



**TESTIMONY  
OF THE  
NEW YORK PUBLIC INTEREST RESEARCH GROUP  
BEFORE THE  
JOINT HEARING OF THE SENATE FINANCE AND ASSEMBLY WAYS & MEANS  
COMMITTEES REGARDING THE  
FISCAL YEAR 2014-2015 EXECUTIVE'S PUBLIC PROTECTION BUDGET PROPOSAL  
February 5, 2014  
Albany, N.Y.**

Good afternoon, my name is Blair Horner and I am the Legislative Director of the New York Public Interest Research Group (NYPIRG) with me is Bill Mahoney, NYPIRG's Research Coordinator and Robbie Shiekh, NYPIRG Legislative Associate. NYPIRG is New York's largest consumer and environmental advocacy organization, with offices across the state and tens of thousands of supporters. Thank you for this opportunity to present testimony on the proposed FY 2014-15 Executive Budget for public protection, *specifically regarding the proposals for campaign finance and ethics reforms*. Our testimony is divided into four sections:

- (1) Reactions to the governor's campaign finance provisions. We are generally in agreement with the governor's approach, but more work needs to be done;
- (2) Reactions to this election law enforcement. We prefer that the focus be on campaign finance enforcement. We are concerned about the degree of "independence" of the election enforcement counsel. We prefer that the recommendation for appointment be made by an independent panel;
- (3) Reactions to his ethics provisions. Generally, we have not viewed the problem of ethics enforcement to be one of insufficient penalties, instead one of a failure of oversight; and,
- (4) Finally, critical reforms which were unaddressed in the governor's budget.

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**SECTION 1: GOVERNOR CUOMO'S CAMPAIGN FINANCE PROPOSALS.**

New York has long been on notice about the failure of its state's campaign finance law. Nearly twenty years ago, the final report of the Commission on Government Integrity was issued. The Commission's report condemned New York's lax ethical standards calling them "disgraceful" and "embarrassingly weak." The Commission then scolded state leaders for failing to act, "Instead partisan, personal and vested interests have been allowed to come before larger public interests."<sup>1</sup>

Yet, nothing steps have not been taken to overhaul the state's campaign finance system. Indefensibly high contribution "limits," coupled with utterly inadequate disclosure requirements and nonexistent enforcement, have created a system that cries out for change, starting with the need for establishing a voluntary system of public financing.

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<sup>1</sup> New York State Commission on Government Integrity, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988.

*Problem: New York's campaign contribution limits are too high resulting in a heavy reliance on a small number of donors who often have business before the government.*

New York State relies on private donations to fund its political campaigns. Thirty seven states limit the size of contributions individuals can make to candidates for office. New York's limits - \$60,800 to a candidate for statewide office – are the highest of any of these, and are more than twenty times the limit of the majority of these states.<sup>2</sup> Since New York State has the highest campaign contribution limits of any state with limits, candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.<sup>3</sup>

Individuals donating to candidates for statewide offices, for example, can give up to \$60,800. One individual has been able to directly give Governor Cuomo \$800,000 this election cycle and has given even more to the State Democratic Committee's "housekeeping" account, which has spent money on the governor's behalf.<sup>4</sup>

Another result is that candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.<sup>5</sup> For example, between 3/5 and 2/3 of all the money entering the political system comes from lobbying firms or their clients.<sup>6</sup>

This system shuts out ordinary New Yorkers. In the 2012 legislative election cycle,

- Only 3.3% of money entering the system came from individual donors who gave aggregate totals of \$250 or less;
- By contrast, 61.7% came from businesses or unions;
- 15.40% came from individuals giving \$2,500 or more;<sup>7</sup> and,
- Only 40,381 individual state residents, or 0.21% of the state's population, donated during this time.

In addition, New York's sky-high contribution levels have fueled a shift away from smaller donors toward reliance on bigger ones. This reliance undermines the public's involvement in a system that can only be described as a money chase.

**The Shift from Small to Big Campaign Donors, 2000 Compared to 2012**

<b>Contribution Level</b>	<b>% in 2012</b>	<b>Contribution Level</b>	<b>% in 2000</b>
<b>&gt;=\$10,000</b>	<b>28.83%</b>	<b>&gt;=\$10,000</b>	<b>14.60%</b>
<\$10,000, >\$2,500	23.29%	<\$10,000, >\$2,300	20.07%
<=\$2,499, >=\$1,000	17.81%	<=\$2,300, >=\$1,000	19.92%
<\$1,000, >=\$250	18.99%	<\$1,000, >=\$200	29.67%
>\$250	11.09%	>\$200, <=\$100	11.91%
		<\$100	3.84%

<sup>2</sup> National Conference of State Legislatures, *State Limits on Contributions to Candidates* (June 1, 2012): [http://www.ncsl.org/Portals/1/documents/legismgt/Limits\\_to\\_Candidates\\_2011-2012v2.pdf](http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012v2.pdf)

<sup>3</sup> See, e.g., NYPIRG, *Albany's Pay-To-Play Culture*, 19 April 2013.

<sup>4</sup> NYPIRG, *Governor Cuomo's Fundraising in the First 31 Months of the 2014 Election Cycle*, 15 July 2013.

<sup>5</sup> See, e.g., NYPIRG, *Albany's Pay-To-Play Culture*, 19 April 2013.

<sup>6</sup> NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

<sup>7</sup> NYPIRG, *Capital Investments 2012* (January 7, 2013).

The governor’s proposal does lower campaign contributions limits. But as seen below, those limits are still too high. NYPIRG urges that limits are lowered to more reasonable levels, such as the maximum donation limit of \$2,600 per election for federal office.

Campaign contribution limits proposed in the Executive Budget<sup>8</sup>

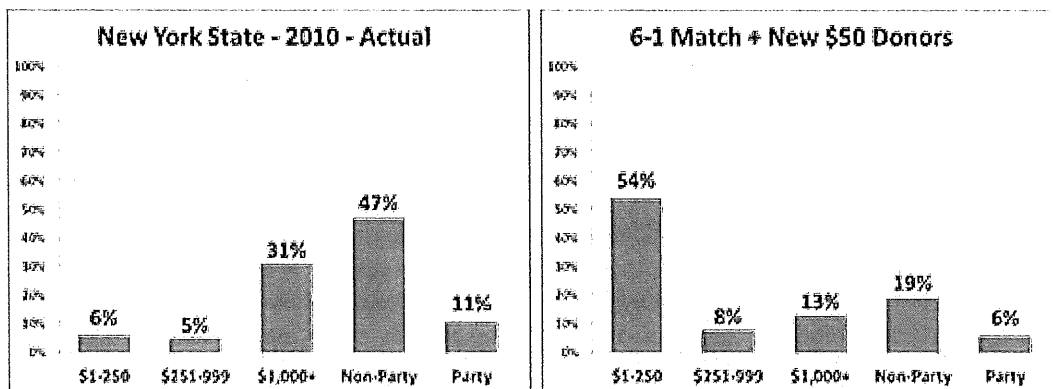
Category	Current general + primary limits	Governor’s proposal
Statewide	\$60,800	\$25,000
State Senate	\$16,800	\$10,000
State Assembly	\$8,200	\$6,000
State Parties	\$102,300(no limit for housekeeping)	\$25,000 (\$25,000for housekeeping)

As seen above, the governor’s proposed limits do little to force a change in the campaign finance system that currently relies on a small number of big donors to one that relies on a large number of small donors. A new system – one that encourages the participation of small donors – must be established. A voluntary system of public financing.

*Key Recommendation: Establish a system of public financing of elections.*

New York State relies on private donations to fund its political campaigns. Since New York State has the highest campaign contribution limits of any state with limits, candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.<sup>9</sup>

Political campaigns in the United States are typically financed by a relative handful of donors. In New York State in 2012, only 6% of candidates’ money came from donors who give \$250 or less. In contrast, 78% came from non-party-organizations (such as PACs) and individuals who gave \$1,000 or more.<sup>10</sup>



<sup>8</sup> This chart lists the governor’s proposed contribution limits for candidates who do not opt into the public financing system.

<sup>9</sup> See, e.g., NYPIRG, *Albany’s Pay-To-Play Culture*, 19 April 2013.

<sup>10</sup> Campaign Finance Institute, “Public Matching Fund System Would Reverse the Importance of Small and Large Donors in New York State Elections,” 4/17/12, see: [http://www.cfinst.org/Press/PReleases/12-04-17/Public\\_Matching\\_Fund\\_System\\_Would\\_Reverse\\_the\\_Importance\\_of\\_Small\\_and\\_Large\\_Donors\\_in\\_New\\_York\\_State\\_Elections.aspx](http://www.cfinst.org/Press/PReleases/12-04-17/Public_Matching_Fund_System_Would_Reverse_the_Importance_of_Small_and_Large_Donors_in_New_York_State_Elections.aspx).

New York City has a system of voluntary public financing. Candidates who voluntarily choose to participate see their contributions enhanced when they raise donations of \$175 or less. In those cases, each \$1 raised is matched with \$6 in public funds.

That system has shifted balance of relying on a small number of large donors to system relying on a large number of small donors. It has given candidates an incentive to turn their attention toward small donors through a program that matches donor contributions 6 for 1 up to \$175. A study by the Campaign Finance Institute showed that a similarly dramatic result would be likely in state elections. It shows that even if matching funds brought no new donors into the system, the role of the small donors under a six-for-one system would shoot up from 6% to 30%. But that 30% number is almost surely too low. It assumes no new donors at all.

New York State's donor participation rate is near the bottom of the country nationally. New York State's candidates for the legislature in 2012 raised 76% of their money (through the final pre-election disclosure reports) from donors who gave them \$1,000 or more, and from interest groups. Only 8% came from donors who gave \$250 or less.<sup>11</sup> If the match would lead state candidates to attract just enough new \$50 donors to bring participation up to the city's rate, the small donors would be worth 54% of the total amount raised.

**This would be a dramatic change: from 8% to 54%. Small donors would be the most important financial constituents instead of the least important. If the goal is to connect candidates more strongly with the people they are supposed to represent, the New York City system is the model to emulate.**

In sum, a key way to minimize that obvious conflict is to create a system of public financing of elections. New York City has a system of public financing in which candidates who voluntarily opt into the system receive \$6 public for every \$1 raised from small contributions (up to \$175), thus encouraging the solicitation of large numbers of small donors.<sup>12</sup> This stands in stark contrast to the state, in which as mentioned earlier, candidates rely on a small number of big donors.

**NYPIRG urges support for a voluntary system of public financing.**

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*Problem: Donations to "housekeeping accounts" are unlimited.*

New York exempts from contribution limits for donations to so-called "housekeeping" for "party building activities."<sup>13</sup> There have been widespread abuses of this exemption. For example, in 2012, the Independence Party admitted to using soft money to pay for ads attacking specific candidates mere days before an election. \$311,000 of the funds used to buy these advertisements came from the Senate Republicans' housekeeping account.<sup>14</sup> Candidates for office must use campaign contributions for all of

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<sup>11</sup> Campaign Finance Institute, "Lower Contribution Limits with Public Matching Funds in NY State, Reversing the Role of Small & Large Donors, Would Leave Candidates "Whole" While Costing New Yorkers only \$2/year," see: [http://www.cfinst.org/Press/PReleases/13-04-01/Updated\\_CFI\\_Research\\_on\\_Public\\_Matching\\_Funds\\_Proposal\\_for\\_New\\_York\\_State.aspx](http://www.cfinst.org/Press/PReleases/13-04-01/Updated_CFI_Research_on_Public_Matching_Funds_Proposal_for_New_York_State.aspx).

<sup>12</sup> New York City Campaign Finance Board, see: <http://www.nycfb.info/candidates/candidates/publicmatchingfunds.aspx>.

<sup>13</sup> New York State Election Law §14-124(3).

<sup>14</sup> Kenneth Lovett, "Independence Party Goes Along With GOP Scheme. . .," *NY Daily News*, 4 March, 2013.

their administrative costs, why shouldn't the parties? The housekeeping loophole has allowed donors to circumvent New York's already-weak campaign limits.

**The governor's proposal places a \$25,000 limit on these donations, but they it is still too high. New York State must eliminate this loophole and require party and political committees to raise and spend money just like candidates – through direct campaign contributions.**

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*Problem: Independent expenditures can go undisclosed.*

Since the U.S. Supreme Court's decision in *Citizens United*, "Super PACs" have proliferated in New York. A 2012 decision by the State Board exempted most "Super PACs" from filing disclosure statements, despite a legislative mandate requiring transparency from these committees.<sup>15</sup> Committees now only need to disclose their contributions and expenditures if they explicitly call for the election or defeat of a candidate; committees that harshly criticize or praise candidates, even days before an election, are exempt so long as they do not directly suggest how to vote. In the 2012 election, a mysterious organization based in Virginia was able to use this loophole to avoid disclosure even though they issued mailings claiming that several senate candidates loved higher taxes and disliked women's rights.<sup>16</sup>

**The governor proposes to expand the definition of independent campaign expenditures written by the Board to include anything that could reasonably be interpreted as advocating for or against a candidate. NYPIRG urges support for this measure.**

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*Problem: Limited Liability Companies (LLC) are allowed to give contributions far in excess of corporations.*

The "LLC Loophole," which treats each Limited Liability Company as an individual for purposes of how much may be donated, has allowed some donors to give well over a million dollars. This exemption is not found in the state's Election Law. Rather, a 1996 opinion from the Board determined that these business entities – creatures of state statute – should be treated as individuals, not corporations, for the purposes of calculating contribution limits.

Since the Board's administrative decision, the role of LLCs in New York's political system has skyrocketed. In the first six months of 2013, they accounted for 14% of all money raised by state-level candidates and party committees, giving more than three times as much as individuals who wrote checks smaller than \$1,000. While the Board in 1996 claimed the power to interpret this area of election law, when petitioned to reconsider their opinion, they have claimed that they do not have this power, and refuse to revisit the issue. This is true despite the fact that the FEC - which the Board used to justify its 1996 decision – has reversed course.<sup>17</sup>

Through various entities and campaign accounts, real estate developer Leonard Litwin has given Governor Cuomo \$800,000 at this point in the 2014 election cycle. He is perhaps the most frequent user of the LLC loophole, and often uses it to give more than \$1 million in a calendar year. In the six months between January 12 and July 11, 2013, Mr. Litwin was able to donate \$1,064,809, more than seven times the legal limit for an individual for an entire calendar year. Some of these donations are unconnected to

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<sup>15</sup> New York State Register, October 24, 2012; Volume XXXIV, Issue 43, p. 1.

<sup>16</sup> Ibid., "State Opens Spigot on Political Advertising," *Albany Times Union*, 10 November 2012.

<sup>17</sup> Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400).

the LLC loophole, and were the result of *Citizens United* or the housekeeping loophole. He gave \$639,809 in “hard” money directly to candidates.

It is often difficult to tell the source of many of these donations by looking at the names of the donors or even performing an internet search. One side effect of the LLC loophole is the obfuscation of the true source of campaign funds. Mr. Litwin is not the only donor who has made use of this loophole. During the first six months of 2013, state-level committees received at least \$4.6 million from donors that used LLCs.

**The governor proposes that LLCs be treated in the same manner as corporations – subject to a \$1,000 annual aggregate donation limit. However, “affiliated” LLCs and corporations would be counted as separate entities. Thus, the governor’s restriction is undermined. NYPIRG urges that LLCs and corporations, plus their subsidiaries and affiliates, be subject to one limit.**

**Additionally, the governor’s proposal does not address the lack of a contribution limit for LLCs and corporations. A \$1,000 contribution limit per election cycle coupled with his proposal for annual \$1,000 donation limits would strengthen this proposal.**

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*Problem: The ‘personal use’ of campaign contributions.*

Election law says that no funds may be “converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.”<sup>18</sup> Despite the apparent limitation on the use of campaign funds in state law, the Board of Elections has interpreted the law to mean that unless candidates “out-and-out stick it in [their] pocket and walk away, everything’s legal.”<sup>19</sup>

The Board of Elections’ informal approval of the permissible use of campaign funds has given campaign committees *carte blanche* to spend money however they want. Candidates have taken full advantage of this. For example, former state Senator Bruno used his campaign funds to purchase an in-ground pool cover, ostensibly because he held political party meetings at pool side.<sup>20</sup> In a typical year, legislators spend around half a million dollars on golf, \$200,000 on new cars, \$70,000 on flowers, and \$30,000 on cigars.<sup>21</sup> Effectively, this means that legislators from districts in which they rarely see serious electoral challenges can treat their campaign donations as a way to boost their personal lifestyles.

Another practice that runs contrary to the spirit of the Election Law’s ban on personal use of campaign contributions is the widespread practice of spending these funds on criminal defense. Between 2004 and 2012, nearly \$7 million was spent on this purpose.

**The governor’s proposal clearly identifies certain expenditures – childcare payments, tuition, and fines for ethical lapses – as personal use. Many of the prohibitions in his budget, including those on rent, sporting tickets, and vehicles, are meaningless due to the inclusion of language saying that these do not count as personal use if they are related to running for or holding office. In recent years, candidates have shown that any expenditure can be defined to fit into one of these categories.**

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<sup>18</sup> New York State Election Law Section 130-4.

<sup>19</sup> Jennifer Medina, “State Campaign Finance Rules Need Tightening, Study Says,” *The New York Times*, May 26, 2006.

<sup>20</sup> “Gov. Cuomo’s Next Big Task,” *The New York Times*, December 23, 2011.

<sup>21</sup> Information compiled by NYPIRG with information obtained from the Board of Elections.

**NYPIRG urges that personal use restrictions be mirrored after the definition of personal use created by the IRS. This problem will only truly be addressed, however, with the creation of a robust and independent regulatory agency which can regularly update the definitions of permissible campaign expenditures.**

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*Problem: Contributions which are “bundled” are not disclosed.*

While lobbyists give large amounts of money directly from their personal bank accounts, they are able to deliver even more through “bundling” money on behalf of their clients. Participants in this practice multiply their political contributions and influence by aggregating checks written by members, clients, or associates. Other governments, notably New York City’s, require committees to disclose which of their donations were bundled and by whom.<sup>22</sup> Bundling is a key way in which lobby firms magnify their influence and ingratiate themselves to decision makers.

In 2012, NYPIRG attempted to understand the practice of bundling at the state level by looking at the firm Featherstonhaugh, Wiley & Clyne, *et al.* Our review showed that 62 different political committees received donations from various combinations of their clients and firms within the time of one week; these donations were often reported on the same day. There were 287 such donations overall, totaling \$559,383. An additional \$978,256.87 in donations came from the firm, its clients, or related organizations over the past year, though these donations were not reported by committees during the same weeks in which they reported donations from other clients. While there is nothing unlawful about this conduct, taken together, these numbers total \$1,537,639.87, meaning that more than 3% of the total money raised by all candidates and state parties during the time period examined came from one lobby firm.

It is difficult, however, to establish exact numbers reflecting the extent of this process. New Yorkers deserve to know which interests have bought access to their elected officials; complete disclosure of bundling is the only way for them to do so.

**NYPIRG supports the governor’s proposal to require the disclosure of intermediaries.**

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*Problem: The employers of any donors who contribute more than \$99 in a calendar year to any one committee are identified.*

The purpose of campaign finance disclosure is to enable voters to discern who is contributing to their elected officials. Often, the appearance of a name, especially a common one, is not enough for a viewer to determine whether or not a donor has a unique relationship to the government, perhaps as a recipient of state funds. The New York City Campaign Finance Board’s regulations can be used as a model.<sup>23</sup>

**The governor’s proposal requires the disclosure of the employers of donors to independent expenditure committees**

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<sup>22</sup> New York City Administrative Code Section 3-701 (12) defines bundlers as follows: “The term ‘intermediary’ shall mean an individual, corporation, partnership, political committee, employee organization or other entity which, (i) other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity to a candidate or authorized committee; or (ii) solicits contributions to a candidate or other authorized committee where such solicitation is known to such candidate or his or her authorized committee.”

<sup>23</sup> New York City Campaign Finance Board, see: <http://www.nycffb.info/act-program/rules/index.aspx>

*Problem: The campaign finance database is out-of-date.*

The Board's campaign finance disclosure website debuted in 1999; the software system supporting this system was created in 1994,<sup>24</sup> a year in which *Time* ran a cover story called "The Strange New World of the Internet."<sup>25</sup> Obviously, the capabilities of web-based technologies have changed over the past two decades. A new campaign finance regulatory entity should be required to reconstruct the presentation of data in a modern user-friendly way. The governor's proposal does require the establishment of a database, but is light on specifics. The Board's repeated failure to improve upon their site – indeed, most of the changes made in recent years have only made their information more difficult to access – reiterates the need that significant changes are strongly dependent upon the creation of a functional entity.

**NYPIRG urges that this budget provide resources and make necessary changes to ensure that the state Board of Elections campaign finance database is easy-to-use and modern.**

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## SECTION 2: GOVERNOR CUOMO'S PROPOSAL TO OVERHAUL ELECTIONS ENFORCEMENT.

### **New York's campaign finance enforcement system fails.**

Reforming the New York State Board of Elections is critical to the effort to end campaign finance dysfunction. In recent decades, the Board has too often failed to fulfill its mandate to enforce the state's existing laws. Moreover, it has managed to weaken the state's already inadequate campaign finance regulations by creating new loopholes. Much of this is the result of the Board's makeup. The Board consists of two Democrats and two Republicans, and the resulting partisan gridlock ensures that enforcement actions are rarely taken. It's important to note that while the state Constitution mandates that bipartisan boards of elections oversee the process for qualifying voters and monitoring the voting process,<sup>26</sup> there's no such requirement for the campaign finance system and enforcement issues. Thus, establishing an independent campaign finance agency can be accomplished without amending the state Constitution. This current structural problem leads to serious consequences.

- *Too many violations go unpunished.*

The most obvious failures of the Board have been in its failure to enforce election law. In filings submitted between January 2011 and January 2013, we have identified over 103,805 violations of election law.<sup>27</sup>

Many of these violations were minor. For example, 454 donations did not include a date. However, this information is required for a reason. *How can the Board hope to find, for example, if a donor has given more than the legal limit in a calendar year if it cannot tell in which calendar year a donation was made?*

- *Regulatory decisions only increase the role of wealthy special interests in New York's elections.*

The much-maligned "LLC Loophole," which has allowed some individuals to give more than thirteen times their theoretical contribution limits, is a creation of the Board. A 2012 decision allowed most Super PACs to spend massive amounts of money without identifying their contributors.

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<sup>24</sup> Celeste Katz, "NYS Board of Elections Pleads Poverty. . ." *New York Daily News* (October 28 2013)

<sup>25</sup> *Time Magazine*, July 25, 1994, see: <http://content.time.com/time/covers/0,16641,19940725,00.html>.

<sup>26</sup> New York State Constitution, Article II, Section 8.

<sup>27</sup> NYPIRG, *Malignant Neglect: The Abject Failure of the State's Campaign Finance Laws*, May 7, 2013.



**New York State needs a new, independent campaign finance enforcement and regulatory agency.**

Clearly, the decision to leave campaign finance oversight with the Board of Elections has failed. Fortunately, the Commission does not need to look far to find an example of a much better way to regulate and oversee campaign fundraising and spending. Over the course of 25 years the New York City Campaign Finance Board has established a well-deserved reputation as an independent, vigorous watchdog entity that has ensured that both the spirit and letter of New York City's election regulations are followed.

The governor, however, proposes an election enforcement counsel, instead of one dedicated to campaign finance. Thus, this individual and his or her staff would be part of the failed state Board of Elections. In addition, the governor proposes that he appoint with counsel with the advice and consent of the Senate. Additionally, the governor's proposals leave regulatory powers with the Board.

**NYPIRG urges campaign finance oversight to be entirely removed from the Board of Elections. A new, independent entity should be established with an independent panel. That panel should consist of 5 members, one from each of the legislative leaders and one appointed by the governor. None of the members should be public officials, or lobbyists, or family members of either, nor should this individual be involved in any political party – including being registered in one.**

**Similarly, NYPIRG urges that the governor's proposal be amended so that the elections counsel is chosen in a more independent fashion. The counsel should be recommended by an independent panel similar to the one described above, then appointed by the governor with the advice and consent of the senate.**

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### SECTION 3: GOVERNOR CUOMO'S ETHICS REFORMS

*Problem: Despite recent changes to the state's ethics laws, controversies and scandals continue.*

- The governor proposes numerous changes to the state's criminal procedure law. NYPIRG has no position on these changes.
- Regarding Title Y-2 "Corrupting the Government," the governor proposes changes to the penal law, NYPIRG has no position. However, we do agree that violations of the section should prohibit that individual from becoming a paid lobbyist or from obtaining a state government contract.
- NYPIRG has no position on the governor's proposed changes to the real property tax, general municipal and tax laws.
- NYPIRG does support the changes to the public officers law proposed by the governor. Although we are concerned about the requirement in section 37 (b) requiring that the reporting individual disclose services which he or she personally and "knowingly" provides "indirect" services.

However, these proposals are only a small part of what needs to be done to improve New York's woeful track record of enforcing the campaign finance and ethics laws, however. Existing penalties and the risk of public shaming have not deterred 32 state-level elected officials who have been caught up in scandal in the past seven years. Empowering District Attorneys could help, but their resources are limited. DAs would need substantial resources to ensure they can invest the time to investigate and prosecute cases that traditionally have not been a focus for their offices. This has been evident in enforcement of the state's campaign finance law. While District Attorneys have existing power to enforce many violations of the campaign finance law, the lack of resources has led to few recent prosecutions in this area.

NYPIRG recommends that the governor's legislation must include adequate resources to enable DAs to enforce ethics laws. We also recommend that the Attorney General be given clear authority to act in this area. We strongly believe that any ethics reform package include the following section.

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#### SECTION 4: ADDITIONAL REFORMS THAT ARE NEEDED.

##### *Structural flaws in the state's ethics oversight*

The recently-created Joint Commission on Public Ethics (JCOPE) has obvious structural flaws resulting from political compromises that must be remedied.

- JCOPE's board consists of 14 members, 6 of whom are appointed by the governor.<sup>28</sup> The panel's size is far too large, the largest in the nation.<sup>29</sup> Instead, the board should be smaller in number. Large boards are unwieldy, inhibit substantive discussion and make decision making more difficult. The law also must be bar the involvement of elected officials from the ethics watchdog panel.<sup>30</sup>
- The current provision giving appointees of legislative leaders a veto on JCOPE investigations of the legislators must be repealed.<sup>31</sup>
- There should be a "revolving door" limitation that prohibits legislative or executive staff from becoming JCOPE staff.
- The executive directors of both JCOPE and the Legislative Ethics Commission (LEC) should serve for a fixed term (with removal during that term, only for cause) to enhance her or his independence from political retribution.
- JCOPE and the LEC should be covered by the provisions of the Freedom of Information and Open Meeting Laws requirements and make all investigation records open to public inspection when a matter is closed, as was the practice of the Temporary State Commission on Lobbying.
- Both JCOPE and the LEC must have budgets that are predictable, adequate, and not subject to political pressures.
- JCOPE's annual report should include greater information regarding each case (identified by number only) in the annual report that the commission is required to produce. JCOPE can administratively implement this recommendation. Specifically, JCOPE's annual report should include the following:
  1. The tally and result of the commission's vote to initiate an investigation, including the name of the person who is the subject of an investigation;
  2. The tally of the commission's vote and result regarding whether there is a substantial basis for determining that a violation occurred along with the name of the person who is the subject of the investigation; and

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<sup>28</sup> New York State Joint Commission on Public Ethics, see, e.g., *About Us*, <http://www.jcope.ny.gov/about/commission.html>.

<sup>29</sup> National Conference of State Legislatures analysis shows that no other ethics agency has as many members as New York. For more information, see: [www.ncsl.org/research/ethics/state-ethics-commissions.aspx](http://www.ncsl.org/research/ethics/state-ethics-commissions.aspx).

<sup>30</sup> National Conference of State Legislatures analysis shows that the overwhelming majority of states prohibit public officials from membership on their ethics agencies. For more information see: [www.ncsl.org/research/ethics/state-ethics-commissions.aspx](http://www.ncsl.org/research/ethics/state-ethics-commissions.aspx).

<sup>31</sup> New York State Executive Law §94 13(a).

3. Along with the status of the complaint (now required), the category of time that the investigation has taken to date (3 months, 6 months, more than one year, etc.) or that was required for completion before a vote on the substantial basis report occurred.

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*Improve Ethics Disclosure*

The Public Integrity Reform Act of 2011 made significant improvements in the disclosure of elected officials' outside business interests. For the first time, the narrow ranges showing the values of their outside incomes were made public. There is, however, room for further improvement. Under the current system, legislators send their forms to the in-house Legislative Ethics Commission, which has over a month to make these filings available. These filings should be posted immediately.

Disclosure forms should be submitted and displayed in a digital format. Under the current system, many forms are submitted electronically, but these are printed and scanned by the Legislative Ethics Commission. Submissions must be made in an electronic format.

There should be some disclosure of real estate transactions, which are often exempted under the current law. Finally, the method of disclosing large investments in which a legislator has a share of should be adjusted. Under current rules, officials are required to disclose the total value of an investment and the percentage they own; when the investment is worth a significant amount, this system effectively hides their share.

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*Improve Lobbying Disclosure*

In 2013, JCOPE posted spreadsheets containing lobbying information on their website for the first time. These should be posted more frequently. They currently post information only twice a year, meaning that money spent in January does not appear online until September. The public deserves to know which interests are attempting to influence legislation as quickly as possible. Posting these forms on a daily basis reflecting new filings would require a minimal investment of time, and would let voters understand debates over issues such as the budget before they are concluded. All filings *do* appear in JCOPE's searchable database, but the limited options available on this tool would require a user to perform thousands of unique searches to capture every large spender. Thus, the online database should also be modernized.

Under the current system, there is little standardization of information of the information that is entered. For example, bill numbers are entered with scores of variations: One might expect to see A.1234, A 1234, (A)1234, Assembly Bill 1234, etc. A recommended formatting in areas such as bill numbers and agencies lobbied would make it easier for voters to understand which groups are weighing in on particular issues.

Finally, JCOPE should work with the campaign finance enforcement entity to link the information contained in their respective databases. Asking filers of lobbying reports to submit the Filer IDs of any PACs they control would be a fairly simple way of doing so.

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*"Pay-to-play" restrictions should be established, creating lower donation limits for lobbyists than regular individuals.*

Lobby firms donated over \$2.3 million in the 2012 legislative election cycle. This figure is even higher with the inclusion donations from their employees. In the first half of that two-year period alone, lobby

firms, their PACs, and their employees directly donated \$1,838,009.84 to state-level candidates and party committees. This figure represents about 4% of the total money raised during this time, and indicates that lobbyists working for retained firms donated nearly 70,000 times as much money per capita as other state residents.

Most lobbyists appear to donate simply to win favors from the politicians whose votes they hope to sway. Democracy is healthier if candidates' fundraising relied more on individuals who gave solely because they liked their positions, and not those who attempt to change them.

How much money comes from lobbyists and their clients overall? Since neither bundling nor the employers of individuals is disclosed it is difficult to come to an exact number, but our best estimate is that it falls somewhere between 3/5 and 2/3 of all the money entering the political system.

- In *Central New York*, 70% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 52.9% of all itemized donations came from these interest groups.
- In *Western New York*, 64% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 43.5% of all itemized donations came from these interest groups.
- In the *Finger Lakes Region*, 68% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 49.44% of all itemized donations came from these interest groups.<sup>32</sup>

Whether intentionally or not, most of these legislators introduced legislation directly benefiting their donors.

Unique restrictions on the campaign involvement of lobbyists are not unusual. According to the National Conference of State Legislatures, 18 states place campaign fundraising restrictions on lobbyists.<sup>33</sup> Typically, there are restrictions on campaign fundraising during the legislative session. However, some states go beyond that, for example:

- Alaska: A lobbyist cannot contribute to a candidate for legislature while lobbyist is subject to registration requirements and for one year after, except to candidate in the district where the lobbyist will be eligible to vote on the day of the election (AS §15.13.074(g)).
- California: Lobbyists may not contribute to state candidates or officeholders if registered to lobby the candidate's or officeholder's agency (Govt. Code §85702).
- Kentucky: Lobbyists may not contribute to legislative candidates, nor may legislative candidates accept contributions from lobbyists (KRS §6.767 and §6.811(6)).
- Massachusetts: Contributions by executive and legislative agents are limited to \$200 per calendar year to an individual candidate or committee.
- South Carolina: A lobbyist shall not offer, solicit, facilitate, or provide contributions on behalf of any member of the General Assembly, the Governor, the Lieutenant Governor, any other statewide constitutional officer, any public official of any state agency (SC Code §2-17-80).
- Tennessee: Lobbyists are prohibited from making any campaign contributions to any candidate for governor or the general assembly (Tenn. Code §3-6-304(j)).

<sup>32</sup> NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

<sup>33</sup> National Conference of State Legislatures, "Contributions by lobbyists,"

See: <http://www.ncsl.org/research/elections-and-campaigns/prohibited-donors.aspx>.

*Additional improvements in campaign finance.*

- *Campaign committees should be closed after an election.*

Another weakness of New York's campaign finance system is the ability of candidates to maintain their committees long after they have left office. In some cases, this lets former politicians use their war chests as perpetual endowers of their personal lifestyles. In others, their campaign accounts are used to transfer money to other candidates and complement their newfound employment as lobbyists. Finally, there are a number of politicians who retain hundreds of thousands of dollars of campaign funds despite the fact that they are either deceased or in prison. In July 2012, these "ghost committees" had \$10.7 million in the bank.

Several states have implemented restrictions on the ability of candidates to retain campaign funds after an election.<sup>34</sup> While carrying money over between election cycles does not necessarily lead to personal use to the same degree as retaining campaign funds after retirement, it does pose a serious problem. Campaign donations designed to help a candidate win an election should be limited to helping a candidate win that election. When candidates repeatedly take war chests from one election cycle to another, they are able to deter challengers and effectively circumvent contribution limits, as donors are able to repeatedly contribute the maximum for what can amount to one election effort. All candidates should thus be prohibited from retaining unspent campaign funds for more than a few months after an election.

- *All candidates should be limited to one campaign committee whose name includes the full name of the candidate.*

At least nine "leadership committees" belonging to legislators currently exist. These have names that obfuscate the donors to candidates. A voter interested in analyzing the donors to Assemblymember Silver, for example, would most likely not be aware that they would need to perform searches for both a committee bearing his name and one called "SPEAKERPAC."

- *Enforce limits on transfers between multiple committees controlled by one candidate.*
- *Prohibit the transfer from N.Y. committees to federal or other states' committees.*

A 2004 decision by a State Supreme Court found that a candidate who controls two committees designated for different offices within the state cannot transfer money between these committees beyond the recipient committee's regular contribution limits.<sup>35</sup> For example, a candidate who has money left over from a run for a statewide office cannot transfer money to a senate committee beyond this office's current combined primary/general election limit of \$16,800. This decision should be enforced and clearly stated in election law. This recommendation – especially when combined with the earlier recommendations that require candidates to close down their political committees soon after election and that no candidate can control more than one committee – should ensure that candidates do not unfairly benefit from incumbency.

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<sup>34</sup> Charts provided by the FEC at <http://www.fec.gov/pubrec/cfl/cfl02/cfl02.shtml> are dated (this was published in 2002), but show a number of states which, at least as of this year, required committees to dissolve after an election. Alaska, for example, requires the dissolution of committees by February 1<sup>st</sup> in the year after an election: <http://www.legis.state.ak.us/basis/statutes.asp#15.13.114>

<sup>35</sup> *Albany Times Union, Capitol Confidential*, "[Klein lost key elections case, didn't suffer consequences](http://blog.timesunion.com/capitol/archives/184503/klein-lost-a-key-elections-case-but-didnt-suffer-the-consequences/)," see: <http://blog.timesunion.com/capitol/archives/184503/klein-lost-a-key-elections-case-but-didnt-suffer-the-consequences/>.

Since it is impossible for New York to regulate receipts by committees established at the federal level or in other states, legislation should also prohibit the transfer of money from state campaign committees to committees or Super PACs registered elsewhere. When Governor Pataki declined to run for reelection in New York and began eyeing a run for office at the federal level, he took advantage of porous campaign finance laws in states like Virginia to increase his national presence.<sup>36</sup> Recent media reports have suggested that Governor Cuomo might consider transferring some of his war chest to a federal Super PAC.<sup>37</sup>

Contributions collected by candidates should be limited to helping them win the particular office they raised this money for. When they transfer it to a committee that is not designated for this office, the end result is similar to personal use. This practice should be banned.

- *Filer ID number must be included for any donations received from PACs or transfers.*

Every committee registered with the Board of Elections is given a unique Filer ID. If recipients of their donations were to include this, it would be easier to make sure the money that one committee reported spending was actually reported as received by another. This is currently extremely difficult, since filers frequently abbreviate the names of donors in different ways so a wide variety of spellings appear. In the two years preceding 2008, for example, legislators reported donations from NYSUT's PAC with 201 variations in spelling.

Further, the inclusion of this information would make it easier for the enforcement agency to identify committees that should be registered, but are not. If multiple candidates report donations from one PAC or party committee which do not have Filer IDs, it would be relatively simple to identify this donor as an entity which has ignored the state's disclosure requirements.

**The governor's proposal does limit candidates who accept public funds to one committee. In general, however, it does not overhaul election law in any of these four areas.**

**The problems addressed by these proposals are all tied to the same fundamental issue: campaign accounts are no longer viewed as funds to simply help a candidate win whatever election they are currently campaign for. By requiring candidates to close down committees after an election and prohibiting them from transferring these funds to other committees, campaign accounts will begin to move away from their existence as perpetual collectors of fortunes donated by special interests, and begin to be rededicated to the sole purpose of helping candidates win their next election.**

Thank you for the opportunity to testify.

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<sup>36</sup> Details of former Governor Pataki's transfers can be found at <http://www.nysun.com/new-york/ny-republicans-press-pataki-to-release-funds/38474/>

<sup>37</sup> Erica Orden and Derek Kravitz, "Cuomo Stockpiles Cash," *The Wall Street Journal*, November 17, 2013. <http://online.wsj.com/news/articles/SB10001424052702303789604579196360485378496>