

Decriminalize Politics, Not Drugs!

[By Donald Scarinci](#)

Elected officials are missing another opportunity to show leadership on campaign finance reform in the wake of the Birdsall Engineering case. Instead of giving back their Birdsall campaign contributions, we must ask whether criminalizing politics and putting companies out of business because of campaign contributions is good public policy.

The recent prosecution of New Jersey engineering firm Birdsall Services Group Inc. has reignited debate over the state's campaign finance laws, particularly those provisions that call for criminal sanctions.

The company recently agreed to plead guilty to criminal charges of first-degree money laundering and second-degree making false representations for government contracts. The unfortunate result is that assistants, clerks and low level engineers who had nothing to do with the "crimes" are losing their jobs and may be unemployed for a long time in this down market.

The charges stem from an investigation into violations of the state's [pay-to-play rules](#), which uncovered evidence that Birdsall was filtering corporate political contributions through its employees and soliciting unlawful contracts. Under the plea arrangement, Birdsall will pay \$1 million in penalties and cannot work on government contracts in New Jersey for 10 years. In addition to charges against the firm, a grand jury also indicted former CEO Howard C. Birdsall and six other executives and shareholders on charges, which include first-degree counts of conspiracy and money laundering. The first-degree charges carry a sentence of 10 to 20 years in state prison.

While the New Jersey legislature passed the first lobbying law back in 1964, pay-to-play rules are a more recent proliferation. The regulations, first implemented in 2004, govern political contributions by businesses that are party to or are attempting to win contracts with State government entities. They are administered by the New Jersey Election Law Enforcement Commission (ELEC).

The criminal sanctions on which the Birdsall indictments were based can largely be traced to amendments to the New Jersey Campaign Contributions and Expenditures Reporting Act (CERA). The changes included a new provision that prohibited advancing money to another person for the purposes of making a political contribution. The provision specifically prohibits corporations from increasing salaries for employees to use the money to donate to political campaigns. In the case against Birdsall, the officers of the corporation allegedly reimbursed employees for contributions through additional bonus payments.

The unintended consequences of the Birdsall Engineering case demand an overhaul of New Jersey's pay-to-pay regulations. Perhaps ideas like immediate internet disclosure of all contributions and strict forfeiture of office penalties should replace the complex scheme of rules and criminal penalties currently in place. While simplifying the law might make some law firms

with vibrant campaign compliance practice groups and [crisis management](#) groups unhappy, public policy might be better served punishing the madams rather than the Johns.

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