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The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published two times per year by students of the Rutgers School of Law – Camden, located at 217 North Fifth Street, Camden, NJ 08102.

The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

Form: Citations conform to The Bluebook: A Uniform System of Citation (21st ed. 2021).

Please cite the Rutgers Journal of Law & Public Policy as 22 RUTGERS J.L. & PUB. POL'Y __ (2025).

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Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102.

Subscriptions: Subscription requests should be mailed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102, or emailed to info@rutgerspolicyjournal.org.

Internet Address: The *Rutgers Journal of Law & Public Policy* website is located at <http://www.rutgerspolicyjournal.org>.

RUTGERS
JOURNAL OF LAW & PUBLIC POLICY

VOLUME 22

SPRING 2025

ISSUE 2

CURRENT ISSUES
IN PUBLIC POLICY

© 2025 by Rutgers University School of Law – Camden
ISSN 1934-3736



**THE ELECTIONS TRANSPARENCY ACT: A STEP
BACKWARD FOR FAIR AND DEMOCRATIC ELECTIONS
IN THE SOPRANO STATE**

Sally Abdulraouf

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INTRODUCTION

Despite being described as the “antithesis of good government” and decried as a “transparent abuse of power” by former State Judge Stephen M. Holden,¹ on April 3, 2023, New Jersey’s Governor Phil Murphy reshaped the state’s campaign finance laws and the independent Election Law Enforcement Commission by signing the Elections Transparency Act into law.² Even though “all four members of the New Jersey Election Law Enforcement Commission (ELEC)” resigned in protest,³ the governor responded by utilizing his newly gained powers to appoint new commissioners who agreed “unanimously to toss 107 cases, including complaints against four of the ‘big six’ political party committees . . . [that] allegedly failed to comply with campaign finance quarterly reporting requirements in 2017.”⁴ Meanwhile, cities like Jersey City, which had strict pay-to-play ordinances in place, were forced to repeal their own local laws because the new Act preempted them.⁵

What was publicized as a bill that was intended to reform campaign finance and tackle the issue of dark money in politics, in a short time, proved to be rather a setback for reform efforts as well as the fairness of the electoral process in New Jersey. At

¹ See Tracey Tully, *Gov. Murphy Signs Law Decried as ‘Frontal Assault’ on Good Government*, N.Y. TIMES (Apr. 3, 2023), <https://www.nytimes.com/2023/04/03/nyregion/new-jersey-phil-murphy-campaign-finance.html>.

² S. 2866, 220th Leg., 2022-2023 Sess. (N.J. 2023).

³ Lawrence Norton & Lyndsay O’Reilly, *New Jersey Overhauls Pay-to-Play and Other Campaign Finance Laws*, JD SUPRA (Apr. 11, 2023), <https://www.jdsupra.com/legalnews/new-jersey-overhauls-pay-to-play-and-9093574/>.

⁴ Dana Difilippo, *New Jersey’s Election Watchdog Dumps 107 Cases After Controversial Law Cuts Investigation Time*, N.J. MONITOR (July 25, 2023), <https://newjerseymonitor.com/2023/07/25/new-jerseys-election-watchdog-dumps-107-cases-after-controversial-law-cuts-investigative-time/>.

⁵ Daniel Israel, *Jersey City Takes First Steps To Repeal Pay-To-Play Reform Ordinance*, TAP INTO JERSEY CITY, <https://www.tapinto.net/towns/jersey-city/sections/government/articles/jersey-city-takes-first-steps-to-repeal-pay-to-play-reform-ordinance> (Dec. 5, 2023, 4:48 AM).

a time when “[l]arge shares of the public see political campaigns as too costly, elected officials as too responsive to donors and special interests. . . .”⁶ Governor Murphy decided to sign into law an Act that doubled the donation limits, extensively reduced “the time for investigating allegations of impropriety to two years, down from 10,” and granted himself the authority “to appoint an entirely new four-person election board, [while] circumventing the traditional approval needed from the State Senate.”⁷ The ramifications of this Act on the electoral process and campaign finance were apparent during the 2023 November General Election. However, the lasting impact of the act is anticipated to extend far into the future, particularly regarding the surge in campaign spending at all levels, decline in voter turnout, narrowing of the candidate pool, and erosion of trust in the fairness and integrity of democratic elections and government institutions.

I. THE HISTORY OF CAMPAIGN FINANCING

The influence of money in U.S. elections has been apparent and well recognized since the mid-1700s. Historian Stern Randall proclaimed that George Washington lost his first campaign for the Virginia House of Burgesses in 1757 because he failed to spend money on food and alcohol for his voters.⁸ Since then, the costs of elections have ballooned exponentially due to factors such as technological advancements, which revolutionized campaigning and the altered the dynamics of electoral politics, the proliferation and utilization of campaign strategists, as well as the expansive role of government over the years that in turn created an environment where special

⁶ Andy Cerda & Andrew Daniller, *7 Facts About Americans' Views of Money in Politics*, PEW RSCH. CTR. (Oct. 23, 2023), <https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/>

⁷ Tully, *supra* note 1.

⁸ Anthony J. Gaughan, *The Futility of Contribution Limits in the Age of Super PACs*, 60 *DRAKE L. REV.* 755, 755 (2012).

interests are incentivized to invest heavily and compete in elections to gain access and influence over public policies.

A. From "Party-Centered" to "Candidate-Centered" Elections

Up until the 1960s, electoral politics can be described as "party centered, locally governed, and profoundly hierarchical, ruled by party bosses who decided party affairs"⁹ Candidates benefitted from "party-sponsored newspapers, the distribution of party ballots to voters, and 'treating' voters to popular forms of entertainment."¹⁰ However, with the rise of new technology, the role of money in electoral campaigns became even more vital. The growing utilization of television and radio by political candidates since the late 1950s and 1960s allowed for the arrival of the candidate-centered era, as it enabled candidates to connect directly with their electoral bases and to rely less on party endorsements and more on their image.¹¹ In 1959, then-Senator John F. Kennedy declared that with the arrival of the televised elections era, "Party leaders are less willing to run roughshod over the voters' wishes and hand-pick an unknown, unappealing or unpopular in the traditional 'smoke-filled room' when millions of voters are watching, comparing and remembering."¹²

However, either chosen party did not totally lose its influence, rather, it gained a new role centered around constructing strong campaign finance infrastructure, employing professional fundraisers, and cultivating loyalty among donors,

⁹ Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. 531, 550 (2016).

¹⁰ Raymond J. La Raja, *Why Soft Money Has Strengthened Parties*, in INSIDE THE CAMPAIGN FINANCE BATTLE: COURT TESTIMONY ON THE NEW REFORMS 69, 70 (Anthony Corrado, Thomas E. Mann & Trevor Potter eds., 2003).

¹¹ Kang, *supra* note 9, at 552.

¹² Alex Pasternack, "A Force That Has Changed the Political Scene": JFK's Essay on His Favorite (and Most Feared) Technology, VICE (Nov. 14, 2010, 7:10 PM), <https://www.vice.com/en/article/nzz7ax/a-force-that-has-changed-the-political-scene-when-jfk-schooled-america-on-tv-in-politics>.

vital for establishing electoral war chests that allowed them to compete and to utilize modern technology in their favor.¹³ Political parties employed “strategies developed by commercial enterprises to identify and inform citizens: direct mail, surveys, and telephone calls.”¹⁴ However, the great costs associated with this new medium and campaign tools allowed the big financial contributors, public relations experts, and demagogues, to “tell the candidate not only how to use TV but what to say, what to stand for and what ‘kind of person’ to be.”¹⁵

B. The Rise of Special Interests

In electoral politics, money is a powerful instrument that not only enables parties and candidates to connect with voters and broadcast their platforms but also gives those who wield it crucial leverage when it comes to influencing electoral outcomes and policymaking. Nowadays, even “[m]inors under the age of eighteen, incarcerated prisoners, corporations, unions, political parties, and political action committees [who] cannot vote...have the ability to influence ... federal, state, and local elections with their checkbooks.”¹⁶

Over time, various entities that contribute funds to electoral campaigns have gradually gained sway over the political process. Since the 1970s, the business sector, alongside other interest groups, has emerged as one of the most influential entities in electoral politics. The proliferation of lobbying groups acting on behalf of business interests allowed them to utilize electoral expenditure and donations to sway legislation in their favor, to avoid strict regulations, and ultimately pursue narrow economic interests.¹⁷ Nowadays, “the biggest companies have upwards of 100 lobbyists representing them,

¹³ See Kang, *supra* note 9, at 553.

¹⁴ La Raja, *supra* note 10, at 78.

¹⁵ See Pasternack, *supra* note 12.

¹⁶ Eugene D. Mazo, *Our Campaign Finance Nationalism*, 46 PEPP. L. REV. 759, 762 (2019).

¹⁷ See RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL 60, 65, 72 (2015).

allowing them to be everywhere, all the time...[and] [o]f the 100 organizations that spend the most on lobbying, 95 consistently represent business.”¹⁸

1. Soft Corruption

Money is an inevitable reality of politics and electoral campaigns, and while its presence is not inherently problematic, it is the way that it is usually employed that requires critical examination and scrutiny. Corruption, existing in its various forms, is not always conspicuous or easily identifiable, especially in the realm of campaign finance. Corruption can take the form of *soft* corruption, a subtle and hard-to-trace form of misconduct or “quid pro quo” wrongdoing, that thrives on exploiting loopholes and ambiguities within the legal system. Soft corruption “is found in the exploitation of such political and governmental activities as campaign finance, lobbying, patronage, and the electoral process, as well as potential conflicts of interest where a public official acts on government matters that provide personal rewards.”¹⁹ For example, when individuals manipulate government functions for personal gains or political advantages, or when legislative leaders seek sizable campaign contributions from special interests in exchange for legislative outcomes, that is soft corruption. Similarly, soft corruption occurs when lobbyists, acting on behalf of special interests or corporations, organize fundraising events for legislative candidates, and when “lawmakers do the bidding of lobbyists against the best interests of their constituents and the general public, they are engaging in soft corruption.”²⁰ Quid pro quo rewards could be businesses receiving favorable narrowly tailored tax breaks, law firms being appointed as legal counsel

¹⁸ Lee Drutman, *How Corporate Lobbyists Conquered American Democracy*, ATL. (Apr. 20, 2015), <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>.

¹⁹ WILLIAM E. SCHLUTER, *SOFT CORRUPTION: HOW UNETHICAL CONDUCT UNDERMINES GOOD GOVERNMENT AND WHAT TO DO ABOUT IT* 4 (2017).

²⁰ *Id.* at 8.

to the government, or labor unions, contractors, and developers obtaining special permits, favorable treatment from regulatory agencies, or being awarded government contracts, even if they did not offer the lowest or most beneficial bid; that is soft corruption.²¹

2. Addressing Soft Corruption: Campaign Finance Regulations at the Federal Level

Amongst the various forms of soft corruption, campaign finance is the most dominant form. “ It pertains to the funding of a particular campaign...the formation of a political action committee, the spending by a political party, the transfer of dollars from one war chest to another, the funds spent to influence voters to vote yes or no on a public question, and much more.”²² Often seen as an inevitable aspect of the electoral system, when campaign finance is plagued by dark money and quid pro quo exchanges, it “subvert[s] the quality of public policy, thus adversely affecting traditional government responsibilities such as education, health care, transportation, and social services.”²³ For decades, laws and reforms have been introduced to mitigate the influence of corruption in campaign finance and electoral politics by individual states as well as Congress. Reforms introduced throughout history developed through three major eras: the Progressive Era, the Post-Watergate Era, and the *Citizens United* Era.²⁴

a. The Progressive Era

During the late nineteenth and early twentieth centuries, railroads, utilities, and corporate giants emerged as dominant special interests, exerting significant influence on legislation

²¹ *Id.* at 7.

²² *Id.* at 8.

²³ *See id.* at 4.

²⁴ *See* Anthony Johnstone, *Recalibrating Campaign Finance Law*, 32 YALE L. & POL'Y REV. 217, 217 (2013).

through their contributions to local and state elections.²⁵ In response, state legislatures began implementing campaign finance laws that restricted campaign spending and required disclosure of funding sources, but did not impose limits on contributions.²⁶ In line with the initiatives undertaken by states, Congress passed the Tillman Act in 1907 to ban direct contributions from businesses, however, corporate interests managed to find and utilize the loopholes in the system through soft money contributions, lobbying, and expenditure on political ads.²⁷ In another attempt to curb corporate interests, Congress tried to impose more regulations on campaign finance in 1947 by requiring "groups to identify themselves and file financial information – expenditures and receipts – for any direct lobbying of legislators."²⁸ Since then, and against the backdrop of a political scandal that shook the political scene, Congress's reform initiatives and attempts to regulate campaign finance grew increasingly proactive.

b. The Post-Watergate Era

During what is referred to as the "post-Watergate era," there was a notable development in federal finance regulations, designed to further restrict and oversee campaign expenditure and contributions. Congress passed the Federal Election Campaign Act (hereinafter "FECA") in 1971, thus establishing contribution limits, disclosure requirements for contributions and expenditures by campaigns, and requiring campaigns to maintain records of the names and addresses of donors.²⁹ Not too long after its passage, FECA was challenged on constitutional grounds, and its provisions were amended. In

²⁵ SCHLUTER, *supra* note 19, at 5. See also Johnstone, *supra* note 24 at 220;

²⁶ Johnstone, *supra* note 24, at 5.

²⁷ Kevin Weber, *Unsuccessful Campaign Finance Reform: The Failure of New Jersey's 2004-2005 Pay-to-Play Reforms to Curb Corruption and the Appearance of Corruption*, 38 SETON HALL L. REV. 1443, 1453 (2008).

²⁸ Robert F. Sittig, *Campaign Reform: Interest Groups, Parties, and Candidates*, ANNALS AM. ACAD. POL. & SOC. SCI., Jan. 1995, at 85, 86 (1995).

²⁹ See Johnstone, *supra* note 24, at 223.

Buckley v. Valeo (1976), the Supreme Court ruled that “the First Amendment requires the invalidation of the Act's independent expenditure ceiling, § 608 (e)(1), its limitation on a candidate's expenditures from his own personal funds, § 608 (a), and its ceilings on overall campaign expenditures, § 608 (c).”³⁰ However, the Court found “no constitutional infirmities in the recordkeeping, reporting, and disclosure provisions of the Act.”³¹ The Court reasoned that when it comes to expenditure limits, “eliminating corruption or the appearance of corruption was not a sufficient regulatory rationale, because campaign expenditure did not directly create the quid pro quo relationship between candidate and donor that would lead to corruption.”³² However, a “limitation on the amount of money a person may give to a candidate or campaign organization . . . involves little direct restraint on his political communication . . . for it . . . does not in any way infringe upon the contributor's freedom to discuss candidates and issues.”³³

FECA was further amended in 1979, whereby most of its reporting requirements were removed, and the threshold for the disclosure of contributions was raised to \$200, and to \$250 for expenditure-related disclosures.³⁴ Such reforms perpetuated the problem of high entry costs for challengers and potential candidates who do not have access to full war chests and relied on direct contributions. Meanwhile, incumbents who relied extensively on financial support from wealthy donors and business interests remained in power and continued to owe them political favors. The persistence of this dynamic not only allowed for the rise of the PACs and diversion of resources to outside interest groups, but it also intensified partisan rhetoric and exacerbated voter alienation.³⁵ Hence, it is clear that given the potential for unintended consequences and unpredictable

³⁰ *Buckley v. Valeo*, 424 U.S. 1, 58-59 (1976).

³¹ *Id.* at 84.

³² William P. Marshall, *The Last Best Chance for Campaign Finance Reform*, 94 NW. U. L. REV. 335, 348 (2000).

³³ *Id.* at 348-49.

³⁴ See Johnstone, *supra* note 24, at 223.

³⁵ See Marshall, *supra* note 32 at 354-373.

outcomes arising from campaign finance regulations, it is essential that such laws undergo periodic review to safeguard the integrity of the electoral process while also safeguarding liberties and freedoms.

c. The *Citizens United* Era

In the post-*Buckley* era, contribution limits and mandatory disclosure became “the primary permissible means of regulation, and anti-corruption and publicity are the primary permissible ends of regulation.”³⁶ In 2010 the Supreme Court delivered another blow to campaign finance regulations with its *Citizens United v. FEC* decision.³⁷ Relying on the First Amendment, the Supreme Court invalidated all state contribution limits on independent committees, PACs, advocacy groups, corporations, and unions, citing that such measures violate the right to free speech.³⁸ The Court treated corporations and unions the same as individuals, and ruled that they “can give unlimited sums on behalf of or in opposition to an identified candidate or issue, providing these expenditures are not coordinated with a specific campaign.”³⁹ Furthermore, in *Speechnow.org v. FEC*, the Court found it “unconstitutional to apply contribution limits to PACs that made only independent expenditures...[and] Super PACs are able to raise unlimited sums, regardless of whether it is given to them by individuals or corporations, and to spend unlimited sums.”⁴⁰ As for 501(c)(4) organizations, they are not required to disclose the names and information of their donors to the FEC.⁴¹ Consequently, a “plethora of super PACs and social welfare-focused 501(c)(4) organizations entered the political scene.”⁴²

³⁶ Johnstone, *supra* note 24, at 226.

³⁷ *Citizens United v. FEC*, 558 U.S. 310 (2010).

³⁸ Gaughan, *supra* note 8, at 759-60.

³⁹ SCHLUTER, *supra* note 19, at 6.

⁴⁰ Mazo, *supra* note 16, at 810-11.

⁴¹ *Id.*

⁴² Sheila Krumholz, *Campaign Cash and Corruption: Money in Politics, Post-Citizens United*, 80 SOC. RSCH.: INT’L Q., 1119, 1125 (2013).

After the *Citizens United* decision, the floodgates opened for anonymous contributions to political campaigns at all levels, allowing corporations and issue-specific PACs to inject information and influence the policy debates and electoral outcomes with little to no accountability.⁴³ For example, in 2010, “[e]ighty-three newly minted Super PACs quickly raised more than \$60 million for the 2010 elections...[and] election spending by all outside groups...increased dramatically...to more than \$300 million.”⁴⁴ And merely 2 years later, outside groups were able to raise and “spend more than \$1 billion for the 2012 elections, with roughly 1310 Super PACs raising more than \$800 million and accounting for more than \$600 million of the total spending.”⁴⁵ It is not surprising that recent elections are characterized by the ever-increasing amounts of money and expenditure at the local, state, and federal levels.

3. Unintended Consequences and Loopholes

Campaign finance reforms, even though promoted as well-intentioned efforts to increase transparency and fairness in elections and campaigning, and more importantly, to curb the influence of dark money in politics, instead benefited incumbents, business interests, and further eroded the public’s trust in the government and its institutions.

a. The Rise of Business Interests

The increasing influx of money into electoral politics, perpetuated by the removal of expenditure limits and the empowerment of PACs and other outside spending sources, produced “significant temptation to engage in soft

⁴³ Michael Latner & Gretchen Goldman, *Fighting Corruption, Promoting Evidence: Reforms to Strengthen Democracy for the Public Good*, CTR. FOR SCI. & DEMOCRACY: UNION CONCERNED SCIENTISTS (Apr. 4, 2019), <https://www.ucs.org/resources/fighting-corruption-promoting-evidence>.

⁴⁴ Kang, *supra* note 9, at 594-95.

⁴⁵ *Id.* at 595.

corruption.”⁴⁶ Examples of soft corruption that end up passing legal muster include when “legislative leaders seek large campaign contributions from special interests that have a stake in pending legislative proposals with an unspoken quid pro quo ... [or] [w]hen lobbyists conduct fund-raising events for legislative candidates.”⁴⁷ Even when looking at individual donors, a trend emerges that highlights the dominance of business interests over electoral finances, either through the influence of business executives and professionals or lobbyists.⁴⁸

While business interests have long exerted influence over American politics, the reforms of the past decades ushered a new era of electoral politics characterized by unprecedented levels of spending. Outside spending on federal elections, which historically ranged around \$20 millions throughout the 1990s, rose to around \$330 millions in 2008, and following the *Citizens United* decision it reached \$1 billion mark in 2012, and then the \$1.4 billion mark in 2016.⁴⁹ It is reported that corporations “spend about \$2.6 billion a year on reported lobbying expenditures...[and] [t]oday, the biggest companies have upwards of 100 lobbyists representing them...[and][o]f the 100 organizations that spend the most on lobbying, 95 consistently represent business.”⁵⁰

Although it is hard to find overt evidence linking PACs contributions to politicians’ votes, studies have consistently demonstrated that “politician’s positions reflected the preferences of their donors to an uncanny extent.”⁵¹ For example, in a study that examined letters sent by lobby groups

⁴⁶ SCHLUTER, *supra* note 19, at 6.

⁴⁷ *Id.* at 4.

⁴⁸ See Krumholz, *supra* note 42, at 1123.

⁴⁹ Eugene D. Mazo & Timothy K. Kuhner, *Democracy by the Wealthy: Campaign Finance Reform as the Issue of Our Time*, in DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA 1, 5 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018).

⁵⁰ Drutman, *supra* note 18.

⁵¹ Nicholas Stephanopoulos, *Aligning Campaign Finance Law*, in DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA 74, 74-75 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018).

to Senate committees, the author found that lobby groups that fundraised for a committee member had a better chance of having their requests answered, reflected by the amendments introduced by the committee members and votes, than if they did not fundraise for that member.⁵² Further, “members of Congress may be more inclined to do favors for groups that fundraise for them than for groups with whom they share a political ideology.”⁵³ Such findings highlight the dynamics of political influence, as well as the significant role campaign fundraising plays in shaping legislative work. Ultimately, this dynamic is advancing a form of democracy that is “premised on responsiveness to the large donors and spenders,”⁵⁴ rather than reflecting the will of the people.

b. Endurance of Incumbents in Maintaining Political Power

The growing influence of the business sector on policymaking and the resulting proliferation and normalization of quid pro quo exchanges involving policymakers favors incumbents. In exchange for favorable policies and regulations, incumbents are rewarded with expenditure and donations from corporations through PACs and lobbying firms.⁵⁵ The business sector invests in incumbents to gain access and influence over the policymaking process and to ensure that regulations do not harm their interests. In return, incumbents, while in office and while campaigning, prioritize the interests of their biggest donors, rather than their constituents, to maintain the flow of campaign funds and expenditure by businesses and PACs.

⁵² Amy M. McKay, *Fundraising for Favors? Linking Lobbyist-Hosted Fundraisers to Legislative Benefits*, 71 POL. RES. Q. 869, 876 (2018).

⁵³ *Id.*

⁵⁴ Timothy K. Kuhner, *The Third Coming of American Plutocracy: What Campaign Finance Reformers Are Up Against*, in DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA 19, 51 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018).

⁵⁵ See LA RAJA & SCHAFFNER, *supra* note 17, at 72-79.

Conversely, challengers who typically campaign on platforms advocating for change, are usually backed by unions, single-issue groups, and advocacy organizations.⁵⁶ Unlike incumbents who have established “names” and “images,” challengers compete on unequal grounds due to the lack of established reputation and lack of sufficient funding needed to publicize their agenda through the media. Over time, this has skewed electoral outcomes in favor of incumbents and affected the diversity of and limited the perspectives of the candidacy pool at the local, state, and federal levels. This dichotomy highlights the significant influence of the various interests over politics and policymaking. Additionally, it leads to the erosion of public trust in elected officials, the democratic electoral process, and democratic values, and increases the barriers to entry for challengers, who are more likely to rely on individual donors and grassroots groups in funding their campaigns.

c. The Electorate’s “Crisis of Confidence”

Consequently, this environment led to a “crisis of confidence,” as President Jimmy Carter called it, that made citizens lose faith “not only in government itself but in the ability as citizens to serve as the ultimate rulers and shapers of our democracy.”⁵⁷ Despite the anticipation that the increase in educational attainment, and the enfranchisement of 18-year-olds and African Americans voters in the South during the 1960s and 1970s, would result in a rise in voter participation over time, against the backdrop of political scandals, diminishing confidence in officials and government responsiveness, it instead led to decline in voter turnout.⁵⁸

⁵⁶ *Id.* at 66.

⁵⁷ President Jimmy Carter, Televised Address: Crisis of Confidence (Jul. 15, 1979).

⁵⁸ Stephen D. Shaffer, *A Multivariate Explanation of Decreasing Turnout in Presidential Elections, 1960-1976*, 25 AM. J. OF POL. SCI. 68, 92 (1981); see also Paul R. Abramson & John H. Aldrich, *The Decline of Electoral Participation in America*, 76 AM. POL. SCI. REV. 502, 502 (1982) (the author notes that although the data suggest these attitudinal changes contributed to the

First, wealthy donors, PACs, lobbyists, and corporations are not representative of the general population, neither ideologically nor demographically. For example, wealthy donors who tend to be white, middle-aged males tend to be more conservative than the general population, especially on issues pertaining to public funding for education and healthcare, tax cuts for businesses, increased privatization, and reduction of the power of unions.⁵⁹ Feeling disenfranchised and overpowered by these narrow interests, voters are left discouraged from participating in elections.

Additionally, with every election, the prominence of foreign influence on electoral finance is on the rise, further fueling the discrepancy in representation. In *Bluman v. FEC*, the Supreme Court barred non-US citizens from contributing to political elections as well as “express advocacy expenditures”; however, it allowed foreigners to contribute to issue advocacy, and excluded citizens of other states, minors, and corporations from its holding.⁶⁰ Consequently, “[i]n 2018, a record 238 PACs belonging to the U.S. subsidiaries of foreign corporations supported political candidates across the United States, contributing more than \$23.5 million to American electoral campaigns in total.”⁶¹ Meanwhile, candidates for the U.S. House of Representatives “received an average of 73.8% of their contributions from outside of their districts,”⁶² and “[i]ncumbent Senators running for re-election in 2018, 41.9% of their contributions on average came from within state and 58.1% came from out of state.”⁶³ This, in turn, makes it more likely for lawmakers to support policies that align with the positions of their donors rather than their own constituents, and this becomes more salient if there are obvious demographic and

decline in voter participation, a causal relationship cannot be conclusively established).

⁵⁹ Mazo & Kuhner, *supra* note 49, at 6-7.

⁶⁰ *Blumen v. FEC*, 565 U.S. 1104 (2012).

⁶¹ Eugene D. Mazo, *Our Campaign Finance Nationalism*, 46 PEPP. L. REV. 759, 810 (2019).

⁶² *Id.* at 798.

⁶³ *Id.* at 802.

socio-economic disparities between the two groups. Foreigners and out-of-state donors can also influence elections at the state and local levels by contributing to 501(c)(4), and since they are not regulated by the FEC and are not required to disclose the names of their donors, voters have no access to data that would reveal information about the identity of the contributors, including foreign entities.⁶⁴

C. Striking the Balance Between Contribution and Expenditure Limits in Campaign Finance

Proponents of the deregulation measures often claim that since there is no evidence that there was a “significant decline in political corruption in the United States since the adoption of campaign finance legislation in the 1970s,”⁶⁵ then imposing contributions and expenditure limits is pointless. Some even go further and argue that contribution limits produce negative effects. For example, Anthony J. Gaughan argues that contribution limits force candidates to spend most of their time chasing small contributions to raise money for their campaigns, which turns them into “perpetual fundraisers” instead of productive officials.⁶⁶ Moreover, when it comes to incumbents who possesses power, prominent platform, established reputation, and a strong base of supporters, imposing contribution limits may disproportionately impede challengers from being able to launch effective campaigns, convey their message to the electorate, and compete on an equal footing with the incumbent’s established level of influence and popularity.⁶⁷

Since the FEC’s contribution and expenditure limits do not extend to PACs and other independent advocacy groups, more likely than not, candidates will feel compelled to rely on them for campaign financing, and this setup will enable

⁶⁴ See *id.* at 811.

⁶⁵ Gaughan, *supra* note 8, 792.

⁶⁶ See *id.* at 795-96.

⁶⁷ See *id.* at 798.

candidates to bypass contribution limits laws and even disclosure measures in certain cases.⁶⁸ Hence, the likes of Gaughan prefer that “Congress and the state legislatures reassert the primacy of candidate campaigns by abandoning contribution limits entirely, while preserving FECA’s mandatory disclosure requirements.”⁶⁹ This line of thought prioritizes transparency for voters to curb corruption and the influx of dark money into elections.

However, a more middle-ground approach regarding contribution and expenditure limits looks at the “optimal range” of each regulatory tool before evaluating its efficiency. Anthony Johnstone argues that in the quest to curb corruption, it is not necessary to lower the contribution limits or expenditure limits as low as possible; rather, effective regulation measures depend on the relative size and particular practices of the jurisdiction that have varying optimal ranges.⁷⁰ Setting high contribution limits leads to the concentration of campaign finances in the hands of the wealthy donors and established elites, meanwhile super low contribution limits push candidates to focus on raising funds, puts incumbents at an advantage, and diverts the influence to interest groups and PACs, that operate with narrow agendas and are less transparent about the source of their funds.⁷¹ As for expenditure, low expenditure limits deprive candidates, especially non-incumbents, of the ability to relay their message to the public and compete on equal footing with established politicians, and high expenditure limits favor the interests of wealthy donors, further leading to the fostering of soft corruption and *quid pro quo* exchanges.⁷²

And even with disclosure requirements, when the threshold for disclosure is too low, average voters and individual donors will be less reluctant to contribute and more willing to redirect their contributions toward PACs and interest groups, leaving “die-hard” or “radical” voters to dominate the

⁶⁸ See *id.* at 792.

⁶⁹ *Id.* at 763.

⁷⁰ See Johnstone, *supra* note 24, at 218-20.

⁷¹ See *id.*

⁷² See *id.* at 217.

pool of direct contributors.⁷³ And when the disclosure limits are too high, it allows campaigns to conceal relevant information, cater to the interests of the wealthiest donors, and ultimately deprive ordinary voters of knowing which wealthy donors have funded which campaign.⁷⁴

Therefore, implementing or altering contribution or disclosure limits will produce diverse outcomes for both the electorate and the campaign finance system. Thus, in their pursuit to provide the electorate with information about donors and the sources of campaign finance, to deter actual corruption or the appearance of it, and to gather data to enforce more substantive measures, lawmakers should focus on arriving at the “optimal range” for setting contribution and disclosure limits.

II. CAMPAIGN FINANCE IN NEW JERSEY: CORRUPTION AND REFORMS

New Jersey, “notorious in the United States for political corruption . . . [is] particularly vulnerable to procurement corruption because of . . . the state’s concentration of power in its governor, its weak lobbying-disclosure laws, and its highly flexible procurement rules.”⁷⁵ Additionally, “the county political parties hold substantial political power, much of it exercised in the selection of candidates who, when elected, will be loyal disciples of their political benefactor.”⁷⁶ Overall, and especially at the state level, government officials and even those serving at the federal level “look to the local political infrastructure for election, reelection, appointments, and even policy formulation

⁷³ *Id.* at 218.

⁷⁴ *Id.* at 219.

⁷⁵ Rachel Jackson, *Blowing the Whistle on the Pay-to-Play Game: Campaign Financing Reform in New Jersey, 1998-2012*, PRINCETON UNIV.: INNOVATIONS FOR SUCCESSFUL SOCIETIES (Dec. 2012), <https://successfulsocieties.princeton.edu/publications/blowing-whistle-pay-play-game-campaign-financing-reform-new-jersey-1998-2012>.

⁷⁶ SCHLUTER, *supra* note 19, at 27-28.

... for their own political survival.”⁷⁷ Additionally, because local officials tend to be less visible compared to ones that serve at the national level, “it stands to reason that they are more susceptible to ethical transgressions and political manipulation—which are also under the radar.”⁷⁸

Throughout the nineteenth century, business interests, notably the interests of the railroads and utilities corporate giants, as well as the alcoholic beverages industry, influenced how legislators voted in the state.⁷⁹ For years, New Jersey’s laws did not require disclosure of political contributions or contributions to lobbying firms by businesses seeking to establish contracts with the state government.⁸⁰ It was estimated that “more than \$1 billion was wasted annually through no-bid contracts and other favors.”⁸¹ The state’s history is marred by the presence of soft corruption, where political connections and *quid pro quo* exchanges dictate the awarding of government contracts, the abuse of hiring and appointments of unqualified officials, and pension padding.⁸² Therefore, political connections and loyalty take precedence over qualifications, and voters’ interests and concerns are secondary to the interests of the elites. When it comes to the “consequences of soft corruption, three are particularly troubling for . . . New Jersey: higher-cost government, bad governmental decisions, and an apathetic public.”⁸³

A. The Road to “Pay-to-Play” Reforms

An owner of a New Jersey-based company who worked as an informant for the FBI once declared that “for companies that seek contracts from municipalities in New Jersey, the only difference between a bribe and a campaign contribution is that

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* at 16.

⁷⁹ *Id.* at 5, 78-79.

⁸⁰ Jackson, *supra* note 75, at 2.

⁸¹ *Id.*

⁸² See SCHLUTER, *supra* note 19, at 10-11.

⁸³ *Id.* at 10.

the latter is legal.”⁸⁴ Starting in the 1990s, calls for reforms to New Jersey’s campaign election contributions and “pay-to-play” practices began to emerge. The phrase “pay-to-play,” utilized by the media, activists, politicians, and voters, describes the practice by which “businesses . . . [donated] money to New Jersey political parties and candidates in exchange for favorable consideration in the awarding of government contracts.”⁸⁵ For decades, this practice was highly utilized by NJ’s politicians, especially those seeking reelection, who worked to block any reform attempts targeting such practices.⁸⁶ Exacerbating the situation further was the fact that under New Jersey law, contracts did not have to go to the lowest bidder. Thus, for decades, “state officials have tremendous latitude when doling out contracts, with little to stop an official from steering a contract to whomever he or she chooses, including a campaign supporter.”⁸⁷ However, civil society reformers, grassroots campaigns, and a series of Democratic and Republican governors successively worked to introduce pay-to-play reforms.

At its earliest stage, the reform movement in New Jersey was initiated by Democratic governors and lawmakers who aimed to curb the influence of the Republican Party, because “although both sides relied on corporate donations, Democratic candidates tended to win far greater financial support from unions and labor interests.”⁸⁸ Hence, the first reform initiatives targeted lobbyists advocating on behalf of the business interests. In 1971, the first law to regulate lobbying activities in the state was introduced, requiring lobbyists to wear identifiable badges and prohibiting them from serving as members of the legislative staff.⁸⁹

In 1990, a bipartisan commission called the Ad Hoc Commission on Legislative Ethics and Campaign Finance, also

⁸⁴ *Id.* at 74.

⁸⁵ Jackson, *supra* note 75, at 1.

⁸⁶ *Id.* at 2.

⁸⁷ Weber, *supra* note 27, at 1448.

⁸⁸ Jackson, *supra* note 75, at 7.

⁸⁹ SCHLUTER, *supra* note 19, at 79.

known as the Rosenthal Commission after its chair Alan Rosenthal, issued a report calling for reforms of campaign financing laws and legislative ethics in New Jersey, a state with no contribution limits.⁹⁰ The report recommended setting the disclosure threshold at \$200 or more, the disclosure of donors' occupations and employers, and limiting yearly contributions to municipal political committees to \$5,000, \$10,000 to county political committees, and \$25,000 to state political parties.⁹¹ However, the bill that gained bipartisan support and was ultimately signed into law in 1993 set the contribution limits to county political committees at \$25,000 per year, and allowed legislators instead of the party caucuses to establish, authorize, and designate political committees to help elect officials.⁹² Thus, it increased the power of the legislators over elections rather than political parties, enabling them to establish political committees to raise funds and choose who to support in elections. As a result, "[l]egislative leaders . . . and the leadership committees became the fund-raising Goliaths of New Jersey politics."⁹³

In 1993, once all campaigns reported their donations to the Election Law Enforcement Commission, it was evident that there was a 60% increase in new spending on local and state elections compared to the previous election cycle, and that special interests became ever more influential in Trenton.⁹⁴ Additionally, "[a]fter their creation in 1993, leadership PACs showed an increase of 325 percent in their donations to legislative candidates,"⁹⁵ and it became apparent that the real function of such PACs was to "circumvent the limits . . . on individual contributions to personal campaign accounts . . . [to] facilitate the wheeling of funds to campaigns . . . [to] hide the identities of donors . . . [and] aid the political fortunes of the

⁹⁰ *Id.* at 57.

⁹¹ *Id.* at 57-58.

⁹² *Id.* at 60.

⁹³ *Id.* at 60.

⁹⁴ SCHLUTER, *supra* note 19, at 62.

⁹⁵ *Id.* at 68.

legislative leaders who make the donations,"⁹⁶ to allow candidates to conceal the "undesirable" sources and interests of their major donors. Additionally, the reform measures empowered legislators, such as the Senate President and Assembly Speaker, who were privileged to form their own committees, to bolster their electoral prospects by providing funds to fellow legislators through their own committees.⁹⁷

The reforms proved ineffective in curbing soft corruption and *quid pro quo* exchanges, as instances of patronage and abuse of power within the political system continued to occur, especially in relation to business interests. Finally, in response to a 1998 scandal linked to the awarding of a \$392 million contract for a privatized motor vehicle inspection system by Parsons Infrastructure & Technology Group, Inc. that failed within a few months of its operation, civil society and grassroots movements began to call for electoral contribution reforms.⁹⁸ The push for reforms was further perpetuated by the fact that under the administration of Republican Governor Christine Whitman, Parsons made campaign contributions totaling \$62,000 to Republican committees. While there were no direct allegations, the situation raised concerns about the appearance of impropriety.⁹⁹

Against a backdrop of scandals, legal challenges, and setbacks, and with the help of groups such as Citizens Campaign, several attorneys and lawmakers, as well as successive Governors, James E. McGreevey, Richard J. Codey, Jon Corzine, and Chris Christie, a new framework was established over the period of almost a decade.

Starting in 2004, Governor McGreevey issued an executive order banning "state government agencies from entering into any transaction valued at more than \$17,500 with any business entity that had contributed to a gubernatorial campaign or to a state or county political party committee."¹⁰⁰

⁹⁶ *Id.* at 62.

⁹⁷ *Id.* at 64.

⁹⁸ Jackson, *supra* note 75, at 3.

⁹⁹ Weber, *supra* note 27, at 1448.

¹⁰⁰ Jackson, *supra* note 75, at 2.

Following his resignation, Governor Richard J. Codey began pushing for lobbying disclosures, created an ethics commission, and eventually signed pay-to-play legislation into law in 2005.¹⁰¹

Although the legislation was passed and codified into law, it faced resistance and opposition from lawmakers and was even challenged in courts. Upon the issuance of Executive Order No. 134 in 2004, the Office of the Legislative Services opined that the Executive Order “infringes upon the lawmaking power of the legislature and [violates the] separation of powers.”¹⁰² Additionally, the Federal Highway Administration found the law to be in violation of federal competitive bidding laws and threatened to pull funds from the state if the legislation encompassed projects that received federal highway dollars.¹⁰³ In the 2008 case of *In re Earle Asphalt Company*,¹⁰⁴ the pay-to-play law's constitutionality was questioned, specifically on First Amendment grounds. However, the court ruled that the State had shown a sufficiently important interest in justifying the law and had used specific measures to prevent unnecessary restrictions on constitutional freedoms.¹⁰⁵

B. Loopholes, Ambiguities, and Pushback

As a result of the challenges and pushbacks, the pay-to-play bill was passed with amendments that allowed for numerous loopholes to emerge, thus diminishing its overall effectiveness. When Governor Codey signed the bill into law, it had been amended to incorporate a provision exempting projects funded by federal highway funds, thereby establishing a loophole for pay-to-play politics.¹⁰⁶ Therefore, a firm could make donations that exceed the limited amount without risking their eligibility for state contracts if they directly made

¹⁰¹ *Id.* at 6-8.

¹⁰² Weber, *supra* note 27, at 1450.

¹⁰³ *Id.* at 1451.

¹⁰⁴ *In re Earle Asphalt Co.*, 401 N.J. Super. 310, 318 (N.J. Super. Ct. App. Div. 2008).

¹⁰⁵ See Weber, *supra* note 27, at 1458-59.

¹⁰⁶ *Id.* at 1451.

donations up to \$10,000 to a federal campaign fund or up to \$25,000 a year to legislative leadership committees and political action committees.¹⁰⁷ Such committees and funds would, in turn, “wheel” the money to the specific campaigns. For example, in 2003, real estate developer Jack Morris and former state Senator John Lynch, who maxed out their contribution limits to the Ocean County Democratic Party, each contributed \$27,000 to the Hunterdon County Democratic Committee, which then “wheeled” two checks of \$25,000 each to the Ocean County Democratic Party that helped elect the mayor there.¹⁰⁸ In a similar manner, Jon S. Corzine, Wall Street CEO and former U.S. Senator, “made the maximum personal contribution of \$37,000 to the Bergen County party and then sent identical amounts to four other Democratic county units, as well as a total of \$27,500 to the two leadership PACs of his party . . . [ultimately] \$212,500 found its way to”¹⁰⁹ the Bergen County Democrats.

Another loophole allowed employees of businesses, especially partners who own less than 10% of the profits or assets, to make personal donations to campaigns.¹¹⁰ This holds particular importance for law firms. Alongside law firms, engineering firms, and consultants who worked on behalf of developers circumvented the pay-to-play bans when dealing with redevelopment zones and acquiring development rights to abandoned or dilapidated properties.¹¹¹ Notably, redevelopment agreements are not covered by pay-to-play provisions. Thus, it allowed such firms to make donations without restrictions.¹¹² Additionally, the legislation’s allowance for local governments to formulate their own pay-to-play laws using the state law as a minimum standard led to the creation of a “patchwork” of regulations that resulted in inconsistencies across the state.¹¹³

¹⁰⁷ Jackson, *supra* note 75, at 8-9.

¹⁰⁸ SCHLUTER, *supra* note 19, at 24.

¹⁰⁹ *Id.* at 26-27.

¹¹⁰ Weber, *supra* note 27, at 1462.

¹¹¹ *Id.* at 1468.

¹¹² *Id.*

¹¹³ Norton & O’Reilly, *supra* note 3.

Furthermore, patronage and *quid pro quo* exchanges remained an ongoing issue for the state and its officials. For example, Charles Kushner, a multimillionaire real-estate developer who contributed more than \$1.5 million to Governor McGreevey's campaign, was named by McGreevey "to the Port Authority of New York and New Jersey, a plum spot for a real-estate developer since it controls hundreds of millions of dollars in development contracts."¹¹⁴ Meanwhile, Rajesh Chugh, a business owner who raised over a million dollars for McGreevey's campaign, was awarded a "\$85,000-a-year post in the secretary of state's office that Chugh boasted made him assistant secretary of state and the third most powerful guy in New Jersey government."¹¹⁵

Further efforts were implemented in 2006 by the newly elected Governor Jon Corzine, who issued two executive orders that extended the law to include "contributions to legislative leadership committees and municipal political party committees" and banned "contractors from making massive donations to a legislative leadership committee based on the implicit understanding that the money would be transferred to the state party."¹¹⁶ However, contractors and other special interest donors continued to utilize the loopholes in the system and became increasingly reliant on PACs and other independent entities. Since special interest PACs are not subject to pay-for-play laws, contractors and other wealthy donors increased their direct contributions to PACs, especially for county and municipal campaigns.¹¹⁷ Meanwhile, wealthy candidates like Corzine utilized the status of non-profits and established charities that "loaned" money to specific political blocs and entities, such as churches in Northern New Jersey and Camden, which in return endorsed him for the governorship.¹¹⁸

¹¹⁴ BOB INGLE & SANDY McCLURE, THE SOPRANO STATE: NEW JERSEY'S CULTURE OF CORRUPTION 52 (2008).

¹¹⁵ *Id.* at 53.

¹¹⁶ Jackson, *supra* note 75, at 10.

¹¹⁷ SCHLUTER, *supra* note 19, at 32.

¹¹⁸ *Id.* at 45-46.

In 2009, Governor Chris Christie, through an executive order, attempted but failed to expand the pay-for-play regulations. Christie added legislative leadership committees to the list and “extended the definition of *business entity* to include the state’s powerful labor unions and labor organizations,” hence making them ineligible “to enter into collective bargaining agreements with the state if they had given campaign contributions of more than \$300,” however, the court ruled that these measures infringe upon legislative powers.¹¹⁹ Additionally, around the same time, the *Citizens United* decision further exacerbated the problem in New Jersey by allowing more money to be funneled to elections under the guise of “free speech,” and it “opened the door to unlimited dark money spending by businesses and nonprofits, and helped establish the idea that ‘corporations are people.’”¹²⁰

Although the impact of pay-for-play reforms at the local level is hard to discern due to the patchwork nature of its adoption and implementation, the Election Law Enforcement Commission’s statistics show that between 2006 and 2011, “political donations by government contractors dropped for the fifth year in a row to \$9.6 million across . . . [New Jersey] from \$15.1 million.”¹²¹ Therefore, it is evident that, regardless of the setbacks and legal challenges, reform efforts yielded tangible outcomes, albeit incremental, especially regarding the awarding of state contracts.

C. The Elections Transparency Act of 2023

The Elections Transparency Act (hereinafter “ETA”), signed into law by Governor Murphy on April 3, 2023, introduced significant amendments to pay-to-play regulations, contribution limits, and the timetable for investigating complaints. One of the most important reforms addresses the

¹¹⁹ Jackson, *supra* note 75, at 11.

¹²⁰ Rachel Moseson, *Bringing Dark Money to Light: Political Nonprofit Disclosure Statutes in Delaware and New Jersey*, RUTGERS U. L. REV. 1, 7 (2017).

¹²¹ Jackson, *supra* note 75, at 12.

“patchwork” problem. The ETA “preempts all pay-to-play ordinances adopted by local governments ... and pay-to-play rules adopted by local independent authorities and boards of education.”¹²² Hence, the new law eliminates major inconsistencies across the state.

When it comes to disclosure requirements, the ETA lowered the disclosure threshold from \$300 to \$200 and requires the submission of a cumulative quarterly report to the Election Law Enforcement Commission (hereinafter “ELEC”) “of all contributions in excess of \$200 in the form of money, loans, paid personal services or other things of value . . . the name and mailing address of each person or group . . . [and] occupation of the individual.”¹²³ Although lowering the reporting threshold and requiring quarterly reporting to the ELEC is a step forward in the quest to curb the presence of “dark money” and pay-to-play practices, the significant increase in contribution limits is poised to amplify the influence of businesses, wealthy donors, and special interests on local elections.

Table 1: Changes Under the Elections Transparency Act ¹²⁴

¹²² Norton & O'Reilly, *supra* note 3.

¹²³ N.J. STAT. ANN. § 19:44A-16(a) (West 2023).

¹²⁴ Guillermo C. Artiles, William J. Palatucci & Omar A. Barentto, *The Elections Transparency Act: What You Need to Know About NJ's New Campaign Finance and Pay-to-Play Law*, MCCARTER & ENGLISH (Apr. 12, 2023), <https://www.mccarter.com/insights/the-elections-transparency-act-what-you-need-to-know-about-njs-new-campaign-finance-and-pay-to-play-law/>; Rudy S. Randazzo & Mary Kathryn Roberts, *What You Need to Know About the Election Transparency Act*, RIKER DANZIG (Apr. 6, 2023), <https://riker.com/publications/what-you-need-to-know-about-the-election-transparency-act/>.

Recipient	Pre-ETA Limits	ETA Limits
<u>Reporting Requirements:</u>	Candidates and Committees: \$300	Candidates and Committees: \$200
	Independent Expenditure Committees (PACs and non-profits): None	Independent Expenditure Committees (PACs and non-profits): \$7,500 or more as well as expenditures made on elections
<u>Campaign Contributions:</u>	Gubernatorial Candidates: \$4,900 per election (primary and general elections count together)	Same
	Candidates (other than Candidates for Governor or Lt. Governor): \$2,600 per election	Candidates other than Candidates for Governor or Lt. Governor): \$5,200 per election
	Legislative Leadership Committees: \$25,000 per year	Legislative Leadership Committees: \$75,000 per year
	State Political Party Committees: \$25,000 per year	State Political Party Committees: \$75,000 per year (Plus \$37,500 per year to housekeeping account)
	County Political Party Committees: \$37,000 per year	County Political Party Committees: \$75,000 per year (Plus \$37,500 per year to a housekeeping account)
	Municipal Political Party Committees: \$7,200 per year	Municipal Political Party Committees: \$14,400 per year
	Political Committees: \$7,200 per election (primary and general	Political Committees: \$14,400 per election (primary and general

	elections count separately)	elections count separately)
	Continuing Political Committees: \$7,200 per year	Continuing Political Committees: \$14,400 per year
<u>Pay-to-Play Laws:</u>	Prohibits contractors from being awarded public contracts if they donate to state, county, municipal political parties, and legislative leadership committees.	No prohibition on contractors who donate as long as the awarding of the public contract was made in compliance with the fair and open process.
<u>Statute of Limitations:</u>	10 years	2 years (applies retroactively)

Although contribution limits to gubernatorial candidates were left unchanged, the new law increased the limits for contributions to other candidates, legislative leadership committees, political committees, as well as state, county, and municipal political party committees.¹²⁵ Under the ETA, the contribution limits have nearly doubled, with the most notable increase seen in contributions to legislative leadership committees, rising from \$25,000 to \$75,000 per year.¹²⁶ Meanwhile, contributions to other recipients doubled or tripled as well, with some having the ability to receive more money in housekeeping accounts. For example, candidates, besides those running for Governor or Lieutenant Governor, can receive up to \$5,200 per election, instead of \$2,600.¹²⁷ Likewise, the limits doubled for contributions to municipal political party committees and political committees from \$7,200 per year to

¹²⁵ N.J. STAT. ANN. § 19:44A-29 (West 2023); NJ ELEC, *Gubernatorial Public Financing*, slide 8 (Nov. 2020), <https://www.cabq.gov/clerk/documents/new-jersey-candidate-power-point.pdf>. See also Tully, *supra* note 1.

¹²⁶ N.J. STAT. ANN. § 19:44A-11.4(a)(1) (West 2023); Norton & O'Reilly, *supra* note 3.

¹²⁷ Norton & O'Reilly, *supra* note 3.

\$14,400 per year, whereby primary and general election contributions to political committees are counted separately.¹²⁸

Additionally, a significant increase is noticeable in the new contribution limits for both State and County political party committees. The contribution limits to State Political Party Committees tripled under the ETA. Meanwhile, it doubled for the County Political Party Committees, with both having the ability to maintain \$37,500 per year in housekeeping accounts.¹²⁹ Such accounts may then be used for “‘non-political’ expenses, such as rent, utilities, taxes, legal and accounting expenses . . . [and] gubernatorial campaigns may use party housekeeping accounts for non-political expenditures following their election, and the expenses will not be considered in-kind contributions from the party to the campaign.”¹³⁰

1. Immediate Consequences and Long-Term Impact: The 2023 Legislative General Election and Beyond

The unprecedented influx of money into state, local, and municipal elections in the 2023 election, which is expected to rise over the coming years, will only further the influence of the wealthy, business interests, and perhaps even out-of-state donors over electoral outcomes and public policies across New Jersey. Small-town candidates and third-party candidates will be impacted the most, considering that most of them rely on individual donors who might be dissuaded from contributing due to the lowering of the reporting threshold, meanwhile establishment candidates who are backed by their parties, PACs, and political committees will have access to an even larger pool of resources for media ads, research and development, polling, and traveling.

Moreover, the challenge of addressing the presence of “dark money,” “pay-to-play” practices, and patronage issues has

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

become increasingly daunting due to the significant shortening of the statute of limitations for actions pursued by the ELEC. Instead of ten years, the ETA, under N.J. Stat. Ann. § 19:44A-6a, establishes that any enforcement action brought by ELEC “for any violation . . . shall be subject to a statute of limitations of two years following the occurrence of the alleged violation . . . provided . . . [that it] shall apply retroactively to any alleged violations occurring prior to the effective date of this act.”¹³¹

a. Increased Spending

The first election cycle following the implementation of the ETA saw a notably high level of spending, as well as a mere 27% voter turnout.¹³² The expenditure and contributions for the 2023 election exceeded all previous records, aside from the 2017 election, marking a significant increase in spending.¹³³ Leading to November 7, 2023, “[c]andidates and interest groups shelled out a whopping \$70.3 million combined as all 120 seats in the Legislature...topped the ballot...according to...the New Jersey Election Law Enforcement Commission.”¹³⁴ In the 11th District alone, around ten million dollars were spent to secure Democrat Vin Gopal’s seat in the State Senate and to win two assembly seats for the Democratic Party.¹³⁵ Meanwhile, Independent Committees funneled a total of \$22,969,841 to Democratic and Republican candidates across the state.¹³⁶ This evident short-term surge in spending is a cause for concern for

¹³¹ N.J. STAT. ANN. § 19:44A-6(a) (West 2023).

¹³² Brent Johnson, *A Whopping \$73M Was Spent on N.J.’S Legislative Elections. Here’s Where It Went*, NJ.COM (Dec. 2, 2024), <https://www.nj.com/politics/2023/12/a-whopping-73m-was-spent-on-njs-legislative-elections-heres-where-it-went.html>.

¹³³ Press Release, N.J. Election Law Enf’t Comm’n, Candidate and Independent Spending High During 2023 General Election (Dec. 1, 2023), https://www.elec.nj.gov/pdf/press_releases/pr_2023/pr_12012023.pdf. Figure 1 and Table 2 on page 43 illustrate the significant disparity in spending and contributions, with a particularly notable increase in 2023.

¹³⁴ Johnson, *supra* note 132.

¹³⁵ *Id.*

¹³⁶ Press Release, N.J. Election Law Enf’t Comm’n, *supra* note 132, at 3 tbl.5.

it foreshadows even more significant increases in election expenditures over the years to come.

Figure 1: New Jersey Legislative General Election Campaign Finance¹³⁷

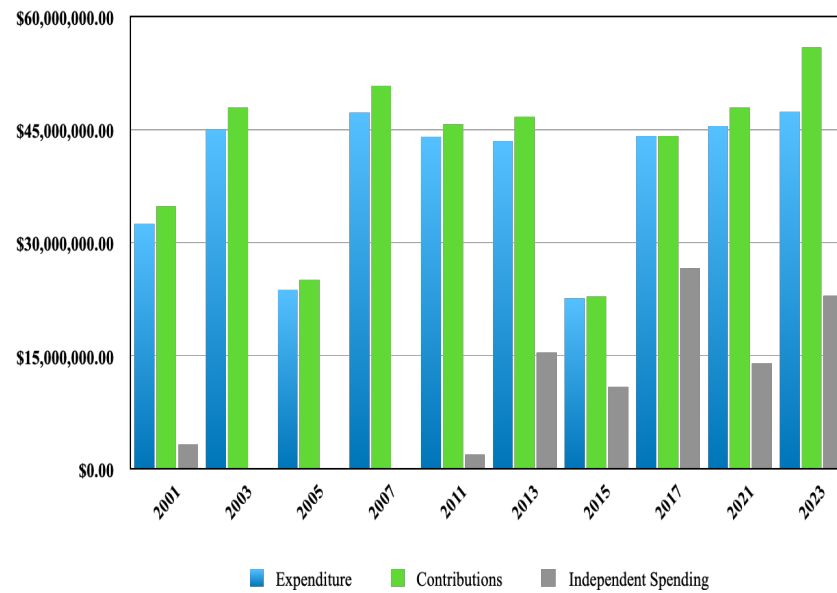


Table 2: Data from the New Jersey Law Enforcement Commission¹³⁸

Year	Expenditure	Contributions	Independent Spending
2001	32,550,394	34,825,851	3,166,463
2003	44,990,255	47,911,008	4,857
2005	23,713,193	25,081,696	3,476
2007	47,231,847	50,797,317	165,000
2011	44,024,272	45,656,674	1,835,500
2013	43,446,977	46,691,108	15,375,071

¹³⁷ *Id.* at 1 tbl.1.

¹³⁸ *Id.*

2015	22,632,814	22,883,719	10,908,983
2017	44,164,473	44,117,517	26,562,428
2021	45,474,841	47,896,089	14,000,959
2023	47,351,472	55,852,814	22,969,841

Table 3: Spending By Independent Committees during the 2023 Legislative General Election¹³⁹

Group	Amount Spent	Backing	Group	Amount Spent	Backing
Brighter Future Forward	\$3,663,219.00	Democratic Candidates	Stronger Foundations Inc (Operating Engineers)	\$1,997,565.00	Republican Candidates
Middle Ground	\$2,649,658.00	Democratic Candidates	Strengthen Our State	\$675,254.00	Republican Candidates
American Representative Majority	\$2,396,563.00	Democratic Candidates	Women for a Stronger New Jersey	\$597,127.00	Republican Candidates
Garden State Forward (NJEA)	\$2,329,155.00	Democratic Candidates	Republican State Leadership Committee	\$765,295.00	Republican Candidates
Prosperity Rising NJ Inc	\$2,255,881.00	Democratic Candidates	South Jersey Strong	\$217,709.00	Republican Candidates
Working for Working Americans (Carpenters)	\$1,500,000.00	Democratic Candidates	Garden State Success	\$209,742.00	Republican Candidates
Growing Economic Opportuniti	\$1,159,374.00	Democratic Candidates	Patriots for Progress	\$49,760.00	Republican Candidates

¹³⁹ *Id.* at 3 tbl.5.

es (Laborers)					
Carpenters Action Fund	\$1,000,000.00	Democratic Candidates	NRA Political Victory Fund	\$7,497.00	Republican Candidates
Planned Parenthood	\$361,731.00	Democratic Candidates	NJ Right to Life PAC	\$7,320.00	Republican Candidates
Progress for NJ PAC	\$250,000.00	Democratic Candidates	NJ Family Policy Center	\$6,089.00	Republican Candidates
Jersey Freedom	\$214,696.00	Democratic Candidates	New Jersey Coalition of Real Estate	\$351,492.00	Both Parties
NJ League of Conservati on Voters Victory Fund	\$166,414.00	Democratic Candidates	America's Future Fund	\$38,300.00	Uncertain
AFT Solidarity	\$100,000.00	Democratic Candidates	Total:	\$22,969,841.00	

b. Evasion of Election Finance Investigations

Although the likes of Nicholas Scutari, one of the sponsors of the ETA and president of the State Senate, have likened the 10 years statute of limitation period to a “police officer writing a ticket long after a traffic infraction,” the reality is that the substantial reduction to two years will result in “wiping” the violations that were committed prior to April 2021 off the books.¹⁴⁰ Since its enactment, almost half of the active investigations have been tossed out.¹⁴¹ Remarkably, amongst the 107 complaints that fell outside the statute of limitations, two claims from the 2017 election cycle involve the Republican State Committee and Democratic State Committee; the Republican State Committee for allegedly failing to report

¹⁴⁰ Tully, *supra* note 1.

¹⁴¹ Difilippo, *supra* note 4.

nearly \$15,000 in donations, and the Democratic State Committee for failing to report almost \$900,000 in donations, and \$1 million dollars in spending.¹⁴² Likewise, 105 other instances involving numerous violations will remain uninvestigated, permitting individuals who accepted “dark money” or neglected to report their donations and expenditures to evade accountability.

Considering that most violations do not come into light until after elections are over, or after a period of investigation by grassroots groups and civic entities, limiting the statute of limitations to two years will allow many violations to go uninvestigated and unnoticed. Not only that, but it will also encourage those willing to participate in acts that violate the state’s contracting and campaign financing laws to commit violations, as they are not deterred by a long period during which their illegal acts might be uncovered. Hence, although this move will reduce the burden of investigation on the relevant agencies in the state, in the long run, its negative effects will allow for the proliferation of violations that go uninvestigated and will allow campaigns and donors to abuse the existing laws.

c. Declining Civic Engagement and Escalating Marginalization

A well-functioning Democracy “requires an involved citizenry . . . [and] [w]hen a majority of citizens do not participate in the democratic process, the resulting political decisions represent the choice of a few . . . [hence] negating the democratic premise.”¹⁴³ When citizens lose faith in their ability to bring about political change, especially through the electoral process, they become distrustful of the political processes and government institutions. Such a disenchanting electorate can become either more susceptible to manipulation by radical or

¹⁴² *Id.*

¹⁴³ Marshall, *supra* note 32, at 374.

populist politicians or disengaged from the political process altogether.¹⁴⁴

Political theorists on modern political democracy, like Schmitter and Karl, have constantly emphasized the importance of the democratic electoral process and participation in elections as a founding pillar for a healthy democracy.¹⁴⁵ Fair democratic elections ensure that the government and its policies reflect the will of the citizens, as well as serve as a tool to curb corruption, institutional checks and balances, and as a mechanism to sanction those who try to undermine the well-being of the state and its citizens.¹⁴⁶ For example, a democratic electoral system creates a desire for candidates and incumbents to get re-elected. Such desire motivates individuals to prioritize their reputation, especially if they know that there are alternative candidates present who can replace them.¹⁴⁷ Therefore, it is imperative for a democratic society to nurture and empower an effective civil society, watchdog organizations, and other grassroots movements to ensure that corruption is investigated and reported so that the electorate is well-informed prior to elections and that their desired policies are produced by the elected officials. After all, "corruption can provoke changes in voting behavior, such as increasing voter abstention, increasing volatility of persistent discrimination against minorities, social classes and women."¹⁴⁸

Therefore, if corruption is left unchecked, not only will trust in the traditional parties erode, but it might also lead to the emergence of radical populist parties, like in Europe, that capitalize on the erosion of the "social contract," voter apathy, and weaknesses in the democratic system and state institutions. Additionally, corruption, or the appearance of it even,

¹⁴⁴ See *id.* at 372.

¹⁴⁵ See ELISKA DRAPALOVA ET AL, CORRUPTION AND THE CRISIS OF DEMOCRACY: THE LINK BETWEEN CORRUPTION AND THE WEAKENING OF DEMOCRATIC INSTITUTIONS 2-3 (Transparency International 2019), <http://www.jstor.com/stable/resrep20482>.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.* at 7.

undermines economic growth at all state levels, state capacity, as well as the allocation of talent.¹⁴⁹ Therefore, if politicians and other elected officials sense that they are not being monitored or that they can effectively use the loopholes in the system for their own benefit, then more likely than not they will take advantage of the situation at the expense of the general public.¹⁵⁰ And once the political system and government become unresponsive to the wishes of its citizens and unaligned with their interests, the electorate will become more apathetic and disengaged, which in return will allow for more corruption.¹⁵¹ Therefore, this vicious cycle of corruption, erosion of political democratic values, and electoral participation will continue to expand from the local to the state and to the national level.

D. Alternative Reform Options for Lawmakers

Polls across the nation and trends in public opinion that cross partisan and demographic lines showcase that “[l]arge shares of the public see political campaigns as too costly, elected officials as too responsive to donors and special interests, and members of Congress as unable or unwilling to separate their financial interests from their work as public servants.”¹⁵² About “(84%) says that ‘special interest groups and lobbyists have too much say in what happens in politics’ is a good description of the political system.”¹⁵³ And to alleviate the negative consequences of the current political landscape, “[r]oughly seven-in-ten U.S. adults (72%) say that there should be limits on the amount of money individuals and organizations can spend on political campaigns.”¹⁵⁴ However, in the post-*Citizens United* world, lawmakers do not have much room to target spending by individuals, PACs, or even corporations. However, they have other options that could potentially yield superior results to

¹⁴⁹ *Id.*

¹⁵⁰ Krumholz, *supra* note 42, at 1120.

¹⁵¹ See Latner & Goldman, *supra* note 43.

¹⁵² Cerda & Daniller, *supra* note 6.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

those achieved by the ETA so far. Officials in New Jersey should consider the public financing of campaigns, vouchers to voters, matching donations, or even micro-grants to candidates, as well as setting term limits.

For decades, “public financing programs at the federal, state, and municipal levels have served, in the words of the US Supreme Court, ‘as means of eliminating the improper influence of large private contributions.’”¹⁵⁵ Empirical studies have shown that public financing of elections also encourages candidates to spend less time fundraising, and “reduce the opportunity for corruption and strengthen our perception of government . . . promote contested and competitive elections, foster diversity in the electoral process, and encourage voter-centered campaigns.”¹⁵⁶ Implementing public financing of elections may cost the voter about \$10 per year.¹⁵⁷ However, this investment could foster a crucial shift, making candidates accountable to the electorate rather than special interest groups, prioritizing the electorate's needs, and enhancing the integrity of the electoral process.¹⁵⁸

Another proposed solution involves offering voters vouchers or matching donations and grants to candidates. Adam Lioz argues that states or localities can offer vouchers to voters who are 18 years old or older so that they can contribute to candidates, parties, or PACs, or match the contributions given by public funds once the candidate raises a specific amount of money.¹⁵⁹ Additionally, micro-grants can be offered to help candidates with the startup costs. Such proposals address the issue of high entry costs, particularly pertaining to challengers and third-party candidates who struggle to compete against

¹⁵⁵ Mimi Murray et al., *Public Financing Fosters Electoral Diversity*, in CAMPAIGN FINANCE, OPPOSING VIEWPOINTS SERIES 29, 30 (Kathryn Roberts ed., 2019).

¹⁵⁶ *Id.* at 32.

¹⁵⁷ Joan Mandle, *Public Financing Is in The Interest of All People*, in CAMPAIGN FINANCE, OPPOSING VIEWPOINTS SERIES 57, 58 (Kathryn Roberts ed., 2019).

¹⁵⁸ *Id.* at 60.

¹⁵⁹ Adam Lioz, *Raising All of Our Voices for Democracy: A Hybrid Public Funding Proposal*, in DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA 126, 143 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018).

incumbents who enjoy the support of big donors, political parties, and PACs, and benefit from name recognition and publicity. Hence, reforms could address this issue further by introducing term limits to ensure that incumbents do not remain in power for too long while relying on the support of special interests in exchange for favorable policies and other quid pro quo exchanges.¹⁶⁰

III. CONCLUSION

Free and democratic elections have been the cornerstone of American representative democracy for centuries, an idea that inspired countries and various constitutions worldwide. However, the mere occurrence of elections does not guarantee the preservation of democratic values, nor that the people's will is reflected in who gets elected and what policies they choose to follow. Unfortunately, "[d]emocracy is now premised on responsiveness to the large donors and spenders."¹⁶¹ The sequence of Supreme Court decisions over the past decades made it clear that "money is considered speech, democracy is construed as an open market, corruption is limited to specific instances of bribery, and ingratiation, access, and influence on the basis of wealth have obtained constitutional protection and ideological justification from the highest court in the land."¹⁶²

However, one must start at the local level to fix the system. Local elections are "the venue where the influence of wealthy elites and established interest groups might be diminished and where non-elites are able to participate fully as volunteers and candidates."¹⁶³ Local elections are also the place

¹⁶⁰ See ALAN ROSENTHAL, *Building Relationships*, in THE THIRD HOUSE: LOBBYISTS AND LOBBYING IN THE STATES 108, 110, 124, (2001) (Rosenthal argues that term limits can weaken the established relationships between lobbyists and legislators, potentially reducing lobbyists' influence over the legislative process).

¹⁶¹ Kuhner, *supra* note 54, at 51.

¹⁶² *Id.* at 53.

¹⁶³ BRIAN E. ADAMS, CAMPAIGN FINANCE IN LOCAL ELECTIONS: BUYING THE GRASSROOTS 4 (2010).

where “different types of candidates can succeed, enhancing the pluralistic nature of the American political system and limiting the problems caused by biases and inequalities in national politics.”¹⁶⁴ Initiatives directed at increasing participation and civic engagement should focus more on local elections, especially since citizens can have more access to them through public meetings and forums.

In retrospect, despite its projected intentions, the Elections Transparency Act represents a regression rather than progress in combating corruption, the appearance of corruption, and addressing the ballooning influence of corporate interests in elections. By failing to address the loopholes from earlier reform attempts and allowing for increased contribution limits, the Act undermined decades’ worth of efforts and initiatives that aimed to uphold and improve the integrity of the democratic process in New Jersey and to foster citizen engagement in the political sphere.

¹⁶⁴ *Id.*