

**ELECTION LAW ENFORCEMENT  
COMMISSION,**  
Petitioner,  
v.  
**CITIZENS TO MAKE MAYOR-COUNCIL  
GOVERNMENT WORK,**  
Respondent.

Initial Decision: April 23, 1985

Final Agency Decision: May 20, 1985

Supreme Court of New Jersey Decision Appears at:  
107 *N.J.* 380 (1987)

**SYNOPSIS**

A complaint filed by petitioner alleged that respondent had violated the Campaign Contributions and Expenditures Reporting Act, *N.J.S.A.* 19:44A-1 et seq., by failing to submit pre-election and post-election reports of funds as well as failing to disclose the identity of certain contributors. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law.

Respondent is an organization formed to secure signatures on a petition to recall the mayor of Atlantic City. Respondent claimed it is not a "political committee" as defined by the Campaign Contributions Act and is therefore not subject to filing requirements. Political committee is defined in *N.J.S.A.* 19:44A-3(i) as an organization which acts to aid or promote the passage or defeat of a public question. Respondent argued that by promoting a recall it was not advocating the passage or defeat of a question, but merely attempting to bring a question before the voters.

The administrative law judge rejected respondent's argument, saying that by working for a recall respondent was in fact taking a position on a public question. *N.J.S.A.* 40:69A-169 defines a recall petition as a petition to "demand the removal of a designated incumbent."

Accordingly, the administrative law judge concluded that respondent was a political committee subject to the filing requirements of the Campaign Contributions Act. Respondent did not deny violating the requirements. Penalties were ordered, including fines and escheat to the State of any anonymous contributions, pursuant to *N.J.S.A.* 19:44A-11.

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The administrative law judge declined to address respondent's contention that the Campaign Contribution Act was unconstitutional, saying that argument was more appropriately raised in an appellate forum.

Upon review, the Election Law Enforcement Commission affirmed this initial decision.

The Appellate Division, 208 *N.J. Super.* 583, reversed. Judgment of the Appellate Division was affirmed in part and reversed in part by the Supreme Court; the cause was remanded.

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**Gregory Nagy, Esq.**, Staff Counsel, on behalf of petitioner  
**Oscar Gaskins, Esq.**, on behalf of respondent

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**METZGER, ALJ:**

This matter arises out of a complaint filed by petitioner alleging that respondent violated provisions of the Campaign Contributions and Expenditures Reporting Act., *N.J.S.A.* 19:44A-1 *et seq.* Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Petitioner's complaint contains three counts. The first count alleges that respondent failed to file pre-election reports; the second that it failed to file a post-election report disclosing the final disposition of funds collected during the campaign; and the third count alleges that respondent failed to disclose the names and addresses of certain contributors who donated over \$100 to the campaign, all in violation of *N.J.S.A.* 19:44A-8 and 16. The facts have been stipulated and are recited in the next paragraphs. Respondent concedes that if it had a filing obligation, it did not comply and is responsible under each of petitioner's counts. It argues, however, that the statute imposes no such obligation under these facts, and if it does, then the statute is unconstitutional.

Respondent was at all times relevant to this matter an organization of two or more persons acting jointly to secure signatures on a petition to recall Michael Matthews, the then mayor of Atlantic City, pursuant to the Optional Municipal Charter Law, *N.J.S.A.* 40:69A-168 to 178. Respondent received contributions and made expenditures exceeding \$1,000 for purposes related to the recall election. As a result of its

efforts, a special election was conducted on March 13, 1984, in the City of Atlantic City, and the following public question was voted on: "Shall Michael J. Matthews be removed from office by recall?"

Respondent established and maintained a bank account for the deposit of contributions and the payment of expenditures for purposes related to the recall election. Respondent began receiving contributions and making expenditures for such purposes on or about February 25, 1983. Prior to the date of the special election, it did not file any campaign report disclosing contributions received or expenditures made out of its account.

On May 18, 1984, respondent did file a report containing information for the period beginning February 25, 1983 and ending on or about December 5, 1983. This report shows a balance of funds in the amount of \$2,899.21. Respondent has not filed a campaign report disclosing the disposition of these funds though the stipulations reflect respondent's explanation that all monies received were paid to campaign workers as "street money" or were used to purchase materials and supplies. There are no records for this balance.

The May 18, 1984 report also fails to disclose the names and addresses of nine contributors, each contributing more than \$100 to the cause. While partial information was developed concerning these contributions during the course of discovery, respondent is unable to identify or otherwise explain contributions received amounting to \$9,390.

This is the substance of the record.

The filing obligation under the act extends to political committees, *N.J.S.A.* 19:44A-8, and applies to elections at which a public question is to be voted, *N.J.S.A.* 19:44-4c. The term "political committee" is defined at *N.J.S.A.* 19:44A-3(i) as:

... any two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does, aid or promote the passage or defeat of a public question in any election, ...

The gravamen of the dispute is to be found in the first paragraph of the stipulations and in an interpretation of the term "political committee." Respondent is an organization which secured signatures on a recall petition, pursuant to *N.J.S.A.* 40:69A-168 to 178. It denies that in so doing, it acted to "aid or promote the passage or defeat"

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of the public question; rather it sought merely to bring the question before the voters. Thus it is not a political committee within the meaning of the act's definition.

Since the stipulations make clear that respondent acted pursuant to *N.J.S.A.* 40:69A-168 to 178, reference to these sections is appropriate. *N.J.S.A.* 40:69A-169 provides:

A recall petition shall demand the removal of a designated incumbent, shall be signed by qualified voters equal in number to at least twenty-five per centum (25%) of the registered voters of the municipality, and shall be filed with the municipal clerk. It shall set forth a statement of the cause upon which the removal is sought.

It is apparent from this section that respondent took a position in bringing the matter to the ballot. As petitioner points out, the task of carrying out a successful recall drive is a formidable one. In this case a legal contest was waged at every stage of the proceedings, as the reported cases on the matter attest. *See, Baker v. Deane*, 192 *N.J. Super.* 153 (Law Div. 1983); *Baker v. Deane*, 196 *N.J. Super.* 416 (Law Div. 1983); *Matthews v. Deane*, 196 *N.J. Super.* 482 (Ch. Div. 1984); *Matthews v. Deane*, 196 *N.J. Super.* 441 (Ch. Div. 1984); *Matthews v. Atlantic City*, 196 *N.J. Super.* 145 (Law Div. 1984). In the absence of respondent's activities there would have been no recall election. Thus as petitioner points out in its brief:

If respondent did not intend to influence the outcome, its actions in undertaking the very process necessary for the recall question to be submitted to the voters is inexplicable.

Based on the foregoing, I **CONCLUDE** that respondent did act to aid or promote the passage or defeat of a public question and as such was a political committee subject to the reporting requirements of the Campaign Contributions Act.

Though respondent did not raise the constitutional issue at the prehearing conference, its brief appears to take the position that a financial reporting requirement for citizens organized to do as it did violates its right of free speech and the right to petition for the redress of grievances. As the attack is to the statute itself, such argument is more appropriately raised in an appellate forum, *Christian Brothers Institute v. Northern New Jersey Interscholastic League*, 86 *N.J.* 409 (1981), and I do not proceed to this issue.

The Commission has recommended specific penalties. With respect to Count 1, it recommends a reprimand and fine of \$400 to be reduced to \$200 if paid within 30 days of the final decision. With respect to

the Count 2, it recommends that respondent be ordered to file a final campaign report within 30 days of the issuance of a final decision and be fined \$200 to be reduced to \$100 if paid within such 30-day period. With respect to Count 3, it recommends that respondent be ordered to escheat to the State, pursuant to *N.J.S.A.* 19:44A-11, any anonymous contribution, that is a contribution the source of which is unknown to respondent. According to the stipulations, respondent is unable to identify the source of contributions which in the aggregate amounts to \$9,390. The Commission suggests that payment be made within 30 days of the final decision.

Respondent made no response to the Commission's recommendation for penalties as its sole argument is that it has no filing obligation. Thus, I have no basis for disagreement with any of the Commission's recommendations, they are adopted, and it is so **ORDERED**.

This recommended decision may be affirmed, modified or rejected by the **NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION**, which by law is empowered to make a final decision in this matter.

#### **FINAL DECISION BY THE ELECTION LAW ENFORCEMENT COMMISSION:**

The Election Law Enforcement Commission at its meeting of May 14, 1985 by a vote of 4-0, affirmed the initial decision of the administrative law judge, decided April 23, 1985, substantially for the reasons set forth in that decision. A copy of the initial decision is enclosed and incorporated in this final decision.

**THEREFORE**, as of the 20th day of May, 1985, it is **ORDERED** as follows:

As to Count 1, Respondent is reprimanded and a penalty in the form of a civil fine in the amount of \$400 (FOUR HUNDRED DOLLARS) is imposed upon Respondent, Citizens to Make Mayor-Council Government Work, said fine to be reduced to \$200 (TWO HUNDRED DOLLARS) if paid within 30 days of the date of this Final Decision.

As to Count 2, Respondent is ordered to file a final campaign report within such 30-day period and a penalty in the form of a civil fine in the amount of TWO HUNDRED DOLLARS is imposed upon Respondent, said fine to be reduced to ONE

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HUNDRED DOLLARS (\$100) if paid within such 30-day period;

As to Count 3, Respondent is ordered to escheat to the State of New Jersey, pursuant to *N.J.S.A.* 19:44A-11, any anonymous contribution, that is a contribution the source of which is unknown to respondent, in the aggregate amount of \$9,390, such payment to be made within 30 days of the date of this final decision.

The Campaign Reporting Act provides that fines imposed by the Commission be paid forthwith into the State Treasury. Therefore, payment should be made by check or money order payable to "Treasurer, State of New Jersey", and submitted to the Commission offices.

**You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.**