ASSEMBLY APPROPRIATIONS COMMITTEE

MINORITY STATEMENT TO

ASSEMBLY, No. 4372

DATED: FEBRUARY 23, 2023

By Assemblymen Bergen and McClellan

This bill is supposed to fix issues that led a federal district court to block a previous disclosure law. In 2019, the U.S. District Court Judge Brian Martinotti ruled in *Americans for Prosperity v. Grewal* that, "it is the definition of 'political information' that the court views as more constitutionally troubling, as it extends disclosure regimes the Supreme Court has approved of well beyond the boundaries set by *Buckley, McConnell, and Citizens United*."

This definition remains unchanged in the legislation, and could lead to another injunction on this failed attempt at transparency.

Unfortunately, this bill is not an attempt at transparency. It is using transparency as a mask for the unmitigated greed of the New Jersey Democratic State Committee. Below are three of the most egregious portions of the deftly-named "Elections Transparency Act."

First, the NJSDC asked the Election Law Enforcement Commission to approve a "housekeeping account" in 2021, which was definitively denied. Specifically, the party requested to accept funds for a segregated account to be used solely for non-political purposes that would not be subject to the state's campaign contribution limits. The ELEC concluded that "risk of undue influence over the party is related to the amount of money contributed, not how those particular funds are spent."

Money is fungible. And it could easily be used inappropriately, as separate accounts were historically before being outlawed.

Contribution limits are already drastically increasing under the bill and establishing a separate account would increase undue influence over political parties, which is what any respectable legislation regulating campaign finance should limit to the greatest extent possible. This bill serves undue influence as its master.

It is also clear that "housekeeping accounts" are in violation of the state public financing program, and the disclosure provisions of the bill may not apply to "housekeeping accounts" as section 33 is written.

Second, section 35 lowers the statute of limitations for campaign violations to 2 years following the occurrence of the alleged violation, rather than 10 years following the election in which a violation occurred.

There is good reason to maintain the current statute of limitation rules. If a violation is not reported for a year, it would expire a year later. Due process is an important part of any allegation being properly adjudicated, which can take longer than two years.

Any violation could become null before an election. An Assembly term only lasts two years and Senate and gubernatorial terms are four years. Gubernatorial elections also tend to begin long before an actual primary – sometimes two years before.

Most importantly, this section injects the ELEC to take action during an election process instead of allowing the democratic process to play out. Voters should not be unmoored by allegations that have yet to be proven. Allegations can have an unfair impact on an election, as many believe occurred during the 2016 presidential election, when allegations of the FBI investigating Secretary Hilary Clinton for inappropriate use of technology were maintained and confirmed by then-Director James Comey. To inject the ELEC into the democratic process similarly is misguided.

Third, pay-to-play laws are essentially gutted by "fair and open" loopholes in the legislation that favor the political transactions of politicians at all levels and branches of government. There have been a number of reports by the ELEC advising that the "fair and open" loophole should be closed because of its ability to evade pay-to-play laws. This bill does the opposite: it turns the loophole into a black hole.

Though there are more troubles with this legislation, the above is more than enough to validate opposition to this bill.