

CLEAN ELECTION CANDIDATE WITHDRAWAL

The purpose of this analysis is to suggest an alternative to the procedure presented in the Commission's Final Report of May 8, 2006 for a candidate who has entered the Clean Elections program but, at a subsequent date in the election cycle, wishes to withdraw.

There has always been a consensus to allow withdrawal. Further, it is recognized that there are two stages of a candidacy when withdrawal might be under consideration.

1. Withdrawal of a Participating Candidate. This is a candidate who is in the process of raising qualifying contributions but has not reached the qualifying level.
 2. Withdrawal of a Certified Candidate. This is a candidate who has raised the required amount of qualifying contributions, has become certified by ELEC, and has received clean election funding from the State - - - as per the schedule in Appendix 3 of the report.
- I. Conditions under P.L. 2004, chapter 121, the law which applied to the 2005 Clean Election experience.

The 2004 act did not speak to the issue of withdrawal by a participating candidate. But for a Certified Candidate the 2004 act (section 9, last paragraph) states:

“Once certified, a candidate shall be permitted to withdraw from being a certified candidate and become a non-participating candidate at any time prior to the day of the election with the approval of the NJCCEC, which shall consider such requests on a case by case basis. Any candidate who withdraws from being a certified candidate shall remit to the fund any money received therefrom pursuant to this act unless directed otherwise by the NJCCEC and the commission may assess a penalty for such withdrawal.”

This language lacks precision in several respects:

- a) Can the review agency deny withdrawal?
- b) Can the review agency forgive repayment by the withdrawing candidate, in part or in full?
- c) Can the review agency assess a penalty greater than the amount of clean election funds received by the withdrawing candidate?
- d) Can the review agency require payment of personal funds from the withdrawing candidate?

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- e) Can the withdrawing candidate use moneys from a previous personal campaign fund (BEEF - - Between Election Expenditure Funds) for repayment? BEEF funds become frozen when the candidate enters the Clean Elections program, yet the language in the 2004 law is unclear as to whether such funds can be used when the candidate withdraws and becomes “non-participating”. Note the language of section 7a(3)(b) of the 2004 law which states that a participating candidate shall:

“certify that he or she will not seek to use such funds (BEEF funds) in any way that would assist the candidate once certified as a New Jersey Fair and Clean Elections candidate.”

It is important to note that the Commission decided early in its deliberations to change the agency which regulates candidate withdrawal from the NJCCEC to ELEC.

II. Conditions regarding withdrawal contained in the Commission’s Final Report and the recommended legislation.

- a) Participating candidate (page 9 of the Report and section 10.c, page 26 bottom, of the draft legislation) which states on page 9:

“A participating candidate may rescind his or her declaration of intent, and ELEC must acknowledge this action, before the candidate can begin raising and spending funds in the traditional manner. Qualifying contributions in the account of a participating candidate who rescinds his or her declaration of intent will be paid over to the State, to be used as clean election funds. However, if a participating candidate does not qualify by virtue of not having received sufficient qualifying contributions by the general election qualifying deadline date of August 31, the candidate can keep all qualifying contributions, as well as remaining seed money, to use in the balance of his or her campaign.”

- b) Certified Clean Elections Candidate (page 11 of the Report and section 10.a(2), page 26, of the draft legislation). Here, the Report and legislation clearly state that certified candidates wishing to withdraw may apply to ELEC and are allowed to withdraw. The actual language (page 11) follows:

“A clean elections candidate may withdraw from the program and become a non-participating candidate at any time. The candidate will have to notify ELEC of the decision to withdraw, and ELEC will acknowledge the withdrawal and issue a press advisory to notify the public. Any clean election funds left in the candidate’s account will be remitted to ELEC within three days of the candidate’s withdrawal.”

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This is the same withdrawal process as allowed for participating candidates, with two exceptions for certified candidates:

- ELEC must publicize the withdrawal of a certified candidate
- The certified candidate, because he or she has received clean election funds, must remit to the State any of these funds that are unspent.

III. Discussion

Many believe that the integrity of a clean elections program requires repayment to the State of clean election funds advanced to a certified candidate if that candidate withdraws and “goes private”. There is also sentiment that the program should not allow traditional campaign funds from private sources (BEEF funds) raised before the candidate enters the program to be used for reimbursements to the State.

IV. Proposed Alternative

The following stipulations are offered as a fair process for withdrawal and reimbursement of clean election funds for a certified candidate.

1. Withdrawal can not be denied, but reimbursement must apply.
2. The amount of repayment to the State shall be the amount of clean election funds that the State has awarded the certified candidate, less any unspent clean election funds remitted to the State at the time of withdrawal.
3. Repayment of funds to the State shall end on election day (either primary or general, as the case may be). If post-election repayment is allowed, it might be difficult bringing closure to the repayment process. Besides, the winning candidate would have the advantage after the election of holding fund raising events where private contributions are solicited from special interests. This creates a situation which the Clean Election program is trying to avoid. There is great incentive, moreover, for the withdrawing candidate to make full repayment well before election day for reasons given in number 7 below.
4. A withdrawing candidate shall not be required to make reimbursement payments from personal funds. However, the withdrawing candidate may do so voluntarily.

5. Reimbursement to the State shall not be from previously frozen campaign (BEEF) funds. When a candidate chooses to enter the clean elections program, the declaration of intent which the candidate signs must state that privately raised moneys in a personal campaign fund (BEEF) can not be used in any way during the ensuing election cycle whether or not the candidate withdraws. Further, the freezing of a candidate's BEEF fund during the election cycle shall mean that no moneys can be "wheeled" from that fund to leadership PACs, political parties, or other entities which might then contribute this money to the withdrawing candidate for repayment to the State. The election cycle includes both the primary and general elections of that year.
6. If a candidate withdraws before the primary, that candidate can not re-enter the clean election program for the remainder of the election cycle
7. After a certified candidate withdraws and becomes "non-participating", said candidate shall remit to the State all subsequent contributions he or she raises from private sources until the prescribed reimbursement is met.
8. Withdrawal by a participating candidate shall be publicized by ELEC in the same manner as withdrawal of a certified candidate (see above - Iib.1).

The withdrawal scenario presented above is an alternative to the withdrawal scenario contained in the Commission Report. It is fair and reasonable, and it honors the principle that clean elections should be free from private source funding. It also provides a level playing field whereby incumbents do not have an unfair advantage over challengers through the use of BEEF funds as an exit strategy.
