massar to do their work.

MR. PARISI: Certainly, Mr. Chairman. I'll be very brief.

I have, at Senator Schluter's suggestion -- I have put together, with the help of several fellows from our office, a time line which, kind of, lays out the large events. It is in two different formats in your packets, and it's this one right here (indicating). The larger format gives you kind of a bird's-eye view of the entire project, starting from the date in August when P.L.2004, c.121 was enacted and ending when the New Jersey Citizens' Clean Elections Commission expires. It highlights some of the major deadlines in that, including the initial organizational meeting which we had in March. It continues into June with the selection of the participating districts. And then the start of the participating candidates collecting contributions, and then the role of the Election Law Enforcement Commission in monitoring the debates and providing voter guides. And it continues through the establishment of a deadline of the report of this Commission. And as I said, finally when NJCCEC expires.

The longer of the two documents is a month-by-month, week-by-week description of how this Commission and, particularly, how Clean Elections would work, and in conjunction with the established regular

elections calendar. And it begins, of course, with the establishment of the Act, and it goes through the same several things.

Some of the larger activity begins in June of 2005, as we know, with the primary and then the selection of the legislative districts, and then continues on that way. That would be starting at Page 11, and continuing to 12 and 13, and so forth. In the left-hand column, of course, are the analogous activities that are happening in the conventional elections calendar.

That is a very brief description. I'm going to defer my more detailed description of that, unless there's any questions, to the Election Law Enforcement Commission, which is going to fill in any of the gaps.

ASSEMBLYMAN BARONI: Mr. Chairman, may I ask a question--

SENATOR SCHLUTER: Yes.

ASSEMBLYMAN BARONI: --that may be answerable now, briefly. And I could have missed something, or maybe it's better to ask later -- so let me ask the questions. They're brief.

One of the questions I had -- and I looked in the legislation -- we know the end date for certification is June 27. The State Chairs have to certify the selected district by the 27th. Question one, is there a date before which they cannot certify? Meaning, could a State Chair do it today. I don't find one in the statute.

Linda, I don't remember it.

ASSEMBLYWOMAN GREENSTEIN: I don't remember seeing that.

ASSEMBLYMAN BARONI: So the first question is, when can that process happen? And the second question is, can that change? Because between the primary and the certification date, I believe both State parties will have an annual -- or whatever it is, quadrennial -- election of a State Chairman. What if the chairman changes? Now I'm not sure (a) whether that is an answerable question, or that's just sort of left to the great decision makers in the robes, but I think it's one that is worth at least examining the possibility of that occurring.

SENATOR SCHLUTER: Mr. Baroni, those are very valid questions. And I would suggest that we ask them of Mr. Herrmann--

ASSEMBLYMAN BARONI: Okay.

SENATOR SCHLUTER: --and Ms. Massar, because some of them relate to their work. For example, you say how much before the date of June 27 could a person be certified? Well, they can't be certified before June 7, because they can't qualify in the primary before then.

ASSEMBLYMAN BARONI: Okay.

SENATOR SCHLUTER: But there are other aspects of your question that I think they would be very-- They might even answer it with some of their regulations.

ASSEMBLYMAN BARONI: Right. Terrific. Sure.

SENATOR SCHLUTER: So if we can hold off and answer them when their time comes.

Does anyone have any questions of Mr. Parisi with respect to his time line? (no response)

Hearing none, may we proceed with the Election Law Enforcement Commission?

MR. PARISI: Mr. Chairman, if I can interject, would you like this time line put on the Web site with the other documents from the Commission?

SENATOR BUCCO: I think so.

SENATOR SCHLUTER: I would recommend that the abbreviated version be put on, not the--

ASSEMBLYWOMAN MURPHY: Yes, abbreviated, definitely. It's too long.

MR. PARISI: Okay.

SENATOR SCHLUTER: Mr. Herrmann, if you could introduce yourself? We all know you, of course, but introduce yourself anyway. And you proceed as you see fit.

F R E D E R I C K M. H E R R M A N N, Ph.D.: I think we're on. Yes.

Thank you.

I'm Fred Herrmann. I'm the Executive Director of the New Jersey Election Law Enforcement Commission. And with me, this afternoon, I have our Legal Director, Nedda Massar; and our Director of Public Financing, Amy Davis.

On behalf of ELEC, I would like to thank all the members of the Clean Elections Commission for donating your time and considerable talents to the important endeavor before us. You are a very distinguished group of public officials and citizens, and have been charged with a very important task -- the welfare of our democracy.

Your Chair, former Senator Schluter, is truly the father of the New Jersey Election Law Enforcement Commission. It was his legislation in 1973 that created ELEC. Our State's citizens should remain grateful to him for his perseverance and courage in starting the modern era of campaign finance reform in New Jersey. ELEC has been working with partisan staff from both sides of the proverbial aisle on the Clean Elections project, and wishes to thank them for their courtesies and kindnesses throughout the process.

Your Secretary, Frank Parisi, of the Office of Legislative Services, who I guess one could say stands in the middle of the proverbial aisle, has years of experience with campaign financing legislation and served with great distinction as the Secretary to the now legendary Rosenthal Commission in 1990. That Commission made many important suggestions for improvements in State ethics laws that were later enacted during the early '90s.

It is your primary role as the Clean Elections Commissioners to evaluate this important experiment in democracy. It will be ELEC's primary role to administer it.

This afternoon we will be sharing with you ELEC's administrative plans. I will begin by giving you some basic background about ELEC itself. I will then briefly summarize the current Campaign Act, because you may wish to be more familiar with the system we are attempting to replace, because parts of it will continue to apply to certified Clean Elections candidates, and because all of it will apply to candidates who do not become certified. I will then very briefly go over the major elements of the Gubernatorial Campaign Financing program -- another model for publicly funding candidates -- and conclude with the highlights of the new Clean Elections Pilot Project.

Legal Director Massar will then review key features of ELEC's new Clean Elections regulations that will implement the program. And then finally, Director of Public Financing Davis will discuss the day-to-day operation of the program. And then, of course, we'd be happy to entertain your questions.

So let me begin by talking a little bit about the New Jersey Election Law Enforcement Commission, to familiarize you with who we are and what we do. We're responsible for campaign financial disclosure by 6,000 candidates at all levels of government, 300 political action committees, 1,200 political party committees, give or take one or two; and various and sundry recall defense committees. They all report contributors of over \$300 and their expenditures. The Commission is also responsible for the disclosure of lobbying activities and financing, the public financing of gubernatorial elections, the personal financial disclosure, the sources of income of candidates for governor and for the Legislature, and the labeling of campaign material.

We were created by the Campaign Act in 1973. We are an independent agency. We have four members -- two are Republicans, two are Democrats -- that serve for three-year, staggered terms. They're appointed by the governor with the advice and consent of the Senate. We meet once a month in Trenton. To enforce the law, ELEC may issue fines when the law is violated, but we've always prided ourselves in our educational efforts. So it's been a philosophy at the Commission that our role isn't to be collecting fine money for the State, but information for the public.

And our educational efforts include such things as compliance manuals, warning letters, public information sessions, and responding to public assistance requests in person or on the telephone. Just a few months ago, we

instituted a new toll-free number in New Jersey. That number is 1-888-313-ELEC. That's 1-888-313-ELEC. And if you're alphabetically challenged, ELEC is 3532.

Candidates and treasurers call us and come in all the time with questions about how to report on their forms and what they're supposed to do to comply with the law. The media and even average citizens will contact the Commission in terms of how to get information and use our reports. We have an advisory opinion process which allows for formal requests for legal advice. And that's something we might develop a little bit more today in terms of our administration of the Clean Elections program. We may be responding, we think, probably to a lot of questions.

We also have a Web site, which was recently enhanced just about two weeks ago. I think at 5:00 a couple of Fridays ago we put out the new version of the Web site. We had -- the old Web site was 5 years old. And this Web site, we think, is perhaps the best in the nation. So we're very proud of that, and we would encourage all of you to take a look at the new Web site. The Web site includes a lot of different information, and let me give you the address, too. It's www.elec.state.nj.us, or you can do a Google search for New Jersey Election Law Enforcement Commission, and it will take you right to us.

On that Web site, we have such things as -- every candidate and committee report filed in New Jersey is scanned under that site. So citizens and the media can actually look at the actual report. We have a contributor search mechanism which has been recently enhanced. You can search for a contributor to any of the candidates at the State level, the legislative level, and two political party committees, at State and county level. There's historical

summary data going back about 20 years. So, if you're interested in what happened in the election of 1985 in the gubernatorial race, it's all there.

All our complaints and final decisions dating back to 1999 are on the site. Advisory opinions we issue are on the site. Our regulations in their entirety, in a searchable format, are on the site. The compliance manuals I spoke about are on the site. Our annual reports for the past five years are on the site. And our research papers, which go back about 15 years, on various topics and campaign finance reform -- all of those have been added to the site. So it's a very, very sophisticated and comprehensive amount of information that we've put together.

I want to get back to the Campaign Act for a second and go over some of the major amendments after 1973. And as I said, a lot of these things will apply to the Clean Elections context, especially to candidates who aren't participating in the program. They'll be playing by those rules. And even candidates that do take the money will still be playing by some of the rules in the general system.

First of all, we have contribution limits. And contribution limits in New Jersey for all candidates only go back to 1993 -- the amendments that year that came out of the Rosenthal Commission in 1990. Prior to that, the only contribution limits we had in New Jersey were for gubernatorial candidates. Now we have contributions limits for candidates at all levels, going down even to school board candidates.

There's a contribution limit chart, which you can find on our Web site, but I'll just give you a little flavor of some of the contribution limits. Currently, the contribution limit is \$2,600 per election for contributions from

individuals, corporations, and unions to a candidate. There's an \$8,200 limit per election from contributions from PACs to candidates. There's a \$7,200 limit per year on contributions from individuals and corporations and unions going into PACs. There's a \$25,000 limit per year on contributions from individuals, corporations, unions, and PACs to State political party committees and legislative leadership committees; and a \$37,000 limit on such contributions to county political party committees.

As you probably are all aware, there's an anti-wheeling provision that was added to the law which will not take effect until January 1 of 2006, which states "that a county political party committee may not contribute to another county political party committee during the primary election process."

Contributors to candidates not only need to be listed by their name and home address, but, as of 1993, we also get occupation and employer information -- a provision that carries into the Clean Elections Law that we'll be discussing in a minute or two.

We have a PAC registration provision that was also added in 1993. Prior to that, PACs existed in New Jersey under law from 1984, but it wasn't until 1993 that we required them to register. So we got some additional information. So PACs now have to tell us what their names are, the type of entity it is -- is it a corporation, is it a union, is it a business, is it an ideological group; who the people are who began the PAC, who controls the PAC -- their names, addresses, their occupations, and employers -- and a brief statement of the objectives of the PAC.

We also have campaign finance usage guidelines, which will specifically apply to Clean Elections candidates, that's mentioned in the Law.

The primary thing is that you cannot use any money, that you raised, for personal use. And oddly, before 1993, we did not have that provision in the New Jersey law. It was very unclear prior to 1993 whether you could take the money and use it for some personal use, which is probably the most egregious offense you could have in a campaign financing system. But over the past 10 years, it's clearly illegal.

There are also guidelines in the statute that tell a candidate and the Treasurer how they can use their money. They can use it, obviously, for their campaign. They can give their money to other candidates, only circumscribed by the contribution limits. They can use the money for the ordinary and necessary expenses of holding public office. The money can be given to charity. And they can also return the money pro rata to contributors.

We limit our candidates to just two committees per candidate. Prior to 1993, candidates could have as many committees as they wanted. They could also have personal PACs that they controlled. And many times, because it was prior to PAC registration, a legislator could be controlling a personal PAC, and the personal PAC would have a name like Good Government Committee, and nobody would ever know that that was affiliated with an elected official. So now, under the law, since 1993, you can only have two committees. You can have your own committee, and you can also participate in a joint candidates committee. And a joint candidates committee is made up of people running for the same office. And under New Jersey law, same office would be defined as Senate, member of the Assembly, County Executive, Freeholder, mayor, council member.

This is a very important reform for a number of reasons. First of all, it makes disclosure a lot more clear. If you had to look at seven or eight reports for each candidate, and sometimes not even knowing that these committees were affiliated with the candidate, it was very hard to get disclosure in terms of where they were getting their money.

When we added contribution limits-- It becomes extremely difficult to try and enforce a contribution limit if somebody's got seven different committees collecting money. And there was a transfer problem. We had many of our candidates -- it got so complicated that when they transferred money between their own committees that they made mistakes, which was good for our fine collection, but not good for the system.

We also have a continuous candidate report. Prior to 1993, a candidate, after a general election, could report to the Commission, "Well, I have \$100,000 left, and I'm going to roll that over and use it for my next primary," which if you remember, the Assembly was three-and-a-half years later. So for three-and-a-half years, there would be no reporting until the month before the next primary. And in that period, the candidate could have fundraisers, raise money, and nobody would know about it until about a month before the election. So that was set right.

The fine scales were increased. They're currently \$6,000 for first offense, \$12,000 for second and each subsequent offense. We added some new penalty sections: major contribution limit violations are now a penalty with a higher fine scales; the misuse of loans for campaign purposes; salary bonuses given to people for contribution purposes are illegal. There was another section that added preelection court challenges for excessive PAC

contributions. So in a preelection setting, if your opponent was getting excessive PAC contributions, you could take that person to court and get an equitable remedy -- for example, a cease and desist order. Finally, we also added inflationary adjustments to various thresholds and fines in the law, and this has kept the law current with inflation.

And then, of course, last year with the sweeping 25-bill ethics reform packet -- some of whose sponsors, or at least one of those sponsors, is here, and I think maybe more -- we made some more sweeping changes in the law. The new laws are: the professional campaign fundraisers have to report -- any person who solicits contributions and is paid \$5,000 will now have to start reporting to the Commission on a special report; solicitation on campaign money on State property is now illegal; the reporting of last-minute contributions, which was part of the law -- we've now added to that the reporting of last-minute expenditures as well. So any expenditure of over \$1,000 in the last two weeks before an election has to be reported on a 48-hour notice. If it were not, the public wouldn't know about those sorts of expenditures until after the election. We now have treasurer training for gubernatorial and legislative candidate treasurers, State party committee treasurers, and legislative leadership treasurers. And of course, very importantly, we now have pay-to-play legislation in New Jersey, part of which is now in effect, and the rest of which will take effect on January 1, 2006.

Let me make a few brief comments about the public financing program for governor, to give you a sense of how another program is structured that is a public financing program, and then I'll turn my remarks, specifically, to the Clean Elections program.

New Jersey has the oldest gubernatorial public financing program in the nation. It started in 1977, and I guess if Chairman Schluter is the father of ELEC, our current Commissioner, Albert Burstein, is the grandfather. Seventy-four, Mr. Chairman, not (indiscernible). It took effect in '77. The legislation was enacted in '74. It covered only the general election at first. The purposes of the program then, as they are now, were twofold: to help candidates of limited means by giving them public money and, also, to keep out undue influence. And the primary mechanism in the gubernatorial program, for keeping out undue influence, were the contribution limits. Well, it worked so well that, in the next election primary in 1981, it covered the primary as well as the general. And today, it covers both the primary and the general.

From 1977 until 2001, 56 candidates received over \$84 million. The program is funded through a \$1 income tax check-off. New Jersey has consistently had the highest check-off threshold, or rating, in the nation. The program simply consists of a five-part formula. First of all, we have a contribution limit, which is \$3,000. Any entity -- unlike the contribution limits for other candidates, there's only one contribution limit -- one size fits all here. Any entity can only give \$3,000. It covers the primary. And then another 3,000 in the general.

The next step in the formula is the qualification threshold, and that's the total amount of money that you can receive in order to get public money, so you'd have to raise \$300,000 in contributions of \$3,000 or less. Once you qualify for public money, you get \$2 for every dollar that you raise until you hit the public funding cap, which is the total amount of public dollars

you will receive. For this year's gubernatorial election and the primary, that figure will be \$2.7 million per candidate. And in the general election, the cap will be 6.4 million. And then the final part of the formula is the expenditure limit -- how much money you can spend -- and in the primary this year that's going to be 4.4 million per candidate, and in the general it will be 9.6 million.

In 1989, mandatory debates were added. A candidate now will have to debate twice in the primary, twice again in the general.

And also, every four years the Commission will adjust the various thresholds for inflation. So there's an inflationary adjustment mechanism built into that program.

Now let me turn to the, at long last, Clean Elections program. And what I will do is, I just want to give you some of the general highlights, and then Legal Director Massar will fill you in on the regulations and how we're implementing them; and Director of Public Financing Davis will talk specifically about some of the administrative things we're going to do with forms, and how candidates will file, and dates, and things like that.

The New Jersey Fair and Clean Elections Pilot Project establishes an experimental program for the public financing of selected Assembly candidates for the general election in 2005. A candidate must be certified by ELEC in order to receive public dollars. The qualification period for certification runs from July 5 to September 7. During that period, a candidate may begin by accepting, from individuals, seed money contributions of \$200 or less, to a maximum amount of \$3,000. A candidate may use previously raised and reported contributions of \$200 or less for this purpose, and all seed money contributions must be disclosed.

Qualifying dollars totaling at least \$20,000 must be raised by check or money order, with a minimum of 1,000 \$5 contributions and 500 \$30 contributions. These contributions may only come from registered voters within a candidate's legislative district. They must be accompanied by a written receipt identifying a contributor's name, address, occupation, and employer. And again, the occupation and employer -- familiar from the Campaign Act itself.

Once a candidate is certified and receives public money, he or she may not raise or use any additional funds and must turn over all seed money and qualifying dollars to the program fund. No candidate may receive public money if his or her running mate does not participate in the program. A certified candidate's initial grant of public money may not be greater than \$100,000. The exact payout is based on 75 percent of the average amount spent in the district by the Assembly candidates from both parties in the two previous general elections, in general election 2001 and 2003. So-called *alternative party* candidates will receive half of this amount.

An additional amount of up to \$100,000 is given by providing the certified candidates with an amount equal to the initial grant if the opposing party's candidates do not become certified in the program. So if your opponents don't get the money, you get their money. There's a third amount that you can get. A third amount of up to \$50,000 is provided to each of the certified candidates for contributions each non-certified opponent receives in excess of the initial grant amount. So, say if the initial grant amount is \$75,000 and your non-certified opponent is collecting private money, any money they collect over \$75,000 you get, up to 50,000. And then there is a

fourth amount of money that you can get up to \$50,000, and that's provided to each of the certified candidates for any independent expenditures over \$1,000 that are made on behalf of their opponents.

The Fair and Clean Elections Fund, which supplies the money for the program, consists of sums collected from a number of sources: Unspent seed money turned back to the fund, qualifying contributions turned back to the fund, voluntary donations -- I'm sure graciously accepted, earnings from the investment of the fund, fines collected by ELEC under the program, unspent public money after the election, and money appropriated to the fund.

The law has stringent political and approval identification requirements for campaign communications, and prohibits a certified candidate from allowing his or her appearance in any other candidate's ads in the legislative district. A certified candidate may include in any communication a statement that he or she is a Clean Elections candidate.

Such a candidate may withdraw from the program at any time prior to the election with the permission of the Citizens' Clean Elections Commission -- you. The candidate must return all public money received unless you direct otherwise, and may receive a penalty from ELEC, which I guess is our speciality. So that's what we do there. Candidate certification decisions by ELEC may be appealed to the Superior Court. If certification is revoked as a result of the appeal, unspent public money must be returned.

ELEC may issue fines for various civil violations of the law. There are also criminal penalties for intentional violations, such as concealing a contributor or filing a false report. A certified candidate who improperly qualifies is subject to termination of candidacy or removal from office.

ELEC will ensure voter access to reports through its recently upgraded Web site, will prepare for the site a voter's guide that includes 500-word candidate statements and identifies certified candidates, and will oversee sponsor selection for two candidate debates of at least one hour each.

Certified candidates are required to debate, while non-certified ones are permitted to do so. There's a penalty for not participating. Debate sponsors must not be affiliated with any political party committee, candidate, or officeholder, and may not endorse until after the debate provisions that we got from our current gubernatorial public financing program. Certified candidates must file with ELEC a report providing details about debate plans, formats, arrangements, and coverage.

And finally, the Citizens' Clean Elections Commission is responsible for holding postelection public hearings and issuing a report with recommendations for the future of this test program.

So at this point I will turn the little microphone -- well, I guess I got the big one -- over to our Legal Director, Nedda Massar.

NEDDA G. MASSAR, ESQ.: Thank you.

It's a pleasure to be here with all of you and see so many people who are genuinely friends of ELEC. I've been with the Commission almost 19 years now. And among the many changes that we've lived through -- and Fred has alluded to them -- we saw significant revisions of the public financing program, we saw additional responsibilities under the lobbying law. In those 19 years, we saw the amendments, in 1993, to the Campaign Reporting Act. And then in just the past year, we have seen major expansions of both the Lobbying and the Campaign Reporting Acts. However, in all of those years,

I don't think any of us has actually been responsible for a completely brand new program. This is a first, and it's an exciting and a humbling experience. We have tried to bring all of our resources to bear in figuring out how we're going to operate this program and what we're going to do in the next several months.

What I'd like to discuss with you for a few moments is the rule-making efforts that we have undertaken at ELEC. I can't help it, but I always fall back on what I did years ago before I went to law school, and that was my teaching background. And so I always look for examples, analogies, whatever. So if we consider the new law, the Clean Elections Law, as the skeleton, or the outline of the program, then we have to put flesh on those bones. And that is what the regulations that we are working on are intended to do. They provide for the candidates and also for the public. Because while we tend very much in this kind of discussion to focus on the candidates and what they need, we also always have to think about what the public needs and the information that the public has to obtain. And the candidates and the public need certain reasonable and clear ground rules to follow. As a result of that -- and we take that very, very seriously -- the Commission has already begun the rule-making process.

At one of its recent Commission meetings, our Commissioners examined proposed rules that staff prepared, and they approved them for filing with the Office of Administrative Law. Those rules are available on our Commission's Web site, and I do have copies of them for you if you wish to take them with you and if you have nothing else to do in the evening and you'd like to try to read through them. I will tell you that we have already

found that there are some things in them that don't work the way we thought they would. That's part of the rule-making process, and we will try to adjust those things as we go along.

Our goal is that the public and the Clean Elections candidates will know as soon as possible what the rules of the game are. If you're considering, or someone is considering, possibly being a participant in the Clean Elections program, under what rules will you have to live, and what will you have to observe?

Just so that you're aware, the Commission will have a hearing on the proposed Clean Elections rules on June 22. That is at the Commission's June meeting. We take public comment. It is our standard practice to have hearings on the rules. The rules will be published in the *New Jersey Register* in advance of that date, on May 16. And for those of you who've ever worked through the OAL and rule making, there are minor differences between the version that is currently on our Web site and what will be published in the *New Jersey Register*. But substantively, they are the same. There are no major changes that I am aware of.

If the process goes according to the normal OAL schedule, the hearing will be in June. The comment period will expire on July 15. Hopefully, our Commissioners, the ELEC Commissioners, will have the rules before then for adoption at the July 19 meeting, and the rules will be published, as adopted, in the middle of August. But while the adoption date is August, the public will have a very good idea -- actually, right now -- of what the rules of the game are anticipated to be. So that is the rule-making process in a nutshell.

Now, what have we done in terms of those rules? In drafting the rules, ELEC looked not only to the Clean Elections Law, but as Fred explained, we looked to many of the long-established procedures in the public financing program, the gubernatorial public financing program. And we asked ourselves the following question: If I were a Clean Elections candidate, what would I need to know? How do I have to proceed and what is expected of me? And while I can't begin to behave like David Letterman, I believe that there are 10 -- there's a top 10 list of questions -- and I will try-- And Fred has actually dealt with several of them already.

In your folders, or on top of your folders, we gave you a proposed chronology. It is a best guess, at this point, of when many of these events will happen. And I think that it may be somewhat helpful just at some point, even after I go through some of these, that you take a look at those dates. And it gives you a flow, a sense of the flow of the program.

Mr. Parisi's outline does a much more thorough job. This is just intended to show you those major events that are highlighted in our proposed rules. The first question that I would ask if I were approaching this is, what would be my first step? What would I have to do as a candidate in order to become a Clean Elections candidate? And I am presuming, by the way, that the State party chairs have made a selection of districts, or that the Alternate Selection Committee has done the same thing. As a candidate, our rules and the proposed rules -- these are all proposed rules -- require the filing, as does the Clean Elections Law, of a declaration of intent to be a certified candidate. We have tried to follow the approach of the public financing program in that declaration. And what we've done, and the rule reflects this is, the candidate

who signs this declaration will basically attest to the fact that he or she knows the ground rules: knows that he or she has to collect qualifying contributions; knows that he or she may not spend more than the moneys that are distributed by the fund, if selected to be or approved as a Clean Elections candidate; knows about the concept of seed money contributions, and knows that they cannot be any more than \$200 and cannot exceed \$3,000 in total. There are many more of these conditions, but we felt -- and we do this with gubernatorial candidates -- that when you apply to be in the program, you should know from the outset what the rules are that you are observing or must observe. And that is what our regulation proposes to do. That if you file that declaration of intent, hopefully you will read it and you will see all of the different things that you must observe as a Clean Elections candidate.

Now, we know that you will have to be accepting contributions as a Clean Elections candidate. So, question number two, does a candidate have to do anything special when accepting a qualifying contribution? And we are proposing in the rules, again, what the Clean Elections Law requires -- that a written contribution receipt be obtained. That receipt will have the information that you have to report when you file reports with the Commission, and it will have a couple of other things that we, again, have borrowed from the public financing program. Qualifying contributions either have to be by check or money order. And money orders do not have signatures of the contributor, necessarily. They usually have a bank officer's signature or someone else's signature. So we believe it's important, especially from a compliance point of view, to be able to have the contributor's signature somewhere. So if a contributor -- if the signature does not appear on the check

or on the money order, then the contributor's signature should appear on that contribution receipt. We think that the Clean Elections Law felt that the receipt was an important item, and we believe that it can be used -- very useful from a compliance point of view.

Question number three: How will a candidate prove to ELEC that he or she is eligible for and should be certified as a Clean Elections candidate? The Clean Elections Law talks about submittals. And again, we have borrowed -- I believe that that concept is taken from the public financing program. And for those of you who have assisted candidates -- and there are some of you here who have, or who have been through the process yourselves -- submissions are filed in order to qualify and to obtain matching funds in the gubernatorial program. And we are proposing a very similar process for Clean Elections candidates. And Amy will address this in detail. But a report will be filed. You'll have to prove to the Commission, ELEC as a Commission, that you have accepted these qualified contributions, that they meet all of the criteria, that you have taken all of those steps that are necessary.

We have provided for six dates. Unlike the public financing program that the dates stretch over months and months, this is a very compressed time frame. And the dates are two dates in July, two dates in August, a date in early September, and a date four business days after the close of the qualifying period. And those dates are included on the proposed chronology that I've provided to you. This way a candidate can provide us with all 1,500 or more qualifying contributions, or piecemeal if it's easier. And we can handle either of those approaches. As a part of the submission, the

candidate will certify that he or she has complied with the requirements of the Clean Elections Law.

And on the final submission, the candidate will certify that he or she has accepted or received no fewer than the 1,500 required contributions. We must be able to check. We must be able to go through those contributions. But we also need the candidates to be completely aware of and know just how many contributions are in those submissions.

We will also ask that seed money contributions be reported on the submissions, because it is essential to know how much seed money has been collected and, also, for those contributions to be reported. So that is the submission process, and I am truly giving you a thumbnail sketch. There is much more in the rules.

The next question -- and this would be important, I believe, or it should be important to a candidate -- how will a candidate know if he or she has been certified as a Clean Elections candidate? And what the Commission will do is provide a written notification to the candidate whether or not the candidate has qualified or is certified. And the Commission will provide -- if the candidate has not met the criteria, the Commission will provide the reasons why. Because there is an appeal process, and we have regulations that deal not only with notifying the candidate that he or she has been certified, but also not certified and why.

And the rules, and that question number five, would be -- actually four-and-a-half -- what would the candidate do if he or she is not certified? And there is an appeal process. The Commission's rules, the proposed rules require that the appeal be in writing and provide reasons if a candidate says,

“Oh, no, but I observed all the requirements.” Well, you have to tell us what we missed or what it is, what documentation that was not provided that should have been provided. In other words, give the Commission grounds to reexamine that decision. There is also provision for an appeal to Superior Court of a certification decision, and obviously, that will have to follow the court rules. But there is an appeal process. Everything is going to happen in a very tight time frame. The candidate has to appeal within three days. ELEC has to schedule a hearing within five days. And we have, therefore, provided rules instructing candidates of those deadlines, those time frames, and the standards for filing an appeal -- what evidence is required and what information has to be provided.

Now, if we assume that everybody is successful because everybody's observed every rule that has to be observed, the next question, it seems to me, is how does a candidate get that initial grant of money that Fred described -- the 75 percent of whatever the average amount in the last two elections? And by the way, we will compute those dollar amounts, and we expect to have those dollar amounts ready approximately June 15. We don't have them now, but that is the date that we are aiming for.

The burden is upon the Commission if a candidate is certified to immediately request the funds from the Department of Treasury. And by the way, this is exactly what we do with gubernatorial candidates. This is something that we have procedures, and we will take care of that. A candidate who is certified has to return seed money. The Clean Elections Law requires that. So we have a regulation -- a proposed regulation that requires the return of seed money within 48 hours of notification that a candidate is certified. A

check has to come with that made out to the Fund, because those moneys are given to the Fund. And a report has to accompany it telling us just how much seed money was collected, how much was spent, and hopefully, if the math is correct, the check should be the difference between those two dollar amounts.

A question that I think is implicit in everything that we're talking about is whether or not there is a spending limit for a Clean Elections candidate. And unlike the public financing program, there is no calculated dollar amount that applies to every candidate. It's just not possible, because the amount that is provided to candidates differs from district to district, because it's calculated based upon the spending in the past two elections. But effectively, there is a spending limit, and that spending limit arises under the law as a result of the initial grant amount that is given by the Commission, the additional funds that are given under the other provisions in the law. And the Clean Elections Law and the regulations provide that you may not spend more than the amounts that are distributed from the Clean Elections Fund. So there is an effective spending limit, but there's no dollar amount that I can give you right now if you were to say, in a particular district, is there a limit of *X* dollars? But that will come. And in that regard, it is different from the public financing program. The candidate will, again, receive the initial grant amount automatically upon certification.

But then -- and this is on my hit parade -- question number nine: Are there other ways that a Clean Elections candidate can get additional funds, other than that initial grant amount? And the answer to that is yes. And Fred discussed several of those. There's the initial grant amount. There is the amount if opponents are non-participating candidates. There is the amount

if candidates receive contributions -- non-participating candidates receive an excess amount of contributions. And there's a third amount which is for independent expenditures. The rules provide procedures for filing reports to claim each of those particular kinds of additional funds.

We are not out there. We are not out in your districts, so we will require -- the rules require evidence or proof of the additional spending or the independent expenditures, and the rules establish procedures for claiming those additional amounts. And they are sufficient to give our Commission grounds to say, "Yes, there is -- this condition has been met, and therefore additional funds should be provided." And again, then the Commission will request additional funds from the Department of Treasury.

A next question -- and Fred has already discussed this -- may a Clean Elections candidate withdraw from the program? And that will be your responsibility to decide whether or not a candidate may withdraw. We have a rule that spells out what a candidate must do, in that the candidate must notify your Commission and our Commission that he or she wants to withdraw. That's all we believed we had the authority to do with regard to the withdrawal process.

We have the voter's guide as a new feature in elections. And again, we turn to our public financing program for guidance. And for those of you who have been involved in a gubernatorial campaign or have ever looked at the back of a sample ballot in a gubernatorial election year, gubernatorial candidates can provide 500-word ballot statements for inclusion on the sample ballot. The Clean Elections Law provides for a 500-word statement to be included in a voter's guide. In proposing the rules, we looked at the

methodology in gubernatorial. We will send -- and this is reflected in the chronology -- ELEC will send a letter to every candidate in the selected districts, requesting the 500-word statements. We have set a deadline for receipt of those 500-word statements. We will process them. We will make them available on our Web site in the voter's guide, and the voter's guide will reflect whether or not a candidate is a Clean Elections candidate or is not a Clean Elections candidate.

We will do the mailing -- just so that you know early in September -- to all candidates. We may still have some candidates appealing decisions at that point in time. But in order to be able to get everything prepared and on a Web site, we need those statements from the candidates. If it turns out someone is not qualified then, or not certified, then we will simply change the description as a Clean Elections candidate or not. But we will collect those statements and we will process them from the candidates.

Then we get to the Clean Elections debates. And I will not go into all of the detail. Our rules are very detailed about this, because we have lived through this in gubernatorial in each primary and general election since 1989. Two debates are required by the Clean Elections Law. Clean Elections candidates must participate. Non-participating candidates must be invited to participate. They don't have to, but they must be invited. The rules are clear on those terms.

The Clean Elections Act did not establish any minimum time amount or duration of the debates. We proposed and we drew from the gubernatorial rules that they must be of a minimum of one hour in duration. Anything less than that, and I believe that they don't serve a public purpose.

Candidates are free to have longer than that, but a minimum of an hour's duration.

Our rules require that the certified candidates in a legislative district select the sponsors. They are knowledgeable about the districts; they know about locations; they know the organizations. And they know who is out there and available and good at arranging debates. And there are many sources. We do not -- the Commission does not have detailed knowledge of all the legislative districts. So what we have done in the rules is require that the candidates make the selection and that they report to ELEC, by October 1, who those sponsors will be and many of the details that will go along with the debates. We believe that that's a reasonable way to administer and provide for effective debates in what could be, if this program expands, as many as 40 legislative districts. And we think that that would work.

We have created a window of time during which the debate should occur, because we believe that there are optimum times for them to occur. And that window for this year would be October 3 through November 3. It's a month, and it is-- We have also asked that when the candidates tell us the dates and the times of the debates, we will go ahead and make sure that they don't conflict with the gubernatorial debates, because that would not be a good outcome for the public in the legislative districts.

I believe that Fred has touched on the major features of the penalties, and nobody really wants to hear about penalties anyway. But they are there. They are severe, and they are clear in that not only are there civil penalties, there are criminal penalties. And perhaps the most severe penalty

of all is disqualification for office. And we have spelled out in the regulations what was in the Clean Elections Law, and I think it's very clear for the public.

And those are the major features of the rules. I hope that this was not overkill. We have copies of them for you. And we are happy, after Amy speaks -- we'd be happy to address your questions. Also, you're welcome to give us a call about them.

Thank you.

MR. HERRMANN: Thank you.

I'll turn next to our Director of Public Financing, Amy Davis, and Amy will be commenting on the day-to-day operation of the program, as ELEC envisions it.

AMY F. DAVIS, ESQ.: Thank you, Fred.

The greatest part about going last is there's not much left to say, especially after following Nedda and Fred.

As Fred said, my name is Amy Davis. I'm the Director of Public Financing at ELEC. Right now, my staff and I currently oversee the day-to-day operations of the gubernatorial public financing project. In addition, we will now be responsible for administering the Clean Elections Pilot Project.

We have already begun to make several preparations to implement the new Clean Elections Project, such as creating new forms, drafting written materials to be utilized in information sessions in which the campaigns will be invited to meet with us in person to discuss any questions they have. Certainly, we will be providing them with assistance with understanding of the law, providing guidance in filing the required forms; and we'll be willing to

meet with any interested person to answer questions, or provide assistance over the telephone.

An exciting new feature that we've been working on, and I'm really pleased to tell you about today, is the Clean Elections electronic filing software -- that in the future we will be calling CEEFS -- to be used exclusively by Clean Elections candidates. We have taken our current electronic filing software, known as REFS, that many candidates have utilized in the past to file the Form R-1 electronically. And looking out at the audience, many of you have filed the Form R-1. Together with the Commission's computer staff, we have modified the software to create a new contributions and expenditures report that will contain schedules to report the \$5, \$30 qualifying contributions, the seed money contributions, and expenditures, etc.

Our staff will invite candidate committees who are interested in utilizing the software to meet with us and will demonstrate the program for their campaign, provide them with a software manual, and offer continued support in person or over the telephone.

We will also be creating a section on our new Web site that will contain blank forms for non-electronic filers; helpful information concerning the project, such as filing and submission dates; and the text of the Clean Elections regulations.

On behalf of myself, Fred, and Nedda, thank you again for inviting us here today to discuss the Clean Elections Project, and we look forward to working with you in the future. I promised it would be brief.

SENATOR SCHLUTER: Thank you very much. That's very comprehensive and very enlightening, informative. I don't think you've put anybody up here to sleep, because it was informative.

I would like to suggest that when questions are asked from up here, that it zeros in on one particular issue; that when you answer, other people up here can add to the question, so that we don't have to have it revisited at a later time when somebody else asks a question.

And with that said, yes, Mr. Baroni.

ASSEMBLYMAN BARONI: I've got a couple of questions. Some are hypothetical and a couple are very practical. I'll ask you the hypothetical one first. Fred, you made a comment about -- through the structure of one candidate team participating, another candidate team not participating -- the participating candidate would therefore get the resources of the non-participating. And I think the hypothetical there behind it is one team wants to participate in the system and the other team decides, we're not going to participate, we're going to spend what we want. Let me change the hypothetical, and tell me how it would be handled. Team number one wants to participate, raises the funds to participate, and becomes certified. Team number two tries to. They want to do it. They try to go out and raise the 1,000 \$5 contributions and 500 \$30. They try to participate, but they can't do it. They can't raise the funds to-- So they're not going to spend lots more, but they can't qualify, not because they don't want to qualify, because they can't. Does team number one still get their money? And if so, doesn't that undermine, certainly, the spirit of that section of the law?

MR. HERRMANN: Well, let me respond generally to answer your question. I think one thing that's very important to note right now is, this is all new.

ASSEMBLYMAN BARONI: Right.

MR. HERRMANN: And we work for a four-member Commission. And so if any fact questions come up during the program, our Commissioners were then going to have to resolve these questions. We also have an advisory opinion process, and so some questions may come up that would probably be something that a candidate, a real candidate, would want to ask it for advisory opinion, and the Commission would respond to that. And it's really important to note, although it is an experiment, the Commission ELEC is very aware of the fact that for those participating it's the real deal. I mean, it's an experiment, but it's an experiment that's going to decide who's going to go to the Legislature, and it could also decide who controls the Legislature. So we're taking this very, very, very seriously.

Let me try and respond to that. And I think all of us can try and respond, but I would just say, as a caveat, that in the real fact situation, the Commission may decide differently. We can just give you impressionistically what our sense would be at this point in time. I think in the case of your question, I think those people that did not certify -- they weren't certified and the other people would get their money, because they're not going to be certified candidates.

ASSEMBLYMAN BARONI: Right. Certainly, a straight read of the language of the statute that would be the outcome.

MR. HERRMANN: Right.

ASSEMBLYMAN BARONI: Purely from a-- It's interesting to see, if you're the candidate who-- I mean, it's sort of, "Check off the box, I don't want to be certified," as opposed to, "I can't be certified, because I can't get there." Because I think in some ways we could make matters worse for, sort of, a candidate in a district where they're -- they just can't get 1,500 people to write them checks. And then the other side gets the benefit of that. So I would suggest to you that maybe some thought -- maybe this is something that the Commission needs to decide and so on. Maybe some thought from a fairness perspective.

Mr. Chairman, I have a different question.

SENATOR SCHLUTER: Okay.

Mr. Baroni?

ASSEMBLYMAN BARONI: Yes, sir.

SENATOR SCHLUTER: Assemblyman Baroni, that was a very, very good question. And I would like to -- if you could hold off your other questions--

ASSEMBLYMAN BARONI: Sure.

SENATOR SCHLUTER: --I would like to-- I have a series myself, and everybody has a right to weigh in on all of these. But there are a couple of things that I would like to establish. One of them relates exactly to the issue you raised. First of all, would you give the Commission a very brief explanation of the advisory opinion process? Because I think that's very important for us to know -- and make it brief, but you know what I mean.

MR. HERRMANN: Through you, Mr. Chairman, we will do that.

SENATOR SCHLUTER: Can you give it now?

MR. HERRMANN: Oh, right now?

SENATOR SCHLUTER: Yes.

MR. HERRMANN: Oh, okay. Oh, I'm sorry. I thought you wanted something in writing.

SENATOR SCHLUTER: And if you have it in writing, just to follow it up.

MR. HERRMANN: Well, we can explain it to you. And then if -- we would be happy to follow up in writing.

The advisory opinion process is laid out in our statute. It's a statutory requirement in the Campaign Act. If somebody is contemplating an activity under the law, they can ask the Commission whether or not the Commission would feel that this is in violation of the law or not. The Commission has 10 days to respond in writing. We have an advisory opinion request form on our Web site -- or we will fax it or mail it to somebody -- that is filled out. We work with the requester because we found in the past that if we don't do that we can play ping-pong for a long time with the advisory opinion request. So our Legal Director, Nedda Massar, and her staff will work with the requester to frame the question. And then the Commission has 10 days to do it. But the reality is that we only meet once a month, so that we usually ask, "Can we have until the next Commission meeting?"

Again, and depending on the person's situation, it may be such an urgent question that they say, "Nope, sorry. You're going to have to set up a special meeting," and then we'll do that. In most instances, it can wait a few days. And sometimes the Commission meeting is in five days, we have the

opposite problem where we get asked a question and the Commission's meeting two days later. And we will try and accommodate that.

But essentially, it is a formal process. It's established by statute. There's a form for it. And we've got 30 years experience doing it. So that is essentially how it works.

SENATOR SCHLUTER: Are your advisory opinions published?

MR. HERRMANN: Yes. They're actually on the Web site.

SENATOR SCHLUTER: They're on the Web site.

MR. HERRMANN: Yep.

SENATOR SCHLUTER: Are they published before they are issued -- that an advisory opinion has been asked for with respect to a particular subject?

MR. HERRMANN: If I understood the question, if somebody requests an advisory opinion, that is a public document. The staff will then write something up for the Commission, which is not a public document. It's advisory, deliberative, and consultative under OPRA. But then, when the Commission acts -- and we do this in public -- when the opinion is formally issued, then that is made public as well. It's put on the Web site, and it's available to everybody. And the whole conversation about the advisory opinion is a public experience.

SENATOR SCHLUTER: Does anybody here on the Commission have a question about the advisory opinions? (no response)

The second question relates to Assemblyman Baroni's point. If we in our deliberations today, or subsequent deliberations before the 30th of June this year, or if you in your rule making come up with something that needs

statutory change, I think it would be wise to make the recommendations. You have members of the Legislature on this panel. And if there is an emergency situation there could be a change.

For example, in the very subject that Mr. Baroni brought up. If there is a person who honestly tries to be a qualified candidate but just can't meet the hurdle, is it fair to give the other candidate that extra \$75,000, or whatever it's going to be?

That was your question?

ASSEMBLYMAN BARONI: Right.

SENATOR SCHLUTER: And to me, that's a public policy issue which merits consideration. I don't know whether your Commission could decide on its own or whether that would have to require an amendment to the legislation. Because maybe a person who benefits from that, because their opponent cannot meet the hurdle, wants to challenge it and is successful, because that's what the law says. So here is one issue which I think, when we study it further, whether you study it further, should be on the top of the table for consideration for possible legislative improvement.

MR. HERRMANN: Well, let me respond this way. First of all, the Legislature, of course, is free to act any time it wants. And if they want to change the program at any time that they want, that would be fine. But many people may well feel that if we go down that road, it's going to be very difficult to run the program, because there are going to be so many things that are going to possibly come up here. And for candidates running, basically, if you change the rules of the game once the game is started -- and I would submit, at this point, the game is just about started here -- it could, perhaps, create somewhat

of a chaotic situation. So I think that again, certainly, if the Legislature feels that they need to change the rules, that would be a decision that would be beyond our pay grade at the Commission.

But what we will try to do is what we do currently, is that as situations come up that weren't contemplated -- and I'm sure many will -- the Commission will have to meet and to make decisions. And then after the program's over, certainly, that would be the time to evaluate the whole thing and say, "That wasn't such a great decision," or "that was tough." For the next go-round, we will change the rules.

Even in the situation with the public financing program for governor, that program is now 31 years old. I'm sure, if you've been reading the papers, we had a major issue just a couple of weeks ago dealing with one of the candidates getting into the debates. That was a question that had never come up in 30 years. It was one that wouldn't have come up prior to the debates, but since 1989, we've had debates. And there will always be things, even with an old program, that will come up, that the Commission has had an experience reacting to.

But having said that, I used to work for the Legislature, and I'm aware that certainly if the Legislature decides that they want to get involved, at any stage, that is certainly why the people elect the Legislature, and they should do it. But the concern that I think all of us would have is, that if we tinker with the rules once it's started, it could be more of a mess than trying to address some of these questions through an administrative process.

SENATOR SCHLUTER: But, sir, I don't think, respectfully, we're talking about changing the rules. We're talking about filling a gap where there is a void, where we think there is a void.

Mr. Baroni.

ASSEMBLYMAN BARONI: If I could suggest, I think this has the potential -- looking at the legislative districts that could be selected --

MR. HERRMANN: Right.

ASSEMBLYMAN BARONI: -- I think this is a very real possibility for -- depending on which of the districts we're talking about, you could have people just not able to come anywhere close to this. And I would suggest to you that were we to go down the road of, therefore, giving the money to the other side, we could create a terrible incentive, longer term, and really damage, maybe, this program. May I suggest to you that under ELEC, sort of broadly define equitable powers under its original statute. We have that certification-- I think the key is the definition of the word *certify*. And that's administrative.

And I agree, Senator, that we could certainly legislate it. But I would suggest to you that potentially you could -- much as candidates who run for school board, for example -- certify, or any office, certify they will not raise more than *X* dollars, raise or expend *X* dollars. Because the goal is to reward participating candidates when they are running against someone who is not participating, but spending so much more.

ASSEMBLYWOMAN MURPHY: Correct.

ASSEMBLYMAN BARONI: You could create a certification process where I, a candidate who can't get 1,500 contributions, will certify that I will not spend more than the average of the last two previous campaigns.

Whatever that number is, I will not spend more than that. I could certify that. It wouldn't allow me to get that money, but that certification might be an administrative fix to this problem. And that certification, that I won't spend more than \$75,000, reading the legislative intent on this bill, would therefore say that that 75 doesn't go to the candidate who does participate. I would just suggest this could become a real problem -- a very real-life situation for some of the candidates in some of these districts in both parties, depending on the district that's picked.

SENATOR SCHLUTER: Yes. I think it's a good point. And I think the fact that legislatively, I guess, it would be determined to be public policy that there be a hurdle, that part of qualifying for funds be determined or be shown by the fact that the candidate could raise so much money, therefore they were a serious candidate. But if they can't raise that amount of money, it seems to me that the public policy of the bill said that then you don't deserve to get any money. So these are some of the open questions.

Yes, Ms. Murphy.

ASSEMBLYWOMAN MURPHY: I guess my question comes with, how do you determine that they can't? What is the barrier to raising the money? A physical barrier -- a number of whatever, don't have parents--

ASSEMBLYMAN BARONI: I mean, 1,500 people is a significant-- I think 1,500 people-- When I look to Senator Bucco and Assemblywoman Greenstein, I mean 1,500 people for any of us -- I mean, that's not kind of an easy thing. And for a candidate in one of these experimental districts that may have never run for office before, and I look at some of the candidates in some of the six districts that two of them will come

from, and you've got candidates who've never sought public office before. They may be able to say, "I don't have any way of getting 1,500 people to do this." And they could certify it themselves and say, "I want to participate, but even this threshold is too high."

MR. DeLUCA: Wouldn't that be part of the--

SENATOR SCHLUTER: Excuse me, through the Chair.

MR. DeLUCA: Oh, I'm sorry, Mr. Chairman.

SENATOR SCHLUTER: Go ahead, Mr. DeLuca.

MR. DeLUCA: Wouldn't that be part of the consideration as to whether or not to participate from the beginning? They would have to assess whether or not they are capable of raising that kind of funding. And if they don't feel that going in, then I think they're going to end up not participating. The problem with what you're laying out is that there's, as was just raised here by our colleague, is that you could have somebody pull a plug because they don't like what's going on, and move away from the threshold because they say, "Well, this is too hard," or "My opponents are moving ahead in this direction, so I'm going to retreat from this process." I think this may be a problem. We don't know if it's a problem. We ought to see -- and this is the whole nature of the pilot -- we ought to see what goes on. And in our hearings after, really assess how hard or easy it was to raise this kind of money. I think the high threshold was there on purpose. And I think that was to show that there's a broad-based support and that the whole nature of getting funded by many people -- sort of the reverse pyramid of getting the funding on the bottom -- is the way to move our elections.

ASSEMBLYMAN BARONI: And through you, Mr. Chairman--

SENATOR SCHLUTER: One at a time.

Senator Bucco.

SENATOR BUCCO: Okay. Every candidate that goes into an election feels they can raise money. That's why they're going into the election. Once you're in there, though, you find that it is difficult at times to raise it. And when you're talking about 1,500 people -- and I've been in local government, county government, and State government. And believe me, always feel that you can raise enough money. And my question to carry on is, if candidate *A* wants to participate and qualifies, but candidate *B* doesn't -- and this is what I want a clarification on, and you did go over it -- candidate *B* does not want to participate and he wants to put his own money in there -- half a million dollars, three-quarters of a million dollars, a million dollars -- what happens?

MR. HERRMANN: I assume from your question, Senator, that *A* and *B* are in the same political party?

SENATOR BUCCO: Yes.

MR. HERRMANN: Okay.

SENATOR BUCCO: No. No. No. Separate. They're opponents. They're opponents.

MR. DeLUCA: No, different.

MR. HERRMANN: Oh.

SENATOR BUCCO: Different parties.

MR. HERRMANN: Okay. *A* is a Democrat; *B* is Republican, or the other way around?

SENATOR BUCCO: Correct. One wants to participate, okay?

MR. HERRMANN: Right.

SENATOR BUCCO: And qualifies.

MR. HERRMANN: Right.

SENATOR BUCCO: His opponent or her opponent does not want to participate and want to put their own money into it, whatever amount they want to put into it.

MR. HERRMANN: Well, the law appears to be clear on that one, Senator -- that if -- unless both candidates are certified from the same political party, they cannot participate and they can't be certified.

SENATOR BUCCO: Right.

MR. HERRMANN: So in that scenario if, say, Nedda and I are running together and Nedda wants to be certified and I have a lot of money and say, "I don't want to participate," then Nedda's barred from participating.

SENATOR BUCCO: What about the opposite part?

MR. HERRMANN: Well, again, if they don't want to participate, that's fine. We'll take their money. So that if *A* and *B* are, say, one party and *C* and *D* are the other, if *C* and *D* aren't part of the program and *A* and *B* are, *A* and *B* get the \$100,000, or the percentage of the 100,000 based on previous spending in that district, and they also get the money that *C* and *D* didn't earn or accept.

SENATOR BUCCO: *C* and *D* -- you get the money from *C* and *D*?

MR. HERRMANN: Yes.

SENATOR BUCCO: They have to give to the Commission?

MR. HERRMANN: Well, it's not even actually their money at that point, Senator. It's Clean Elections money and, basically, it gets a little complicated. There are four tiers for getting money. The first is, if you certify, you get the grant. The second way you can get some money is if your opponents don't get certified, you get their money. And then there are two other ways of getting money.

SENATOR BUCCO: All right.

So theoretically, how much could the candidate expect to raise or to have for his election, their election, if they qualify?

MR. HERRMANN: It would be the whole nine yards.

SENATOR BUCCO: Okay. The whole nine yards?

MR. HERRMANN: Yes, okay.

SENATOR BUCCO: How much can they expect to get?

MR. HERRMANN: Well, let's say that, for example, *A* and *B*, based on previous spending, to make it easy, get \$100,000. *C* and *D* aren't participating, we get another \$100,000. *C* and *D* manage to raise \$150,000. We get \$50,000 credited for that. And somebody makes independent expenditures, for whatever amount, over \$50,000, we get \$50,000 for that. So adding all that together--

MS. MASSAR: Maximum.

MS. DAVIS: Three hundred thousand.

MS. MASSAR: Maximum 300,000.

MR. HERRMANN: --300,000.

SENATOR BUCCO: If the opponent wants to put three-quarters of a million in?

MR. HERRMANN: All right. You're running against somebody that's got three-quarters of a million and you've got 300,000.

SENATOR BUCCO: Right.

MR. HERRMANN: Yes.

SENATOR BUCCO: So it's possible then?

MR. HERRMANN: Very possible, yes.

SENATOR BUCCO: Okay.

SENATOR SCHLUTER: Assemblywoman--

SENATOR BUCCO: That bothers me a little bit. It's not at a level playing field again.

ASSEMBLYWOMAN GREENSTEIN: I wanted to check on just a couple of things to make sure I understand this. The question that we've been discussing here is whether a person who doesn't want to participate would be treated the same way as somebody who has tried and can't.

MR. HERRMANN: Right.

ASSEMBLYWOMAN GREENSTEIN: Under the present state of what we have here, would that be the case or not?

MR. HERRMANN: Well, let me procedurally just back up just for a second on this. I think the Commission's role, because obviously we have a limited role -- our role is to respond to what the statute is, and with our regulations and interpretations work within that framework.

ASSEMBLYWOMAN GREENSTEIN: Well, let me ask a related question, because they kind of go together.

MR. HERRMANN: Sure.

ASSEMBLYWOMAN GREENSTEIN: Of the different things we've been discussing -- and this is the part where I'm a little unclear.

MR. HERRMANN: Sure.

ASSEMBLYWOMAN GREENSTEIN: To what extent have you heard questions here that you feel you wouldn't be able to deal with within your administrative framework, where we might have to go back to the drawing board, and to what extent do you think these can all be covered through your own process?

MR. HERRMANN: Well, that's an excellent question. I guess from our view as regulators is that it's very late in the game at this point in time to change the rules of the game. Whatever comes up, we're going to have to deal with.

ASSEMBLYWOMAN GREENSTEIN: For this year?

MR. HERRMANN: Yes. And it is an experiment, and it is two districts, and we'll do the best that we can. If the Legislature wants to change the rules, obviously that's a prerogative of the Legislature. And of course, we are a creature of the Legislature, and we will do the best we can if the rules change. But there could be a lot of questions that may come up. And again, through the regulatory process, we have to deal with things all the time. We're experienced at that. It's a Commission, that although it's bipartisan, has always acted in a nonpartisan fashion. Obviously, we will have hearings if questions come up. People can get involved. We'll hear all points of view and we'll make a decision.

ASSEMBLYWOMAN GREENSTEIN: Well, what about that one, though, about the candidate who can't do it versus the candidate who won't do it?

MR. HERRMANN: Well, it's a difficult question. I don't know if that was contemplated by the statute. It's not there. And there are probably a lot of things that aren't contemplated, and that's why the experiment idea of it was such a beautiful idea -- that we're only going to do this with two districts.

I mean, another way of looking at that situation, for example, is: the two people don't qualify, they're not in the program. The other two are certified candidates, they get their money. And then the two people that couldn't raise the money, maybe they had trouble with \$5 contributions, \$30 contributions, but they know where to get 2,600 to cut dollar contributions. They know their political parties can support them. Something dynamically changes in the course of the campaign where the front-runners all of a sudden have some problems with the media, and the money comes pouring into the other side. So the two poor persons that couldn't get that initial money, now, as Senator Bucco said, now maybe they're the ones with three-quarters of a million dollars and they're doing okay, thank you. So it's hard to know what the dynamics is going to be until it actually happens.

ASSEMBLYWOMAN GREENSTEIN: Mr. Chairman, I actually just had one other -- is it all right?

SENATOR SCHLUTER: Yes, sure.

ASSEMBLYWOMAN GREENSTEIN: The issue of independent expenditures. Could you just expand a little on that?

MR. HERRMANN: That's a very good question.

ASSEMBLYWOMAN GREENSTEIN: Is that 527-type issue groups or--

SENATOR SCHLUTER: I wonder if we could hold off on that--

ASSEMBLYWOMAN GREENSTEIN: Yes.

SENATOR SCHLUTER: --until we put this to bed, and then we'll come right back on that.

And Assemblyman Baroni--

ASSEMBLYMAN BARONI: And Mrs. Greenstein, I will be very brief.

I think, basically, we're dealing with three types of candidate teams. Candidate type one is the candidate team who wants to participate and is able to get the contributions they want. They're the good actors. That's who we want. Type two is the candidate team who doesn't want to participate, doesn't care about the system, is going to spend what they want. They're the bad actors. It's this group in the middle -- the people who want to participate, but are unable to get the finances. So that's, sort of, the issue -- that third group of candidates. We reward type one by giving them taxpayer-funded grant to run their campaign, because that's the goal of the program. We punish group number three (*sic*), saying, "Well, if you're not going to participate, we're going to give your money, because you're going to spend all this money, to the candidates who are our good actors."

But it's the group in the middle, Mayor, to go back to your -- through you, Mr. Chairman -- back to your point. That if they don't want to participate, well, if they're in that second group that are bad actors, fine, we

have a punishment mechanism, essentially. But it's that third category of people that would like to participate, that want to participate, but because there's a gray area, not only will they not be able to participate in the system and, therefore, get the grant, they don't get to become category one. But they are treated as if they were the bad actors. And therefore, this extra taxpayer grant goes to their opponents anyway, which I think makes matters worse.

So I would proffer through you, Mr. Chairman, that I believe, and maybe this is something that we could, as you go through your rule-making process, look at a-- Because your hypothetical, of late in the campaign -- they can't raise \$5 contributions -- they can raise 2,600, there is a mechanism if that were to occur -- that extra \$100,000, however, that could go to the good actors--

MR. HERRMANN: Correct.

ASSEMBLYMAN BARONI: --the moment that would occur. Because you would be signing a certification saying, "I can't raise \$100,000, therefore I can't participate in the system," as Mrs. Greenstein said, "and I want to." The moment they break that, that 100,000 immediately goes to the good actors. I would suggest you may not need -- although we may want to look at it, but from an emergent time perspective--

MR. HERRMANN: Right.

ASSEMBLYMAN BARONI: --you may be able to do this administratively.

MR. HERRMANN: Yes. Again, procedurally, actually you're probably talking to the wrong people. We're the functionaries at the Commission. We work for four Commissioners. And this is certainly an issue

that can be brought before the Commission at the hearing, or you might even before, if you want to get that to us, and the Commissioners can consider it. We'll see what they think, in terms of where we could go with that.

SENATOR SCHLUTER: Can I, kind of, try to wrap this up. I think a very good issue has been raised. In the third group that Assemblyman Baroni speaks about, you actually have a subgroup, which you've referred to as a group that maybe wasn't able to raise the qualifying amount, but in the background they have this ability -- all of a sudden they change into people who can get the \$2,600 and could go. And you also have a qualifying statement, do you not, that a candidate has to sign, that they're intent to become a certified or a participating candidate. And would it be out of order for us to ask you for an advisory opinion on this particular point to determine what would happen? Because if the advisory opinion comes out then and says that group one would get double amount if group two was unable to do it, it would be unfair and it would hurt the program.

MR. HERRMANN: One of the aspects of the advisory opinion process, Senator, former Senator, is you have to have standing. And I don't know if the Clean Elections Commission would have standing. In other words, the only person really with standing would be a candidate involved in a campaign. They would have to be the ones to ask the question, if we were to use the advisory opinion process. But also, we're currently in the regulatory process right now. And in the regulatory progress, any citizen, let alone the Clean Elections Commission, can certainly address the Election Law Enforcement Commission with any suggestions or recommendations you might

have for us to consider. And I'm sure we'd be happy to consider anything that you want to put before us.

ASSEMBLYMAN BARONI: Mr. Chairman, why does-- I mean, I'm obviously open for discussion, but I sense there's a-- We as a Commission could certainly submit comments on this section to the ELEC in their rule-making process, saying we've got some concerns on this category three person--

MR. HERRMANN: Sure.

ASSEMBLYMAN BARONI: --and ask them to-- I mean, I would say we could take that and do it ourselves.

I'm sorry.

SENATOR SCHLUTER: All right.

I think this thing has come to the conclusion, and I would direct the Secretary to draft a memo that we could circulate very fast by e-mail -- Mr. Parisi, I think you got the context of this -- and we can agree and send it off to the Commission to try and resolve this -- what could be a thorny issue.

Thank you for bringing it up.

Do you want to go with your question now, Assemblywoman? But I want to get back to a series of things that will be very short. Go ahead with your question--

ASSEMBLYWOMAN GREENSTEIN: I just wanted to ask you about independent expenditures, if you could just expand a little on that. You listed four categories. You called that one number four. Just generally, what would go into that and what are your thoughts on that one?

MR. HERRMANN: Independent expenditures are expenditures that are made not in coordination with the candidate. You had mentioned the phrase 527.

ASSEMBLYWOMAN GREENSTEIN: That's really Federal, I realize.

MR. HERRMANN: Yes. That's what, really, I wanted to zero in on -- 527 is really a common term. It's actually a tax term. It's not really a campaign financing term. But what we're talking about when we're talking about 527 is that everybody uses that term for this -- is issue advocacy. And that is political communication that doesn't use the express language *vote for*, *vote against*, *support*, or *defeat*. And under the landmark *Buckley* decision of 1976, 300-plus pages, one little footnote that talks about the so-called *magic words*, and the magic words in the footnote were that in order to be what was considered express advocacy -- that's regulated activity that has to be reported and can be restricted -- you have to use a phrase like *vote for* or *vote against*. And if you don't, it can't be regulated. That was true for many years.

Now, with the *FEC vs. McConnell* decision of a couple of years ago, many states, including New Jersey -- I believe Senator Inverso, in New Jersey, has legislation in to try and capture some of this activity. As a matter of fact, I testified on it in front of the Senate State Government Committee. So it is conceivable that we could change New Jersey statute law to try and capture some of this issue advocacy activity. And the way it's usually done is to try and capture it in a short time frame before the election. Because again, we're balancing free speech with keeping the purity of the political process intact.

So, at this point in time, we do not have such a law in New Jersey. And therefore, an independent expenditure that just says, again, if I'm running against Nedda, which usually we'd be on the same team, but for the purposes of the argument, some independent group ran a really nasty ad about me -- "Fred's terrible; he stinks; he's got a horrible record" -- as long as it doesn't say, "Don't vote for Fred" or "Vote for Nedda," you can't touch it, and it isn't really covered by the Clean Elections Law.

So the solution to that one, I think, would be something -- again, Senator Inverso has got a bill in. There may be other ways of doing this. But we could certainly try and amend our Campaign Act in New Jersey to try and get that sort of activity covered by the law.

ASSEMBLYWOMAN GREENSTEIN: Just briefly, what does Senator Inverso's bill say? What would it do?

MR. HERRMANN: Basically, I believe, it sets a time frame before the election, before the primary and the general, of X number of days, and says that if there's a communication within that time frame it doesn't have to be as blatant as *vote for*, *vote against*. It can use other sorts of phraseology. It's been a while since I've looked at it, but I believe that mentioning a candidate's name within that time frame would be enough. And again--

ASSEMBLYMAN BARONI: It applies the McCain-Feingold standards to New Jersey.

MR. HERRMANN: Yes.

ASSEMBLYWOMAN GREENSTEIN: That's correct.

MR. HERRMANN: Excellently put, Assemblyman, yes.

ASSEMBLYWOMAN GREENSTEIN: Right now, under Federal law -- and I'll really ask both of you, because I know you know something about this -- under Federal law, it would be okay to extend the state boundaries further -- or it would not be considered a violation of Federal law?

MR. HERRMANN: That would appear to be able to fly at this point in time. And it's something that the Commission, ELEC, has been supportive of for a long time. Actually, before McCain-Feingold, maybe, we were suggesting, maybe we could experiment with this. And I think most people in the field feel that this would make sense.

ASSEMBLYWOMAN GREENSTEIN: I really do think, as this Commission goes forward, even though we are looking at Clean Elections, I think this is a very important area for us to consider, because I think it's one of the sticking points to campaign finance reform. It's something that could throw an axe into any serious program that we might put into place, and I think that we should do anything we need to do legislatively, or through this Commission. What I thought I heard you say before, though, when you listed this as, sort of, number four category, was that under Clean Elections, your approach to it is to sort of -- if that happens, if there is that kind of independent expenditures, it gives an advantage to the other candidate monetarily. So it's a way of punishing the person who gets the independent--

Now, of course, the bad thing about that is the person who gets the independent expenditure made on their behalf may not even know that it was going to be made on their behalf. So they're getting--

ASSEMBLYMAN BARONI: They better know. They better not know.

ASSEMBLYWOMAN GREENSTEIN: --“punished,” right?

No, but I mean that could happen where they wouldn’t even know that it’s being made.

MS. MASSAR: By the way, I believe the Federal standard is that the communication has to refer to a clearly identified Federal candidate and occur within the time period. And that’s sufficient to overcome the hurdles.

MR. HERRMANN: And be over a certain amount of money, too, as well as -- some of those proposals are certain monetary thresholds.

MS. MASSAR: Yes, there are. There are monetary thresholds, but the Federal law has higher thresholds, generally.

ASSEMBLYWOMAN GREENSTEIN: I’m glad to see that it is covered in a sense there, but we clearly -- I think we need to go further with it.

MR. HERRMANN: It’s a very important issue, Assemblywoman, and one that should be looked at.

SENATOR SCHLUTER: Mr. DeLuca.

MR. DeLUCA: Just continuing on that, if you have both parties participating and an outside group makes an independent expenditure, say a week before the election, how does this impact this \$50,000?

MR. HERRMANN: It’s an excellent question. What we will attempt to do is, we are going to create a form. And the person who feels that the opponent has gotten the advantage of such an expenditure will fill out the form, give the Commission the details we need to verify that, indeed, the expenditure was made, and then we will scramble to get them the money. There’s obviously a realistic time frame in terms of how quickly you can act, and I think if it’s something that happens a day or two before, it may not be

possible to get the person the money. And even if you did a day or two before, could you balance that off? So for a very last minute type of hit, it would be very difficult to redress that. But we will move as quickly as we can. I think the idea of having a form will help, because we'll have all the information in front of us that we need, because that kind of process could drag out if we do it any other way. And obviously, time will be -- is the essence to get somebody their money.

SENATOR SCHLUTER: Let me, if I may-- Is your answer--

MR. DeLUCA: I just wanted to--

Yes, that was a great answer. Thank you.

Suppose that you have the same situation, and in that process you have, say, the Ocean County Democratic Party says vote Democratic, and then you have the Ocean County Republican party, vote Republican. How does that get factored into this, as an independent expenditure?

MR. HERRMANN: Well, that's an outstanding question, and we were sort of batting that one around the office the other day ourselves. I think in that fact pattern, those would probably be considered generic expenditures and probably wouldn't be factored in. Certainly, get out the vote activities or something -- that's not even a political communication. But one of the political parties could go in and spend a lot of money getting out the vote.

SENATOR SCHLUTER: Thank you.

Let me proceed here, and then, people, sort of save up on your questions so we ask them at one time. A lot of them might be answered.

Fred, I have a particular question with the wording of the statute.

MR. HERRMANN: Okay.

SENATOR SCHLUTER: And the wording of the statute, as was mentioned by our staff, talks about the qualifying contributions, a thousand contributions of \$5, for \$5,000; and at least 500 contributions of \$30, or at least \$15,000. I think it would be more clear if you said a thousand contributions of \$5 or less.

MR. HERRMANN: Well, that might be--

SENATOR SCHLUTER: Or is it exactly \$5?

MR. HERRMANN: I believe it is exactly \$5.

SENATOR SCHLUTER: So they must be \$5?

MR. HERRMANN: That's our understanding, Mr. Chairman, yes. Or \$30.

SENATOR SCHLUTER: And it must be \$30?

MR. HERRMANN: Thirty dollars.

SENATOR BUCCO: Not more or less?

MR. HERRMANN: Not 29.99.

SENATOR SCHLUTER: And that is the way the law reads?

MR. HERRMANN: Yep.

MS. DAVIS: Yes.

MR. HERRMANN: Amy -- because Amy studied Arizona and Maine, I don't know, but-- I think that's, basically -- was modeled after those states.

MS. DAVIS: Correct.

MR. HERRMANN: It's a specific dollar amount.

MS. DAVIS: Right.

MR. HERRMANN: It's not less than--

SENATOR SCHLUTER: I think if I can, Mr. Herrmann, that you could be very specific. And not only are you saying that the contributions must be accompanied by a signature and an address, but they must be in that exact denomination?

MR. HERRMANN: It may well say that in our regulations.

MS. DAVIS: And on the form that we're creating, the actual--

SENATOR BUCCO: And that district also -- the 1,500, the 1,000 and the 500. In that district?

MS. DAVIS: Right.

MR. HERRMANN: Yes.

MS. MASSAR: Registered voter. A voter registered in that district.

ASSEMBLYWOMAN MURPHY: That is difficult, yes.

SENATOR BUCCO: That's a problem.

SENATOR SCHLUTER: When you talk about, as Assemblyman Baroni talked about, a difficulty of a candidate in getting those signatures and everything else, with respect to that \$5 or the \$30 exactly-- Now, before Mr. Baroni has another question, but before I get to that -- if the person raises 1,000 contributions of \$5 and then they go into the \$30, but they still raise more of the \$5, that can't be used toward the \$30 then?

MR. HERRMANN: No.

SENATOR SCHLUTER: It's got to be 500 contributions of \$30 precisely?

MR. HERRMANN: Yes. And I didn't go a little bit beyond that, practically, because if I were a Clean Elections candidate, I would be collecting

some excess money. Because if some of it isn't good, you're not certified. So it would behoove the candidate-- It says *at least* in the statute. And I think that a candidate should take that to heart and try and go over. And that's the experience that certainly Director Davis has had with the gubernatorial.

SENATOR SCHLUTER: Well, I accept that interpretation, and Mr. Baroni has a question right on that issue.

ASSEMBLYMAN BARONI: The issue came up of voter registration. And I'm going to ask a question that's going to sound dumb, but let me explain it. The statute is very clear -- a \$5 contribution from registered voters in your district. So it's a contribution amount. They are registered, and they are in your district. Well, the other section of New Jersey law that talks about registration and time lines is petition signing. Signatures -- if you need X number of people to sign -- 100 signatures of registered voters who live in your district.

Now, courts have often made this interpretation kind of fuzzy -- is when do you have to be registered? Do you have to be registered at the point you write the check? Do you have to be registered at the point where the check is reported to ELEC? Or are you registered so you can be a registered voter by election day? I know that sounds picayune; but I can tell you, in the petition contest issue, if you sign--

SENATOR BUCCO: You could go to court.

ASSEMBLYMAN BARONI: --a petition and you're not registered, but the registration is on file in the clerk's office when you review the petition -- and that happens every year. Somebody will sign the petition and say, "Oh, I'm not registered," and then fill out the registration form. Courts have almost

uniformly -- I don't think I can remember a judge, that I've certainly prepared for, where they won't count that. They say, "Well, if you're registered to vote and we review the petition, we want you to be registered." I would proffer to you that some thought needs to be given to the specific language of when you're registered. Because you're going to get all these checks, and you're going to have to have some mechanism to go and see if Bill Baroni in Hamilton is registered. They're going to look me up on the computer to see if I'm registered to vote and when, and can I later register. I would also proffer to you that a lot of times in campaigns people write checks and the address on their check is not their address where they are registered. They're P.O. boxes, business addresses, what have you. I would suggest that in the form you have to fill out that you have to have your registered voter address, not my house at the shore, not -- whatever. Because it's going to make it impossible for you all to go through and try and prove registration of 1,500 people, if people's check address is different than the registration address. I know it sounds like a very picayune issue--

MS. MASSAR: No. No.

MR. HERRMANN: No, that's the real world.

ASSEMBLYMAN BARONI: --but I can guarantee somebody is going to raise this issue.

SENATOR SCHLUTER: I think that has been submitted for reconsideration for your administrative rules.

MR. HERRMANN: It's something we probably do administratively.

SENATOR SCHLUTER: By your regulations?

MR. HERRMANN: Again, with the regulations, too, you have to keep in mind there's a regulatory schedule here. And if we start changing the regulations, then they don't take effect. So that's a real issue as well. So we will do as many things as we can administratively. And perhaps this is one that -- this could be dealt with administratively. Again, a very important point, no question about it.

SENATOR SCHLUTER: All right.

MS. MASSAR: Actually, one other thing about that. Remember there is an appeal process. So that if, for example, the Commission were to determine that you didn't hit 1,500 contributions from voters registered in the district because voters two, three, and four were not registered, that would be the kind of thing that I would contemplate would be answered in the appeal process. Oh, but they are, the records were lost, or all of the vagaries of HAVA and whatever else that are happening with voter registration. I think that's where these would be played out, especially in the pilot project.

SENATOR SCHLUTER: Proceeding on--

Yes.

MR. DeLUCA: Could I ask one more question on this?

SENATOR SCHLUTER: On this -- right on this?

MR. DeLUCA: If I write a check, as a joint check, has my wife's name and my name on the check, and I write that check for \$10 to a candidate, can that candidate allocate \$5 from me and \$5 from my wife?

MS. MASSAR: Is your wife going to sign the check also?

MR. DeLUCA: Well, suppose she does? Does that make it?

MS. MASSAR: Then I can answer that question for you. Under the gubernatorial rules, the way they apply, \$5 would be allocated to the husband and \$5 to the wife.

MR. DeLUCA: And if I -- one more question, Mr. Chairman -- go to an event where both candidates are there, can I write a check for \$20 that \$5 goes to candidate X, five-- I have to write two checks for \$10, and both of us sign it?

MS. MASSAR: We didn't discuss all of the rules today. One of the rules that we didn't bore you with was the fact that we are requiring separate depository accounts for each candidate, so there would have to be a separate check written for each candidate. And that provides the ability for the Commission to quickly audit and deal with all kinds of contribution issues.

Back for a moment to your question about the \$10 check drawn on a joint account or an account owned by you and your wife. What our rules, the proposed rules, do is require that candidates follow a rule that already exists -- a Commission rule that already exists that says how to treat a check drawn on a joint account, how to treat a check drawn on a partnership account, all of those.

SENATOR SCHLUTER: Senator Bucco has a question.

SENATOR BUCCO: Talking about checks and contributions, if I give a check to a candidate for \$5, can I also give that candidate a check for \$30?

MS. DAVIS: No.

MS. MASSAR: No.

MS. DAVIS: The law clearly says--

SENATOR BUCCO: So you have to have a 1,000 people--

SENATOR SCHLUTER: It's 1,500 people.

SENATOR BUCCO: Fifteen hundred people.

MR. HERRMANN: You have to be different people. You have to be different people.

MS. DAVIS: It says you clearly have to--

MS. MASSAR: Fifteen hundred different registered voters.

MS. DAVIS: Yes. Right.

ASSEMBLYWOMAN MURPHY: Oh, that's a lot of people.
(laughter) I'm sorry.

MS. DAVIS: So if you give \$5, you can't give \$30.

SENATOR SCHLUTER: All right. Let's get on. We're getting along here.

Specifically, why in the statute does it say that in this process of qualifying a candidate, they need to have an appropriate number of ballot signatures, nominating signatures, and this is determined in June. They've had to have that in April. What is the difference?

MS. MASSAR: I believe that that's the reference to a candidate nominated by direct petition.

MR. HERRMANN: Independent candidate.

MS. MASSAR: It's an independent candidate. It's not someone who's been through a primary.

SENATOR SCHLUTER: Okay. Fine. Thank you.

Next question. With seed money and the qualifying money, I presume the candidate can spend that after it is received on operating

expenses, which might mean maintaining an office for their campaign. Is that correct?

MR. HERRMANN: The Clean Elections statute -- there's a reference to the Campaign Act, and says that the campaign fund usage guidelines, which I briefly touched upon in my initial remarks, would apply. So anything that a candidate now can use money for -- ordinary, necessary expenses of holding public office, for example -- would be legitimate.

SENATOR SCHLUTER: So that when they qualify and they certify a candidate, it would be the \$3,000, less what they've spent in the seed money -- the \$3,000 of seed money -- less what they have spent would be refunded, would be turned over to the fund?

MR. HERRMANN: Any money they have left over from seed money, qualifying money after the election, back to the fund.

SENATOR SCHLUTER: The next question. Seed money, do they have to get the \$3,000, or is it they can get up to the \$3,000?

MR. HERRMANN: Up to.

SENATOR SCHLUTER: That's all I have at this time. I have some more questions of a general nature for our Committee.

Other questions?

I'm sorry.

Mr. Lenox, you haven't spoken up. You deserve a turn.

MR. LENOX: A real simple one, a real simple one. In collecting these 1,500 contributions, what support can a candidate get from outside, an entity from their county party, their local party?

MR. HERRMANN: Well, that's an interesting question. Again, just general campaign law -- volunteer activities don't count. So volunteers can help you out, that would be legitimate. But in terms of getting what would be in-kind contributions from a political party, that would be a no-no. You can't accept any money from-- Again, and let me back up, an in-kind contribution, as opposed to getting a direct check, an in-kind contribution is goods or services provided and the law requires that they're reported by their fair market value. And it would have to be coordinated. So if any outside entity was involved in in-kind contributions, that wouldn't be allowed, because this law says you may only accept money from individuals. So a good question. Volunteer activity, though, would be okay.

MR. LENOX: Okay.

SENATOR SCHLUTER: Thank you, Mr. Lenox.

We'll go right around.

Mr. Baroni.

ASSEMBLYMAN BARONI: Very quickly. Somewhat back -- and Nedda and I have dealt with this issue -- I think, four year ago, the issue of -- often the FEC refers to them as slate mailings. But this issue of where they put out the absentee ballot mailer, where the Mercer Republican Party puts out an absentee ballot request mailer where it says, "If you're going to be away, vote by absentee," and attach-- And on the back it says, "Vote Lenox for Governor and Murphy for Senate," and whatever. Is that -- that's a question of, is that -- certainly an expenditure on the political party, because the political party does it and it happens. But in a situation like this, how-- We don't have an answer,

but that's going to be -- what a great potential loophole for someone to drive a truck through.

MR. HERRMANN: Well--

MS. MASSAR: Go ahead.

MR. HERRMANN: Okay. We're going to have a busy Fall.
(laughter)

ASSEMBLYMAN BARONI: Lenox and I are opening up a shop to help those candidates. (laughter)

MR. HERRMANN: But we're looking forward to the challenge.

SENATOR SCHLUTER: Mr. Bucco?

SENATOR BUCCO: Nothing.

SENATOR SCHLUTER: Assemblywoman.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

ASSEMBLYWOMAN MURPHY: Just as a general question--

SENATOR SCHLUTER: I'm sorry. Go ahead.

ASSEMBLYWOMAN MURPHY: --the legislation then will provide for a review of this pilot time before we try to amplify this any further within the state. Am I correct in understanding that? That everybody who created this will get a bite at the apple once we have gone through one pilot, before we start off on another and it's always too late to do something.

Thank you.

SENATOR SCHLUTER: I do have another question which I neglected to ask. And that is, for the non-participating candidate, who doesn't become certified -- and you have a district where you have two running mates who are participating and the other two are not -- now, when they exceed the

amount of money that the participating candidates have as their threshold, then up to \$50,000 of that excess goes to the candidates A. All right. How do you keep track of when they raised and spend that money so you can know exactly, and when it clicks in that they will get that excess? Because you go right up to election day and people are getting money the day before election, and they're spending it, and everything else. How do you plan to control the last minute flurry of money so that the first group of candidates is able to get money in time to spend it, or can you cut off their -- any kind of receipts and expenditures after a certain date?

MR. HERRMANN: That's an excellent question. That was one of the boring details we didn't give you. But there's a form for that as well. So the candidate would file a form with us saying, "Hey, I just looked at the ELEC report from my opponent, or a 48-hour notice. They brought in money. Now I want more money from ELEC." And we would process them right up to the last minute until we ran out of time.

SENATOR SCHLUTER: So you would go on the 48-hour notice and have opposition triggering that, so that any legitimate candidate, the participating candidates would have to send people down to your office every day to check what's in the (indiscernible).

MR. HERRMANN: However, we have the Web site.

SENATOR SCHLUTER: The Web site.

MR. HERRMANN: Right.

MS. MASSAR: And we do post the 48-hour notices immediately.

MR. HERRMANN: On the Web site.

SENATOR SCHLUTER: Does anybody else think that's a problem or that might be a problem, or do you think that could be handled that way?

MR. HERRMANN: It's an experiment, Senator, so we'll see. I think we've already thought of some things. We've obviously-- I probably reviewed this law more than any in my 20 -- actually, almost 30 years in government now, so we have some ideas, some ways that this could be tweaked to make it more efficient. But again, it is an experiment. I guess our feelings, let's let it work, let's see what the real problems are, and then we can address them afterwards. But I think it would be very surprising in any kind of an experiment if the final result looks like the initial bill that was laid out.

So I think there are going to be a number of things that, through experience, we'll be able to refine this, which is based on the experience in other states. Obviously, New Jersey is unique. And I'm sure that you'll be suggesting some ways of tailoring it once it's over. But everything you've said to us today is very valuable as we move forward with it. There are certainly a lot of administrative things we can do course corrections on, and we'll certainly do that. Because again, we're taking this very seriously. We realize for those candidates that are part of the program, this is very real. We really want to make sure that it works as best as it can.

SENATOR SCHLUTER: Well, you have established an excellent reputation for your shop--

MR. HERRMANN: Thank you.

SENATOR SCHLUTER: --and we have great confidence in you. And I think that's probably what the Legislature recognized in giving you that authority.

Do you have a question, Mr. DeLuca?

MR. DeLUCA: Mr. Chairman, thank you.

Have you done an analysis of the six potential districts, whether they all would meet the 100,000?

MR. HERRMANN: We've done some preliminary numbers there, but one of the realities of our business is that the numbers change all the time because people are still amending reports in those districts. And so we want to hold off until -- as long as we can, to come up with some final numbers. But we have already done some preliminary review of that. It's something that we're going to do that we can do, and those numbers will change somewhat between now and the next couple of months. But we want to get those-- It's a balancing act to get them as accurately out there as possibly, but get them out there in a timely fashion. So when the party chairmen are deciding which districts are going to be picked, I think that's an important piece of information they're going to want to have before them.

Let me also just say very, very quickly -- I just want to thank Director Massar and Director Davis. They have worked incredibly hard on this with their staffs. I think, as Director Massar said, this is all new stuff. Many nights have been spent in the office, and weekends, and things, to put all this together. And I'm just very proud of the job that both of these people have done. I just wanted to say that publicly.

MS. MASSAR: Thank you.

MS. DAVIS: Thank you.

SENATOR SCHLUTER: Any more questions from the Commissioners?

Yes, Assemblywoman.

ASSEMBLYWOMAN GREENSTEIN: Just a question going back to your pre-Clean Elections discussion, the earlier part. Do you expect that with all of the new powers, in a sense, that you've been given and the various resources, that you'll be doing more enforcement? Do you think it will give you the ability to do more enforcement than you've done before? Has it put more teeth in what you do, do you feel?

MR. HERRMANN: I greatly appreciate that question. The reality is that last year something very unique happened in New Jersey. Many states have strengthened their ethics laws. We're the only state I know that has really put a lot more money into the ethics agencies. This was a major breakthrough last year, and we are very, very thankful and grateful to the Legislature, to the governors that were involved in that, because a very important part of campaign finance reform is adequately funding the agency so they can do their job. And New Jersey at this point, I can honestly say, is the leader in the nation in terms of supporting the ethics agencies and letting them do their job. We agreed not to ask for any additional funding for this, because we were getting a lot of additional staff added to do the other 18 bills that we were assigned.

Right now, I feel pretty comfortable we have enough people to do it. However, our situation is that we were supposed to be able to hire 36 people. At this point, we've hired three, because we still haven't been able to

get the space to put anybody in, but we've been working on that. And I think we've gotten excellent support. It's a very real problem finding space in Trenton, and the powers that be have been working very hard at that. But having said that, we've really only added three people at this point. But the game plan was, and I think at least for the pilot project, we're going to be okay. Director Davis has put together an outstanding staff of six people, I think, who are very good at this. They've been working the primary and the gubernatorial election. A lot of the situations that we encounter and the procedures are very similar, and I think we can handle that. Of course, Director Massar and her legal staff have many years of experience, and I think we can handle that.

One of the things that we'll, obviously, want to talk to you about after the election, if we move forward -- and we all hope you will -- is that we will need additional resources if we're going to expand this to more districts. And certainly, if it becomes a statewide program and it's going to be administered properly, we're going to need more resources. And I think a lot of the excellent questions I've heard today -- this is just the tip of the iceberg. There are going to be a lot of situations that can come up here. And to be fair to candidates, you want answers. If you call the IRS and, "Gee, we're not really sure what you're supposed to do," and you fill out the 1040 and then you get nailed, you're not very happy. And I think one of the things that's been an oversight in this field for years is that we've created very complicated laws, but we've got to give the agencies, like ELEC, the resources so we can help people.

And again, our philosophy is not to play *gotcha* with candidates over the years, we really want to help. And over the years, it's been very

difficult to answer all the phone calls we get and train people properly. And finally, because of what happened last year, we now have resources that we never had before, or about to have resources we never had before, and training is going to be a big part of that, more responsiveness will be, upgrading the Web site even more will be. And I just don't think-- We want to have a situation with candidates, who are people, again, that are giving of their time to public service, and all of you do that, who really deserve a better system than we have now, in terms of being able to get help in filling out these forms and getting legal advice from the Commission. And to the extent that we don't have the resources, it's difficult to do that. But, again, very happily for the first time in not only New Jersey history, but national history, we have created ethics agencies, not only our Commission, but the SCI got more money, the Executive Commission on Ethical Standards, the new Inspector General. What's been going on in New Jersey is very exciting.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

SENATOR SCHLUTER: I would like to pick up on what Mayor DeLuca said, and I was going to get to that later anyway. But he must have forecasting vision there, Mayor. And that is, I think it would be helpful for us to know and for the two State Chairmen to know, now, not June 15, approximately what the different amounts of funds for the last two elections in those six districts. Because they've got to start thinking, and some candidates have got to start expressing to their party leaders their willingness to participate. And I would like to ask if we couldn't get this by the middle of May. It's taking those two election cycles and, my goodness, cut them off at the January 15 report, or the April 15 report, after that election, adding them

up, and what the average is, because they should be thinking of that right now. And I wouldn't be surprised if you will come up with some stark differences among the districts--

MR. HERRMANN: Yes.

SENATOR SCHLUTER: --where there will be very small amounts spent by some and very large amounts by others.

MR. HERRMANN: Yes.

SENATOR SCHLUTER: So if you could do that -- do you think you can do that by May 15?

MR. HERRMANN: Maybe we can. My expert nodded at me. She'll be number crunching, and that's an excellent suggestion. We will do that.

SENATOR SCHLUTER: Mayor, this is what you had in mind, is it not?

MR. DeLUCA: Yes. Yes, sir.

SENATOR SCHLUTER: Yes. And that would be good.

And number two, I would like to suggest, if the Commission would go along, that we send our minutes and invitation and agenda to the State Chairs of the two State parties so that they're clued in and they're starting to think about what they have to do right after the primary.

ASSEMBLYWOMAN MURPHY: Good idea.

SENATOR SCHLUTER: Okay. And we invite them to the meetings, too, and we hope that they would come or send representatives.

Now, we have on our agenda a portion for public comment. And do we have--

Thank you very much. If you would, please, stay around?

MR. HERRMANN: Oh, absolutely. And thank you. We all took notes. I think we learned as much as you did, so we appreciate that.

SENATOR SCHLUTER: Do we have comments from anybody in the public?

Yes, sir.

MR. PARISI: Please identify yourself?

JOE DECKELNICK: Sure. My name is Joe Deckelnick. I'm the Political Director for the Ocean County Democrats.

Several questions that I actually -- came to my light, as I was listening to the testimony from the three folks from ELEC. First, they talked about separate accounts for each candidate -- two Assembly people in the district. Does that mean you literally need to get 3,000 donations and -- of \$5 or more, and 1,000 donations of 30 or more? Or is it done as running mates?

SENATOR SCHLUTER: It wouldn't be 3,000 and 1,000. It would be 2,000 and 1,000, I think it is.

MR. HERRMANN: It's per candidate.

MR. DECKELNICK: It's per candidate. Okay.

As far as seed money goes--

ASSEMBLYMAN BARONI: I think that, Senator, he actually asked a great question.

SENATOR BUCCO: Yes.

ASSEMBLYMAN BARONI: That's a terrific question. Maybe I'm misunderstanding it and am confused. Are you saying that -- because I think-- Is it the Executive Director? I don't want to get the title wrong.

MR. DECKELNICK: Political Director.

ASSEMBLYMAN BARONI: The Political Director has an interesting question. Two candidates in the 9th District that are running, they both need to raise 1,500 contributions each?

MR. HERRMANN: Yes.

SENATOR BUCCO: Can they raise it from the same individual?

ASSEMBLYWOMAN MURPHY: Can they be from the same people?

MR. DECKELNICK: That was my follow-up question.

MR. HERRMANN: Oh, could I give to both of them?

SENATOR SCHLUTER: Right.

MR. DECKELNICK: Yes.

MR. HERRMANN: I believe the answer to that would be yes.

MR. DECKELNICK: Okay. In terms of seed money, for example, if I had two candidates that had the ability to raise \$10,000 prior to the primary?

MR. HERRMANN: Oh, in the primary season.

MR. DECKELNICK: In the primary season.

MR. HERRMANN: Okay, that's okay.

MR. DECKELNICK: That's fine.

MR. HERRMANN: Yes.

MR. DECKELNICK: What happens if I have money left over the day after? Does that money become a frozen asset and go back to the State, or--

MR. HERRMANN: This is privately raised money in the primary?

MR. DECKELNICK: Privately raised money in the primary.

MR. HERRMANN: Oh, that's their money. That money gets frozen, but they can use it. They can't use it for the Clean Elections situation, but they can use it afterwards.

MR. DECKELNICK: So, essentially, it is frozen, but we don't have to (indiscernible).

MR. HERRMANN: But again, it is very technical. After -- there might even be a window after the primary -- and we'll look at this -- where you could continue to raise and spend money, but you could not touch that money once you became a participating candidate. That money could not be used as your qualifying money.

MR. DECKELNICK: Right.

MR. HERRMANN: And again, it's a very technical thing. It says, money that's reported and raised. That would be money that would be raised after the primary, but it wouldn't be reported. Therefore, you could not use any of that money as qualifying money. You would have to actually go back to the 20-day, post-election primary report, which is reported money, and some of that money could be used, if it's \$200 or less, to qualify. And also, we can be happy with specific things. Once this thing gets going, if you're involved, we will absolutely work with you and the candidates to answer those kinds of questions.

MR. DECKELNICK: Okay. My last question would be, who is eligible to help raise those signatures and contributions?

MR. HERRMANN: I think, again, volunteer activity would be okay. You could have volunteers, because volunteers have always been outside of the Campaign Financing Law. Volunteer activity does not count as a contribution. So the volunteers could be used.

MR. DECKELNICK: What about professional canvassers?

MR. HERRMANN: I guess you'd have to pay them. And if you paid them, and you had enough money in your seed money to pay them, I don't think that would be a problem.

MR. DECKELNICK: Okay.

SENATOR SCHLUTER: Senator Bucco had a question.

SENATOR BUCCO: You go through the primary. You raise \$10,000. You only spent eight. You've got 2,000 left. That money is frozen in that account. So then you'd have to open up a separate account.

MR. HERRMANN: Very good question, Senator. Yes, you would be using separate accounts. Actually, you'd have a separate account for your seed money and for your grant money. Interestingly enough--

SENATOR BUCCO: Who pays for the accountant? (laughter)

SENATOR SCHLUTER: From your seed money. (laughter)

MR. HERRMANN: All good questions, Senator. The qualifying money -- and this is an interesting aspect of this -- that money cannot be deposited in the candidate account, because the checks are made out to the fund. So that money isn't going to the candidate account.

ASSEMBLYWOMAN MURPHY: So, in theory, the candidate has no money to spend during the time that he is raising money. He only has any money he can spend on his campaign after he has raised--

SENATOR SCHLUTER: No, no.

MR. HERRMANN: Seed money -- \$3,000.

SENATOR SCHLUTER: He has the seed money.

ASSEMBLYWOMAN MURPHY: Oh, okay.

SENATOR SCHLUTER: Mr. Deckelnick, does that answer your questions?

MR. DECKELNICK: I think it does.

SENATOR SCHLUTER: Thank you for your interest. It's great to have you here.

MR. DECKELNICK: Thank you.

SENATOR SCHLUTER: Any other questions from the public?

Ingrid Reid, nice to see you.

And before she sits down, did you, Mr. Parisi, send her memo to all of the members of the Commission?

MR. PARISI: Yes, Mr. Chairman, I did.

SENATOR SCHLUTER: Good. Thank you.

I N G R I D R E I D: Good afternoon. My name is Ingrid Reid. I direct the Eagleton New Jersey Project at the Eagleton Institute of Politics. And as you know, we are committed to making politics work, because only if politics work does democracy work.

And I wanted to let the Commission know that, at the beginning of April, the New Jersey Project convened academics in other institutions, as well as Rutgers, who have been involved in studying New Jersey politics, to have an informal conversation about the challenge that the Commission faces to evaluate this program and prepare a report by the beginning of February.

And we did two things. We looked at the goals of this effort, this pilot project, which is really, basically, to restore faith in our democracy. And then we looked at the elements that have been set out in the legislation, of the report that you are to prepare, which includes evaluating the negative and positive aspects of this experiment. And we discussed among ourselves what might be helpful to the Commission in making that evaluation. In other words, what past information, if gathered for you, would provide a comparison to what happened in 2005. Obviously, experiments often involve a control group. Would it be possible for us to find four other districts that are somewhat similar where we might compare the activity in those districts in comparison with the two pilot districts?

Is there a way to gauge public opinion, both in the State, about an attitude toward politics and elections before Clean Elections, and does the Clean Elections experiment influence public policy? Does it change in the pilot districts? What kind of -- we came up with some key points that we thought you might want to know about in terms of what happened during the campaign -- the media coverage, the campaign materials, the level of volunteer activity -- and thought we might be able to establish a protocol and use students in our various academic institutions to do that kind of description of each of the districts.

We also were interested in trying to gauge the media coverage in the pilot districts and possibly in the control districts. How did the media view this and what role did the media play? We're going to be meeting again. Some of these activities require resources, particularly the media analysis, because the person who joined us on that was a young man named Matt Hale.

You wouldn't necessarily know his name, but he was one of the three co-directors of the University of Wisconsin's media study that looked at political coverage during news broadcasts in 11 major markets. And he's now on the faculty at Seton Hall.

But I wanted to let you know that we were taking this very seriously, because we would like to be a resource to you. I don't have a firm commitment to make. We're going to meet again. But I thought I would let you know that we're thinking about it and that we want to be of assistance; and that you, as individuals, may want to also tell us what you've been thinking about, what you will need in order to make an assessment, and have some backing, and have that have validity. And let us know what you're thinking about and see if we might incorporate it in what we're currently considering; and if you have advice for us and if there is a way that we could collaborate. And I'm assuming that you would find that helpful. I'm not sure our effort's helpful. I'm not sure I should make that assumption. But since I have met many of you, and I know how committed you are to this process, I figured that any support that you could get would probably be welcome if it were open and as academically pursued as we are able to. Because I think all the people who are involved are interested in this as citizens.

So I wanted to let you know that we are taking this under very serious consideration, and hope that we will be able to make a contribution to you. And this would be a good time for us to hear from you. And we will certainly get back to you and let you know what we think and we'll be able to do, and what we will commit ourselves to doing.

So I'm delighted to be here today at your second meeting, and to hear from ELEC the really important work that they're doing to make this all possible. But then, ultimately, you're going to have to decide what you make of it all. And some of the questions you've asked today are clearly very important ones, but there also will be others.

So thank you very much for letting me talk with you today, and I hope we can be helpful.

SENATOR SCHLUTER: May I suggest that we consider you for one of the major presenters at our next meeting. And you can give us more information. And even if you have additional preliminary information to send us ahead of time, so that you can scope out where you might interface with us, what it might mean. And I think it would be very helpful to have you featured at our next meeting.

I see some nods around, and they all agree.

Thank you.

MS. REID: Okay. Thank you.

SENATOR SCHLUTER: You have a question? You can state your name.

W I L L I A M C O U L T E R: Just a remark and a question, Mr. Chairman.

My name is William Coulter. I'm the Democratic Municipal Chair of Barnegat Township in Ocean County. I haven't -- in a world of technology, a lot of people are doing banking by Web. Also, we have a lot of donations coming in on our Web sites through Master Card, and VISA, and so forth. Have you thought about that at all?

ASSEMBLYMAN BARONI: Great question.

SENATOR BUCCO: Very good question.

ASSEMBLYMAN BARONI: That's a great question.

Fred?

MR. HERRMANN: Hi. (laughter)

It's a good question. The law says check or money order. That would be another thing, I think, that post-election we would definitely want to look at. But it didn't contemplate what you're talking about and--

ASSEMBLYMAN BARONI: But, Fred, did the original -- I could be wrong. But does 1944A contemplate Internet contributions, or is that something that ELEC did regulatorially?

MR. HERRMANN: We did that regulatorially, but we didn't have the same statutory language that we have in the Clean Elections bill. So we had the flexibility to do that in the Campaign Act for other candidates, and we have done that, as a matter of fact. I think the view of the Commission would be that, of course, you'd want to keep up with technology. And certainly, if people are making contributions in that way, we don't want to create a legal straight jacket so they can't. Unfortunately, the Clean Elections bill, now law, provides for check or money order. And again, I'm not exactly sure what the history of that was, why they didn't make it broader. But we're just dealing with the facts of the situation right now. It has to be check or money order.

MR. COULTER: Okay. The question comes out as to when I do banking on the Web -- all right -- I'm putting checks on the Web. I'm paying by check on the Web. So wouldn't that be considered a check? Or are you saying everything has to be in hard copy?

MR. HERRMANN: Let me turn to the Legal Director.

MS. MASSAR: (speaking from audience) This law was enacted in 2004, and it did not specify any means other than a check or a money order.

MR. HERRMANN: Perhaps, though, I suppose if we could get an advisory opinion on something like that, maybe we could review that.

MS. MASSAR: Well, that would be a problem at this point in time.

MR. HERRMANN: For the reg.

MS. MASSAR: Yes.

MR. HERRMANN: But I think that it's possible that we could interpret that, if we got a -- and the Commission could rule.

MS. DAVIS: (speaking from audience) We need the check or money order to be written out to the Clean Elections Fund.

MS. MASSAR: To the Clean Elections Fund.

MS. DAVIS: Right.

MS. MASSAR: There's no provision for direct deposit.

MR. HERRMANN: Oh, they can't do that, okay, right. Yes. Right. So the law says-- I guess I made that point a little earlier that for the qualification money it has to be written out-- It's not written out to the candidate, it's written out to the Fund itself.

SENATOR SCHLUTER: Thank you for your very insightful question.

MR. COULTER: Okay. Thank you.

MR. HERRMANN: But it's a very important question, I grant you that.

SENATOR SCHLUTER: Anybody else? (no response)

I would ask for comments from the Commissioners and suggestions for when we should have our next meeting.

Yes.

MR. DeLUCA: I have a comment about the-- The Commission -- ELEC is responsible to prepare a voter guide. And at a minimum, it has to have statements of 500 words, or less, from the candidates. It seems to me that this would be a perfect vehicle to really explain the Clean Elections process and philosophy. And I would hope that there would be some -- that this would be approached from a marketing, as opposed to a legal, point of view. That this would be an explanation to voters as opposed to a legal document, so that people could understand what we're trying to do here. And I don't know if we have a role in that promotion, but it's clearly ELEC's responsibility. But I'm wondering if there's a way that we could--

SENATOR SCHLUTER: I think, if I might, what you're saying is, in addition to the 500 words from a candidate, that the voter guide contain an explanation of the pilot program?

MR. DeLUCA: Yes. Yes.

SENATOR SCHLUTER: Will that be done in the voter guide?

MR. HERRMANN: It's not in the statute, but I do believe that's something -- we could handle that.

Also, let me say, too, that the Clean Elections Commission has a Web site, and you may want to use that for certain purposes, explanatory

purposes. Actually, we already have linked to your Web site. You can get to your Web site from our Web site. We will have a special section on our Web site for Clean Elections. And to directly answer your question, yes, we can do that. And I guess what I'm saying is, you all might want to do something in addition to that, or it wouldn't hurt to have them in two places. It's a good suggestion.

MR. PARISI: I would just point out to the members of the Commission and to the audience that there is the explanation as to how the law works, which was presented at the last meeting, and a copy of which is included with the packet information today, which explains how, in fact, the law is going to work. It's entitled, "Explanation of P.L.2004,c121, the New Jersey Fair and Clean Elections Pilot Project." That is currently on the Web and available to anyone who is interested. It kind of gives an outline of how the process is to work. And anybody, including ELEC or anyone from the public, is certainly welcome to use that in any way.

SENATOR SCHLUTER: But I think, Mayor, your comments are well made, because there are a lot of people that don't use the Internet and they relate to election matters when they get a voter's guide. And it wouldn't hurt to have them.

Any other comments from Commissioners about the next meeting?

ASSEMBLYWOMAN GREENSTEIN: I was just thinking that-- I don't know if this is necessary or not, but it may be an interesting idea to have somebody from ELEC at our meetings, as sort of an ex officio member, or just present.

SENATOR BUCCO: To answer questions.

ASSEMBLYWOMAN GREENSTEIN: Because I'm just thinking that questions may come up, and those are the folks who--

SENATOR BUCCO: Great idea.

ASSEMBLYMAN BARONI: Great, great idea.

SENATOR SCHLUTER: I think that's an excellent idea.

SENATOR BUCCO: Good idea.

Fred is volunteering.

MR. HERRMANN: Yes. No. Either myself, depending -- or we'll always have a representative here, usually me. No problem.

ASSEMBLYWOMAN GREENSTEIN: That would be good.

SENATOR BUCCO: Great idea.

ASSEMBLYWOMAN MURPHY: That's good.

SENATOR SCHLUTER: I haven't heard any, but I'm sort of leaning toward maybe a week after primary for another meeting. And if we'll get any input from anybody directly to me or to the Secretary, because that will be before the districts are picked, and we will have information on the amount of expenses before then. We'll be getting information. So if we can proceed along that basis, and we'll have -- at the call of the Chair.

Any more business? (no response)

SENATOR BUCCO: Move for adjournment.

SENATOR SCHLUTER: Move for adjournment.

Second?

ASSEMBLYMAN BARONI: Second.

SENATOR SCHLUTER: Second.

All in favor? (ayes respond)

So ordered.

Thank you very much.

ASSEMBLYMAN BARONI: Thanks to ELEC. Great job.

(MEETING CONCLUDED)