

*Paul, Brian*



**Testimony by  
Brian Paul, Research and Policy Manager, Common Cause/New York  
Before the Moreland Commission to Investigate Public Corruption**

**Albany, NY  
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Good evening and thank you for the opportunity to speak today. My name is Brian Paul and I'm the Research and Policy Manager for Common Cause/New York, a nonpartisan citizens' lobby and a leading force in the battle for honest and accountable government.

Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, not simply the special interests. We have been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country. We have been involved in helping craft, ultimately pass and implement virtually all of the public funding of election systems that are functioning at the state and national level, as well as numerous municipal level systems, including the highly regarded public funding of elections system in New York City.

For more than three decades, Common Cause/New York has advocated for comprehensive reform of New York State's campaign finance laws and undertaken research studies that "connect the dots" between campaign contributions and policy.<sup>1</sup>

With individuals able to give over \$60,000 in a single year to a statewide candidate, \$16,800 to a Senate candidate, and \$8,200 to an Assembly candidate, New York has some of the highest campaign contribution limits of any state in the country. In practice however, New York really belongs with the small group of states with no campaign finance limits whatsoever.<sup>2</sup>

Two glaring loopholes, the "LLC Loophole" and the partisan slush funds known as "soft money" or "housekeeping accounts," essentially allow any enterprising donor to pump unlimited sums of money into the political system.

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<sup>1</sup> Full archive of Common Cause/NY money in politics reports since 1990 available at [www.commoncause.org/ny/reports](http://www.commoncause.org/ny/reports)

<sup>2</sup> Only four states have fully unlimited campaign contributions: Missouri, Oregon, Utah, and Virginia. <http://www.ncsl.org/Portals/1/documents/legismgt/Limits to Candidates 2011-2012v2.pdf>

New York's lax campaign finance laws create an environment in which influence and access can be bought by wealthy and powerful individuals and organizations. It is standard practice for any special interest affected by state policy to flood Albany with piles of cash and to direct the largest prizes to those in positions of power, creating an ever-escalating and self-perpetuating money race.

We have already provided the Moreland Commission with a letter summarizing our campaign finance research reports of the past two years. In my testimony today, I will narrow the focus to analysis of the two worst loopholes in the campaign finance system and illustrate how they help to engender a "show me the money" culture of legalized corruption in Albany.

## **THE "LLC LOOPHOLE"**

Under New York State campaign finance law, LLC's are treated as "individuals" subject to the \$150,000 annual limit rather than the \$5,000 annual limit for corporate donors. This "corporate personhood" status held by LLC's is the result of an advisory opinion issued by the State Board of Elections in 1996. The Federal Elections Commission (FEC) had issued similar decisions in the mid-1990's but reversed its position in 1999, choosing to treat LLC's as corporations or partnerships rather than individuals.<sup>3</sup>

Our New York State Board of Elections, controlled by the parties that benefit from the oversized campaign contributions from LLC's, never followed the FEC's lead in reclassifying them. Additionally, the State Board of Elections also treats each subsidiary LLC as a completely separate entity subject to its own limits, allowing each to contribute up to the full \$150,000.

In New York, LLC's are used by a wide variety of industries to circumvent the \$5,000 annual corporate limit. Interests that take advantage of the LLC Loophole range from big telecom providers like Cablevision and Time Warner, gambling interests like Genting and Saratoga Gaming, political consultants like the Parkside Group and Tonio Burgos Associates, big sports franchises like the Yankees and the parent company of the Ultimate Fighting Championship, and most commonly, the real estate industry.

Since 2005, corporate entities with "LLC" in their name have given nearly 2,400 campaign contributions over the \$5,000 corporate limit to New York State candidates, parties, and PACs, amounting to a total of nearly \$40 million.<sup>4</sup>

Most of the LLC money goes to candidates and party accounts but the LLC loophole is also used to supercharge corporate political action committees. In most states and at the federal level, corporate

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<sup>3</sup> Federal Election Commission 11 CFR Part 110 [Notice 1999-10], *Treatment of Limited Liability Corporations Under the Federal Election Campaign Act*. Available at [http://www.fec.gov/law/cfr/ej\\_compilation/1999/1999-10\\_LLCs.pdf](http://www.fec.gov/law/cfr/ej_compilation/1999/1999-10_LLCs.pdf)

<sup>4</sup> Since many entries in the NYS Board of Elections' campaign finance database are misspelled and there are numerous instances when LLCs do not actually include the term "LLC" in their entered name, the actual amount of contributions over \$5,000 given by LLC's is likely significantly higher.

PACs typically raise money through many relatively small donations from executives and employees. In New York, PACs are subject to the \$5,000 corporate campaign contribution limit just like any other recipient. But corporations can use the LLC loophole to flood a PAC with unlimited sums of cash. For example, since 2008 the law firm and lobbyist Hinman Straub has given \$675,500 to its "State Street Associates PAC" through an LLC in contributions of up to \$50,000. Similarly, gambling interests used LLC's to give over \$250,000 to the New York Gaming Association PAC in 2012-2013, and telecom providers Cablevision and Time Warner Cable also supercharge their corporate PACs with LLC giving.

In the wake of *Citizens United*, the LLC loophole is also being exploited to fundraise for multi-million dollar independent expenditure campaigns. This election season, the Real Estate Board of New York (REBNY) established a Political Action Committee (PAC) called "Jobs for New York" (JFNY) and raised nearly \$7.1 million from just 25 REBNY member companies who used 121 different LLC's and subsidiaries to circumvent New York State campaign contribution limits and donate an average of \$277,400 each.

<b>"Jobs For New York" Donor</b>	<b>Amount</b>	<b>Contribution Details</b>
THE DURST ORGANIZATION	\$637,500.00	7 contributions through 7 LLC's
THE RELATED COMPANIES	\$500,000.00	6 contributions through 4 LLC's
BROOKFIELD FINANCIAL PROPERTIES	\$450,000.00	4 contributions through 3 LLC's, 1 LP
FISHER BROTHERS	\$425,000.00	4 contributions through 4 LP's
GLENWOOD MANAGEMENT	\$425,000.00	17 contributions through 17 LLC's
JACK RESNICK & SONS	\$425,000.00	8 contributions through 8 LLC's
RUDIN MANAGEMENT	\$425,000.00	5 contributions through 1 LLC, 4 LP's
SILVERSTEIN PROPERTIES	\$425,000.00	4 contributions through 2 individuals and 2 LLC's
SL GREEN	\$425,000.00	3 contributions through 3 LLC's
TISHMAN SPEYER	\$425,000.00	6 contributions through 5 LLC's
NEWMARK GRUBB KNIGHT FRANK	\$420,000.00	28 contributions through 28 LLC's
JAMESTOWN PROPERTES	\$250,000.00	1 contribution through 1 LP
TISHMAN CONSTRUCTION/TISHMAN HOTELS	\$250,000.00	2 contributions through 2 individuals and 1 LLC
TWO TREES MANAGEMENT	\$250,000.00	2 contributions through 2 LLC's
HIMMEL & MERINGOFF PROPERTIES	\$212,500.00	15 contributions through 15 LLC's
TF CORNERSTONE	\$212,500.00	2 contributions through 2 individuals
THE BRODSKY ORGANIZATION	\$187,500.00	4 contributions through 4 LLC's
ROCKROSE DEVELOPMENT CORP	\$150,000.00	2 contributions through 2 LLC's
L&L HOLDINGS	\$100,000.00	1 contribution through 1 LLC
THE WITKOFF GROUP	\$100,000.00	1 contribution through 1 LLC
VORNADO REALTY TRUST	\$100,000.00	1 contribution through 1 LLC
THE GOTHAM ORGANIZATION	\$85,000.00	4 contributions through 4 LLC's
BFC PARTNERS	\$25,000.00	1 contribution through 1 LLC
STELLAR MANAGEMENT & CHETRIT GROUP	\$25,000.00	1 contribution through 1 LLC
ATCO PROPERTIES	\$5,000.00	1 contribution directly through corporation

Overall, real estate developers are the most egregious abusers of the LLC loophole. Luxury residential developer Glenwood Management has contributed over \$10 million in total since 2005 with the help of 40 LLC's and subsidiaries. The Durst Organization which has contributed nearly \$3 million contributed since 2005 with the help of 61 LLC's and subsidiaries and The Related Companies with nearly \$2.5 million contributed since 2005 with the help of 18 LLC's and subsidiaries. These are just a few examples of a practice that is endemic to the industry.

LLC's controlled by real estate developers often contribute to the same candidate/committee, on the same date, in checks of the same amount. This coordination makes it very clear that these LLC's are not independent entities. For example, on January, 8 2013, Glenwood Management gave \$225,000 to Governor Cuomo in checks of \$25,000 through 9 LLC's. This is common practice for Glenwood; other examples include \$20,000 to Senator Tom Libous on July 5, 2011 through 4 LLC's, and \$10,000 to Assemblyman Joe Morelle on June, 3 2013 through 4 LLC's. Examples from other developers of coordinated giving through multiple LLC's include \$10,300 given to Senator Greg Ball on September 5, 2012 by 9 LLC's controlled by Jack Resnick and Sons, and \$25,000 given to the NYS Senate Republican Committee on October 12, 2012 by four LLC's controlled by the Durst Organization.

Among big telecom providers, Cablevision is the worst abuser of the LLC loophole, using 8 LLCs to evade contribution limits and give over \$1.5 million to candidates and hard money committees. Two examples include giving \$130,000 to Governor Cuomo through four LLCs between July and October 2010, and more recently, using three LLCs to give \$190,000 to former Nassau County Executive Tom Suozzi's campaign on a single day, April 29<sup>th</sup>, 2013.

The evidence is clear – the LLC loophole completely undercuts New York State's campaign contribution limits and allows special interests free reign to use their financial power to influence our government.

Follow the money of any of the top LLC donors and you are likely to find a trail of special policy favors won and bills unfavorable to the donor killed on arrival in the Legislature.

## **“SOFT MONEY” HOUSEKEEPING SLUSH FUNDS**

The aim of campaign finance contribution limits is to prevent corruption by ensuring that our lawmakers are not beholden to wealthy special interests. This goal is already significantly undermined by the LLC loophole.

But what is perhaps even more shocking about New York State campaign finance law is the “soft money” loophole that further renders our campaign contribution limits meaningless.

Any corporation, individual, union, or other interest wishing to evade campaign contribution limits need only give to a type of party committee that is supposedly reserved for administrative tasks and “party building” purposes. These party accounts, commonly referred to as “soft money” or “housekeeping” accounts, can accept unlimited sums of cash.

At the federal level, soft money was banned in 2002 with the Bipartisan Campaign Reform Act (aka “McCain-Feingold”), a ban that was upheld by the Supreme Court in 2003’s *McConnell v. FEC*. The Supreme Court found that the soft money loophole raised concerns about corruption or its appearance and that “the best means of prevention is to identify and remove the temptation.”

As with the LLC loophole, New York State has embarrassingly failed to keep pace with best practices in campaign finance regulation. With no limits to the size of donations or enforcement of “non-campaign” spending, soft money accounts have become an integral part of Albany’s “show me the money” culture and an important contributor to the power of wealthy special interests at both the state and local levels of New York State government.

Since 2006, the soft money loophole in New York’s campaign finance laws has grown in significance and abuse. Soft money contributions to the state parties and the state legislature grew by 24% when comparing the seven year periods of 1999-2005 and 2006-2012. From 2006 to July 2013, the parties took in nearly \$98 million in soft money contributions.

Unsurprisingly, the vast majority of soft money flows to the handful of committees that are best positioned to influence policy and the outcome of elections – the majorities in the State Legislature, the statewide parties, and the key county-level political machines. The top twenty soft money recipient committees (list attached at the end of this testimony) together account for over 90% of the soft money raised since 2006.

Soft money contributions are often given in amounts that dwarf what would be legal if the funds were given to candidates or hard money committees, despite the fact that New York State has some of the highest campaign contributions limits in the nation.

From 2006 through 2012, 65% of soft money was raised through contributions of \$10,000 or higher and over 34% of soft money was raised through contributions of \$50,000 or higher. Businesses made 1,652 soft money contributions greater than \$5,000 that raised a total of \$32 million dollars, illustrating how soft money renders the state's \$5,000 annual limit on corporate donations completely meaningless.

The telecom industry is an ideal example of how the "soft money" loophole empowers special interests. More than half of the nearly \$12 million in contributions by Big Telecom providers in New York State from 2005 to July 2013 was given directly to soft money accounts. Verizon (82% soft money contributions), Time Warner Cable (70%), Comcast (59%) and AT&T (53%) rely on soft money as their primary contribution method.

Overall, from 2006 to 2013, 59 donors gave in excess of \$200,000 to the parties' soft money accounts, accounting for nearly half of the total soft money raised during this period. This list of top soft money donors, attached at the end of this testimony, is dominated by special interests that are highly regulated and/or subsidized by state government – real estate firms, healthcare and pharmaceutical interests, labor unions, the telecom companies, the beverage industry, big tobacco, and gambling interests. Most of these interests give multiple annual soft money contributions to the parties in power, regardless of ideology.

The party housekeeping accounts are supposed to be reserved for party-building administrative expenses and *"not for the express purpose of promoting the candidacy of specific candidates"* (NYS Election Law §12-124).

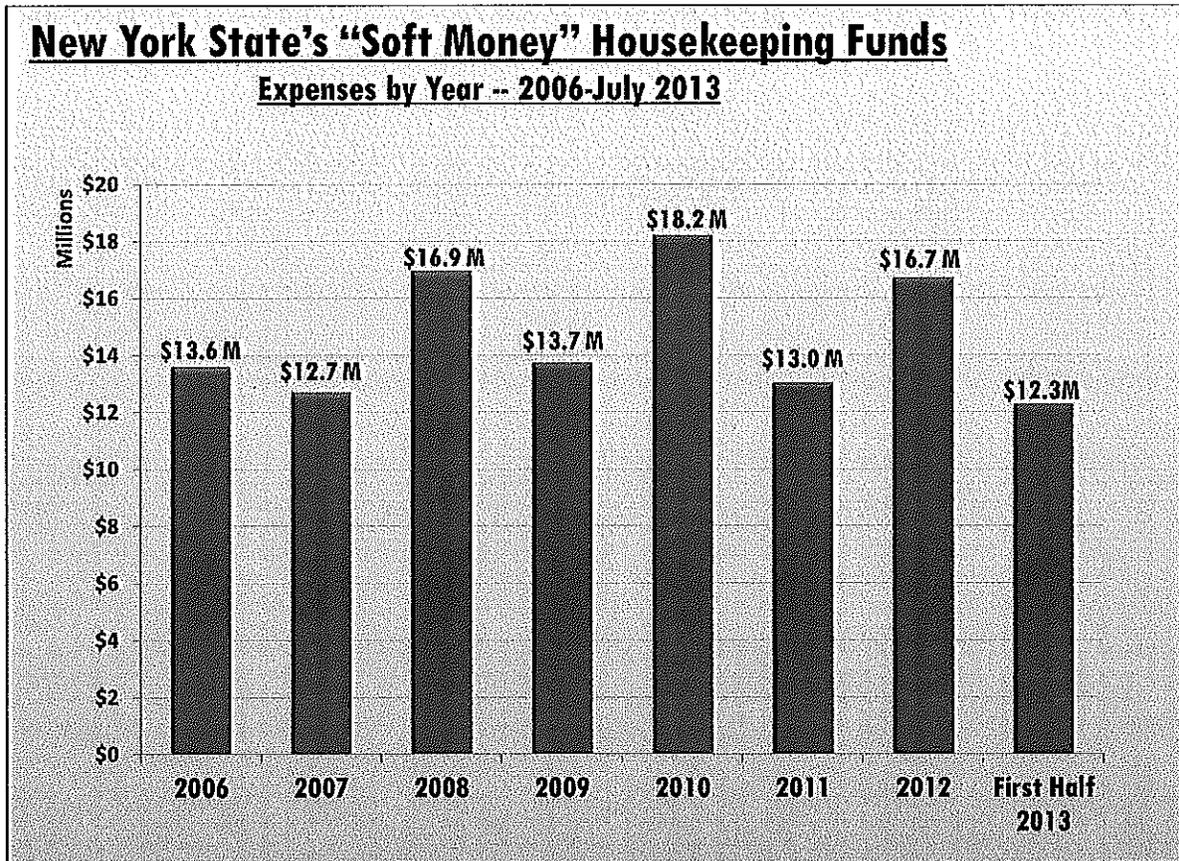
In our review of soft money expenditures, we found that without clear guidelines and consistent auditing, it is impossible to rely on accurate self-reporting by the parties. The largest single category of expenses is "Other" at a total of \$37.3 million. Nearly \$3.8 million in housekeeping expenses have no purpose code or a purpose code that is not identified and defined by the Board of Elections. Other expenses that are filed as housekeeping are identified with purpose codes that clearly blur or cross the line into the realm of "campaign expenditures" such as polling costs, fundraising expenses, political consultants, campaign literature, and advertising. Overall, less than 0.2% of housekeeping expenses are itemized as "Voter Registration Materials or Services," a category of activity which is often used by the parties to justify the existence of housekeeping account

Moreover, Common Cause/NY's analysis clearly reveals that housekeeping expenditures spike each election season as monies go to hire high-priced political consultants and pay for campaign-related advertising.<sup>5</sup>

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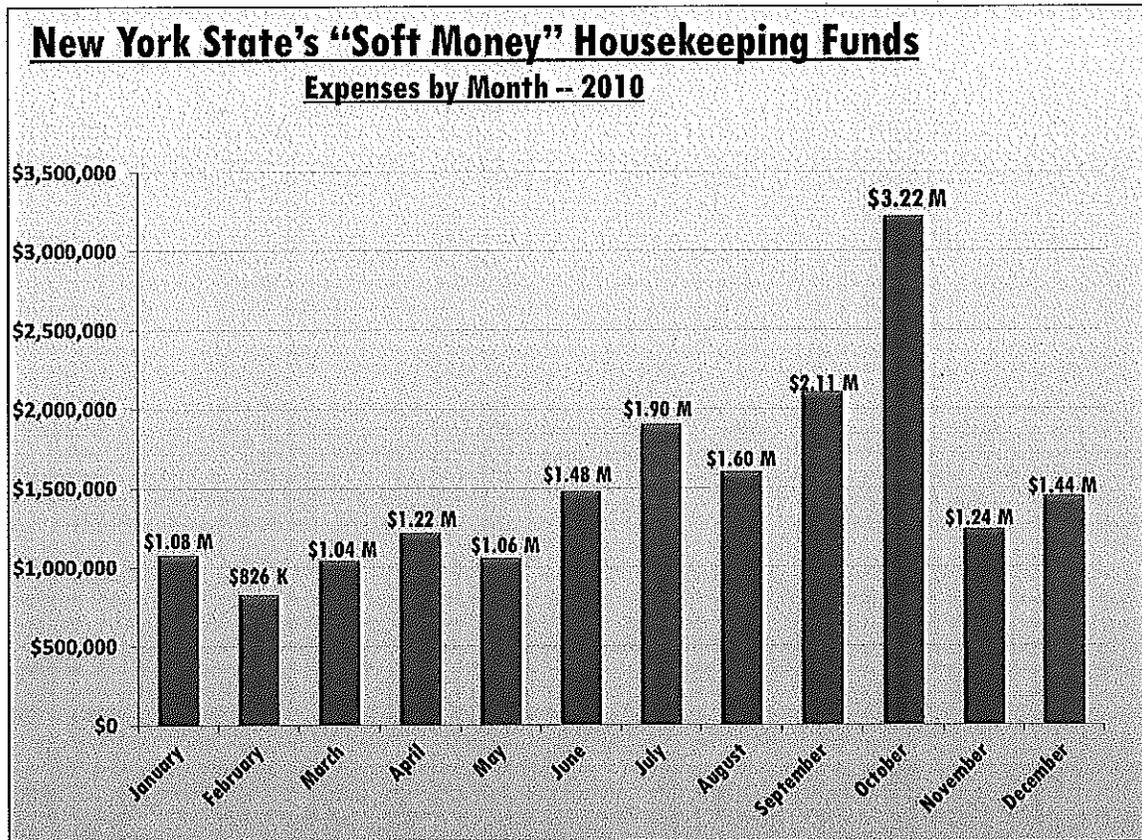
<sup>5</sup> Common Cause/NY. "The Life of the Party: Hard Facts on Soft Money in New York State." May 2013. [www.commoncause.org/ny/softmoney](http://www.commoncause.org/ny/softmoney)

From 2006-2012, overall housekeeping expenditures are 24% higher on average during election years than during non-election years.



The high rate of spending in 2013 reflects the new use of the New York State Democratic Committee housekeeping account to raise and spend money on an advertising campaign in support of Governor Cuomo's policy agenda.

Looking at the distribution of expenses by month during election years and non-election years, it is clear that the spike in spending in election years is due to a higher level of spending during that occurs during the run up to the election from July to October.



The election season spikes in housekeeping expenses are related to hiring high-priced political consultants and spending on advertising and mass-mailings. Common Cause/NY analysis also shows that during the height of the election season, money is often expended out of soft money accounts on or near the same day that hard money committees expend money to the same vendor. From the current state of the campaign finance records, it is impossible to know if the political consultants receiving housekeeping funds are working on campaigns for individual candidates or not.

In recent years it has become disturbingly commonplace for the parties to use housekeeping funds to pay for political advertising during election season. The Senate Republicans, Senate Democrats, New York State Republicans, New York State Conservatives, and New York State Independence Party have all at times used housekeeping money for political advertising, as have many county-level parties on a smaller scale.

The most egregious examples of housekeeping accounts used to fund election season advertising include the Conservative Party's 2010 "Ground Zero Mosque" campaign in support of Republican

gubernatorial candidate Rick Lazio,<sup>6</sup> and the 2012 attacks ads on Democratic Senate candidates George Latimer and Terry Gipson by Independence Party via a transfer from the Senate Republicans' housekeeping account.<sup>7</sup> Both advertising campaigns were paid for by non-campaign housekeeping money with the purpose code "OTHER."

## CONCLUSION

Part of the mission of this Moreland Commission is to investigate *"the effectiveness of existing campaign finance laws."* The purpose of campaign contribution limits and campaign finance regulation at large is to ensure that our democracy is not captured by wealthy special interests

Common Cause/NY's research presented here today clearly demonstrates that the LLC and soft money loopholes together render the state's campaign contribution limits completely meaningless, making New York a de facto unlimited contribution state.

Our state's campaign finance system clearly advantages large dollar donors over ordinary New Yorkers and calls into question the role of money in influencing public policy. Reform of New York State's campaign finance laws should seek to reduce this influence and reduce the dependency of politicians and parties on big checks from special interests.

We believe that a Fair Elections system of public matching funds at the state level is an essential aspect of any such reform. The Fair Elections system of 6 to 1 matching funds has been highly effective in New York City at encouraging democratic participation and amplifying the influence of small donors and constituents. In 2009, City Council candidates who opted into New York City's public financing system received roughly 25% of their total campaign cash from small donors giving amounts of \$200 or less. The corresponding figure for State officials is abysmally low at 7% overall, with some individual state legislators clocking in at less than 2%<sup>8</sup>

But alongside empowering small donors, it is crucial to lower New York's sky-high contribution limits and reign in the loopholes that are systematically exploited by powerful special interests. Our research shows that the huge contributions enabled by soft money and the LLC loophole have come to be seen as a standard practice, a cost of doing business for any special interest seeking to influence politics and policy in New York.

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<sup>6</sup> John Del Signore. "Meet the Man Who Manufacture the Masses' Mosque Madness." *Gothamist*. January 19, 2011. [http://gothamist.com/2011/01/19/meet\\_the\\_man\\_who\\_manufactured\\_the\\_m.php](http://gothamist.com/2011/01/19/meet_the_man_who_manufactured_the_m.php)

<sup>7</sup> Kenneth Lovett. "Independence Party goes along with GOP scheme to dodge campaign finance laws, insiders allege." *The Daily News*. March 4, 2013. <http://www.nydailynews.com/news/politics/lovett-independence-party-gop-annex-article-1.1278583>

<sup>8</sup> Michael J. Malbin and Peter W. Brusoe. "Small Donors, Big Democracy, New York City's Matching Funds as a Model for the Nation and States ." Campaign Finance Institute, 2011.



The culture of money and corruption in Albany will not be cured by half-measures. It is imperative that we close the soft money and LLC loopholes and end the practice of raising unlimited sums of giant donations from wealthy, powerful, and self-interested actors. As long as the rules of the game make politicians accountable to narrow special interests, they're never going to be accountable to the public who elected them.

## Attachment: Top Soft Money Donors and Recipients

### “The \$200K Club” – Top Soft Money Power Donors

The following 59 donors that have given in excess of \$200,000 since 2006 are responsible for nearly half of the total soft money raised during this period.

<b>NYS 200K+ Soft Money Power Donors</b> <small>(excluding political committees as donors or other political committees)</small>	<b>Soft Money Contributions 2006 – Jul 2013</b>	<b>Industry Category</b>
1. MICHAEL R. BLOOMBERG	\$7,170,000.00	GOVERNMENT ; FINANCE ; MEDIA
2. GNYHA MANAGEMENT CORPORATION	\$3,572,188.58	HEALTHCARE -- HOSPITALS
3. NEW YORK STATE UNITED TEACHERS (NYSUT) VOTE/COPE	\$3,250,194.28	LABOR -- EDUCATION
4. 1199 SEIU	\$2,219,975.00	LABOR -- HEALTHCARE
5. CABLEVISION	\$1,688,041.52	TELECOM
6. VERIZON	\$1,563,234.96	TELECOM
7. PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA (PhRMA)	\$1,553,750.00	PHARMACEUTICALS
8. TIME WARNER CABLE	\$1,552,273.24	TELECOM
9. PHILIP MORRIS / ALTRIA	\$1,230,750.00	TOBACCO
10. HEALTHCARE ASSOCIATION OF NY (HANYS)	\$1,168,500.00	HEALTHCARE
11. JAMES SIMONS	\$1,101,000.00	FINANCE – HEDGE FUND (RENAISSANCE TECHNOLOGES)
12. ROBERT MERCER	\$1,010,000.00	FINANCE – HEDGE FUND (RENAISSANCE TECHNOLOGES)
13. RENT STABILIZATION ASSOCIATION	\$955,550.00	REAL ESTATE
14. WAL-MART	\$928,500.00	RETAIL
15. RED APPLE GROUP / UNITED REFINING CO. / JOHN CATSIMATIDIS	\$829,100.00	CONGLOMERATE ; RETAIL-- SUPERMARKET ; REAL ESTATE ; ENERGY
16. ESTATE OF HENRY SANDERS	\$812,710.10	ESTATE BEQUEST
17. GLENWOOD MANAGEMENT / LEONARD LITWIN	\$765,400.00	REAL ESTATE
18. GEORGE SOROS	\$750,000.00	FINANCE – HEDGE FUND (SOROS FUND MANAGEMENT)
19. COCA-COLA COMPANY / COCA-COLA BOTTLING COMPANY	\$713,500.00	BEVERAGES
20. HOSPITAL INSURANCE COMPANY	\$703,500.00	INSURANCE – HEALTHCARE
21. LAW PAC OF NEW YORK	\$651,300.00	LAW



22. AT&T	\$648,800.00	TELECOM
23. DIAGEO NORTH AMERICA / DIAGEO-GUINNESS	\$595,000.00	BEVERAGES -- BEER ; WINE ; LIQUOR
24. BROOKFIELD FINANCIAL PARTNERS	\$575,000.00	REAL ESTATE
25. LAWRENCE AND SUSAN KADISH	\$559,500.00	REAL ESTATE (FIRST FISCAL FUND CORP)
26. VORNADO REALTY TRUST/ STEVEN ROTH	\$515,600.00	REAL ESTATE
27. NEW YORK STATE BOTTLERS ASSOCIATION	\$508,000.00	BEVERAGES
28. HOWARD COX	\$482,000.00	FINANCE -- VENTURE CAPITAL (GREYLOCK PARTNERS)
29. EMPIRE DENTAL PAC	\$479,250.00	HEALTHCARE -- DENTAL
30. UNITED FEDERATION OF TEACHERS	\$474,483.33	LABOR -- EDUCATION
31. CABLE TELECOMMUNICATION ASSOCIATION OF NEW YORK	\$471,618.84	TELECOM
32. BRUCE & SUZANNE KOVNER	\$455,000.00	FINANCE -- HEDGE FUND (CAXTON ASSOCIATES)
33. REAL ESTATE BOARD OF NEW YORK (REBNY)	\$449,500.00	REAL ESTATE
34. GENERAL ELECTRIC	\$400,000.00	CONGLOMERATE -- ENERGY ; MANUFACTURING ; MEDIA ; FINANCE
35. DAVID KOCH	\$400,000.00	CONGLOMERATE -- CONSUMER GOODS; INDUSTRIAL ; ENERGY (KOCH INDUSTRIES)
36. THE PIKE COMPANY, INC.	\$398,600.00	REAL ESTATE ; CONSTRUCTION
37. H.J. KALIKOW & CO.	\$382,000.00	REAL ESTATE
38. CONSTELLATION WINES	\$339,000.00	BEVERAGES -- WINE & LIQUOR
39. FIRST CITY DEVELOPERS / INNER CITY STRATEGIES	\$325,000.00	SHELL DONOR UNDER INVESTIGATION BY FBI
40. ASTRA ZENECA	\$320,950.00	PHARMACEUTICALS
41. ENTERTAINMENT SOFTWARE ASSOCIATION	\$302,100.00	ENTERTAINMENT -- VIDEO GAMES
42. GREENBERG TRAUIG / ED WALLACE	\$293,550.00	LAW ; LOBBYIST
43. CITIGROUP	\$279,077.17	FINANCE
44. LABELLA ASSOCIATES	\$275,721.00	ENGINEERING
45. US CHAMBER OF COMMERCE	\$275,000.00	BUSINESS ASSOCIATION
46. ELI LILLY & COMPANY	\$257,150.00	PHARMACEUTICALS
47. SEIU INTERNATIONAL	\$255,500.00	LABOR
48. PAUL SINGER	\$250,000.00	FINANCE -- HEDGE FUND (ELLIOT MANAGEMENT)
49. TISHMAN SPEYER	\$245,000.00	REAL ESTATE
50. HENRY & MARSHA LAUFER	\$244,257.50	FINANCE -- HEDGE FUND

		(RENAISSANCE TECHNOLOGIES)
51. MERCK & CO. INC.	\$243,075.00	PHARMACEUTICALS
52. THE SENECA NATION OF INDIANS	\$235,000.00	TRIBE – GAMBLING ; TOBACCO
53. BERNARD SCHWARTZ	\$231,992.57	RETIRED
54. GLAXOSMITHKLINE	\$225,935.78	PHARMACEUTICALS
55. YANKEE GLOBAL ENTERPRISES	\$218,100.00	SPORTS
56. PFIZER INC.	\$218,000.00	PHARMACEUTICALS
57. THE DONALD ZUCKER COMPANY	\$216,900.00	REAL ESTATE
58. SARATOGA HARNESS RACING/SARATOGA GAMING	\$205,850.00	GAMBLING ; HORSE RACING
59. PATRICIA LYNCH & ASSOCIATES	\$205,001.11	LOBBYIST

## Top 20 Soft Money Recipients

The following top 20 soft money recipients account for over 90% of the \$98 million in soft money raised statewide since 2006.

Top 20 NYS Soft Money Recipients	Soft Money Contributions (2006-Jul 2013)	Committee Name(s)
1. State Senate Republicans	\$20,561,930.36	Two accounts: "NYS Senate Republican Campaign Committee – Housekeeping, and "NYS Senate Republican Conference Committee (Housekeeping)"
2. New York State Democratic Committee	\$12,931,646.87	"New York State Democratic Committee (Housekeeping)"
3. State Assembly Democrats	\$7,349,542.23	Two accounts: "NYS Democratic Assembly Campaign Committee (DACC)" and "NYS Democratic Assembly Campaign Comm. Housekeeping Conference Acct. (DACC)"
4. New York State Conservative Party	\$6,070,086.49	Five accounts: "Conservative Party NYS (Headquarters Account)," "Conservative Party Dinner Committee Housekeeping Account," "State Conservative Campaign Committee," "Conservative Party of NYS (Albany Account)," "New York State Conservative Party (Conference Accounts) (NYSCP)"
5. State Senate Democrats	\$5,578,896.75	"Democratic Senate Campaign Committee – Housekeeping (DSCC Housekeeping)"

<b>6. New York State Republican Committee</b>	<b>\$5,351,088.64</b>	"New York Republican State Committee – Housekeeping"
<b>7. Monroe County Republican Party</b>	<b>\$4,716,184.65</b>	"Monroe County Republican Housekeeping Committee"
<b>8. New York State Independence Party</b>	<b>\$4,593,837.90</b>	Four accounts: "Independence Party of New York State – Housekeeping Account," "NYS Independence Party Housekeeping Account (NYS – New York State)," "NYS Independence Party Chairman's Club," "Independence Party Chairman's Club."
<b>9. Queens County Democratic Party</b>	<b>\$3,838,215.69</b>	"Democratic Organization of Queens County"
<b>10. Working Families Party</b>	<b>\$2,441,779.89</b>	"Working Families Party, Inc."
<b>11. Kings County Democratic Party</b>	<b>\$2,415,583.94</b>	"Kings County Democratic County Committee"
<b>12. Nassau County Democratic Party</b>	<b>\$2,181,414.82</b>	Two accounts: "Nassau County Democratic Committee Housekeeping Account"; "Nassau County Democratic Committee Operating Account"
<b>13. State Assembly Republicans</b>	<b>\$1,799,795.55</b>	"Republican Assembly Campaign Committee – Housekeeping Account"
<b>14. Bronx County Democratic Party</b>	<b>\$1,790,204.47</b>	"Bronx Democratic County Committee – Housekeeping"
<b>15. New York County Democratic Party</b>	<b>\$1,599,529.05</b>	"New York County Democratic Committee"
<b>16. Monroe County Democratic Party</b>	<b>\$1,412,156.05</b>	"Monroe County Democratic Committee"
<b>17. New York County Independence Party</b>	<b>\$1,339,587.47</b>	"New York County Independence Committee"
<b>18. New York County Republican Party</b>	<b>\$1,057,907.41</b>	Two committees: "New York Republican County Committee," "New York Republican County Committee Housekeeping Account."
<b>19. Erie County Republican Party</b>	<b>\$1,020,390.9</b>	"Erie County Republican Committee-Housekeeping"
<b>20. Onondaga County Republican Committee</b>	<b>\$954,926.96</b>	"Onondaga County Republican Committee Housekeeping"



**TESTIMONY  
OF THE  
NEW YORK PUBLIC INTEREST RESEARCH GROUP  
BEFORE THE  
MORELAND COMMISSION ON PUBLIC CORRUPTION  
SEPTEMBER 24, 2013  
ALBANY, NEW YORK**

Good evening. My name is Bill Mahoney and I am the Research Coordinator for the New York Public Interest Research Group (NYPIRG). As you know, NYPIRG has been deeply involved in the issues of governmental ethics, most prominently in New York State. We applaud the governor for establishing the Commission. It is our hope that your work will change the course of New York State history and help restore public confidence in Albany.

We have been told that each of the Commission's hearings will focus on one aspect of your mandate and that one of the purposes of tonight's hearing is designed to generate public comment on the state's system of overseeing campaign financing practices.

New York State's campaign finance system has been analyzed for decades and the same conclusion emerges: It is an awful system. It is a system marked by shamefully high campaign contribution "limits," inadequate disclosure requirements, and essentially non-existent enforcement. And being New York, that woefully inadequate system is riddled with loopholes. It is an "everything goes" system, which seems to allow a candidate to act as if there are no campaign contribution limits, and it is a system in which it is easy to hide contributions and the donations can be spent to subsidize the lifestyle of elected officials.

In a sense, your work is easier due to this history. In the 1980s, a public outcry led to the creation of the Commission on Government Integrity, created under the Moreland Act. That Commission, also known as the Feerick Commission, completed extensive analyses of the state's campaign finance and ethics systems. Their work should serve as the basis for your analyses and recommendations. There is no reason to reinvent the wheel: the problems that riddle the system are well documented and, if anything, things are worse than during the Feerick investigation. I will discuss the lessons from the previous Moreland Commission later in my testimony.

This testimony is written to cover New York's campaign finance woes by organizing our analysis into four categories:

- 1. Overview of fundraising in New York.** When looking at aggregate contribution totals, it is clear that money flows to the individuals and parties that hold power (p. 3).

2. **Breakdown of where money comes from.** An overwhelming amount of money raised in the state system is raised from sources with business before state government. Businesses give more than unions or individuals, real estate gives more than any other sector, and most of the money raised from individuals comes from large donors. Lobbyists donate large amounts of money; when coupled with their clients, they account for around two-thirds of all the money raised by legislators. Loopholes in the law allow some donors to give much more than their theoretical legal limits (p. 4).
3. **Other analyses to consider when drafting policy recommendations.** Legislators' reliance on special interest donors means they raise significant money from some parts of the state, such as the Capital District, rather than from their actual constituents. The pervasiveness of fundraisers held in Albany on session days highlights the joined-at-the-hip relationship between fundraising and policy-making (p. 20).
4. **Legislative recommendations.** As mentioned above, the findings of the "Feerick Commission" should be closely examined. Since so few of its recommendations have been enacted, they can serve as an excellent starting point for your own proposals. The current commission should also address new problems that have arisen over the past two decades. (p. 29).
5. **Non-legislative recommendations.** This commission should consider making legal referrals that could lead to significant changes without legislative action (p. 30).

The following includes analyses conducted by NYPIRG. Unless otherwise noted, the analyses are based on our reviews of the campaign finance disclosure reports submitted to the Board of Elections.

## I. OVERVIEW OF FUNDRAISING IN NEW YORK

### Total Legislative Candidate Fundraising

In the typical two-year election cycle, legislators and their party committees report nearly \$90 million in total contributions. The total fundraising decreased slightly from 2010 to 2012 due to a decrease in the number of competitive senate races.

	2011-12 <sup>1</sup>	2009-10
Total Contributions	\$85,247,517.95	\$87,181,389.52
Total Receipts <sup>2</sup>	\$105,288,158.32	\$116,678,071.57

Donors gave overwhelmingly to the majority parties in each chamber. While Senate Democrats outraised Republicans by about \$14 million in 2009-10, Republicans outraised Democrats by over \$23 million in 2011-12:

<sup>1</sup> All of the totals in sections I and II reflect information filed with the Board of Elections as of December 13, 2012.

<sup>2</sup> "Total receipts" is a more encompassing category than "contributions" as it includes donations as well as interest, candidate loans, and transfers from parties and other candidate committees.

House	Party	Total Receipts (2011-2012)
Senate	Republicans + Conference Committees	\$42,320,138.78
Senate	Democrats + Conference Committees	\$19,096,121.72
Senate	Independent Democratic Conference	\$3,032,480.83
Senate	Other <sup>3</sup>	\$94,381.60
Assembly	Democrats + Conference Committees	\$29,596,026.04
Assembly	Republicans + Conference Committees	\$11,054,446.12
Assembly	Other	\$94,563.23

The total spent in gubernatorial races varies based on factors such as the existence of primaries and self-funded campaigns.

Candidate	Total spent over four years
Pataki (2002)	\$44,701,787
McCall	\$16,254,169
Golisano (2002)	\$75,072,493
Spitzer	\$35,983,002
Faso	\$3,681,345
Cuomo	\$28,355,275
Paladino	\$9,629,078

## II. BREAKDOWN OF WHERE MONEY COMES FROM

### Receipts by Source

We have labeled the source of 98.4% of the receipts reported by legislative candidates in the two years preceding December 1, 2012 into one of ten source categories. Businesses accounted for more than a third of all money raised by candidates.

<sup>3</sup> "Other" candidates are primarily those that did not run in a major party's primary in 2012 and were on the general election ballot for either the Conservative, Independence, or Green parties.

Type of Donor	Total Given	% of All Money
Business, LLC or Trade Association	\$37,798,813.72	35.90%
Individual	\$24,705,039.25	23.46%
Union	\$13,791,460.07	13.10%
Not for Profit	\$1,165,673.80	1.11%
Other Candidate	\$10,045,250.03	9.54%
Party	\$8,786,150.83	8.34%
Directly from Candidate	\$3,385,102.01	3.22%
From Candidate's Family	\$947,140.07	0.90%
Interest & Expenditure Refunds	\$1,119,239.51	1.06%
Native American Tribes	\$422,050.00	0.40%
Loans	\$90,000.00	0.09%
Unitemized by Filer	\$1,318,621.65	1.25%

During this two year period, businesses gave 3.7 times more money to Senate Republicans than to Senate Democrats, and gave 3.05 times more money to Assembly Democrats than to Assembly Republicans. Unions gave 1.08 times more to Republicans in the Senate than to Senate Democrats, and 7.86 times more labor money went to Assembly Democrats as to Assembly Republicans.

In many cases, donors gave to Democrats in one house and Republicans in the other. Clearly, campaign contributors are rarely driven by a consistent ideology. If not political beliefs, what motivates the state's largest donors?

Consider the following chart. In the Assembly, members of the majority conference were able to pass nearly twice as many bills on average in 2012 as members of the chamber's minority. In the Senate, Republicans passed over seven times as many bills on average. When dealing with significant changes to law, the numbers are even more disproportionate, since many of the bills passed by members of the minority parties were noncontroversial local bills affecting only individual municipalities in their districts.

Clearly, the state's largest donors write checks with the intent of influencing the legislative process.

Conference	Bills Passing Both Houses	Bills Passing Both Houses per Member
Assembly Dems	530	5.00
Assembly GOP	110	2.56
Senate Dems	54	2.08
Senate IDC	74	18.50
Senate GOP	487	15.71

Legislative party committees and their affiliated "housekeeping" affiliates relied on individuals for their donations to a much smaller degree than candidate committees. It is clear that the loopholes that let party committees raise huge contributions from donors benefit groups such as businesses and unions that can afford to write larger checks.

### Donations to Parties and Legislative Candidates, 2011-2012

Source of Donation	Party, Total \$	% of Party \$	Candidates, Total \$	% of Candidate \$ <sup>4</sup>
Business, LLC or Trade Association	\$14,266,081.30	45.75%	\$23,532,732.42	33.73%
Individuals	\$3,142,394.70	10.08%	\$21,562,644.55	30.90%
Union	\$4,695,682.45	15.06%	\$9,095,777.62	13.04%
Not for Profit	\$474,600.00	1.52%	\$691,073.80	0.99%
Other Candidate	\$7,028,871.24	22.54%	\$3,016,378.79	4.32%
Party	\$916,234.22	2.94%	\$7,869,916.61	11.28%
Native American Tribes	\$265,000.00	0.85%	\$157,050.00	0.23%
Unitemized by Filer	\$72,189.77	0.23%	\$1,246,431.88	1.79%
Loans	\$0.00	0.00%	\$90,000.00	0.13%
Interest	\$5,782.11	0.02%	\$503,889.27	0.72%
Expenditure Refunds	\$187,926.62	0.60%	\$421,641.51	0.60%

### Individual Candidates' Sources of Funding

Due partially to a relative dearth of transfers from other candidates and their inability to have a party committee of their own, members of the IDC were more reliant than members of other conferences on donations from both unions and businesses.

Conference	Business Total	Business % of all \$	Union Total	Union % of all \$	Individual Total	Individual % of all \$
Senate GOP	\$11,485,501.70	40.61%	\$2,434,876.66	8.61%	\$7,518,342.53	26.58%
Senate Dem	\$3,066,579.57	23.01%	\$2,244,447.01	16.84%	\$4,401,221.34	33.02%
Senate IDC <sup>5</sup>	\$1,350,014.09	44.52%	\$583,716.00	19.25%	\$821,032.89	27.07%
Assembly Dem	\$5,727,724.20	26.78%	\$3,395,628.23	15.87%	\$6,477,856.77	30.28%
Assembly GOP	\$1,875,809.86	23.80%	\$432,010.72	5.48%	\$2,293,826.62	29.11%

### Business Donations By Sector

We reviewed 85.2% (\$32.2 million) of the \$37.8 million from business donors to legislative candidates in 2011 and 2012 and categorized them according to the fifteen labels found below.<sup>6</sup> Based on this categorization, it appears that businesses in the fields of real estate and construction continued to be the top source of corporate donations. Their lead can partially be attributed to the loophole in campaign finance law that lets LLCs donate more than other forms of business.

<sup>4</sup> Donations directly from candidates or their family members were not included when calculating the percentage raised by candidates, since these cannot be compared to money raised by parties. If they were included, the percentage of money that candidates raised from individuals would increase significantly.

<sup>5</sup> For the purposes of this chart, IDC members were limited to those members who declared their affiliation with this conference before election day: Senators Klein, Savino, Valesky, and Carlucci, and Albany County Legislator Shawn Morse.

<sup>6</sup> These categories are based on those used by the Joint Commission on Public Ethics, which categorizes lobbying clients, with some changes added by the authors.

<b>Business Sector</b>	<b>Amount Donated</b>
Real Estate & Construction	\$7,523,955.25
Health & Mental Hygiene	\$6,228,494.00
Insurance, Financial, Banking	\$4,152,821.36
Lobby Firms	\$2,333,924.24
Food, Alcohol, or Tobacco Production	\$2,279,268.31
Law Firms <sup>7</sup>	\$2,157,708.70
Entertainment, Tourism, Restaurants	\$1,655,275.37
Telecom	\$1,607,973.70
Transportation, Shipping, Car Dealers	\$1,363,949.15
Energy	\$813,271.64
Miscellaneous Service Sector	\$587,282.47
General Retail	\$542,883.42
Miscellaneous Industry	\$525,209.29
Business Associations and Chambers of Commerce	\$380,704.82
Education	\$57,900.00

These breakdowns by business sector are remarkably constant over time. In general, the totals raised by legislators from different sectors in 2011-2012 are nearly identical to the same figures from the previous election cycle. The most notable change came in businesses categorized as being in the entertainment industry. The total from these businesses increased almost 50%, due to a surge in spending by casinos and other gambling companies in this category.

<b>Sector</b>	<b>2011-2 Total \$</b>	<b>2011-2 % of Business \$</b>	<b>2009-10 Total \$</b>	<b>2009-10 % of Business \$</b>
Real Estate & Construction	\$7,523,955.25	19.91%	\$7,610,306.62	18.98%
Health & Mental Hygiene	\$6,228,494.00	16.48%	\$6,191,863.27	15.45%
Insurance, Financial, Banking	\$4,152,821.36	10.99%	\$4,226,249.74	10.54%
Lobby Firms + Law Firms	\$4,491,632.94	11.88%	\$4,103,466.81	10.24%
Food, Alcohol, or Tobacco Production	\$2,279,268.31	6.03%	\$2,882,727.68	7.19%
Entertainment, Tourism, Restaurants	\$1,655,275.37	4.38%	\$1,104,416.75	2.76%
Telecom	\$1,607,973.70	4.25%	\$1,327,524.91	3.31%
Transportation, Shipping, Car Dealers	\$1,363,949.15	3.61%	\$1,242,459.82	3.10%
Energy	\$813,271.64	2.15%	\$819,681.70	2.04%
Miscellaneous Service Sector	\$587,282.47	1.55%	\$623,962.99	1.56%

<sup>7</sup> Several law firms are grouped with lobby firms for the purpose of this analysis. While they often engage in similar work to other law firms, those which are registered to represent clients before the state legislature have a fundamentally different relationship with the lawmakers whom they contribute to.

General Retail	\$542,883.42	1.44%	\$408,208.95	1.02%
Miscellaneous Industry	\$525,209.29	1.39%	\$351,963.00	0.88%
Business Associations and Chambers of Commerce	\$380,704.82	1.01%	\$450,161.97	1.12%
Education	\$57,900.00	0.15%	\$52,925.00	0.13%

For members of three of the four major conferences, the three most generous business sectors were Real Estate & Construction; Health & Mental Hygiene; and Insurance, Financial & Banking. It should be noted that since only 85.2% of business donations were labeled by sector, some of these totals might be higher.

Conference/ Rank	Sector	Total \$	% of Conference's Business \$
Senate GOP 1	Real Estate & Construction	\$4,525,008.96	24.55%
Senate GOP 2	Health & Mental Hygiene	\$2,905,660.77	15.77%
Senate GOP 3	Insurance, Financial, Banking	\$2,183,319.51	11.85%
Senate Dem 1	Real Estate & Construction	\$909,419.45	18.64%
Senate Dem 2	Health & Mental Hygiene	\$880,665.00	18.05%
Senate Dem 3	Law Firms	\$514,616.01	10.55%
Assembly Dem 1	Health & Mental Hygiene	\$1,880,028.73	18.45%
Assembly Dem 2	Real Estate & Construction	\$1,283,808.28	12.60%
Assembly Dem 3	Insurance, Financial, Banking	\$1,136,363.95	11.15%
Assembly GOP 1	Real Estate & Construction	\$464,993.56	15.91%
Assembly GOP 2	Health & Mental Hygiene	\$356,020.50	12.18%
Assembly GOP 3	Insurance, Financial, Banking	\$233,028.56	7.97%

These totals by sector were similar for statewide candidates running in the 2010 general election:

<b>Cuomo</b>	
Real Estate & Construction	\$2,632,893.05
Lawyers & Lobbyists	\$1,528,460.90
Insurance, Financial, Banking	\$1,014,523.55
<b>Paladino</b>	
Real Estate & Construction	\$186,452.57
Lawyers & Lobbyists	\$28,223.00
Entertainment, Tourism, Restaurants	\$17,835.04
<b>DiNapoli</b>	
Lawyers & Lobbyists	\$360,346.85
Real Estate & Construction	\$204,086.83
Insurance, Financial, Banking	\$83,375.00
<b>Wilson</b>	
Real Estate & Construction	\$150,550.00
Insurance, Financial, Banking	\$33,500.00
Transportation, Shipping, Car Dealers	\$18,000.00

<b>Schneiderman</b>	
Lawyers & Lobbyists	\$400,029.20
Real Estate & Construction	\$331,318.86
Health & Mental Hygiene	\$117,808.59
<b>Donovan</b>	
Real Estate & Construction	\$265,839.00
Insurance, Financial, Banking	\$75,500.07
Lawyers & Lobbyists	\$58,050.00

As cited above, lobby firms donated over \$2.3 million in the 2012 legislative election cycle. This figure is even higher when one includes 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.

#### 25 Highest-Giving Lobbying Firms, 2011

Rank	Firm	Total Donations
1	Wilson Elser Moskowitz Edelman & Dicker, LLP	\$177,703
2	Burgos, Tonio & Associates, Inc.	\$94,550
3	Hinman Straub Advisors LLC	\$92,169
4	Greenberg Traurig, LLP	\$89,759
5	Cordo & Company, LLC	\$75,951
6	Gotham Government Relations	\$70,850
7	Parkside Group, LLC (The)	\$65,197
8	Bond, Schoeneck & King, PLLC	\$64,329
9	Harter Secrest & Emery, LLP	\$56,870
10	Featherstonhaugh, Wiley & Clyne, LLP	\$51,675
11	Cozen O'Connor	\$50,750
12	Brown & Weinraub, PLLC	\$49,693
13	Gilberti Stinziano Heintz & Smith, P.C	\$48,300
14	Manatt, Phelps & Phillips, LLP	\$46,112
15	Whiteman Osterman & Hanna LLP	\$45,275
16	Rubenstein Associates, Inc.	\$37,973
17	Roffe Group P.C. (The)	\$34,150
18	Bolton St. Johns, LLC	\$32,750
19	Davidoff Malito & Hatcher LLP	\$30,448
20	Park Strategies, LLC	\$29,340
21	Pitta Bishop Del Giorno & Giblin LLC	\$27,905
22	Meara Avella Dickinson	\$27,400
23	Delbello Donnellan Weingarten Wise & Wiederkehr, LLP	\$26,650
24	Ljm Rad LLC	\$25,200
25	Stroock & Stroock & Lavan LLP	\$21,723

### **Bundling**

While these numbers are large, lobby firms 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>8</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.

### **Donations from Special Interests**

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.

Most of these legislators introduced legislation directly benefiting their donors.

Among the legislators representing these three regions, the absolute minimum percentage of money coming from lobby firms and their clients is therefore around half. As mentioned above, this does not include totals donated by individuals affiliated with these firms and clients. Estimates, based off of other studies such as the examination of donations from individual lobbyists mentioned above, make it seem likely the percentage of money from individuals that comes from those with business before state government is between one-third and two-thirds, putting the overall percentage of money raised from lobbyists, their clients, and affiliated individuals somewhere in the range of 60-70%.

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<sup>8</sup>Section 3-701 (12) of the Administrative Code of the City of New York 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.”

***Syracuse-area legislators, 2012 fundraising***

This chart and the following two illustrate how dependent legislators' campaign committees are on donations from lobbyists and their lobby clients.

<b>Candidate</b>	<b>Lobby Firms</b>	<b>Lobby Clients</b>	<b>Other Businesses, Unions, and NFPs</b>	<b>Individuals</b>	<b>Transfers, Interest, Unitemized</b>	<b>% of all Donations from Lobbyists/ Clients</b>
Citizens For Defranco/ Defranco Re-Election Committee	\$25,992.10	\$180,345.00	\$55,175.00	\$57,659.00	\$425.00	64.65%
Committee To Elect Sam Roberts		\$38,485.71	\$8,150.00	\$12,472.00	\$4,100.81	65.11%
Finch For Assembly	\$1,350.00	\$15,775.00	\$18,167.46	\$20,950.00	\$1,190.00	30.45%
Friends Of Bob Oaks	\$2,100.00	\$16,938.00	\$14,256.00	\$12,680.00	\$0	41.41%
Friends Of Don Miller	\$0	\$12,421.00	\$15,511.80	\$52,963.34	\$2,834.00	15.35%
Friends Of Senator Seward	\$11,450.00	\$155,334.00	\$95,829.00	\$60,387.00	\$3,250.00	51.64%
Friends Of Tom O'mara	\$7,400.00	\$44,400.00	\$11,400.00	\$34,660.00	\$3,150.00	52.93%
Mike Nozzolio For State Senate	\$8,750.00	\$111,431.40	\$84,474.00	\$57,436.00	\$522.00	45.85%
People For Magnarelli	\$2,100.00	\$36,350.00	\$10,350.00	\$21,625.00	\$919.00	54.60%
Valesky For Senate	\$6,300.00	\$107,900.00	\$24,492.00	\$29,063.93	\$16,832.00	68.08%
<b>Total</b>	<b>\$65,442.10</b>	<b>\$719,380.11</b>	<b>\$337,805.26</b>	<b>\$359,896.27</b>	<b>\$33,222.81</b>	<b>52.94%</b>

***Buffalo-area legislators, 2012 fundraising***

<b>Candidate</b>	<b>Lobby Firms</b>	<b>Lobby Clients</b>	<b>Other Businesses, Unions, and NFPs</b>	<b>Individuals</b>	<b>Transfers, Interest, Candidate, Unitemized</b>	<b>% of all Donations from Lobbyists/ Clients</b>
Cathy Young For Senate	\$8,100.00	\$103,871.25	\$54,027.56	\$42,957.74	\$6,517.00	53.59%
Ceretto For Assembly	\$0.00	\$16,470.00	\$11,485.00	\$11,277.00	\$30,491.55	41.98%
Citizens For Schimminger	\$4,900.00	\$36,650.00	\$27,172.25	\$11,700.00	\$4,360.00	51.66%
Committee To Elect Maziarz State Senate	\$18,171.38	\$227,885.06	\$137,419.49	\$95,553.74	\$18,224.40	51.37%
Dipietro For You	\$0.00	\$500.00	\$8,114.00	\$13,915.00	\$2,554.00	2.22%
Friends Of Andy Goodell	\$300.00	\$9,700.00	\$7,150.00	\$28,580.00	\$15,494.06	21.87%
Friends Of Crystal Peoples	\$4,550.00	\$11,150.00	\$5,673.00	\$13,308.00	\$6,251.44	45.27%
Friends Of Dennis	\$4,925.00	\$34,390.00	\$27,452.00	\$14,094.00	\$7,982.00	48.62%

Gabryszak						
Friends Of Ray Walter	\$320.00	\$8,433.00	\$6,608.00	\$31,581.00	\$3,309.00	18.65%
Gallivan For Senate	\$10,009.00	\$49,755.00	\$33,247.00	\$52,121.05	\$6,629.00	41.18%
Giglio For Assembly	\$500.00	\$10,350.00	\$3,600.00	\$5,500.00	\$7,300.25	54.39%
Grisanti For Senate	\$9,085.00	\$190,223.45	\$69,966.76	\$240,239.94	\$42,334.08	39.12%
Jane Corwin Campaign Committee	\$1,500.00	\$6,500.00	\$7,160.00	\$28,410.00	\$4,423.70	18.36%
Kearns For Western New York	\$0.00	\$12,850.00	\$70,110.00	\$27,872.00	\$36,013.38	11.59%
Kennedy For Senate	\$6,650.00	\$248,980.00	\$117,996.76	\$159,725.00	\$17,640.32	47.93%
Mike Ranzenhofer For State Senate	\$12,750.00	\$100,005.00	\$83,245.00	\$103,758.00	\$5,819.00	37.62%
Sean Ryan For Assembly	\$6,199.00	\$88,343.00	\$16,382.00	\$49,704.00	\$14,551.00	58.86%
<b>Total</b>	<b>\$87,959.38</b>	<b>\$1,156,055.76</b>	<b>\$686,808.82</b>	<b>\$930,296.47</b>	<b>\$229,894.18</b>	<b>43.48%</b>

*Rochester-area legislators, 2012 fundraising*

<b>Candidate</b>	<b>Lobby Firms</b>	<b>Lobby Clients</b>	<b>Other Businesses, Unions, and NFPs</b>	<b>Individuals</b>	<b>Transfers, Interest, Candidate, Unitemized</b>	<b>% of all donations from Lobbyists/ Clients</b>
Cathy Young For Senate	\$8,100.00	\$103,871.25	\$54,027.56	\$42,957.74	\$6,517.00	53.59%
Citizens For Joseph Robach (Senate)	\$12,600.00	\$165,061.84	\$45,496.67	\$18,100.00	\$2,525.00	73.64%
Committee To Elect Maziarz State Senate	\$18,171.38	\$227,885.06	\$137,419.49	\$95,553.74	\$18,224.40	51.37%
Committee To Re-Elect Assemblyman Joe Morelle	\$14,317.73	\$178,700.00	\$77,640.00	\$177,950.00	\$5,093.50	43.03%
Committee To Re-Elect Gantt	\$5,500.00	\$38,750.00	\$6,750.00	\$10,350.00	\$0.00	72.13%
Dipietro For You	\$0.00	\$500.00	\$8,114.00	\$13,915.00	\$2,554.00	2.22%
Friends Of Assemblyman Bill Reilich	\$750.00	\$19,160.00	\$30,070.00	\$23,170.00	\$7,888.00	27.22%
Friends Of Bill Nojay	\$500.00	\$1,500.00	\$2,650.00	\$3,145.00	\$109,277.28	25.66%
Friends Of Bob Oaks	\$2,100.00	\$16,938.00	\$14,256.00	\$12,680.00	\$0.00	41.41%
Friends Of Brian Kolb	\$9,500.00	\$83,249.00	\$50,974.00	\$66,604.00	\$3,756.00	44.10%
Friends Of Harry Bronson	\$2,950.00	\$42,450.00	\$7,150.00	\$23,180.00	\$6,469.04	59.95%
Friends Of Mark Johns	\$500.00	\$19,700.00	\$6,856.59	\$5,198.00	\$730.00	62.63%
Friends Of Steve Hawley	\$500.00	\$9,450.00	\$18,678.22	\$11,965.00	\$5,595.00	24.51%
Gallivan For Senate	\$10,009.00	\$49,755.00	\$33,247.00	\$52,121.05	\$6,629.00	41.18%
Jane Corwin	\$1,500.00	\$6,500.00	\$7,160.00	\$28,410.00	\$4,423.70	18.36%

Campaign Committee						
Mike Nozzolio For State Senate	\$8,750.00	\$111,431.40	\$84,474.00	\$57,436.00	\$522.00	45.85%
Mike Ranzenhofer For State Senate	\$12,750.00	\$100,005.00	\$83,245.00	\$103,758.00	\$5,819.00	37.62%
Ted O'brien For State Senate	\$3,750.00	\$155,920.00	\$18,500.00	\$42,510.00	\$48,360.15	72.35%
<b>Total</b>	<b>\$112,248.11</b>	<b>\$1,330,826.55</b>	<b>\$686,708.53</b>	<b>\$789,003.53</b>	<b>\$234,383.07</b>	<b>49.44%</b>

### Most Individual Money Comes from Large Donors

Over half of the money donated by individuals, not including donations made by candidates' family members or the candidates themselves, came from donors who gave amounts of \$2,500 or more to legislative candidates. When donations from non-individuals are considered, the following numbers indicate that only 2.6% of the money candidates raise comes from individual donors giving less than \$250:

### Donations from individuals to legislative candidates by size, 2011-2012

Amount Donated	Total from all donors of this amount	Percentage
\$10,000 or more	\$7,121,246.63	28.83%
\$2,500 to \$9,999	\$5,753,590.88	23.29%
\$1,000 to \$2,499	\$4,400,390.62	17.81%
\$250 to \$999	\$4,690,989.85	18.99%
Less than \$250	\$2,738,820.32	11.09%

44,894 unique individuals donated to legislative candidates or party committees in the past two-year election cycle. 40,381 of the unique individual donors had New York state addresses.<sup>9</sup>

By comparison, this number is:

- Less than the number of votes the *Rent is Too Damn High* candidate for governor received in 2010.<sup>10</sup>
- Almost 15,000 fewer than the inmates in state prisons (55,328).<sup>11</sup>
- Less than the population of 55 New York counties.

### Governor Cuomo's fundraising: indicative of meaningless contribution limits

Perhaps the one candidate who has relied on large donors to the greatest extent is Governor Cuomo. In theory, candidates for statewide office are limited to \$41,100 in cumulative contributions per donor for their general election, and between \$6,500 and \$19,700 for their primary, depending on their party affiliation. In reality, however, these limits have been eroded by loopholes such as the Board of Elections' decision to treat Limited Liability Companies as individuals. At least 27 donors have been able to give the governor more than the statutory \$60,800 contribution limit.

<sup>9</sup> 1,399 did not have a complete addresses reported. It is likely, though unverifiable, that many of these individuals lived in New York.

<sup>10</sup> See: <http://www.elections.ny.gov/NYSBOE/elections/2010/general/2010GovernorRecertified09122012.pdf>

<sup>11</sup> See: <http://rocdocs.democratandchronicle.com/database/new-york-prison-population>.

**Cuomo Donors by Cumulative Contribution Total**

80.18% of the money raised by Governor Cuomo this election cycle has come from donors that have given \$10,000 or more. This represents an increase from January, at which point 78.89% of his donors had given at this level. Similarly, the percentage of his money coming from donors giving less than \$1,000 has decreased from 1.03% to 0.89%.<sup>12</sup>

Donor Level	Total \$	% of All \$	Total Donors
\$40,000 or more	\$12,062,023.01	43.84%	200
\$10,000 or more, less than \$40,000	\$9,998,757.17	36.34%	564
\$2,500 or more, less than \$10,000	\$4,021,795.35	14.62%	904
\$1,000 or more, less than \$2,500	\$1,184,193.02	4.30%	934
Less than \$1,000	\$245,612.20	0.89%	904

**Donors of more than \$60,800 to Governor Cuomo this election cycle**

Donor	Total Given
Holdings Of Leonard Litwin	\$625,000.00
Kasowitz, Benson, Torres & Friedman LLC	\$200,000.00
The Richman Group Inc.	\$155,000.00
Cablevision & Holdings	\$140,000.00
Alvin Benjamin And The Benjamin Companies	\$125,000.00
H.J. Kalikow & Co LLC And Peter Kalikow	\$125,000.00
Empire Merchants, Llc And Empire Merchants North, LLC	\$121,600.00
Roth & Sons Management Llc/ Roth & Sons New York, LLC	\$120,800.00
Zuffa/ Ultimate Fighting Productions, LLC	\$105,000.00
Access Industries Holdings LLC/ Access Industries, LLC	\$100,000.00
Extell Development	\$100,000.00
Pepsi	\$97,000.00
Crystal Run Healthcare LLP	\$80,000.00
Catsimatidis, John	\$79,665.46
Marathon Development	\$75,000.00
Wilson, Elser, Moskowitz, Edelman & Dicker	\$70,000.00
215 West 90th Street Retail LLC/ 170 West 75th Street Retail LLC/ 235 West 102nd Street Retail LLC/ 18 W 72nd Street Retail LLC/ 687 Amsterdam Avenue Retail LLC/ 1628 Second Avenue Retail LLC	\$70,000.00
SI Green Management LLC	\$69,843.00
Norstar	\$68,000.00
Emergency Medical Services Soj Acct Local 2507	\$66,500.00
Time Warner	\$65,800.00
Sacks & Sacks	\$64,800.00
Uniformed Fire Officers Association	\$62,800.00

<sup>12</sup> The totals in this analysis reflect contributions and contribution refunds made between December 1, 2010 and July 11, 2013. This study excludes contribution refunds made to 16 entities totaling \$41,160.23, presumably residuals of the 2010 election cycle, which resulted in more money being refunded to them than they gave this election cycle. It is possible that the identification of more vaguely-titled LLCs will lead to an increase in the total money from large donors.

Greenberg Traurig	\$62,500.00
Cozen O'Connor Empire State Pac	\$62,500.00
Petracca, Lester	\$61,500.00
Edelman, Martin	\$61,000.00

### Limited Liability Companies

The "LLC Loophole," which treats each Limited Liability Company as an individual human being for purposes of how much may be donated, has allowed some donors to give well over a million dollars each year. This exemption is not found in New York State's Election Law. Rather, a 1996 opinion from the Board of Elections determined that these business entities – creatures of state statute – should be treated as humans, 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 actual humans who wrote checks smaller than \$1,000. While the Board in 1996 claimed the power to interpret this area of election law, when petitioned by NYPIRG and other reform groups 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>13</sup>

As mentioned above, developer Leonard Litwin has given Governor Cuomo \$625,000 at this point in the 2014 election cycle. He is perhaps the most frequent abuser 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, 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 the LLC loophole, and were made possible by *Citizens United* and the housekeeping loophole, but he gave \$639,809 in hard money directly to candidates.

One will note that it is 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 thus the obfuscation of the true source of campaign funds.

While Litwin is examined in depth below, he is certainly not the only donor who has made use of this loophole. During this six month time period, state-level committees received at least \$4.6 million from donors that used LLCs.

### Donations made by Leonard Litwin, Jan 12 – July 11, 2013

Recipient	Reported Donor	Amount
Friends Of Monica Martinez	56th Realty	\$1,000.00
Andrew Cuomo 2014, Inc.	56th Realty Llc	\$25,000.00
Kennedy For Senate	56th Realty LLC	\$5,000.00
Friends Of Robert J. Rodriguez	56th Realty LLC	\$2,500.00
Schneiderman 2014	56th Realty LLC	\$10,000.00
Jobs For New York, Inc.	56th Realty, LLC	\$25,000.00
Simcha NY	56th Street Realty LLC	\$5,000.00
Friends Of Monica Martinez	79th St Realty	\$1,000.00

<sup>13</sup> Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400).

Friends Of Jim Brennan	79th St Realty LLC	\$4,000.00
Andrew Cuomo 2014, Inc.	79th Street Realty LLC	\$25,000.00
Simcha NY	79th Street Realty LLC	\$5,000.00
David Carlucci For New York	79th Street Realty LLC	\$2,500.00
Friends Of Senator Jack Martins	79th Street Realty, LLC.	\$2,500.00
Friends Of Monica Martinez	80th Realty	\$1,000.00
Friends Of Jim Brennan	80th Realty LLC	\$4,000.00
Friends Of John Flanagan	80th Realty LLC	\$2,500.00
Savino For New York	80th Realty LLC	\$2,500.00
Andrew Cuomo 2014, Inc.	80th Realty LLC	\$25,000.00
Bellone 2015	80th Realty LLC	\$5,000.00
Jobs For New York, Inc.	80th Realty, LLC	\$25,000.00
Friends Of Monica Martinez	92nd Realty	\$1,000.00
Neighborhood Preservation PAF	92nd Realty LLC	\$10,000.00
Citizens Committee To Re-Elect Senator Ken LaValle	92nd Realty LLC	\$2,500.00
Committee To Re-Elect Assemblyman Joe Morelle	92nd Realty LLC	\$2,500.00
Andrew Cuomo 2014, Inc.	92nd Realty LLC	\$25,000.00
Dilan For Senate	92nd Realty LLC	\$5,000.00
Jobs For New York, Inc.	92nd Realty, LLC	\$25,000.00
Friends Of Monica Martinez	Arwin 74th St	\$1,000.00
Friends Of Jim Brennan	Arwin 74th St LLC	\$4,000.00
Friends Of Terry Gipson	Arwin 74th St. LLC	\$2,500.00
Schneiderman 2014	Arwin 74th St. LLC	\$10,000.00
Jobs For New York, Inc.	Arwin 74th St., LLC	\$25,000.00
Friends Of Monica Martinez	Arwin 88th St	\$1,000.00
Andrew Cuomo 2014, Inc.	Arwin 88th St. LLC	\$25,000.00
Neighborhood Preservation PAF	Arwin 88th Str LLC	\$10,000.00
Committee To Re-Elect Assemblyman Joe Morelle	Arwin 88th Street LLC	\$2,500.00
Jobs For New York, Inc.	Arwin 88th Street, LLC	\$25,000.00
Mike Nozzolio For State Senate	Arwin 88th Street, LLC	\$2,500.00
Citizens For Joseph Robach (Senate)	Arwin 88th Street, LLC	\$2,500.00
Suffolk County Democratic Committee	Arwin 88th Street, LLC	\$10,000.00
New York Republican State Committee - Reporting	Barclay Street Realty LLC	\$25,000.00
Committee To Re-Elect Assemblyman Joe Morelle	Barclay Street Realty LLC	\$2,500.00
Zeldin For Senate	Barclay Street Realty LLC	\$2,500.00
Jeff Klein For New York	Barclay Street Realty LLC	\$10,000.00
Jobs For New York, Inc.	Barclay Street Realty, LLC	\$25,000.00
Suffolk County Democratic Committee	Barclay Street Realty, LLC	\$10,000.00
Jobs For New York, Inc.	Briar Hill Realty, LLC	\$25,000.00
Friends Of Monica Martinez	Columbus 60th Realty	\$1,000.00
Friends Of Senator Seward	Columbus 60th Realty LLC	\$2,500.00
Neighborhood Preservation PAF	Columbus 60th Realty LLC	\$10,000.00

Jeff Klein For New York	Columbus 60th Realty LLC	\$10,000.00
Jobs For New York, Inc.	Columbus 60th Realty, LLC	\$25,000.00
Friends Of Monica Martinez	East 46th Realty	\$1,000.00
Neighborhood Preservation PAF	East 46th Realty LLC	\$10,000.00
Real Estate Board PAC	East 46th Realty LLC	\$15,000.00
The IDC Initiative (Independent Democratic Conference)	East 46th Realty LLC	\$10,000.00
Nassau County Democratic Committee Operating Account	East 46th Realty LLC	\$20,000.00
Maureen O'Connell For County Clerk	East 46th Realty LLC	\$5,000.00
Friends Of Martin Golden	East 72nd Realty LLC	\$5,000.00
Valesky For Senate	East 72nd Realty LLC	\$10,000.00
Schneiderman 2014	East 72nd Realty LLC	\$10,000.00
The IDC Initiative (Independent Democratic Conference)	East 72nd Realty LLC	\$10,000.00
Friends Of Tom Suozzi	East 72nd Realty LLC	\$10,000.00
Jobs For New York, Inc.	East 72nd Realty, LLC	\$25,000.00
Friends Of Monica Martinez	East 77th Realty	\$1,000.00
Friends For The Election Of Dean Skelos	East 77th Realty LLC	\$10,000.00
Grisanti For Senate	East 77th Realty LLC	\$2,500.00
Schneiderman 2014	East 77th Realty LLC	\$10,000.00
The IDC Initiative (Independent Democratic Conference)	East 77th Realty LLC	\$5,000.00
David Carlucci For New York	East 77th Realty LLC	\$10,000.00
Nassau County Democratic Committee Operating Account	East 77th Realty LLC	\$20,000.00
Jobs For New York, Inc.	East 77th Realty, LLC	\$25,000.00
Friends Of Carl L. Marcellino	East 81st Realty LLC	\$5,000.00
Friends Of Will Barclay	East 81st Realty LLC	\$300.00
Jobs For New York, Inc.	East 81st Realty, LLC	\$25,000.00
Friends Of Monica Martinez	East 85th Realty	\$1,000.00
Nassau County Republican Committee	East 85th Realty LLC	\$5,000.00
Jobs For New York, Inc.	East 85th Realty, LLC	\$25,000.00
Friends Of Ed Ra	East End Realty LLC	\$500.00
NYS Senate Republican Campaign Committee	Leonard Litwin	\$5,000.00
Neighborhood Preservation PAF	Leonard Litwin	\$900.00
Nassau County Republican Committee	Leonard Litwin	\$2,500.00
Friends Of Bill deBlasio-2009	Leonard Litwin	\$4,950.00
Squadron For New York	Leonard Litwin	\$4,950.00
Melinda Katz 2013	Leonard Litwin	\$3,850.00
Committee To Re-Elect Assemblyman Joe Morelle	Liberty Street Realty LLC	\$2,500.00
Friends For Dave McDonough	Liberty Street Realty LLC	\$300.00
Jeff Klein For New York	Liberty Street Realty LLC	\$5,000.00
Friends Of Kathleen Rice	Liberty Street Realty LLC	\$15,000.00

Jobs For New York, Inc.	Liberty Street Realty, LLC	\$25,000.00
DeFrancisco Re-Election Committee	River York Barclay LLC	\$2,500.00
Dilan For Senate	River York Barclay LLC	\$5,000.00
Friends Of Rob Astorino	River York Barclay LLC	\$18,059.00
Jobs For New York, Inc.	River York Barclay, LLC	\$25,000.00
Jeff Klein For New York	River York Barclay, LLC	\$10,000.00
Andrew Lanza For Staten Island	River York Stratford LLC	\$2,500.00
Gallivan For Senate	River York Stratford LLC	\$5,000.00
Friends Of Rob Astorino	River York Stratford LLC	\$25,000.00
Jobs For New York, Inc.	River York Stratford, LLC	\$25,000.00
Friends Of Mike Gianaris	Tribeca North End LLC	\$5,000.00
Friends Of Tom O'Mara	Tribeca North End LLC	\$2,500.00
Jeff Klein For New York	Tribeca North End LLC	\$10,000.00
Jobs For New York, Inc.	Tribeca North End, LLC	\$25,000.00
Friends Of Steve Otis	Tribeca North End LLC	\$4,000.00
Jeff Klein For New York	West 37th Street Parking LLC	\$5,000.00
Nassau County Republican Committee	West 37th Street Parking LLC	\$2,500.00
Jobs For New York, Inc.	West 37th Street Parking, LLC	\$25,000.00
Mike Ranzenhofer For State Senate	West 37th Street Parking, LLC	\$2,500.00

### III. OTHER ANALYSES TO CONSIDER WHEN DRAFTING POLICY RECOMMENDATIONS

The following charts further highlight problems in the current campaign finance system that are worth addressing through legislative recommendations. Not all of these illustrate sources of potential corruption, but each of them represents the magnitude of the problems facing the state's campaign finance system.

#### Individual Donations By Geographic Region<sup>14</sup>

Economic Development Region	Total Donations	Percentage of All \$
Capital Region	\$1,637,782.34	6.63%
Central NY	\$504,777.55	2.04%
Finger Lakes	\$746,586.29	3.02%
Long Island	\$2,871,091.92	11.62%
Mid-Hudson	\$3,325,006.21	13.46%
Mohawk Valley	\$277,249.31	1.12%
New York City	\$9,917,374.84	40.14%
North Country	\$151,192.31	0.61%
Southern Tier	\$358,315.98	1.45%
Western NY	\$1,419,413.35	5.75%
Out of NY State	\$2,666,892.93	10.79%
No Address Reported	\$829,356.22	3.36%

The current rules create a system where some parts of the state are left out of the electoral process.

<sup>14</sup> These totals do not include donations directly from candidates or their family members.

Places like Albany County (\$2.77 in donations per capita) with significant lobbyist populations and New York County (\$3.75) with many wealthy residents give much more money than counties like Hamilton (\$0.09), Orleans (\$0.11), Franklin (\$0.13), and Tioga (\$0.14).

County	Total Donations	Average per Resident
Albany	\$841,705.24	\$2.77
Allegany	\$12,740.00	\$0.26
Bronx	\$384,945.56	\$0.28
Broome	\$197,883.00	\$0.99
Cattaraugus	\$21,122.50	\$0.26
Cayuga	\$46,344.00	\$0.58
Chautauqua	\$78,563.24	\$0.58
Chemung	\$39,110.00	\$0.44
Chenango	\$21,462.04	\$0.43
Clinton	\$27,166.86	\$0.33
Columbia	\$120,481.15	\$1.91
Cortland	\$27,999.00	\$0.57
Delaware	\$24,669.94	\$0.51
Dutchess	\$373,190.67	\$1.25
Erie	\$1,150,025.96	\$1.25
Essex	\$27,895.00	\$0.71
Franklin	\$6,771.00	\$0.13
Fulton	\$10,172.00	\$0.18
Genesee	\$59,033.00	\$0.98
Greene	\$22,799.67	\$0.46
Hamilton	\$446.00	\$0.09
Herkimer	\$29,263.88	\$0.45
Jefferson	\$54,787.45	\$0.47
Kings	\$1,851,553.51	\$0.74
Lewis	\$6,400.00	\$0.24
Livingston	\$16,684.00	\$0.26
Madison	\$37,429.00	\$0.51
Monroe	\$487,879.29	\$0.66
Montgomery	\$37,002.85	\$0.74
Nassau	\$1,985,509.21	\$1.48
New York	\$5,952,018.21	\$3.75
Niagara	\$156,961.65	\$0.73
Oneida	\$139,748.58	\$0.59
Onondaga	\$370,055.55	\$0.79
Ontario	\$121,053.00	\$1.12
Orange	\$268,125.85	\$0.72
Orleans	\$4,805.00	\$0.11
Oswego	\$22,950.00	\$0.19
Otsego	\$40,222.00	\$0.65
Putnam	\$106,074.10	\$1.06

Queens	\$1,220,529.37	\$0.55
Rensselaer	\$118,309.11	\$0.74
Richmond	\$508,328.19	\$1.08
Rockland	\$259,074.00	\$0.83
Saratoga	\$313,778.69	\$1.43
Schenectady	\$137,629.48	\$0.89
Schuyler	\$2,305.00	\$0.13
Schoharie	\$20,840.00	\$0.64
Seneca	\$7,305.00	\$0.21
St. Lawrence	\$27,726.00	\$0.25
Steuben	\$44,653.00	\$0.45
Suffolk	\$885,582.71	\$0.59
Sullivan	\$54,440.12	\$0.70
Tioga	\$7,375.00	\$0.14
Tompkins	\$20,858.00	\$0.21
Ulster	\$98,440.29	\$0.54
Warren	\$66,740.00	\$1.02
Washington	\$16,339.00	\$0.26
Wayne	\$24,665.00	\$0.26
Westchester	\$2,165,661.18	\$2.28
Wyoming	\$16,237.00	\$0.39
Yates	\$8,925.00	\$0.35
Out of NY State	\$2,666,892.93	
No Address Reported	\$829,356.22	

One result of this regional disparity is that candidates do not raise much money from individuals they actually represent. A NYPIRG study examining fundraising in the first half of 2010 found that \$4,343,441.79 of the \$8,165,346.81 (53.19%) of the money raised from individuals by legislative candidates came from people living within the county that contains the legislative district. This reliance on non-locals was especially pronounced in New York City, where candidates received only 44.8% of their money from individuals that actually lived in or near their districts. Among all candidates, checks from outside their district were generally larger. The average size of a contribution coming from another part of the state was \$627.36. The average size of a check coming from a local was \$269.23.

A major reason for this outsized role of out-of-district money is the sheer number of fundraisers held in Albany. On nearly every legislative session day, there are multiple fundraisers held within blocks of the Capitol. Legislators transition from being lobbied by special interests to requesting money from these special interests within minutes. There are hundreds of these events every year; the following chart presents a sample of them, looking at the 80 Albany fundraisers in March 2011.

**Fundraisers in Albany, March 2011**

<b>Date</b>	<b>Location</b>	<b>Minimum Cost</b>	<b>Member</b>
3/1/2011	Angelo's 677 Prime	\$250	Assemblymember Amedore
3/1/2011	University Club	\$250	Assemblymember Conte
3/1/2011	74 State	\$350	Assemblymember Jacobs
3/1/2011	74 State	\$500	Assemblymember Towns
3/1/2011	Fort Orange Club	\$500	Senator Griffo
3/1/2011	Crowne Plaza Hotel	\$500	Senator Peralta
3/2/2011	Albany Room	\$250	Assemblymember Johns
3/2/2011	Fort Orange Club	\$250	Assemblymember Katz
3/2/2011	Albany Room	\$250	Assemblymember Reilly
3/2/2011	Fort Orange Club	\$200	Assemblymember Tenney
3/2/2011	Fort Orange Club	\$400	Senator Grisanti
3/2/2011	University Club	\$750	Senator Libous
3/7/2011	Fort Orange Club	\$250	Assemblymember Barclay
3/7/2011	Bayou Café	\$300	Assemblymember Lupardo
3/7/2011	Fort Orange Club	\$500	Senator McDonald
3/7/2011	Fort Orange Club	\$500	Senator Seward
3/8/2011	Sign of the Tree	\$275	Assemblymember Butler
3/8/2011	Albany Room	\$500	Assemblymember Dinowitz
3/8/2011	University Club	\$250	Assemblymember Hayes
3/8/2011	Fort Orange Club	\$250	Assemblymember McLaughlin
3/8/2011	Bongiorno's	\$250	Assemblymember Molinaro
3/8/2011	Liberty Café	\$300	Assemblymember Peoples
3/8/2011	Albany Room	\$500	Assemblymember Sweeney
3/8/2011	Crowne Plaza	\$500	Assemblymember Weprin
3/8/2011	Crowne Plaza Hotel	\$500	Senator Carlucci
3/8/2011	Crowne Plaza Hotel	\$350	Senator Huntley
3/8/2011	Fort Orange Club	\$750	Senator Nozzolio
3/9/2011	Taste, 30 So Pearl	\$500	Assemblymember Cahill
3/9/2011	Albany Room	\$250	Assemblymember Crespo
3/9/2011	Albany Room	\$250	Assemblymember Gabryszak
3/9/2011	Albany Room	\$250	Assemblymember Gibson
3/9/2011	Bongiorno's	\$250	Assemblymember Jordan
3/9/2011	University Club	\$250	Assemblymember Palmesano
3/14/2011	University Club	\$250	Assemblymember Crouch
3/14/2011	Fort Orange Club	\$250	Assemblymember McDonough
3/14/2011	University Club	\$200	Assemblymember Smardz
3/14/2011	Sign of the Tree	\$400	Assemblymember Weisenberg
3/14/2011	Fort Orange Club	\$1,000	Senator DeFrancisco
3/14/2011	Anna O'Keefe's	\$500	Senator O'Mara
3/14/2011	Fort Orange Club	\$500	Senator Zeldin
3/15/2011	Crowne Plaza Hotel	\$300	Assemblymember Hevesi

3/15/2011	Albany Room	\$500	Assemblymember Markey
3/15/2011	Albany Room	\$250	Assemblymember Montesano
3/15/2011	Crowne Plaza Hotel	\$250	Assemblymember Reilich
3/15/2011	Albany Room	\$250	Assemblymember Schimel
3/15/2011	University Club	\$500	Senator Flanagan
3/15/2011	Fort Orange Club	\$450	Senator Fuschillo
3/15/2011	Crowne Plaza Hotel	\$500	Senator Klein
3/15/2011	Fort Orange Club	\$400	Senator Little
3/16/2011	Sign of the Tree	\$250	Assemblymember McEneny
3/17/2011	Albany Room	\$500	Senator Dilan
3/21/2011	Victory Café	\$500	Assemblymember Wright
3/21/2011	Fort Orange Club	\$500	Senator Hannon
3/21/2011	Fort Orange Club	\$500	Senator Martins
3/21/2011	University Club	\$400	Senator Ritchie
3/22/2011	The State Room	\$250	Assemblymember Abbate
3/22/2011	Crowne Plaza Hotel	\$350	Assemblymember Braunstein
3/22/2011	Albany Room	\$100	Assemblymember Curran
3/22/2011	Albany Room	\$500	Assemblymember Heastie
3/22/2011	Albany Room	\$250	Assemblymember Malliotakis
3/22/2011	Albany Hibernian Hall	\$250	Assemblymember Schroeder
3/22/2011	Fort Orange Club	\$650	Senator Alesi
3/22/2011	University Club	\$500	Senator Breslin
3/22/2011	Crowne Plaza Hotel	\$250	Senator Savino
3/22/2011	74 State	\$500	Senator Smith
3/22/2011	Crowne Plaza Hotel	\$500	Senator Stavisky
3/23/2011	Albany Room	\$200	Assemblymember Ceretto
3/23/2011	Albany Room	\$500	Assemblymember Ortiz
3/23/2011	Crowne Plaza Hotel	\$250	Assemblymember Rodriguez
3/23/2011	Albany Room	\$500	Assemblymember, Rivera P.
3/28/2011	Fort Orange Club	\$250	Assemblymember Graf
3/28/2011	Albany Room	\$200	Assemblymember Losquadro
3/28/2011	Pinto & Hobbs	\$250	Assemblymember Zebrowski
3/28/2011	Fort Orange Club	\$500	Senator Gallivan
3/28/2011	Crowne Plaza Hotel	\$500	Senator Kennedy
3/29/2011	Albany Room	\$500	Assemblymember Aubry
3/29/2011	Albany Room	\$250	Assemblymember Castro
3/29/2011	Albany Room	\$200	Assemblymember Murray
3/30/2011	Albany Room	\$250	Assemblymember Jaffee
3/31/2011	Albany Room	\$500	Assemblymember Lancman

#### **Donations by Month**

These fundraisers are one of the many advantages incumbents have over their challengers. More than one third of the last legislative election cycle's contributions from unions, businesses, and individuals were raised in the first year of the election cycle, despite the fact that most non-incumbents did not even create campaign committees until the spring or summer of 2012. This illustrates the head-start

that incumbents have over potential challengers that contributes to their huge monetary advantages. The only date over the two-year election cycle in which no contributions were reported was December 25, 2010.

Month	Total Contributions	Percent of Cycle's Contributions
December 2010	\$564,150.93	0.74%
January 2011	\$795,226.26	1.04%
February 2011	\$1,828,045.35	2.40%
March 2011	\$3,001,868.30	3.94%
April 2011	\$1,634,443.90	2.14%
May 2011	\$3,070,853.13	4.03%
June 2011	\$2,964,148.82	3.89%
July 2011	\$3,717,183.06	4.88%
August 2011	\$2,321,765.86	3.05%
September 2011	\$2,272,528.01	2.98%
October 2011	\$2,550,074.21	3.35%
November 2011	\$2,441,309.73	3.20%
December 2011	\$3,382,525.18	4.44%
January 2012	\$3,358,462.29	4.41%
February 2012	\$3,139,926.54	4.12%
March 2012	\$3,771,997.22	4.95%
April 2012	\$2,235,743.97	2.93%
May 2012	\$5,062,874.48	6.64%
June 2012	\$4,054,546.50	5.32%
July 2012	\$5,338,938.37	7.00%
August 2012	\$4,507,221.71	5.91%
September 2012	\$4,596,494.96	6.03%
October 2012	\$7,203,956.29	9.45%
November 2012	\$2,420,480.15	3.18%

**Senate Candidates: Most Total Receipts Dec 2010 through November 2012**

In each house, the top fundraisers were typically in the majority party. Most were either leaders or had especially competitive elections. Once again, this is illustrative of how most money flows to the legislators with the most power.

Candidate	Total Raised
Friends For The Election Of Dean Skelos	\$1,780,831.78
Grisanti For Senate	\$1,647,043.00
Friends Of Martin Golden	\$1,416,985.87
Friends Of Senator Libous Committee (2010)	\$1,413,997.07
Ulrich For Senate	\$1,400,321.10
New Yorkers On The Ball	\$1,356,726.24
Friends Of Bob Cohen	\$1,340,395.51
New Yorkers For Klein	\$1,338,043.12
Friends Of Sean Hanna	\$1,262,145.44
Committee To Elect Maziarz State Senate	\$1,055,170.86

**Assembly Candidates: Most Total Receipts Dec 2010 through November 2012<sup>15</sup>**

<b>Candidate</b>	<b>Total Raised</b>
Friends Of Silver	\$782,804.33
Committee To Re-Elect Assemblyman Joe Morelle	\$683,469.09
Santabarbara For Assembly	\$482,082.98
Friends Of Didi Barrett For Assembly	\$451,618.60
Friends Of Dan Quart	\$436,713.35
Mark Gjonaj 2012	\$403,885.00
Citizens For Al Stirpe	\$397,621.40
Friends Of Brian Kolb	\$389,165.93
Friends Of David Buchwald	\$385,812.40
Steck For Assembly	\$384,359.29

**The Senate: Individuals Donating the Maximum**

Depending on the number of races in which a candidate runs, the maximum amount a non-relative of a senate candidate can give to a campaign ranges between \$10,300 and \$16,800. 137 contributions in amounts equal to or greater than this legal maximum were reported by candidates. More than half (71) of these contributions went to the four Republican senators who supported marriage equality: McDonald (20), Saland (20), Alesi (16), and Grisanti (15). No other senate candidate received more than five donations at this level.

68 individuals made at least one maximum donation; 21 of them gave contributions to at least two of the four aforementioned Republican gay marriage supporters. Mayor Michael Bloomberg, who gave 11 candidates maximum donations totaling \$126,300, made the most contributions of this sort.

<b>Candidate</b>	<b>Total Donations at Maximum Level or Greater</b>
Committee To Elect McDonald To The Senate	20
Saland For Senate	20
Friends Of Jim Alesi	16
Grisanti For Senate	15
Friends Of Bob Cohen	5
Kennedy For Senate	4
Zeldin For Senate	4
Simcha Ny	4
Friends Of Martin Golden	4
New Yorkers On The Ball	3
New Yorkers For Klein	3
Friends Of David Storobin	3
Friends Of Mike Gianaris	3
Savino For New York	2
Friends Of Kathy Marchione Committee	2

<sup>15</sup> This includes donations received for special election efforts.

Carlucci For New York	2
Committee To Re-Elect John Sampson	2
Candidates with one maximum individual donor	25

### “Ghost” Committees

One of the more bizarre problems in 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. The following chart shows a representative sample of the candidates whose election efforts they were initially designed to benefit.

Committee	Closing Balance, July 2012
Citizens For Gulotta	\$1,007,646.68
Friends Of Carl [Kruger]	\$417,310.38
Friends Of Joel Giambra	\$387,633.86
Committee For Goodman	\$375,581.60
Committee To Elect George Onorato	\$197,150.63
Adam Bradley For White Plains	\$131,293.13
Friends Of Bill Stachowski	\$115,480.25
Marino Campaign Committee	\$105,628.21
Friends Of Craig Johnson	\$105,368.87
Friends For The Reelection Of Joseph N. Mondello	\$105,196.67
Friends Of Ivan Lafayette	\$92,050.25
Hevesi For New York	\$87,935.94
Citizens For Morahan	\$33,449.21
Committee To Re-Elect Sen. Stafford	\$26,679.38
Sandra Lee Wirth For Assembly	\$21,687.59
Friends Of Ray Meier	\$11,676.36

### Campaign funds paying for criminal defense

Between 2004 and 2012, nearly \$7 million in campaign funds belonging to state-level politicians was spent on criminal defense. The following chart shows the committees that spent the most on this purpose during that time.

Committee	Total Spent on Criminal Defense
Friends Of Carl [Kruger]	\$1,761,663.70
Committee To Re-Elect Senator Bruno	\$1,505,989.40
[Governor David Paterson]	\$1,086,000.00
Committee To Elect Brian McLaughlin	\$957,253.28
[Comptroller Alan Hevesi]	\$755,000.00
Friends Of Vito Lopez	\$276,296.34

Friends Of Nick Spano Committee	\$131,774.73
Friends Of Silver	\$75,000.00
Sabini For Senate	\$35,227.31
Monserrate 2010	\$35,000.00
Friends Of Seminerio	\$35,000.00
Friends Of Senator Libous Committee (2010)	\$25,000.00
Malcolm A Smith For New York	\$25,000.00
Committee To Re-Elect Clarence Norman, Jr. The	\$18,000.00
New Yorkers For Espada	\$15,000.00
United For Monserrate	\$12,000.00
Shirley Huntley For State Senate	\$10,000.00
Committee To Elect Naomi Rivera	\$10,000.00
Leibell Senate Committee	\$6,980.00
Friends Of Kevin Parker	\$5,750.00

#### IV. LEGISLATIVE RECOMMENDATIONS

As mentioned earlier, we believe that you should start with the recommendations of the earlier Moreland Commission. Recommendations they made included:

- “A new, independent, adequately funded Campaign Financing Enforcement Agency should be established with extensive powers to implement and enforce the campaign financing laws and regulations.”
- “Full, detailed and timely disclosure of all campaign contributions and expenditures should be required. Systems should be put in place to make this information accessible to the public. Disclosure should include the residence address, business address and business affiliation or employer of each individual contributor.”
- “Campaign contribution limits should be drastically reduced and direct contributions from corporations, labor unions, and those doing business with government should be prohibited.”
- “Limits on contributions to party committees, including to legislative party committees, should be imposed.”
- “Limits on transfers from individual legislative committees to other candidates and to party committees should be the same as limits to contributions by individuals to candidates and party committees.”
- “Individual candidates should be limited to one reporting committee. Similarly, legislative party campaign committees should be required to make all disclosure statements through one committee per party, per house.”<sup>16</sup>

<sup>16</sup> Bruce A. Green, editor, and John D. Feerick, Government Ethics Reform for the 1990s: The Collected Reports of the New York State Commission on Government Integrity (United States of America: Fordham University, 1991), 87-88.

The only one of the above recommendations that has been partially implemented was the call for disclosure reports to be made accessible to the public. However, while forms are now available online, their usefulness has deteriorated. Nonexistent enforcement of disclosure regulations lets candidates omit required information and enter data in an effectively unusable way. The Board of Elections has made no significant technological upgrades to their Internet databases since they were first created in 1999, the year in which Research in Motion unveiled their first “pager-sized wireless email device”<sup>17</sup> and more than 1.5 million households used Prodigy to connect to the web.<sup>18</sup> There is surely significant room for modernization that improves both public accessibility and enforcement capabilities.

When you are establishing your legislative proposals, each of these recommendations should thus be carefully considered. In the written testimony we submitted for your hearing last week, we provided specific suggestions for the structure of the new enforcement agency. We will soon do the same for other areas of desperately-needed policy changes.

Beyond these recommendations, there are other statutory changes which need consideration that were not addressed by the original Feerick Commission. The recent *Citizens United* decision opened the door for an explosion of a new form of special interest spending. As you attempt to combat public corruption, you should examine proposals to ensure new “Super PACs” are not coordinating with candidates and their campaign expenditures are adequately disclosed. This new form of money increases the role of huge spenders in New York’s elections, a trend that should be combatted by a system of public financing. Finally, new loopholes in the law, such as the Board’s aforementioned decision to treat LLCs as individuals, must be addressed.

## V. NON-LEGISLATIVE RECOMMENDATIONS

There are several areas in which you might be able to promote change in the state’s current system that might not require any legislative action. By using your powers to investigate recent questionable behavior by campaign committees and referring any findings of possible violations to the appropriate enforcement authorities, it is possible to spur change by ensuring New York’s current laws are actually obeyed.

### *“Housekeeping accounts.”*

One way would be looking at the expenditures of housekeeping committees. As mentioned above, New York exempts fundraising for so-called “housekeeping” or “party building activities” from the contribution limits that apply to candidate and other “hard money” donations. Election Law provides that spending under the housekeeping exemption must be limited to expenditures designed to “maintain a permanent headquarters and staff and carry on ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates.”<sup>19</sup>

In recent years, housekeeping committees appear to have expanded their spending beyond these statutory constraints. In several cases, surges in their spending immediately before special and general elections show that not all of their expenditures are for “permanent” or “ordinary” purposes. In 2012, the Independence Party admitted to using soft money to pay for ads attacking specific candidates mere days before an election, a use which few reasonable individuals would claim was not designed to “promote the candidacy of” his opponent.<sup>20</sup> \$311,000 of the funds used to buy these

<sup>17</sup> See: [http://news.cnet.com/Short-Take-BlackBerry-wireless-email-device-debuts/2110-1040\\_3-220388.html](http://news.cnet.com/Short-Take-BlackBerry-wireless-email-device-debuts/2110-1040_3-220388.html).

<sup>18</sup> See: [http://www.itu.int/ITU-D/ict/statistics/at\\_glance/Top20ISP.html](http://www.itu.int/ITU-D/ict/statistics/at_glance/Top20ISP.html).

<sup>19</sup> New York State Election Law §14-124.3

<sup>20</sup> Kenneth Lovett, “Independence Party Goes Along with GOP Scheme. . .,” *The New York Daily News*, March 4, 2013.

advertisements came from the Senate Republicans' housekeeping account. Transfers to another political party hardly seem like "ordinary" party-building purposes.

To be clear, enforcing the current restrictions on the use of housekeeping money would not do as much to clean up our electoral system as statutory changes that ban or dramatically limit the size of contributions these committees can receive. The existing rules, however, have been abused without board oversight or legal challenge for years. It is certainly feasible that a strong Commission pronouncement and referral could deter this behavior in the future.

#### *Personal Use*

Similarly, campaign accounts for individual legislators are routinely spent on purchases that appear to be for the candidate's personal benefit. Under the state's gift ban, a lobbyist cannot give a legislator plane tickets for a trip to Palm Beach, buy them a new car, or even take them out for a lavish dinner. These provisions are undermined, however, by the non-existent enforcement of the personal use provision of campaign finance law. Election law §14-130 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." 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>21</sup>

This absurd interpretation has resulted in a system in which lobbyists can give a legislator's campaign committee money that can be instantly turned around and spent on plane tickets for a trip to Palm Beach, a new car, or a nice dinner. It is difficult to determine the full extent of this practice, since the reporting requirements created by the Board obfuscate the problem, as it is difficult to tell if an expenditure on plane tickets was spent to go on a vacation or for a more legally legitimate purpose, such as attending a fundraiser. The amount of expenditures that fall into these categories is massive: In a typical year, legislators spend around \$500,000 on golf, \$200,000 on new cars, \$70,000 on flowers, and \$30,000 on cigars. To the best of our knowledge, the legitimacy of these expenditures has never been challenged. It seems clear, however, that a number of them could fall outside the legal prohibitions limiting their use to purposes of running for or holding office.

Certainly the average New Yorker would be shocked to learn that money raised to run for office is being used in ways that appear distant from paying for an electoral campaign. Everyone knows they can't use the office petty cash account for their personal use. But that logic isn't applied to campaign donations.

#### *Limited Liability Corporation Loophole*

A final area worth exploring is the existence of the Limited Liability Company loophole. The individuals who have exploited this and donated millions of dollars a year are acting completely under regulations manufactured by the Board of Elections. However, the Board's reasoning in establishing these regulations is suspect and has been inconsistent. Corporations cannot give more than a cumulative total of \$5,000 in a calendar year; individuals can give a total of \$150,000. Other regulatory agencies working with similar definitions of donor categories, such as the Federal Elections Commission and New York City Campaign Finance Board, eventually arrived at the conclusion that this newly-created business form is in fact a corporation for the purposes of establishing contribution limits.<sup>22</sup> Even if one were to accept the idea that since many LLCs are wholly owned by one individual, they should be treated as an extension of these individuals in

<sup>21</sup> Jennifer Medina, "State Campaign Finance Rules Need Tightening, Study Says," *The New York Times*, May 26, 2006.

<sup>22</sup> For details, see Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400) and NYCCFB Advisory Opinion 2001-6

determining their donor class, they must consider it illogical to not count donations from these LLCs against the maximum limits imposed on their owners. It seems unlikely the Board's flimsy reasoning would withstand scrutiny.

Further, the proliferation of LLCs as a source of funding has masked the actual donors. Frequently, they are identified in disclosure reports only by a street address that is owned by an entity whose identity is hidden in Department of State records. This seems to undermine provisions in Election Law that contributions be made "under the true name of the contributor."<sup>23</sup> Since LLCs are often organized by only one person, donations through them can hide the actual identity of a single donor.

Thank you for the opportunity to testify.

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<sup>23</sup> New York State Election Law §14-120.

*Dadey, Dick  
Fauss, Rachael*

**CITIZENS UNION OF THE CITY OF NEW YORK**

**SPENDING IN THE SHADOWS:  
DISCRETIONARY FUNDING IN THE NYS BUDGET**

**SEPTEMBER 2013**

**Research and Policy Analysis by Citizens Union Foundation**

**Written and Published by Citizens Union**



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*Original data for this report is available at <http://www.citizensunion.org>.*

## I. EXECUTIVE SUMMARY

In examining this year's \$135 billion state budget, Citizens Union uncovered an alarming number of discretionary funds that lack needed specificity and disclosure, including over \$3 billion in funding authorized to be spent this year through "lump sum" pots of money that allow budgetary decisions to be made after budget bills are passed. This lack of specificity hands over to our elected leaders the discretion to decide how the money is spent in the shadows, without sufficient transparency and public oversight.

New York State's budget process as a whole has long been regarded as too opaque with few details, lacking necessary transparency and accountability. Despite reforms made in 2007 to improve the budget process, the presence of large amounts of discretionary funds – items which elected leaders have direct control over and are often used to fund local non-profits organizations and other local projects funded throughout the state – raises serious questions about whether the state's budget process is serving the broader public interest and has sufficient public oversight. While discretionary funds often provide needed services, recent corruption scandals have demonstrated the need for greater transparency and accountability of these funds, including:

- Senator Malcolm Smith's promise to deliver multi-modal funds to a developer in exchange for ensuring his place on the New York City mayoral ballot;
- Former Senator Shirley Huntley's provision of funds to a fake organization for her own personal shopping sprees, which resulted in her resignation due to a felony charge;
- Assemblymember William Boyland's use of member items to promote his candidacy for office, through falsification of records, which resulted in his recent indictment; and
- Former Assemblymember Vito Lopez's funding to the Ridgewood Bushwick Senior Citizens Council, which was found by the New York City Department of Investigation to have falsified documents, double-billed the state, and increased his girlfriend's salary to \$659,591 from \$235,135, who was the executive director of the organization at the time.

In light of these instances of public corruption, Citizens Union examined two categories of discretionary funds in the FY 2013 – 2014 state budget to determine their scope:

1. "lump sum" pots of funds that are not sufficiently itemized when the budget is adopted; and
2. remaining member items funded through the **Community Projects Fund**.

The vast majority of this funding is distributed through Memorandums of Understanding (MoUs) and other agreements that are determined by our elected leaders behind closed doors and in the shadows after the state budget is passed, which are not made easily accessible for the public. These totaled the following:

- **"Lump Sum" Funds** – \$3.3 billion in reappropriations set aside to be spent this year without being itemized in the FY 2013-14 budget bills, out of a total of \$9 billion that has been authorized over the lifetime of these funds; and
- **Community Projects Fund (Member Items)** – \$378 million in funding authorized for FY 2013-14, \$343 million of which was not itemized in the state budget bills.

While not a new budgetary tool, lump sum appropriations appear to have been used like member items to allow lawmakers – particularly those in leadership positions – to direct funding to local projects after budget bills are passed, and without needed disclosure.

**In light of these findings, Citizens Union calls upon the Moreland Commission to follow the money as it investigates lump sum funds, member items, and other discretionary aspects of the state budget.** Citizens Union has shared its findings with the Moreland Commission, and urges it to:

1. Recommend policy changes regarding the approval of budget items to ensure needed itemization and disclosure to provide necessary transparency and public accountability in deciding which entities receive state funds; and
2. Fully analyze lump sum appropriations and remaining member items in the state budget, including their recipients and sponsors, to determine whether further investigative action is needed.

#### **Citizens Union Recommendations**

In order to improve transparency and accountability of lump sum appropriations, there should be increased disclosure and accountability of lump-sum appropriations and remaining Community Projects Fund items. Specifically:

1. **Lump-sum appropriations should disclose in the state budget the detailed purposes and criteria set forth for their distribution;**
2. **Additional, more specific information about lump-sum appropriations should be made available online in user-friendly formats, including the following:**
  - a. all MoU's, plans, resolutions and other agreements specifying their distribution;
  - b. funds distributed and their recipients; and
  - c. any remaining funds;
3. **There should be a time limit for the reappropriation of lump-sums in order to decrease slush funds and the use of such funds as "one-shot" budget gap fillers.** This is consistent with Governor's Cuomo's decision to veto many of these items in this year's state budget;
4. **Legislators' names should be listed with the itemized member items and any other projects they sponsor in budget appropriation bills before they are passed, as well as in other itemized listings in MoUs, plans or other documents detailing the distribution of lump sum appropriations; and**
5. **Resolutions passed providing details related to expenditures of lump sum appropriations in the budget should be required to age three days before being voted on, and be made easily available online.**

## II. ACKNOWLEDGEMENTS

This report was written by Rachael Fauss, Policy and Research Manager, with writing and research assistance from policy interns Gus Bowe and Tyler Farrar. Editors include Dick Dadey, Executive Director; Alex Camarda, Director of Public Policy; and Michael Murphy, Communications and Public Affairs Manager.

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Generous funding for the research and development of this report was directed by Robert M. Kaufman from the New York Community Trust.

### III. INTRODUCTION

New York State's budget process is too opaque, lacks sufficient details about discretionary spending, and leaves too many large pots of state funds to be decided in agreements well after the state budget is adopted. This lack of transparency and insufficient itemizations leaves important decisions to a handful of legislative leaders on how to spend taxpayer dollars, without the necessary public oversight in place that ensure that these funds are well appropriated (authorized to be funded) and without undue political influence.

Citizens Union has analyzed the state's budget process, as well as the shortcomings of budget reforms enacted in 2007 by the legislature and former Governor Eliot Spitzer, through releasing a comprehensive Issue Brief and Position Statement on Budget Reform in 2008, and follow-up report cards on the state budget process in 2009 and 2012.<sup>1</sup> Through these reports, we noted the problematic use of lump sum appropriations – pots of funds that are not itemized in the state budget, allowing details and recipients to be spelled out later – and the lack of sufficient transparency regarding “member items,” that may be itemized in the budget, but do not list their sponsors or satisfactorily detail their intended purposes. Through the use of Memorandums of Understanding (MoUs), legal agreements that detail administrative decisions made by elected leaders, details of spending are worked out after budget bills are passed, yet unlike budget bills, these MoUs are not routinely made available to the public.

These pots of funds have often been appropriated (authorized to be funded) in one budget year, but are not fully spent. This leaves stashes of cash left over that can be carried over and re-appropriated in future years, authorizing their continued spending until they are fully cashed out. These discretionary funds are often used for “pet projects” in local districts, such as for local non-profits, local governments such as school districts and local law enforcement officers, or other local capital improvements which are funded through state agencies. While many discretionary funds provide needed services that would otherwise not be funded, greater accountability and transparency is needed in the budget process to ensure that funds are being used appropriately and serve the broader public interest.

Citizens Union, in this report, analyzes two categories of discretionary funds:

- **“Lump Sum” Funds** – pots of money which grant lawmakers discretion to direct specific funding to non-profits, localities, and a range of specific programs or capital projects after the overall state budget is adopted; and
- **Community Projects Fund** – known as “member items” which are doled out by individual lawmakers to local governments and local non-profits.

This report provides detailed information about these two types of discretionary funds – lump sum appropriations and member items – including an inventory of such items in the fiscal year (FY)

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<sup>1</sup> CU Issue Brief and Position Statement Available at:

[http://www.citizensunion.org/www/cu/site/hosting/issuebriefs/2008ib\\_statebudgetreform.pdf](http://www.citizensunion.org/www/cu/site/hosting/issuebriefs/2008ib_statebudgetreform.pdf)

Report Cards available at: [http://www.citizensunion.org/site\\_res\\_view\\_template.aspx?id=44c00241-f127-49c8-b019-f2d3d8cd1c41](http://www.citizensunion.org/site_res_view_template.aspx?id=44c00241-f127-49c8-b019-f2d3d8cd1c41)

2013 - 2014 New York State budget. Citizens Union believes that New Yorkers need a complete picture of where the state gets resources, how it spends those funds, and how well state activities achieve their public purposes in order to have full confidence in state government.

Member items and other discretionary funding pots have in the past too often been directed to groups or projects for political purposes, and have been linked to corruption scandals. For example, Senator Malcolm Smith of the Independent Democratic Caucus, agreed to steer Multi-Modal transportation funds to a developer for a road project in a scheme to gain access to the Republican ballot line for mayor in New York City. Smith himself said about the funds: "Multi-modal money is outside the budget and it's always around."<sup>2</sup>

Given the potential for discretionary funds to be used inappropriately, providing opportunities for corruption, and the general lack of transparency regarding their usage, Citizens Union provides a number of recommendations to improve transparency and accountability of state discretionary funds, which are provided in detail at the end of this report.

The original data for this report is available at <http://www.citizensunion.org>.

#### **IV. DISCRETIONARY FUNDING HISTORY AND PRESENCE IN FY 2013-2014 BUDGET**

##### **A. LUMP SUM FUNDS**

In a January 2006 report, former state Comptroller Alan Hevesi noted that over \$1 billion in the FY2005-06 New York State budget, including a \$200 million pot of member items, was divvied up through Memorandums of Understanding (MoUs) between the governor and legislative leaders.<sup>3</sup> Citizens Union has examined lump sum appropriations in the FY2013-14 New York State Budget, and has found over \$3 billion in reappropriations that are to be distributed via MoUs or other agreements such as resolutions and plans by elected leaders – the governor, assembly and senate.<sup>4</sup> These appropriations raise questions regarding how much of the state budget process has been deferred to decisions outside of the regular adoption process by the legislature.

As noted previously, reappropriations authorize the use of funds for projects that were added to previous budgets in prior years, but are not yet fully spent. It should be noted, however, that appropriations and reappropriations are not always backed by the revenue necessary to fund the projects.<sup>5</sup> The table on the following page shows reappropriations that reflect the potential cost to taxpayers in the current fiscal year, as well as the initial appropriation amounts of the lump sum

<sup>2</sup> Dwyer, Jim. "Jumping from Party to Party to Bribery Charge." New York Times. April 2, 2013. Available at: <http://www.nytimes.com/2013/04/03/nyregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html? r=0>

<sup>3</sup> Office of the State Comptroller. Available at: <http://www.osc.state.ny.us/reports/budget/fiscalreform.pdf>

<sup>4</sup> Funding obtained from Aid to Localities Legislation, S.2604-E/A.3003-E of 2013: <http://open.nysenate.gov/legislation/bill/S2603E-2013> and Capital Budget Legislation, S.2604-E/A.3004-E <http://open.nysenate.gov/legislation/bill/A3004E-2013>

<sup>5</sup> Vielkind, Jimmy. "Old 'pork' lives on in spending proposal." April 1, 2013. Times Union. Available at:

<http://www.timesunion.com/local/article/Old-pork-lives-on-in-spending-proposal-4398781.php>

See also <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

funds that have been carried over in multiple budget years, as provided in the Aid to Localities and Capital budget bills. Not included are items from the Community Projects Fund that are unallocated pots of funds.

<b>Lump Sum Appropriations in the New York State FY 2013 -14 Budget Aid to Localities and Capital Budgets</b>		
	<b>Initial Appropriation Amount (carried over multiple budgets)</b>	<b>FY 2013-14 Reappropriation (current fiscal year)</b>
<b>Aid to Localities</b>	\$301,535,236	\$67,952,900
<b>Capital</b>	\$9,366,286,000	\$3,301,081,000
<b>GRAND TOTAL</b>	<b>\$9,667,821,236</b>	<b>\$3,369,033,900</b>

Citizens Union limited its analysis of these funds to those that are distributed by elected leaders, narrowing these pots of funds to those determined by the Governor, Senate and Assembly. In most cases, legislative leadership or the governor determine the how these pots are spent through MoUs or other agreements, though in some instances these items are passed via resolutions by the legislature, allowing rank-and-file members the opportunity to vote on these items. Resolutions are not required to age for three days, however, and are difficult to track down via the legislative search tools provided by each house.<sup>6</sup> Below is a table of funds that are influenced by the various branches. Please note that in some cases, the Governor, Senate and Assembly jointly determine the distribution of funds, so the tally below contains overlapping pots funds.

<b>Total Funds Influenced - Lump Sum Appropriations in the New York State FY 2013 -14 Aid to Localities and Capital Budgets</b>		
<b>Branch</b>	<b>Initial Appropriation Amount (carried over multiple budgets)</b>	<b>FY 2013-14 Reappropriation (current fiscal year)</b>
Governor	\$9,353,779,736	\$2,979,904,000
Senate	\$3,382,983,736	\$789,732,900
Assembly	\$3,146,067,236	\$753,364,000

### **Capital Budget Lump Sum Pots**

The state's capital budget contains the largest lump sum appropriations, totaling over \$3.3 billion in reappropriations for FY2013-14, with initial appropriations authorized in previous years' budgets of over \$9.3 billion that has been carried over in multiple years.<sup>7</sup> These pots of funds are not new, with some having first been allocated as early as 2000 and not having fully been spent to date. As stated previously, only included in this tally are items in which elected officials – the governor, assembly and senate – are directly involved in determining allocations. As such, items that are distributed via state agencies or commissions are not included, such as funding distributed by the Regional Economic Development Councils.

<sup>6</sup> For examples of Resolutions passed by the legislature, please see the following:

<http://open.nysenate.gov/legislation/bill/R2680-2013> and <http://open.nysenate.gov/legislation/bill/R2681-2013>

<sup>7</sup> Funding obtained from Capital Budget Legislation, S.2604-E/A.3004-E <http://open.nysenate.gov/legislation/bill/A3004E-2013>

Capital funding is often provided for upgrades to state government facilities, which while is discretionary in terms of where the funds are spent, is less inherently problematic than funding that is provided outside of government given that there are greater controls over the spending of such funds within state agencies. Capital funds are often provided to public universities through the State University of New York (SUNY) and City University of New York (CUNY), as well as for local transportation upgrades and economic development initiatives. A summary of these capital funding lump sum appropriations by agency is provided below.

Lump Sum Appropriations by Agency FY2013-14 Enacted Budget, Capital Budget Bill		
Agency Name	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
CUNY Senior Colleges	\$100,500,000	\$0
Department of Environmental Conservation	\$60,000,000	\$50,401,000
Department of Transportation	\$1,333,625,000	\$318,113,000
Miscellaneous - All State Departments and Agencies	\$2,531,675,000	\$814,039,000
New York State Urban Development Corporation (Empire State Development Corporation)	\$254,386,000	\$120,715,000
SUNY	\$5,086,100,000	\$1,997,813,000
<b>Grand Total</b>	<b>\$9,366,286,000</b>	<b>\$3,301,081,000</b>

Unlike Aid to Localities pots of funds, which are described in the next section, some capital funds are laudably distributed through through competitive formulas or programs. Examples of such programs include the SUNY 2020 Capital Challenge Grant, which is “a joint program between the Governor and SUNY—to incentivize bottom-up, individualized long-term economic development implementation plans on campuses and the surrounding communities...The competitive process is open to all SUNY State Operated and Community Colleges, or regional consortiums including multiple campuses.”<sup>8</sup> As part of the program, funds may be made available for projects identified and approved by the governor and the SUNY Chancellor, giving the governor leverage over a portion of this program, why it is included in our tally.

Even where state agencies direct the spending of these funds, there can be problems related to the discretionary decision-making that is afforded lawmakers in choosing which projects to fund, and potentially steering projects that are intended to be completed by private contractors. For example, “Multi-Modal” transportation funds have received particular attention due to Senator Malcolm Smith’s boast that he could deliver these funds to a developer for a road project in a scheme to gain access to the Republican ballot line for mayor in New York City. Smith himself said the following about the funds: “Multi-modal money,” Mr. Smith said, “is outside the budget and it’s always around.”<sup>9</sup> Smith alleged that he was confident \$500,000 in funds could be secured

<sup>8</sup> SUNY Research Foundation. NY-SUNY 2020 Grant program description. Available at: [https://portal.rfsuny.org/portal/page/portal/The%20Research%20Foundation%20of%20SUNY/home/rsed/nv\\_suny\\_2020](https://portal.rfsuny.org/portal/page/portal/The%20Research%20Foundation%20of%20SUNY/home/rsed/nv_suny_2020)

<sup>9</sup> Dwyer, Jim. “Jumping from Party to Party to Bribery Charge.” New York Times. April 2, 2013. Available at: [http://www.nytimes.com/2013/04/03/nyregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html?\\_r=0](http://www.nytimes.com/2013/04/03/nyregion/malcolm-smith-accused-of-bribery-for-spot-on-mayoral-ballot.html?_r=0)

from a multi-modal transportation grant. According to the court documents, Smith had proposed the funding plan as late as March 21, at the height of the budget making process.<sup>10</sup> Smith's case highlights that while the flow of new money from earmarks or member items has been turned off, individual lawmakers appear to have access to other cash, including the program Smith alluded to.

According to an analysis by Reinvent Albany, Multi-Modal fund projects are identified by the governor and legislature outside of the adoption of the state's budget bills, but there is no online list or description of the items that are ultimately funded, how much they cost, or which elected official requested the funds. Further, according to the Department of Transportation, projects are "Identified in schedules agreed upon between the Governor and the Legislature in a Memorandum of Understanding" or via individual project requests. Again, these MoUs are not provided online.<sup>11</sup>

The ability for decisions regarding large sums of funds to be decided in the shadows through MoUs and other agreements that are not made easily accessible to the public provides an unfortunate incentive for lawmakers to promise these funds in exchange for political favors, as was seen with Senator Smith. This potential for corruption could be mitigated through sufficient public oversight of this decision making.

### ***Aid to Localities Lump Sum Pots***

For lump sum appropriations provided in the Aid to Localities budget, in most cases they are designated to local non-profits or government bodies, such as schools, libraries, or local law enforcement officials. These pots of funds are not new, with some having first been allocated as early as 2000 and not having fully been spent to date. Lump sum appropriations in the Aid to Localities bill this year authorized \$68 million in spending through reappropriations, with initial funding levels of \$301 million when considering past years' budgets.<sup>12</sup>

These funds items are sprinkled throughout the budget, and are funding through contracts with five different state agencies. Many of these lump sums have not yet been assigned to a particular state agency and are listed as "Miscellaneous." For a list of total funds provided through state agencies, see the table on the following page.

<sup>10</sup> Reisman, Nick. "So What is Multi-Modal Funding?" April 2, 2013. State of Politics.

<http://www.nystateofpolitics.com/2013/04/so-what-is-multi-modal-transportation-funding/>

<sup>11</sup> Reinvent Albany. "Smith Scandal Flags \$288 million in Transportation 'Member Items.'" April 3, 2013. Available at:

<http://reinventalbany.org/2013/04/malcolm-smith-spotlights-288-million-in-transportation-member-items/>

<sup>12</sup> Funding obtained from Aid to Localities Legislation, S.2604-E/A.3003-E of 2013: <http://open.nysenate.gov/legislation/bill/S2603E-2013>

Lump Sum Appropriations by Agency (other than Community Projects Fund) FY2013-14 Enacted Budget, Aid to Localities Bill		
Agency Name	Initial Appropriation Amount (carried over multiple budgets)	FY 2013-14 Reappropriation (current fiscal year)
Department of Labor	\$4,355,500	\$2,437,000
Division of Criminal Justice Services	\$6,589,000	\$6,589,000
Education Department	\$63,211,000	\$22,209,000
Miscellaneous	\$207,379,736	\$17,659,000
Office of Parks, Recreation and Historic Preservation	\$1,000,000	\$58,900
Urban Development Corporation (Empire State Development Corporation)	\$19,000,000	\$19,000,000
<b>Grand Total</b>	<b>\$301,535,236</b>	<b>\$67,952,900</b>

The perhaps best known lump sum pot in this category is “bullet aid” which has been used for aid to local school districts and totaled nearly \$30 million this year.<sup>13</sup> Bullet aid has been criticized as a way of funding items outside of established funding formulas, in which political dynamics are allowed to take over.<sup>14</sup>

The descriptions of the intended purposes of Aid to Localities appropriations vary, some being detailed in their scope, such as “services and expenses of local law enforcement and judges for domestic violence training,” while other items provide little detail, such as “For Senate Majority Labor Initiatives.”

## B. COMMUNITY PROJECTS FUND

Member items are discretionary funds that are provided by individual lawmakers to community groups, localities, or for particular local programmatic activities. While other types of funds are often called member items, the Community Projects Fund, as per §99-d of the State Finance Law, is the fund most commonly associated with member items in New York State. As such, Citizens Union has focused its analysis for the purposes of this section on these items. Past pots of funds that have been sponsored by individual legislators include the Community Capital Assistance Program and the Strategic Investment Program.<sup>15</sup> As mentioned previously, there have not been new member items funded in the state budget since 2009, though some items remain and have been reappropriated in this year’s budget. Unlike former Governor Paterson who vetoed all reappropriated member items in 2010<sup>16</sup>, Governor Cuomo has not vetoed these items, provided that the funding goes to the organization or locality that it was originally earmarked for. The Governor has, however, vetoed other funds that were more than seven years old, stating the

<sup>13</sup> Vielkind, Jimmy. “\$30 million ‘bullet’ targets aid gap.” April 2, 2013. Albany Times Union. Available at: <http://www.timesunion.com/local/article/30M-bullet-targets-aid-gap-3454176.php>

<sup>14</sup> Vielkind, Jimmy. “\$30 million ‘bullet’ targets aid gap.”

<sup>15</sup> The Assembly has disclosed recipients of these funds via its website: <http://assembly.state.ny.us/comm/?sec=post&id=41>

<sup>16</sup> Blain, Glenn. “Gov. Paterson Sends Those Vetoes to Legislature.” New York Daily News. July 7, 2010. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2010/07/gov-paterson-sends-those-vetos.html>

following in his veto message: "In general, seven years is more than enough time to fund and implement services."<sup>17</sup>

As previously noted, reappropriations authorize the use of funds for projects that were added to previous budgets in years past, but are not yet fully spent. According to the Division of the Budget, the Community Projects Fund contained only \$92.8 million as of March 2013, though the FY 2013-14 budget authorized an additional \$33 million to replenish the fund.<sup>18</sup>

For the FY2013-2014 Budget, Citizens Union examined remaining Community Projects Fund items in the Aid to Localities Bill<sup>19</sup>, and found nearly \$378 million in reappropriated Community Projects Fund items and unallocated pots. Also not included in this tally are four items for the Bronx Overall Economic Development Corp. that were identified by the press as being sponsored by Senate Co-Leader Jeff Klein and were vetoed by the Governor.<sup>20</sup> The Governor's veto message for these items described the reason for the veto as being that each was "improperly characterized as a reappropriation."<sup>21</sup> No other community projects fund items were vetoed, however, though 120 projects categorized as member items were vetoed that were fully cashed out, and 45 other items were vetoed as no money had been paid on them since 2005.<sup>22</sup>

A summary of the Community Projects Fund, as provided FY 2013-14 Aid to Localities budget, is provided on the following page.<sup>23</sup> This analysis includes all items – line items that are earmarked for specific organizations or localities as well as lump sum appropriations that are not yet itemized for a particular group or locality – separated by house and type of item.

<sup>17</sup> Governor Cuomo Budget Vetoes, FY2013-14, Division of the Budget. <http://www.budget.ny.gov/pubs/press/2013/2013-14Vetoes.pdf>

<sup>18</sup> Vielkind, Jimmy. "Old 'pork' lives on in spending proposal."

See also <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

<sup>19</sup> Available at: <http://open.nysenate.gov/legislation/bill/S2603C-2013>

<sup>20</sup> Blain, Glenn. "Bronx state Senator Jeff Klein attempts pork earmark despite Cuomo ban," New York Daily News. April 11, 2013.

Available at: <http://www.nydailynews.com/news/politics/cuomo-stops-pork-spending-bronx-state-senator-klein-article-1.1314443>

<sup>21</sup> Division of the Budget. Governor Cuomo Veto Messages, April 2013. Available at:

<http://www.budget.ny.gov/pubs/press/2013/2013-14Vetoes.pdf>

<sup>22</sup> Vielkind, Jimmy. "Pork items survive veto ax." Times Union. April 10, 2013. Available at:

<http://www.timesunion.com/local/article/Pork-items-survive-veto-ax-4425465.php>

<sup>23</sup> Funding summarized from Aid to Localities Legislation, A.3003-E of 2013, available at:

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=A03003&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A03003&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y)

<b>Community Projects Fund Items by House                      FY 2013-14 Enacted Budget, Aid to Localities Bill</b>		
<b>HOUSE</b>	<b>Initial Appropriation                      Amount (carried over                      multiple budgets)</b>	<b>FY 2013-14                      Reappropriation                      (current fiscal year)</b>
<b>SENATE</b>		
Unallocated Pots	\$133,725,000	\$132,510,000
Itemized Projects	\$17,301,695	\$16,558,025
<b>SENATE TOTAL</b>	<b>\$151,026,695</b>	<b>\$149,068,025</b>
<b>ASSEMBLY</b>		
Unallocated Pots	\$32,961,000	\$23,939,158
Itemized Projects	\$23,557,367	\$17,936,984
<b>ASSEMBLY TOTAL</b>	<b>\$56,518,367</b>	<b>\$41,876,142</b>
<b>JOINT – SENATE AND ASSEMBLY</b>		
Unallocated Pots	\$800,000,000	\$187,000,000
Total Unallocated Pots	\$966,686,000	\$343,449,158
Total Itemized Projects	\$40,859,062	\$34,495,009
<b>Total Community Projects                      Fund</b>	<b>\$1,007,545,062</b>	<b>\$377,944,167</b>

These funds items are sprinkled throughout the budget, and are spent through contracts with many different state agencies. In total, 18 agencies are responsible for the contracts of these items going forward, should they be funded. One catch-all category, "Miscellaneous – All Agencies," contains items that are provided in unallocated pots, and as such have not been itemized for a particular organization or locality. There are five such pots totaling \$261 million – more than two-thirds of funds in the Community Projects Fund this year. These items are to be distributed by a Memorandum of Understanding entered into between the Director of the Budget and representatives of the legislature, including the secretaries of the Senate Finance Committee and Assembly Ways and Means Committee. For a list of total funds provided through state agencies, see the table on the following page.

Community Projects Fund Items by Agency FY 2013-14 Enacted Budget, Aid to Localities Bill		
Agency Name	Initial Funding Amount	FY 2013-14 Reappropriation
Department of Agriculture and Markets	\$2,686,175	(\$2,686,175)
Department of Corrections and Community Supervision	\$4,000	(\$4,000)
Department of Economic Development	\$7,771,610	(\$5,407,018)
Department of Environmental Conservation	\$2,353,600	(\$2,279,793)
Department of Family Assistance Office of Children and Family Services	\$57,042	(\$57,042)
Department of Mental Hygiene Office of Alcoholism and Substance Abuse Services	\$5,000	(\$5,000)
Department of State	\$32,560,304	(\$31,791,634)
Department of Transportation	\$7,182,300	(\$6,702,300)
Division of Criminal Justice Services	\$13,282,428	(\$6,862,779)
Division of Housing and Community Renewal	\$6,000	(\$6,000)
Division of Military and Naval Affairs	\$21,650	(\$21,650)
Division of Veterans' Affairs	\$3,697,950	(\$3,697,950)
Education Department	\$16,130	(\$16,130)
Foundation for Science, Technology and Innovation	\$15,465,000	(\$14,445,963)
New York State Urban Development Corporation (Empire State Development Corporation)	\$25,834,000	(\$20,358,860)
Office for the Aging	\$41,250	(\$41,250)
Office of Parks, Recreation and Historic Preservation	\$22,152,323	(\$22,152,323)
Department of General Services	\$33,300	(\$33,300)
Miscellaneous - All Agencies	\$874,375,000	(\$261,375,000)
<b>Grand Total</b>	<b>\$1,007,545,062</b>	<b>(\$377,944,167)</b>

**Transparency of Member Items**

Member items have not been consistently itemized in state budget bills, and even when they are, the sponsoring legislator's name is not included. Budget reforms enacted in 2007 require that legislative additions (which includes member items) to the executive budget must be itemized, though in the event that they are not itemized, a plan with the individual items must be developed and passed via resolution by a majority of members elected in each house.<sup>24</sup> These resolutions, unlike budget bills, are not required to age for three days, and can be passed immediately. Though it appears that some resolutions are provided online via the legislative search tools of the legislature, they are not made easily accessible.

Limited disclosure of member item line items is provided outside of the budget bills. The State Assembly has provided disclosure of "Legislative Initiative Request Forms," which are the forms used by Assembly members to designate funding to particular organizations since Fiscal Year (FY)

<sup>24</sup> State Finance Law, §24(5)

1998. There are also online databases of funding, such as the Attorney General's "NY Open Government"<sup>25</sup> website (formerly known as Project Sunlight) and the private site "See Through New York"<sup>26</sup> which is run by the Empire Center for New York State Policy, both of which have data from FY 2006-2007 to 2009-2010. The Division of the Budget website<sup>27</sup> also provided disclosure of line item member items from 2003 to 2010.

These websites have varying degrees of usefulness, but all government websites fail to provide a clear picture of how and whether funds have been spent. While the NY Open Government website provides searchable databases that allow users to export the information for their own analysis, its records do not include information about whether the items have been fully expended. The Assembly and Division of the Budget websites contain pdfs broken out by fiscal year, with the Assembly's site having multiple versions of documents for the same year, making it unclear whether there have been changes or whether the new documents are merely additional items. The Assembly's pdf documents together comprise over 22,000 pages, with one member item per page, split into over 50 separate documents. Tellingly, the Division of the Budget's website notes the following: "A recipient's name appearing on this list does not confirm either that the entity has been paid the grant amount or has even begun the process of applying for the funds through the agency that oversees the contract."

The State Comptroller's office keeps records of disbursements and contracts of the Community Projects Fund, though this information is not made publicly available on its website. The Albany Times Union provided up-to-date information regarding the Comptroller's records on its Capitol Confidential Blog in April 2013.<sup>28</sup>

### ***Questionable Allocations***

Several state legislators have improperly used their member item allocations, including former Senator Shirley Huntley, and Assemblymembers William Boyland and Vito Lopez. Huntley was indicted last year for securing \$30,000 to the fake "Parent Workshop Charity," which conducted no activities. Instead, the money was siphoned off by an aide and Huntley's niece for personal shopping sprees for Huntley, both of who were previously charged with crimes.<sup>29</sup> In addition to the Parent Workshop Charity, Huntley had secured a \$70,000 member item for the Young Leadership Institute in 2009 — which is now being investigated by the attorney general, according to the state Department of Education.<sup>30</sup>

<sup>25</sup> Office of the Attorney General. NY Open Government Database. Available at: <http://www.nyopengovernment.com/NYOG/>

<sup>26</sup> See Through New York, Empire Center for NYS Policy. Available at: <http://seethroughny.net/expenditures/legislative-member-items/>

<sup>27</sup> For more information, see Assembly Ways and Means Reports: <http://assembly.state.ny.us/comm/?sec=post&id=41> and the Division of the Budget: <http://www.budget.ny.gov/pubs/community/lars.html>

<sup>28</sup> For more information, see <http://blog.timesunion.com/capitol/archives/183742/did-your-member-item-get-re-upped-in-the-budget/>

<sup>29</sup> Algar, Selim. "State Sen. Huntley hauled off in 30G 'scam.'" August 28, 2012. The New York Post. Available at:

<http://nypost.com/2012/08/28/state-sen-huntley-hauled-off-in-30g-scam/>

<sup>30</sup> Klein, Melissa. "Huntley prob widens." August 30, 2013. New York Post. Available at: <http://nypost.com/2012/08/30/huntley-probe-widens/>

As the Chairman to the Democratic Party of King's County, former Assemblymember Vito Lopez had tremendous influence over funding decisions for local nonprofits in his community. At the state and city levels, Lopez secured millions in member items for the Bushwick Ridgewood Senior Citizens Council to provide home healthcare assistance, job training, and other community services to residents of Bushwick and Ridgewood. In 2010, New York City Department of Investigation began an inquiry into the organization after former Executive Director's salary rose to \$659,591 from \$235,135. The investigation revealed that the organization falsified documents, forged signatures, and double-billed the state for services it did not provide the community.<sup>31</sup>

Assemblyman Boyland was recently arrested for funneling discretionary funds to a Brooklyn based non-profit organization which used the funds to promote Boyland's candidacy for office, falsely stating that the funds were not used for partisan political activity. Specifically, the organization directed that a portion of those public funds be used to pay for community events promoting Boyland, and items such as t-shirts imprinted with the slogan 'Team Boyland.'<sup>32</sup>

Many of the member items still listed in the state budget also appear to be old, and perhaps no longer necessary. Some allocations were provided for specific events, such as bicentennial celebrations or sporting games, and though they have already been held, the funding is still present in the state budget. These include \$2,000 for the Hadley Bicentennial Parade Committee, first allocated in 2000, and another \$5,000 for the Empire State Games of 2002, allocated in 2002.

An additional \$12,500 was provided to the Friends of Long Island's Heritage starting in 2000, though news reports indicate that the organization went bankrupt in 2004.<sup>33</sup> The funding is still authorized in this year's New York State budget, however. While these outdated items are small, they call into question whether other items may also be no longer or why they should be continually reappropriated, particularly since in many cases the sponsoring legislator may no longer hold office.

## V. CITIZENS UNION RECOMMENDATIONS

The lack of specific and detailed information about how lump sum appropriations are spent calls into serious question whether there is sufficient transparency and public oversight of the state budget process.

Citizens Union's research also raises further questions about the process by which remaining Community Projects Fund items are being distributed. The public deserves a full and open accounting of how these items are being spent, in a manner that is clear and links the sponsors of the items to the end results.

<sup>31</sup> Katz, Celeste. "DOI: More Shadiness at Ridgewood-Bushwick." Daily Politics. Available at:

<http://www.nydailynews.com/blogs/dailypolitics/2011/11/doi-more-shadiness-at-ridgewood-bushwick-updated-again>

<sup>32</sup> U.S. Attorney's Office Press Release. May 3, 2013. Available at: <http://www.fbi.gov/newyork/press-releases/2013/new-york-state-assemblyman-william-f-boyland-charged-with-mail-fraud-conspiracy-for-defrauding-new-york-state>

<sup>33</sup> <http://query.nytimes.com/gst/fullpage.html?res=9A00EFDE123DF932A05753C1A9629C8863>

**Citizens Union calls upon the Moreland Commission to follow the money as it investigates lump sum appropriations and other discretionary aspects of the state budget.** Citizens Union has shared its findings with the Moreland Commission, and urges it to:

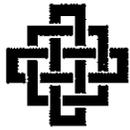
1. Recommend policy changes regarding the approval of budget items to ensure needed itemization and disclosure to provide necessary transparency and public accountability in deciding to which entities receive state funds; and
2. Fully analyze lump sum appropriations and remaining member items in the state budget, including their recipients and sponsors, to determine whether further investigative action is needed.

### **Citizens Union Recommendations**

In order to improve transparency and accountability of lump sum appropriations, there should be increased disclosure and accountability of lump-sum appropriations and remaining Community Projects Fund items. Specifically:

1. **Lump-sum appropriations should disclose in the state budget the detailed purposes and criteria set forth for their distribution;**
2. **Additional, more specific information about lump-sum appropriations should be made available online in user-friendly formats, including the following:**
  - a. all MoU's, plans, resolutions and other agreements specifying their distribution;
  - b. funds distributed and their recipients; and
  - c. any remaining funds;
3. **There should be a time limit for the reappropriation of lump-sums in order to decrease slush funds and the use of such funds as "one-shot" budget gap fillers.** This is consistent with Governor's Cuomo's decision to veto many of these items in this year's state budget;
4. **Legislators' names should be listed with the itemized member items and any other projects they sponsor in budget appropriation bills before they are passed, as well as in other itemized listings in MoUs, plans or other documents detailing the distribution of lump sum appropriations; and**
5. **Resolutions passed providing details related to expenditures of lump sum appropriations in the budget should be required to age three days before being voted on, and be made easily available online.**

***Original data for this report is available at <http://www.citizensunion.org>.***



Lawyers Alliance  
for New York

*Connecting lawyers, nonprofits, and communities*

September 24, 2013

Testimony of Lawyers Alliance for New York Before the Commission  
to Investigate Public Corruption

by

Laura Abel, Senior Policy Counsel

On behalf of Lawyers Alliance for New York, I respectfully submit this testimony regarding public disclosure of election-related activity and lobbying. The scourge of public corruption is an endemic problem that deserves rigorous reform to insure that officials in New York are elected and discharge their public trust with integrity. At the same time, underserved communities and the organizations that serve their interests should not be excluded from the public arena by overly broad regulation. We urge the Commission to recommend improvements to the state's laws regarding lobbying and the disclosure of independent spending on elections to ensure that they produce information that is truly useful in fighting public corruption, and that do not chill speech by the small, grassroots organizations we so desperately need to participate in our democracy. In particular, any new disclosure requirements should follow these principles:

- Section 501(c)(3) organizations should be exempted, because federal tax law prohibits them from engaging in partisan activities.
- The definition of "electioneering" or "independent spending" should be narrowed so it does not capture references to elected officials that are not intended to influence elections.
- The spending threshold for lobbying reporting should be raised to \$10,000.
- Disclosures that could cause harassment of covered organizations or their contributors should be exempted.
- Organizations required to disclose election-related or lobbying activity should be able to disclose it to a single government agency, which should share information with any other state agencies that need the information.

Lawyers Alliance is the leading provider of business and transactional legal services to nonprofit organizations that are improving the quality of life in New York City neighborhoods. Working with a network of more than 1,300 volunteers from more than 100 law firms and corporations, Lawyers Alliance annually represents more than 600 nonprofit organizations on more than 1,000 legal matters. Our client base consists in large part of smaller and community-based organizations working in low-income neighborhoods without the resources to afford paid counsel to assist them with legal compliance. Lawyers Alliance helps these organizations comply with federal tax law, and with the federal, state and city reporting requirements regarding independent spending and lobbying.

While the popular image of organizations that engage in election related activity is of mysterious dark money groups from out of state, disclosure laws also affect the hundreds of local groups that seek to ensure that community members have a voice in elections and in the legislature. These are local arts organizations, senior centers, youth programs, social services groups, citizen engagement organizations, and more.

In response to the Supreme Court's *Citizens United* decision, New York regulators have acted quickly and decisively to require expanded disclosure of election-related activity. However, the present disclosure system is a piecemeal one that imposes unnecessary costs on free speech and makes it extremely difficult to access the information gathered.

In the summer of 2012, the New York City Campaign Finance Board issued a new rule requiring 501(c)(4) organizations to disclose contributions for and expenditures on election-related mass communications.<sup>i</sup> The rule also requires 501(c)(3) organizations to make disclosures if they are working on ballot resolutions. This past June, Attorney General Schneiderman issued a regulation also requiring disclosure of contributions for and expenditures on election-related communications by certain 501(c)(4) organizations.<sup>ii</sup> These regulations create obligations in addition to those found in the state Election Law, which requires organizations expressly advocating for a candidate or ballot proposal to report to the Board of Elections, and City and State laws requiring reporting of lobbying activity.<sup>iii</sup>

Each of these reporting regimes has different definitions and deadlines, so that organizations may have to disclose some information to the City, some to the Attorney General, and still other information to the Board of Elections. For instance, a nonprofit would have to report to the Attorney General if on August 6 of this year (which was 35 days before the September 10 primary election) it sent out a mailing mentioning a City Council member running for re-election. If the group sent the same document on August 16 (which was 25 days before the primary), it would need to file with the New York City Campaign Finance Board instead. If the mailing urged members of the public to ask their Council Member to take action on a bill, the group would have to report to both the Joint Committee on Public Ethics and the New York City Clerk in addition to the Attorney General or City Campaign Finance Board.

Some of the disclosure rules even require reporting if an organization merely mentions a candidate or ballot proposal in a mass communication a few weeks or months before an election. This is a trap for the unwary that serves no useful purpose. Nonprofits routinely send out newsletters, news roundups, and other communications mentioning the names of elected officials. They might say, "Council Member Brown stopped by our rally," or they might pass along a news story reporting that the Mayor vetoed a bill. There is no government interest in requiring disclosure of these communications. For instance, imagine that in October of this year a (c)(4) organization gears up for the state legislature coming back into session by printing 5,000 reports on public education in NY State, at a cost of \$15,000. And imagine that the back cover of the report includes a standard list of donors that the organization puts on all of its publications, including the local Council Member who gave them a member item. If that Council Member is up for re-election this November, the group will have to report expenditures for that report.

Many 501(c)(4) organizations do not intend to engage in election-related activities. They are organized as 501(c)(4)'s because their missions call for them to engage in more legislative and administrative advocacy than the IRS permits 501(c)(3) organizations to undertake. Without a focus on elections, and without a lawyer scrutinizing their activities, these very leanly staffed organizations are unlikely to realize that distributing a communication mentioning a legislator who happens to be running for office triggers the obligation to report their expenditures and donations.

Clearly, this is an extremely complicated system. Many of my non-lawyer clients find it virtually impossible to understand. Those that do understand must spend precious staff time keeping different sets of records and filing different reports for each agency. This is time that could be spent far more productively in the service of their community.

In order to avoid these problems, any future disclosure requirements should follow a few simple principles:

**1) Section 501(c)(3) organizations should be exempted from election-related disclosure requirements.** These organizations are prohibited by federal law from attempting to influence an election, and organizations that violate this prohibition are subject to revocation of tax-exempt status. Requiring reporting by these organizations does not achieve any public purpose.

**2) The definition of "electioneering" or "independent spending" should be narrowed so it does not capture references to elected officials that are not intended to influence elections.** The law should cover only those communications that a reasonable person would think are intended to influence an election. Additionally, disclosure should be required only for mass communications to the public, such as the paid advertising and mass mailings covered by the New York City Campaign Finance Board. The government does not have a legitimate interest in monitoring the content of communications with an organization's members. Extreme care must be taken if electronic communications are covered, because many organizations routinely email newsletters to thousands or tens of thousands of people, with no intent to influence an election.

**3) The spending threshold for lobbying reporting should be raised to \$10,000.** The state's Commission on Public Integrity has recommended raising the threshold to \$10,000 to allow the state to focus its enforcement resources on lobbyists and clients that pose a higher risk of violation.<sup>iv</sup> Raising the threshold to this amount would exempt most of the smaller nonprofits that lobby on their own behalf, do not spend enough on lobbying to pose a risk of corruption, and cannot afford to spend staff time on lobbying reporting.

**4) Disclosures that could cause harassment of covered organizations or their contributors should be exempted.** The U.S. Constitution bars the government from requiring disclosure of members of or contributors to nonprofit groups if there is a reasonable probability that they will suffer retaliation as a result of disclosure. *Brown v. Socialist Workers 74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982). This is particularly important for organizations with sensitive missions, whose members or contributors could face violence if their names were disclosed.

**5) Organizations required to disclose election-related or lobbying activity should be able to disclose it to a single government agency, which should share information with any other state agencies that need the information.** The State Board of Elections, Attorney General and JCOPE should use the same definitions and reporting deadlines. They should be required to develop and use a single form, and to designate a single government agency to receive the information. They should also be required to work cooperatively with their local counterparts, such as the New York City Campaign Finance Board and City Clerk's Office, to minimize the need for information to be reported once at the state level and again at the local level.

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<sup>i</sup> Rules of the New York City Finance Board, Chapter 13.

<sup>ii</sup> 13 NYCRR Part 91.6.

<sup>iii</sup> NY Election Law § 14-100 et seq.; NY Leg. Law § 1-c; NYC Admin. Code §§ 3-211 to 223.

<sup>iv</sup> Lobbying Commission Public Meeting, March 30, 2011, Tr. at 41 (quoted in Final Report of the New York City Lobbying Commission 29 (2013)).

*Perry, Robert*



**NYCLU**

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**Testimony of the New York Civil Liberties Union  
Before the Moreland Commission to Investigate Public Corruption**

**Presented on behalf of the NYCLU by Robert Perry**

**September 24, 2013**

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The following statement is submitted on behalf of the New York Civil Liberties Union (NYCLU) regarding the Moreland Commission's inquiry into matters related to the integrity of the electoral process and campaign finance laws.

The NYCLU is the New York affiliate of the American Civil Liberties Union. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution through an integrated program of litigation, legislative advocacy, public education and community organizing. With seven chapter, or regional, offices and nearly 50,000 members across the State of New York, in the forefront of those efforts has been our defense of the rights of those individuals with disabilities under the Federal Constitution and the New York State Constitution.

**Introduction**

In the past year there has been a concerted effort by various offices and agencies of government in New York State to establish rules and regulations that are intended to create greater transparency and accountability regarding the electoral process.

In the announcement of today's public hearing, the Commission to Investigate Public Corruption has invited commentary on this and related issues -- including campaign finance laws, disclosure related to campaign contributions and expenditures, and compliance with existing

lobbying laws, including organizations that engage in lobbying and “other efforts to influence public policies and elections.”

As an organization whose mission is to uphold civil rights and civil liberties, the NYCLU is, and has been, among the most outspoken advocates for transparency and accountability on the part of government officials, agencies and their agents.<sup>1</sup>

Creating greater transparency and accountability in the electoral process is a laudable objective. There are however competing principles of law and public policy that come into play, particularly when, in the name of transparency, the government seeks to regulate not-for profit organizations that engage in issue advocacy having no relation to electoral activity.

A regulation recently promulgated by the Attorney General’s office (13 N.Y.C.R.R. 91.6) and the leading legislative proposal for creating a public campaign finance system in New York (S4705-A/A4980C) both impose reporting and disclosure requirements on non-profit organizations that engage in expressive activities that are unrelated to elections or political campaigns.

These two proposals as well as a regulation recently adopted by the Joint Commission on Public Ethics (13 N.Y.C.R.R. 938) require such organizations to publicly report personal information about their financial donors when those organizations have engaged in issue advocacy or lobbying activity that is unrelated to electoral campaigns.

These types of regulatory schemes undermine the constitutional guarantee of free speech and the important public policy objective of promoting robust commentary and debate on the important public policy matters of the day.

The right to freely discuss matters of public concern lies at the core of the First Amendment’s protections of speech and expressive activities.<sup>2</sup> Accordingly, any regulations which are triggered by engaging in discussion of important issues must “reflect our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.”<sup>3</sup>

This testimony addresses three issues that are implicated by the regulatory initiatives just described: (1) the government’s regulation of issue advocacy that is not related to electoral campaigns, (2) the mandatory reporting of personal information regarding donors to non-profit organizations that engage in issue advocacy; and (3) the regulation of lobbying activity that is beyond the scope of what the government is constitutionally permitted to regulate.

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<sup>1</sup> The New York Civil Liberties Union (NYCLU) is registered with the IRS as both a 501(c)(3) organization (as the NYCLU Foundation) as well as a 501(c)(4) organization.

<sup>2</sup> See, e.g., *First National Bank v. Bellotti*, 435 U.S. 765, 776 (1976).

<sup>3</sup> *F.E.C. v. Wisconsin Right to Life*, 551 U.S. 449, 467 (2007) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

**1) Regulation of issue-oriented communication unrelated to an electoral campaign undermines the right to freedom of speech and inhibits participation in public discourse on matters of importance to New Yorkers**

In May of 2013 the office of New York's Attorney General adopted regulations that require reporting and disclosures from organizations that engage in a broad range of expressive activities in New York. Under the proposed regulations, non-501(c)(3) organizations that spend \$10,000 or more on express election advocacy or issue advocacy are required to report on all of their election-related expenditures, and to disclose all donors who have contributed more than \$1,000. The Office of the Attorney General will, in turn, publish this information on its website.

Comments submitted by the NYCLU raised several objections to this proposal. First, the proposed regulation reached beyond express election advocacy and its functional equivalent, making subject to the reporting scheme organizations engaged in pure issue-oriented speech unrelated to any electoral contest. Second, we observed that the breadth of information sought by the regulations was not sufficiently tailored to advance the governmental interests advanced in support of these disclosure requirements. Finally, controversial organizations that are constitutionally entitled to exemptions from disclosure were subjected to a standard for securing such exemptions that deviated impermissibly from the standard prescribed by the Supreme Court. (This last objection was addressed in a revised regulation, which has since been adopted.)

Our reasons for reaching these conclusions are set forth below.

The scope of the Attorney General's regulation extends inappropriately beyond express advocacy speech and its functional equivalent, and seeks to regulate issue-oriented speech unrelated to any electoral contest.

The proposed regulations require disclosures from organizations that engage in both "express election advocacy" and "election targeted issue advocacy."<sup>4</sup> "Express election advocacy" is defined as either: (1) a communication with express words (e.g. "vote," "oppose," or "elect") calling for the election or defeat of a "clearly identified candidate," a political party, "or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to the voters at any election"; or, (2) communications that "otherwise refer[] to or depict[]" a candidate, political party, constitutional amendment, propositions, referenda or other questions submitted to the voters "in a manner that is susceptible to no reasonable interpretation than as a call for the nomination, election, or defeat of such candidates in an election."<sup>5</sup> Organizations that engage in "express election advocacy" are subject to the regulation's reporting and disclosure requirements regardless of when the speech occurs.

"Election targeted issue advocacy" is any communication "other than express election advocacy" that (1) refers to a "clearly identified candidate[] in that election"; (2) "depicts the name, image, likeness or voice of one or more clearly identified candidates"; or (3) "refers to any political party, constitutional amendment, proposition, referendum or other question submitted to

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<sup>4</sup> 13 NYCRR 91.6(6)-(7).

<sup>5</sup> 13 NYCRR 91.6(6)(i)-(ii).

the voters.” Election targeted issue advocacy communications subject the speaker to regulation when made within 45 days before a primary election and 90 days before a general election.<sup>6</sup>

In the thirty-seven years since *Buckley v. Valeo*,<sup>7</sup> the Supreme Court has consistently concluded that government regulation of election speech cannot extend beyond express election advocacy speech and its functional equivalent, to include the regulation of issue-oriented speech.<sup>8</sup> The Court has “long recognized that the interests held to justify the regulation of campaign speech and its functional equivalent might not apply to the regulation of issue advocacy.”<sup>9</sup>

But under the proposed regulations, organizations will find themselves subject to reporting and disclosure obligations as a result of engaging in purely issue-oriented speech, unrelated to an electoral campaign, so long as the speech took place within 90 days of an election.

For example, a reproductive rights organization that purchases space in a newspaper to discuss reproductive rights issues, and mentions the name of an office holder who also happens to be seeking re-election, would trigger the reporting and disclosure requirements. This speech would constitute “election targeted issue advocacy” under the regulations even if the organization articulated support for some positions that an elected official had taken, and opposition to other positions of the official. Similarly, an environmental organization would trigger the reporting regime if it spent money to purchase a billboard to thank New York Senators for adopting a favorable position on a broad policy agenda, such as protecting New York’s forests. These actions would trigger the disclosure requirements even though no reasonable listener would consider the communication to be electioneering.

We recognize that in *Citizens United v. F.E.C.*,<sup>10</sup> the Supreme Court upheld the application of the disclosure obligations set forth in the Bipartisan Campaign Reform Act (“BCRA”), even though BCRA’s disclosure requirements extend beyond expression that is the functional equivalent of express advocacy.<sup>11</sup> But the Court, under the facts of that case, had previously found the film *Hillary*, produced by Citizens United, constituted the functional equivalent of express advocacy.<sup>12</sup> Accordingly, in upholding the application of BCRA’s disclosure obligations to Citizens United, the Court was simply applying those obligations to an organization engaged in the functional equivalent of express advocacy. No broader lesson can be drawn from the opinion. Indeed, the application of disclosure obligations to entities that engage in issue-oriented speech unrelated to an electoral campaign would run directly afoul of the Supreme Court’s decision in *F.E.C. v. Wisconsin Right to Life*.<sup>13</sup> In that case, the Supreme

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<sup>6</sup> 13 NYCRR 91.6(a)(7).

<sup>7</sup> 424 U.S. 1 (1976).

<sup>8</sup> *Buckley*, 424 U.S. at 43.

<sup>9</sup> *Wisconsin Right to Life*, 551 U.S. at 457.

<sup>10</sup> 130 S. Ct. 876 (2010).

<sup>11</sup> *Citizens United*, 130 S. Ct. at 915.

<sup>12</sup> See *Citizens United*, 130 S. Ct. at 890 (concluding that *Hillary* the movie was “equivalent to express advocacy” as “a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President”).

<sup>13</sup> 551 U.S. 449 (2007).

Court noted that it has “never recognized a compelling interest in regulating ads...that are neither express advocacy nor its functional equivalent.”<sup>14</sup>

Adherence to the limitations imposed by *Wisconsin Right to Life* and the avoidance of extending the regulations to issue-oriented speech will not significantly impede most efforts to impose disclosure obligations on organizations that seek to disguise campaign ads by pretending that they are simply issue-oriented expression.<sup>15</sup>

*(Please note that the foregoing analysis is developed more fully in Appendix A and Appendix B attached to this testimony.)*

It is important to note here that the Attorney General’s regulation includes a provision that is sufficient to address the problem of sham issue advocacy that is a front for electioneering – without regulating issue advocacy unrelated to an electoral campaign. This provision requires the mandatory disclosure of communications that are “susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat” of a candidate in an election.<sup>16</sup> This language is substantially similar to the definition of the functional equivalent of express advocacy found in the federal election regulations.<sup>17</sup> If properly enforced, this provision is sufficient to regulate advertisements that purport to be issue-oriented speech, but are actually veiled candidate-advocacy.<sup>18</sup>

Moreover, additional regulations could more narrowly serve an interest in informing the electorate about who is financing “sham” issue advertisements by ensuring that any issue-oriented communications are truly independent from a campaign. Federal law can provide some

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<sup>14</sup> *Wisconsin Right to Life*, 551 U.S. at 476.

<sup>15</sup> See, attached, Appendix A (“Comments of the New York Civil Liberties Union regarding the NYS Attorney General’s Proposed Annual Disclosure of Electioneering Activities by 501(c)(3) Registrants,” March 6, 2013) and Appendix B (“Comments of the New York Civil Liberties Union regarding the NYS Attorney General’s Proposed Revised Annual Disclosure of Electioneering Activities by 501(c)(3) Registrants,” May 16, 2013) for further development of this analysis. (“Comments of the New York Civil Liberties Union regarding the Joint Commission on Public Ethics Source of Funding Regulations,” Feb. 8, 2012).

<sup>16</sup> 13 N.Y.C.R.R. 91.6(a)(6)(ii).

<sup>17</sup> FEC regulation 11 C.F.R. § 100.22(b) defines “express advocacy” as communications which, “when taken as a whole and with limited reference to external events, such as proximity to the election” could only be reasonably interpreted as advocating the election or defeat of a clearly identified candidate because (1) the communication is “unmistakable, unambiguous, and suggestive of only one meaning”; and (2) “reasonable minds could not differ” as to whether it encourages the election or defeat of a candidate.

<sup>18</sup> For example, pursuant to the analogous portion of the federal regulations, the Federal Elections Commission was able to require the payment of a substantial civil fine from the organization Swiftboat Veterans and POWs for Truth for their in advertisements in the 2004 presidential election. Among other things, the Swiftboat television and newspaper ads argued that John Kerry “lacks the capacity to lead,” “cannot be trusted” and accused him of attending secret meetings with “enemy leaders.” Specifically, the Commission concluded that Swiftboat Veterans’ communications “comment[ed] on Senator Kerry’s character, qualifications, and fitness for office, explicitly link[ed] those charges to his status as a candidate for President, and have no other reasonable meaning than to encourage actions to defeat Senator Kerry.” See *In re Swiftboat Veterans & POWs for Truth*, MURs 551 & 5525 (F.E.C. Dec. 13, 2006) (conciliation agreement), available at <http://eqs.nictusa.com/eqsdocs/000058ED.pdf>

guidance in how to enforce independence by requiring disclosures for “coordinated” campaign speech.<sup>19</sup> The federal regulations include five types of coordinated communications that are subject to regulation:

- (1) Communications created at the suggestion of a candidate, or with the assent of a candidate;
- (2) Communications created with the material involvement of a campaign or committee;
- (3) Communications created after “substantial communication” with the campaign about its needs;
- (4) Communications created by a vendor common to a candidate or campaign, who also utilizes information that is not publicly available; or,
- (5) Communication that was paid for by an employee, independent contractor, or former employee of a candidate, with the use of non-public information.<sup>20</sup>

The proposed regulations could thus more narrowly target “sham” issue speech by including a provision that would require disclosures of any communications that were created pursuant to coordination between the campaign and the organization.

The scope of information that organizations must disclose under the Attorney General’s regulation is not justified by the interests that the regulations seek to advance.

Any forced disclosure regime, including one which applies exclusively to independent expenditures, must survive “exacting scrutiny,” requiring a “substantial relation between the disclosure requirement and a sufficiently important governmental interest.”<sup>21</sup> Compelled disclaimer and disclosure requirements have only been upheld to the extent that they advance the government’s “informational interest” in providing the public with knowledge about “who is speaking about a candidate shortly before an election.”<sup>22</sup>

Any information that the government requires organizations to make available must bear a “substantial relation” to the government interest being served. The Attorney General’s regulations fail this requirement in several ways.

First, the regulations require disclosures from organizations that are not engaged in campaign speech. Second, there is no asserted interest advanced through requiring information about the employers of contributors. Third, the proposed regulations require disclosures about donors whose funds did not support campaign speech. Finally, to the extent that the regulations seek to better inform donors that their contributions are being used for election-related activities, such a goal is more effectively advanced by the provisions that require organizations to report on their election-related expenditures.

**Recommendation:** As a matter of law and public policy, any new regulation of protected speech activities should remain within the clearly defined boundaries of permissible government regulation. By requiring disclosures from organizations engaged in pure issue discussion, New

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<sup>19</sup> 11 C.F.R. 109.21.

<sup>20</sup> 11 C.F.R. 109.21(1)-(5).

<sup>21</sup> *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64).

<sup>22</sup> *Citizens United*, 130 S. Ct. at 916.

York seeks to regulate uncharted territory as regards constitutionally protected speech. Any such initiatives should therefore be amended to require disclosures only for communications that constitute express advocacy or its functional equivalent

**2) Mandating that not-for-profit advocacy organizations publicly report personal information regarding their donors inhibits the First Amendment right to petition the government and to associate with likeminded individuals**

It is well settled that the right to petition the government to take a position on proposed legislation is among the freedoms protected by the First Amendment.<sup>23</sup> In a representative democracy “the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives.”<sup>24</sup>

Equally well established is the right to make contributions in order to advance one’s beliefs, and the right of “like-minded persons to pool their resources in furtherance of common political goals.”<sup>25</sup> However, the compelled government disclosure of personal information about individuals who make financial contributions to lobbying organizations “can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”<sup>26</sup>

In assessing compelled government disclosure requirements, “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.”<sup>27</sup> Regulations which encroach upon constitutionally protected rights “must be justified by more than a showing of a mere rational or legitimate interest.”<sup>28</sup>

Furthermore, any attempts to compel the disclosure of information about people engaged in protected First Amendment activities must be narrowly tailored in furtherance of a specific government interest, and must minimize any impact on protected speech and associational rights.<sup>29</sup>

I will briefly address two recently adopted donor-reporting rules that pose a direct and immediate to First Amendment rights of speech and association.

The Attorney General’s regulation discussed above would compel organizations engaged in issue advocacy having nothing to do with electioneering to report donor information pursuant to a scheme that poses a significant burden on the rights of speech and association. The burden of this regulation will be imposed upon persons who wish to support advocacy on matter of public import that have little if anything to do with electoral campaigns – the activity the regulation purports to address.

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<sup>23</sup> See, e.g., *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (U.S. 1961).

<sup>24</sup> *Id.* at 137.

<sup>25</sup> *Buckley v. Valeo*, 424 U.S. 1, 22 (U.S. 1976).

<sup>26</sup> *Buckley*, 424 U.S. at 64.

<sup>27</sup> *Doe v. Reed*, 130 S.Ct. 2811, 2818 (2010).

<sup>28</sup> *Commission on Independent Colleges & Universities*, 534 F. Supp. at 494.

<sup>29</sup> See, *id.*

Any information that the government requires organizations to make available must bear a "substantial relation" to the government interest being served.<sup>30</sup> The proposed regulations fail this requirement in several ways. First, the regulations require disclosures from organizations that are not engaged in campaign speech. Second, there is no asserted interest advanced through requiring information about the employers of contributors. Third, the proposed regulations require disclosures about donors whose funds did not support campaign speech. Finally, to the extent that the regulations seek to better inform donors that their contributions are being used for election-related activities, such a goal is more effectively advanced by the provisions that require organizations to report on their election-related expenditures.

The "Source of Funding" regulation recently adopted by the Joint Commission on Public Integrity ("JCOPE") also includes a donor-reporting provision. It would require any organization that engages in lobbying activities to disclose the names, addresses, and employer and contribution information for all contributors who have provided at least \$5,000 to a lobbying organization.<sup>31</sup>

This scheme, like the Attorney General's regulation, also imposes a significant burden on the exercise of First Amendment rights by donors who make a financial contribution to advocacy organizations that engage in issue advocacy. The proposed Source of Funding regulations are overly broad, requiring organizations that meet the threshold requirements for disclosure to report *both* contributions "specifically designated for lobbying in New York" *as well as* contributions "not specifically designated for lobbying in New York" (the latter of which are reported as a percentage of the actual contribution).<sup>32</sup>

The regulations therefore require that organizations disclose information about contributions that are merely *available* for lobbying activities, regardless of whether they are ever utilized for such a purpose. This regulatory scheme extends beyond lobbying activities, requiring the disclosure of personal information from contributors whose funds will never be used to fund lobbying activities. The compelled disclosure of contributions which may only incidentally support an organization's attempts to influence legislation is unconstitutionally over broad.

The JCOPE regulation is misguided for another reason. Disclosure requirements have been upheld only to the extent that they advance the important government interest in "stemming the reality or appearance of corruption in the electoral process."<sup>33</sup> Government regulation of campaign finance speech rests upon an interest in preventing any corruption which may be created by the relationship between a contributor and an elected official.

The concerns about corruption in the lobbying context are quite different. While there may be an interest in knowing which organizations are expending resources to influence legislation, there is a more attenuated interest in the personal information of donors who contribute to organizations which then use those funds to hire a lobbyist to take action on a variety of proposed issues. As a matter of policy, it is unclear why the government's interest in

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<sup>30</sup> *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64).

<sup>31</sup> *Source of Funding Regulations*, 13 N.Y.C.R.R. 938, *et seq.*

<sup>32</sup> 13 N.Y.C.R.R. 938.2 ("Amount of Contribution(s)").

<sup>33</sup> *Citizens United*, 130 S. Ct. at 903.

maintaining transparency would not be adequately served in this context by limiting the disclosure requirement to expenditures related to an organization's lobbying activities.<sup>34</sup>

*(Please note that the foregoing analysis is developed more fully in Appendix C, attached to this testimony.)*

It is important that the members of the Commission (as well as all government officials responsible for making law and policy) appreciate that mandating the disclosure of personal information – name, address, employer, donation levels – of individuals who support non-profit advocacy organizations is likely to result in people either contributing less to advance issues that they believe in (so they do not fall within the scope of the compelled disclosure) or altogether withholding their support from organizations that are required to report on the identity of their donors.

Even if a donor-reporting scheme should meet constitutional muster (and it is position of the NYCLU that the various regulatory schemes just described do not), the Supreme Court has observed that requiring an organization to disclose the identity and personal information of financial supporters “can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”<sup>35</sup> Therefore the Supreme Court has held that any government-mandated disclosures of such contributors must provide exemptions for individuals or organizations for whom disclosure could result in harassment or reprisals.<sup>36</sup> (The legislators who drafted New York's Lobby Act noted in the bill jacket that “organizations whose primary activities focus on the question of abortion rights, family planning, discrimination or persecution based upon race, ethnicity, gender, sexual orientation or religion, immigrant rights, and the rights of certain criminal defendants are expected to be covered by such an exemption.”<sup>37</sup>)

Granting exemptions to organizations engaged in such issues will ensure that their financial supporters do not become the targets of harassment, and worse, for their support of controversial work. This will also ensure that organizations are not undermined in their ability to engage in such advocacy.

**Recommendation:** The Commission must uphold the constitutional principle and the public policy interest that calls for strictly limiting any required reporting of donor information by non-profit advocacy organizations; and when such reporting is justified, the disclosure provision includes an exemption for organizations and their supporters who would suffer harm should their personal information be made a publicly available.

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<sup>34</sup> See, attached, Appendix C (“Comments of the New York Civil Liberties Union regarding the Joint Commission on Public Ethics Source of Funding Regulations,” Feb. 8, 2012).

<sup>35</sup> *Buckley v. Valeo*, 424 U.S. 1, 64 (1976).

<sup>36</sup> See, e.g., *Brown et al. v. Socialist Workers' '74 Campaign Committee*, 459 U.S. 87 (1982).

<sup>37</sup> 2011 NYS Legislative Bill and Veto Jackets, S:5679, L 2011, ch. 399, at 10 (2011).

**3) In seeking to regulate all attempts to "influence the passage or defeat of any legislation," the Lobby Act and the recently adopted Source of Funding regulations extend beyond the scope of activities the government is constitutionally permitted to regulate.**

As currently written, the Lobby Act and the Source of Funding regulations attempt to regulate any and all attempts to "influence the passage or defeat of any legislation," even if such efforts do not involve direct communication with lawmakers or a choreographed grassroots campaign. This extends well beyond established constitutional limits. Accordingly, the regulations should be amended to include the constitutionally required, narrow definition of lobbying activities subject to government regulation.

In light of the well-established First Amendment rights to express opinions on government action and to petition the government (both of which may involve lobbying activities), the Supreme Court has noted the necessity of construing disclosure requirements for lobbying activities "narrowly to avoid constitutional doubts."<sup>38</sup> The Court, in *U.S. v. Harriss*, accordingly concluded that the government can only regulate "lobbying in its commonly accepted sense - [] direct communication with members of [government] on pending or proposed [] legislation."<sup>39</sup>

The New York Lobby Act is, on its face, considerably overbroad. It is quite similar in this respect to the statute that the Supreme Court in *Harriss* found to be unconstitutional.<sup>40</sup> The Lobby Act defines lobbying as "any attempt to influence the passage or defeat of any legislation" or any of a number of other activities aimed at influencing government actions which carry the force of law.<sup>41</sup> By its terms, New York's law does not confine itself to "direct communications" with legislators, as is required by the Supreme Court in order to avoid constitutional invalidity. Rather, it seeks to reach any attempt "to influence the passage or defeat" of any legislation.

In order to save the constitutional validity of the statute, the State Lobbying Commission has previously stated in an advisory opinion that it will not apply the New York Statute "in any context outside the definition of lobbying contained in the *Harriss* case."<sup>42</sup> The State Lobby Act's constitutional validity thus rests upon the grounds that it seeks to regulate *only* direct communications with lawmakers, and so long as there is "no indication that this New York legislation requires disclosure of indirect lobbying activities."<sup>43</sup>

The new JCOPE regulations contain no definition of "lobbying" activities which are subject to regulation. To the extent that the regulations rely on the underlying definition of "lobbying" provided in the Lobby Act, they are relying on an unconstitutionally over broad definition. The regulations should therefore be amended to include a definition of "lobbying" that comports with the constitutionally permissible scope of government regulation, reaching only organizational

<sup>38</sup> *U.S. v. Harriss*, 347 U.S. 612, 613 (1954).

<sup>39</sup> *Harriss*, 347 U.S. at 620.

<sup>40</sup> The Supreme Court in *U.S. v. Harriss*, 347 U.S. at 614, concluded that the federal lobby statute was unconstitutionally overbroad. That statute sought to require disclosures from lobbyists, defined as "any person... [who] receives money or any other thing of value to be used principally to aid (a) [t]he passage or defeat of any legislation by the Congress of the United States."

<sup>41</sup> N.Y. Leg. Law 1-c(c)(i)-(x).

<sup>42</sup> *Commission of Independent Colleges and Universities v. New York Temporary State Commission on Regulation of Lobbying*, 534 F. Supp. 489, 497 (N.D.N.Y. 1982).

<sup>43</sup> *Id.*

efforts to influence legislation which include direct communications with lawmakers or a choreographed grassroots campaign that makes a direct appeal to public officials.

**Recommendation:** The Commission is urged to recommend that the Legislature amend the definition of lobbying in the state's Lobby Act, consistent with courts' rulings on this issue, so as to limit the scope of lobbying to mean direct communication with government officials and choreographed grassroots campaigns that make a direct appeal to government officials.

**APPENDIX A:**

**Comments of the New York Civil Liberties Union regarding**  
**The New York State Attorney General Proposed Annual Disclosure of Electioneering**  
**Activities by Non 501(c)(3) Registrants**  
**(submitted March 6, 2013)**



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**Comments of the New York Civil Liberties Union**

regarding

**The New York State Attorney General  
Proposed Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants  
13 N.Y.C.R.R. 91.6**

**March 6, 2013**

The following comments are submitted on behalf of the New York Civil Liberties Union regarding the New York State Attorney General's proposed "Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants."<sup>1</sup> The New York Civil Liberties Union (NYCLU) is registered with the IRS as both a 501(c)(3) organization (as the NYCLU Foundation) as well as a 501(c)(4) organization. The NYCLU is thankful for the opportunity to comment on the Disclosures of Electioneering Activities to facilitate the development of these regulations.

**I. Introduction**

The right to freely discuss matters of public concern lies at the core of the First Amendment's protections of speech and expressive activities.<sup>2</sup> Accordingly, any regulations which are triggered by engaging in discussion of important issues must "reflect our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open."<sup>3</sup>

The proposed regulations would require reporting and disclosures from organizations that engage in a broad range of expressive activities in New York State. Under the proposed regulations, non-501(c)(3) organizations that spend \$10,000 or more on express election advocacy or issue advocacy will be required to report on all of their election-related expenditures, and to disclose all donors who have contributed over \$100. The Office of the Attorney General will, in turn, publish this information on its website.

<sup>1</sup> Proposed 13 NYCRR 91.6, *et seq.*

<sup>2</sup> *See, e.g., First National Bank v. Bellotti*, 435 U.S. 765, 776 (1976).

<sup>3</sup> *F.E.C. v. Wisconsin Right to Life*, 551 U.S. 449, 467 (2007) (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

The NYCLU objects to three provisions of the proposed regulations. First, the new regulations reach beyond express advocacy and its functional equivalent, and seek to regulate organizations engaged in pure issue-oriented speech unrelated to any electoral contest. Second, the breadth of information sought by the regulations is not sufficiently tailored to advance the governmental interests advanced in support of these disclosure requirements. Finally, controversial organizations that are constitutionally entitled to exemptions from disclosure are subjected to a standard for securing such exemptions that deviates impermissibly from the standard prescribed by the Supreme Court. Our reasons for reaching these conclusions is set forth below.

**II. The proposed regulations extend inappropriately beyond express advocacy speech and its functional equivalent, and seek to regulate issue-oriented speech unrelated to any electoral contest.**

The proposed regulations require disclosures from organizations that engage in both "express election advocacy" and "election targeted issue advocacy."<sup>4</sup> "Express election advocacy" is defined as either: (1) a communication with express words (e.g. "vote," "oppose," or "elect") calling for the election or defeat of a "clearly identified candidate," a political party, "or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to the voters at any election"; or, (2) communications that "otherwise refer[] to or depict[]" a candidate, political party, constitutional amendment, propositions, referenda or other questions submitted to the voters "in a manner that is susceptible to no reasonable interpretation than as a call for the nomination, election, or defeat of such candidates in an election."<sup>5</sup> Organizations that engage in "express election advocacy" are subject to the regulation's reporting and disclosure requirements regardless of when the speech occurs.

"Election targeted issue advocacy" is any communication "other than express election advocacy" that (1) refers to a "clearly identified candidate[] in that election"; (2) "depicts the name, image, likeness or voice of one or more clearly identified candidates"; or (3) "refers to any political party, constitutional amendment, proposition, referendum or other question submitted to the voters." Election targeted issue advocacy communications subject the speaker to regulation when made within six months of an election.<sup>6</sup>

In the thirty-seven years since *Buckley v. Valeo*,<sup>7</sup> the Supreme Court has consistently concluded that government regulation of election speech cannot extend beyond express election advocacy speech and its functional equivalent, to include the regulation of issue-oriented speech.<sup>8</sup> The Court has "long recognized that the interests held to justify the regulation of

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<sup>4</sup> 13 NYCRR 91.6(6)-(7).

<sup>5</sup> 13 NYCRR 91.6(6)(i)-(ii).

<sup>6</sup> 13 NYCRR 91.6(a)(7).

<sup>7</sup> 424 U.S. 1 (1976).

<sup>8</sup> *Buckley*, 424 U.S. at 43.

campaign speech and its functional equivalent might not apply to the regulation of issue advocacy.”<sup>9</sup>

But under the proposed regulations, organizations will find themselves subject to reporting and disclosure obligations as a result of engaging in purely issue-oriented speech, unrelated to an electoral campaign, so long as the speech took place within 180 days of an election. For example, a reproductive rights organization that purchases space in a newspaper to discuss reproductive rights issues, and mentions the name of an office holder who also happens to be seeking re-election, would trigger the reporting and disclosure requirements. This speech would constitute “election targeted issue advocacy” under the regulations even if the organization articulated support for some positions that an elected official had taken, and opposition to other positions of the official. Similarly, an environmental organization would trigger the reporting regime if it spent money to purchase a billboard to thank New York Senators for adopting a favorable position on a broad policy agenda, such as protecting New York’s forests. These actions would trigger the disclosure requirements even though no reasonable listener would consider the communication to be electioneering.

We recognize that in *Citizens United v. F.E.C.*<sup>10</sup> the Supreme Court upheld the application of the disclosure obligations set forth in the Bipartisan Campaign Reform Act (“BCRA”), even though BCRA’s disclosure requirements extend beyond expression that is the functional equivalent of express advocacy.<sup>11</sup> But the Court, under the facts of that case, had previously found the film *Hillary*, produced by Citizens United, constituted the functional equivalent of express advocacy.<sup>12</sup> Accordingly, in upholding the application of BCRA’s disclosure obligations to Citizens United, the Court was simply applying those obligations to an organization engaged in the functional equivalent of express advocacy. No broader lesson can be drawn from the opinion. Indeed, the application of disclosure obligations to entities that engage in issue-oriented speech unrelated to an electoral campaign would run directly afoul of the Supreme Court’s decision in *F.E.C. v. Wisconsin Right to Life*.<sup>13</sup> In that case, the Supreme Court noted that it has “never recognized a compelling interest in regulating ads....that are neither express advocacy nor its functional equivalent.”<sup>14</sup>

Adherence to the limitations imposed by *Wisconsin Right to Life* and the avoidance of extending the regulations to issue-oriented speech will not significantly impede most efforts to impose disclosure obligations on organizations that seek to disguise campaign ads by pretending that they are simply issue-oriented expression.

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<sup>9</sup> *Wisconsin Right to Life*, 551 U.S. at 457.

<sup>10</sup> 130 S. Ct. 876 (2010).

<sup>11</sup> *Citizens United*, 130 S. Ct. at 915.

<sup>12</sup> See *Citizens United*, 130 S. Ct. at 890 (concluding that *Hillary* the movie was “equivalent to express advocacy” as “a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President”).

<sup>13</sup> 551 U.S. 449 (2007).

<sup>14</sup> *Wisconsin Right to Life*, 551 U.S. at 476.

The regulations already mandate disclosures for communications which are “susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat” of a candidate in an election.<sup>15</sup> This language is substantially similar to the definition of the functional equivalent of express advocacy found in the federal election regulations.<sup>16</sup> If properly enforced, this provision is sufficient to regulate advertisements that purport to be issue-oriented speech, but are actually veiled candidate-advocacy. For example, pursuant to the analogous portion of the federal regulations, the Federal Elections Commission was able to require the payment of a substantial civil fine from the organization Swiftboat Veterans and POWs for Truth for their in advertisements in the 2004 presidential election.<sup>17</sup> Among other things, the Swiftboat television and newspaper ads argued that John Kerry “lacks the capacity to lead,” “cannot be trusted” and accused him of attending secret meetings with “enemy leaders.”<sup>18</sup>

Thus, if properly employed, the functional equivalent prong of the regulations is both sufficient and more narrowly tailored to target the type of speech that the Attorney General seeks to regulate. It is possible that the vigorous application of the “functional equivalent” test will not reach every conceivable effort to use the pretense of issue-oriented speech to escape the disclosure obligations imposed upon those organizations that sponsor campaign speech. But where, as here, First Amendment rights are implicated, it is better to err on the side of unfettered and robust discussion of public issues and to leave pure issue-oriented speech unregulated.

Moreover, additional regulations could more narrowly serve an interest in informing the electorate about who is financing “sham” issue advertisements by ensuring that any issue-oriented communications are truly independent from a campaign. Federal law can provide some guidance in how to enforce independence by requiring disclosures for “coordinated” campaign speech.<sup>19</sup> The federal regulations include five types of coordinated communications that are subject to regulation:

- (1) Communications created at the suggestion of a candidate, or with the assent of a candidate;
- (2) Communications created with the material involvement of a campaign or committee;

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<sup>15</sup> 13 N.Y.C.R.R. 91.6(a)(6)(ii).

<sup>16</sup> FEC regulation 11 C.F.R. § 100.22(b) defines “express advocacy” as communications which, “when taken as a whole and with limited reference to external events, such as proximity to the election” could only be reasonably interpreted as advocating the election or defeat of a clearly identified candidate because (1) the communication is “unmistakable, unambiguous, and suggestive of only one meaning”; and (2) “reasonable minds could not differ” as to whether it encourages the election or defeat of a candidate.

<sup>17</sup> *In re Swiftboat Veterans & POWs for Truth*, MURs 551 & 5525 (F.E.C. Dec. 13, 2006) (conciliation agreement), available at <http://eqs.nictusa.com/eqsdocs/000058ED.pdf>. Specifically, the Commission concluded that Swiftboat Veterans’ communications “comment[ed] on Senator Kerry’s character, qualifications, and fitness for office, explicitly link[ed] those charges to his status as a candidate for President, and have no other reasonable meaning than to encourage actions to defeat Senator Kerry.” *Id.* at ¶ 28.

<sup>18</sup> *Id.* at ¶ 15.

<sup>19</sup> 11 C.F.R. 109.21.

- (3) Communications created after "substantial communication" with the campaign about its needs;
- (4) Communications created by a vendor common to a candidate or campaign, who also utilizes information that is not publicly available; or,
- (5) Communication that was paid for by an employee, independent contractor, or former employee of a candidate, with the use of non-public information.<sup>20</sup>

The proposed regulations could thus more narrowly target "sham" issue speech by including a provision that would require disclosures of any communications that were created pursuant to coordination between the campaign and the organization.

Finally, as a matter of policy, any new regulation of protected speech activities should remain within the clearly defined boundaries of permissible government regulation. By requiring disclosures from organizations engaged in pure issue discussion, the proposed regulations seek to regulate uncharted territory as regards constitutionally protected speech. The regulations should therefore be amended to require disclosures only for communications that constitute express advocacy or its functional equivalent.

**III. The scope of information that the proposed regulations require organizations to disclose is not justified by the interests that the regulations seek to advance.**

Disclosure and reporting requirements do not impose limits on core political speech activities, but they are nevertheless subjected to heightened scrutiny because of the acknowledged toll that they exact on the exercise of established First Amendment rights.<sup>21</sup> Any forced disclosure regime, including one which applies exclusively to independent expenditures, must survive "exacting scrutiny," requiring a "substantial relation between the disclosure requirement and a sufficiently important governmental interest."<sup>22</sup> Compelled disclaimer and disclosure requirements have only been upheld to the extent that they advance the government's "informational interest" in providing the public with knowledge about "who is speaking about a candidate shortly before an election."<sup>23</sup>

Any information that the government requires organizations to make available must bear a "substantial relation" to the government interest being served. The proposed regulations fail this requirement in several ways. First, the regulations require disclosures from organizations that are not engaged in campaign speech. Second, the regulations are not narrowly tailored to address this interest because the \$100 threshold contribution level which subjects donors to disclosure is too low. Third, there is no asserted interest advanced through requiring information about the employers of contributors. Fourth, the proposed regulations require disclosures about donors whose funds did not support campaign speech. Finally, to the extent that the regulations

<sup>20</sup> 11 C.F.R. 109.21(1)-(5).

<sup>21</sup> See, e.g., *Citizens United*, 130 S. Ct. at 914.

<sup>22</sup> *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64).

<sup>23</sup> *Citizens United*, 130 S. Ct. at 916.

seek to better inform donors that their contributions are being used for election-related activities, such a goal is more effectively advanced by the provisions that require organizations to report on their election-related expenditures.

As discussed in the previous section, the proposed regulations require disclosures from organizations engaged in speech that cannot be construed as campaign speech. The regulations purport to "protect the public interest in transparency in the electoral process by disclosing contributions that covered organizations...use to influence New York state and local elections."<sup>24</sup> By mandating disclosures from organizations that are engaged exclusively in issue-oriented speech, and therefore are not attempting to influence elections, the regulations require disclosures beyond what is needed to advance this interest.

Second, the threshold contribution level which subjects a contributor to disclosure is too low. The regulations, accordingly, require information about too many donors to be made publicly available. Once an organization triggers the regulations, it is required to disclose the names, addresses, employers, and contribution information about all donors who have contributed \$100 or more.<sup>25</sup> If the State's interest is in knowing whether any "fat cats" are bankrolling an election campaign, this threshold amount is simply too low to advance that interest.

Third, disclosing the names of the employers of contributors to organizations fails to advance the regulation's asserted interests.

Fourth, rather than requiring disclosures about donors whose contributions were actually used to speak about a candidate before an election, the regulations require the disclosure of *all contributors* who have given money in excess of \$100 to an organization. This disclosure requirement applies regardless of whether a contributor's funds were intended to, or ever actually did, support election speech. Moreover, the regulations even require disclosures about donors who may have been unaware that their contributions were used to support election speech.<sup>26</sup> The information compelled is therefore broader than what is needed to advance the interest in informing New York's voters about who is speaking about candidates.

Finally, the proposed regulations assert that the disclosure obligations allow donors to know that the organizations to which they contribute engage in electioneering activities.<sup>27</sup> Organizations are already required under the proposed regulations to report on their election-related expenditures.<sup>28</sup> Interested contributors to the organization can therefore always examine

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<sup>24</sup> Regulatory Impact Statement for 13 N.Y.C.R.R. 91.6, § 3(E) ("Needs and Benefits").

<sup>25</sup> 13 N.Y.C.R.R. 91.6(c)(1).

<sup>26</sup> The Regulatory Impact statement notes that "donors to nonprofit organizations may be unaware that their donations to a charitable, social welfare or similar organization can be used to directly or indirectly influence elections." Regulatory Impact Statement for 13 N.Y.C.R.R. 91.6 § 2 ("Legislative Objectives").

<sup>27</sup> Regulatory Impact Statement for 13 N.Y.C.R.R. 91.6, § 3(E) ("Needs and Benefits").

<sup>28</sup> 13 N.Y.C.R.R. 91.6(b)(1)-(2).

the Attorney General's website to obtain such information. Thus, publication of contributors' personal information is an odd way of accomplishing this goal, and one which is not narrowly tailored to this end.

**IV. The "clear and convincing evidence" standard for granting an exemption from the public disclosure of personal donor information is an impermissible deviation from the constitutionally prescribed standard.**

The proposed reporting scheme implicates important privacy rights, and could result in retaliation and harassment. The Supreme Court has consistently articulated that exemptions from such disclosure requirements should be provided whenever there is a "reasonable probability" that release of such information will lead to harm. The proposed regulations impermissibly deviate from this standard. The regulation should be amended to provide an exemption based upon the standard articulated by the Supreme Court.

The regulation, as proposed, authorizes the Attorney General to grant, upon application, an exemption from the requirement to disclose donor information upon a showing of "clear and convincing evidence that such disclosure will cause undue harm, threats, harassment or reprisals to any person or organization."<sup>29</sup> The Supreme Court has found that the constitution requires that individuals and organizations are granted exemptions from compelled disclosures whenever they can demonstrate a "*reasonable probability*" that the forced disclosure of their donors or members will "subject them to threats, harassment, or reprisals from either Government officials or private parties" (emphasis added).<sup>30</sup> The Court adds that in assessing an application for an exemption, organizations must be afforded "sufficient flexibility" regarding the evidence that they are permitted to offer in demonstrating a likelihood of injury from the disclosures.<sup>31</sup>

The unduly strict evidentiary standard of "clear and convincing evidence" fails to adequately protect individuals and organizations from public disclosure of personal information, and from the harm that may follow from such disclosure. The regulations should accordingly be amended to comport with the constitutionally required standard: exemptions will be granted upon a showing of a "reasonable probability" of harm.

**V. Conclusion**

The proposed election regulations implicate core First Amendment rights to freely discuss matters of public concern. The regulations inappropriately extend beyond regulation of express advocacy and its functional equivalent, and seek to regulate organizations engaged in issue-oriented speech that is unrelated to any electoral contest. The broad scope of information required to be disclosed pursuant to the regulations is unsubstantiated by the interests asserted in

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<sup>29</sup> 13 N.Y.C.R.R. 91.6(h).

<sup>30</sup> *Brown et al. v. Socialist Workers' '74 Campaign Committee*, 459 U.S. 87, 93 (1982) (citing *Buckley*, 424 U.S. at 74) (emphasis added); see also, *Citizens United v. F.E.C.*, 130 S. Ct. 876, 914 (2010).

<sup>31</sup> *Brown*, 459 U.S. at 93.

support of the regulations. Finally, the regulations should be revised to provide organizations and donors constitutionally entitled to exemptions from disclosure requirements exemptions whenever they are able to demonstrate a "reasonable probability" of harm from such disclosures.

**APPENDIX B:**

**Comments of the New York Civil Liberties Union regarding**  
**The New York State Attorney General Proposed Revised**  
**Annual Disclosure of Electioneering Activities by Non 501(c)(3) Registrants**  
**(submitted May 17, 2013)**



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**Comments of the New York Civil Liberties Union**

**regarding**

**The New York State Attorney General  
Proposed Revised Annual Disclosure of  
Electioneering Activities by Non-501(c)(3) Registrants  
13 N.Y.C.R.R. 91.6 (Revised 4/17/13)**

**May 17, 2013**

The following comments are submitted on behalf of the New York Civil Liberties Union (NYCLU) regarding proposed revised rules related to "Disclosure of Electioneering Activities," which were published by the Department of State on April 17, 2013.<sup>1</sup>

The revised rules would amend proposed rules that were first published on December 12, 2012.<sup>2</sup> The NYCLU submitted comments regarding these proposed rules on March 6, 2013. These comments raised three concerns: (1) the regulations extend inappropriately beyond "express advocacy" and its functional equivalent, and seek to regulate pure issue-oriented speech that is unrelated to any electoral contest; (2) the regulations are overly broad as regards the nature and scope of information that must be disclosed; and (3) the standard for exempting organizations from the disclosure requirements ("clear and convincing evidence" that disclosure would result in reprisal) is an impermissible deviation from the constitutionally prescribed standard.

In revising the proposed regulations, it appears that the Office of the Attorney General has taken into account the concerns raised by the NYCLU and other organizations. However, it is the position of the NYCLU that, notwithstanding the proposed amendments, the revised regulations place undue constraints upon protected First Amendment activity.

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<sup>1</sup> NY Department of State, Notice of Revised Rulemaking, 13 NYCRR 91.6, *et seq.*, April 17, 2013.

<sup>2</sup> Proposed 13 NYCRR 91.6, *et seq.*

**I. The regulations continue to require disclosures for purely issue-oriented speech in violation of the First Amendment.**

In its comments of March 6, 2013, the NYCLU stated that the proposed regulations extend inappropriately beyond “express advocacy” and its “functional equivalent,” reaching, in the form of disclosure requirements, purely issue-oriented speech that is not coordinated with any electoral campaign. The regulations do so by defining “election targeted issue advocacy” quite broadly. As pointed out in the NYCLU’s comments, a reproductive rights organization that purchases space in a newspaper to criticize legislation that might impair a woman’s right to choose would be subject to the proposed disclosure obligations if the criticism were to identify the sponsor of the offending legislation and if that sponsor were a candidate for office. Such an issue-oriented statement by an ideological organization would trigger the disclosure requirements, even though no reasonable reader would consider the communication to be electioneering. Issue-oriented commentary of this sort is offered daily by non-partisan, non-profit organizations on a broad range of public policy issues. Discussion of issues of public concern lies at the core of the First Amendment. Yet, this measure would impose new disclosure obligations on such organizations, compromising associational privacy and imposing unwarranted administrative burdens upon these organizations for no substantial reason at all. In our view, the broad reach of the proposed regulation beyond electoral communications violates the First Amendment.

The Department of Law dismissed this analysis. It asserted that “[t]he Supreme Court has specifically rejected the contention that ‘disclosure requirements must be limited to speech that is [express advocacy or] the functional equivalent of express advocacy.’” In support of this assertion, the Department of Law cited *Citizens United v. FEC*, 130 S. Ct. 876, 915 (2010). See Assessment of Public Comments J.D. Law-52-12-00013-P at Section 6. But the Department of Law misreads the Supreme Court decision in *Citizens United*. It fails to place the language upon which it relies in the proper factual and analytical context of the case. In *Citizens United*, the Court repeatedly made clear that it was engaged only in an “as applied” evaluation of the constitutionality of the disclosure requirements at issue, concluding that the disclosure obligations were valid only “as applied to the ads for the movie and to the movie itself” that were at issue in that case. *Citizens United*, 130 S. Ct. at 914.

Moreover, the Court had, earlier in the *Citizens United* opinion, specifically found that the communications at issue “qualifie[d] as the functional equivalent of express advocacy.” *Citizens United*, 130 S. Ct. at 890 (“...there is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton. Under the standard stated in *McConnell* and further elaborated in *WRTL*, the film qualifies as the functional equivalent of express advocacy.”). Accordingly, in evaluating the disclosure requirements in *Citizens United*, the Court upheld the requirements “as applied” to a communication constituting “the functional equivalent of express advocacy.” That is the narrow holding of this part of the Court on the disclosure issue. No wider precedential lesson can be drawn from the case on this issue. Properly understood, the opinion

cannot support the claim, advanced by the Department of Law, that issue-oriented speech that is not “express advocacy” or the “functional equivalent of express advocacy,” or not “coordinated” with an electoral campaign can be regulated without violating the First Amendment. Such a category of independent, issue-oriented public discourse was simply not at issue in *Citizens United*.

Moreover, the interpretation urged by the Department of Law would render *Citizens United* incompatible with a decision that the Court reached only three years earlier in *Federal Election Commission v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007). The *WRTL* case involved a non-profit, issue-oriented organization that, during the 2004 electoral cycle, attempted to broadcast advertisements declaring that a group of Senators was filibustering to delay and block federal judicial nominees. The ads further asked members of the public to contact Wisconsin Senators Feingold and Kohl, urging them to oppose the filibuster. Because the communications identified candidates for public office by name within thirty days of the primary election, they were barred by a federal law that attempted to regulate electronic communications within thirty days of a primary election. The nonprofit organization challenged, as violative of the First Amendment, the application of the federal law to the advertisements; and the Court upheld the challenge. In doing so, the Court concluded that the communication at issue constituted neither “express advocacy” nor its “functional equivalent.” And, in this regard, the Court announced that it “has never recognized a compelling interest in regulating ads, like *WRTL*’s, that are neither express advocacy nor its functional equivalent.” *WRTL*, 551 U.S. at 476. In light of the unambiguous articulation of this principle in *WRTL*, it is inconceivable that the *Citizens United* Court would have reversed this declaration of principle without any serious discussion of the *WRTL* case, or in the absence of any effort to distinguish that case.

Finally, proponents of the proposed revised regulation can find no support in the decisions that the *Citizens United* Court cites in upholding the disclosure obligations in that case. In two of those cases, *FEC v. Massachusetts Citizens for Life (MCFL)*, 479 U.S. 238 (1986) and *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court was again concerned only with electoral speech that constituted “express advocacy.” And *United States v. Harriss*, 347 U.S. 612 (1954), the Court was addressing lobbying, not campaign speech, which presents its own unique problems. In none of the campaign finance cases did the Court uphold the regulation of speech that did not constitute “express advocacy” or the “functional equivalent of express advocacy.” Indeed, *Buckley* limited the regulatory reach of the Federal Election Campaign Act only to “express advocacy.” *Buckley*, 424 U.S. at 43-44.

In sum, the Department of Law’s rejection of our comments is not supported by *Citizens United*, *Buckley* or *MCFL*. And it directly conflicts with the Court’s reasoning in *WRTL*. The overreaching of the proposed regulation should be cured.

**II. The standard for granting exemptions from the public disclosure of personal donor information fails to comport with the constitutionally prescribed standard.**

Any government mandate requiring an organization to disclose information about its members or supporters must provide exemptions for individuals and organizations for whom public disclosure could result in harassment or reprisal.<sup>3</sup> As noted in our previously submitted comments, the Supreme Court has repeatedly recognized that the Constitution requires that organizations must be granted exemptions from compelled disclosure if it can be demonstrated there is a “*reasonable probability*” that the forced disclosure of organizations’ donors or members will “subject them to threats, harassment, or reprisals from either Government officials or private parties.”<sup>4</sup>

The revised version of the proposed regulations provide that the Attorney General *may* grant exemptions from the requirement to publicly disclose information about donors upon a showing that “the covered organization’s primary activities involve areas of public concern that create a *substantial likelihood* that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization,”<sup>5</sup> This standard deviates from the constitutionally required standard, which mandates that exemptions are provided whenever there is a “*reasonable probability*” of harm from such disclosures. The “substantial likelihood” standard appears to require a higher evidentiary showing of harm in order to obtain an exemption. The standard for granting exemptions should, accordingly, be amended to bring it in line with the standard approved by the Supreme Court – allowing for organizations to receive exemptions from public disclosure of information regarding members and supporters whenever there is a “reasonable probability” that the disclosure will result in harassment or reprisals.

**Conclusion**

The regulations at issue implicate rights at the core of the First Amendment’s protections for speech and association. The NYCLU encourages the Office of the Attorney General to reconsider the regulation of pure issue-oriented speech, and to lower the evidentiary burden that organizations must meet before receiving an exemption from the proposed disclosure requirements.

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<sup>3</sup> See, e.g., *Brown et al. v. Socialist Workers’ 74 Campaign Committee*, 459 U.S. 87 (1982).

<sup>4</sup> *Socialist Workers*, 459 U.S. at 93 (citing *Buckley v. Valeo*, 424 U.S. 1, 74 (1976)); see also, *Citizens United v. F.E.C.*, 130 S. Ct. 876, 914 (2010).

<sup>5</sup> Revised Proposed 13 N.Y.C.R.R. 91.6(h)(1) (emphasis added).

**APPENDIX C:**

**Comments of the New York Civil Liberties Union regarding**  
**The Joint Commission on Public Ethics Source of Funding Regulations**  
**(submitted February 8, 2013)**



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## Comments of the New York Civil Liberties Union

regarding

### Joint Commission on Public Ethics Source of Funding Regulations

February 8, 2012

The following comments are submitted regarding the Joint Commission on Public Ethics (JCOPE) Source of Funding Disclosures on behalf of the New York Civil Liberties Union. Founded in 1951, the New York Civil Liberties Union (NYCLU) is a not-for-profit, nonpartisan organization with eight chapters and 50,000 members across New York State. The NYCLU's mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, the right to privacy, and equality and due process of law for all New Yorkers. Members of the NYCLU staff are registered lobbyists pursuant to New York's Lobby Act,<sup>1</sup> and the NYCLU reports as a lobbying "client."<sup>2</sup> The NYCLU is thankful for the opportunity to comment on the Source of Funding Disclosures to facilitate the development of JCOPE's regulations.

#### I. Introduction

It is well settled that the right to petition the government to take a position on proposed legislation is among the freedoms protected by the First Amendment.<sup>3</sup> In a representative democracy "the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives."<sup>4</sup>

Equally well established is the right to make contributions in order to advance one's beliefs, and the right of "like-minded persons to pool their resources in furtherance of common political goals."<sup>5</sup> However, the compelled government disclosure of personal information about individuals who make financial contributions to lobbying organizations "can seriously infringe

<sup>1</sup> N.Y. Leg. Law 1-a, *et seq.*

<sup>2</sup> See N.Y. Leg. Law § 1-j(4).

<sup>3</sup> See, e.g., *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (U.S. 1961).

<sup>4</sup> *Id.* at 137.

<sup>5</sup> *Buckley v. Valeo*, 424 U.S. 1, 22 (U.S. 1976).

on privacy of association and belief guaranteed by the First Amendment.”<sup>6</sup> Any attempts to compel the disclosure of information about people engaged in protected First Amendment activities must be narrowly tailored in furtherance of a specific government interest, and must minimize any impact on protected speech and associational rights.<sup>7</sup>

Existing New York State law requires organizations engaged in lobbying activities to submit twice-yearly reports on the names, addresses, and compensation provided to individuals who engage in lobbying activities.<sup>8</sup> The Joint Commission on Public Ethics has proposed a new set of disclosure requirements which will additionally require any organization that engages in lobbying activities to disclose the names, addresses, and employer and contribution information for all contributors who have provided at least \$5,000 to a lobbying organization.<sup>9</sup> These mandated disclosures implicate core First Amendment rights to petition the government and to advocate for or against potential government action.

JCOPE’s proposed regulations raise a number of concerns. First, government regulation of lobbying and the imposition of disclosure obligations are consistent with the First Amendment only if they are limited to “direct communication” with elected officials to influence legislation. Second, the JCOPE regulations require the disclosure of information on contributors to organizations that engage in lobbying, even if the contributed funds are never utilized for such a purpose. This provision is overly broad, and as a consequence, infringes upon First Amendment rights. Third, the mandated disclosure of personal information about contributors will undoubtedly have a “chilling effect” on the exercise of protected speech and petition activities. Finally, the First Amendment requires that the proposed regulations provide for exemptions for controversial organizations upon a showing of a “reasonable” likelihood of harm from the disclosures. Each of these will be addressed in turn.

**II. In seeking to regulate all attempts to “influence the passage or defeat of any legislation,” the Lobby Act and the Source of Funding regulations extend beyond the scope of activities the government is constitutionally permitted to regulate.**

As currently written, the Lobby Act and the Source of Funding regulations attempt to regulate any and all attempts to “influence the passage or defeat of any legislation,” even if such efforts do not involve direct communication with lawmakers or a choreographed grassroots campaign. This extends well beyond established constitutional limits. Accordingly, the regulations should be amended to include the constitutionally required, narrow definition of lobbying activities subject to government regulation.

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<sup>6</sup> *Buckley*, 424 U.S. at 64.

<sup>7</sup> *See, id.*

<sup>8</sup> N.Y. Leg. Law §§ 1-h(4), 1-j(4).

<sup>9</sup> *Source of Funding Regulations*, 13 N.Y.C.R.R. 938, *et seq.*

In light of the well-established First Amendment rights to express opinions on government action and to petition the government (both of which may involve lobbying activities), the Supreme Court has noted the necessity of construing disclosure requirements for lobbying activities "narrowly to avoid constitutional doubts."<sup>10</sup> The Court, in *U.S. v. Harriss*, accordingly concluded that the government can only regulate "lobbying in its commonly accepted sense - [] direct communication with members of [government] on pending or proposed [] legislation."<sup>11</sup>

The New York Lobby Act is, on its face, considerably overbroad. It is quite similar in this respect to the statute that the Supreme Court in *Harriss* found to be unconstitutional.<sup>12</sup> The Lobby Act defines lobbying as "any attempt to influence the passage or defeat of any legislation" or any of a number of other activities aimed at influencing government actions which carry the force of law.<sup>13</sup> By its terms, New York's law does not confine itself to "direct communications" with legislators, as is required by the Supreme Court in order to avoid constitutional invalidity. Rather, it seeks to reach any attempt "to influence the passage or defeat" of any legislation.

In order to save the constitutional validity of the statute, the State Lobbying Commission has previously stated in an advisory opinion that it will not apply the New York Statute "in any context outside the definition of lobbying contained in the *Harriss* case."<sup>14</sup> The State Lobby Act's constitutional validity thus rests upon the grounds that it seeks to regulate *only* direct communications with lawmakers, and so long as there is "no indication that this New York legislation requires disclosure of indirect lobbying activities."<sup>15</sup>

The new JCOPE regulations contain no definition of "lobbying" activities which are subject to regulation. To the extent that the regulations rely on the underlying definition of "lobbying" provided in the Lobby Act, they are relying on an unconstitutionally over broad definition. The regulations should therefore be amended to include a definition of "lobbying" that comports with the constitutionally permissible scope of government regulation, reaching only organizational efforts to influence legislation which include direct communications with lawmakers or a choreographed grassroots campaign that makes a direct appeal to public officials.

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<sup>10</sup> *U.S. v. Harriss*, 347 U.S. 612, 613 (1954).

<sup>11</sup> *Harriss*, 347 U.S. at 620.

<sup>12</sup> The Supreme Court in *U.S. v. Harriss*, 347 U.S. at 614, concluded that the federal lobby statute was unconstitutionally overbroad. That statute sought to require disclosures from lobbyists, defined as "any person...[who] receives money or any other thing of value to be used principally to aid (a) [t]he passage or defeat of any legislation by the Congress of the United States."

<sup>13</sup> N.Y. Leg. Law I-c(e)(1)-(x).

<sup>14</sup> *Commission of Independent Colleges and Universities v. New York Temporary State Commission on Regulation of Lobbying*, 534 F. Supp. 489, 497 (N.D.N.Y. 1982).

<sup>15</sup> *Id.*

**III. The proposed Source of Funding Regulations are overly broad, requiring the disclosure of information about contributions neither designated for, nor utilized to, support lobbying activities.**

The Supreme Court has held that "contributions and persons having only an incidental purpose of influencing legislation" are excluded from the scope of acceptable government regulation of lobbying activities.<sup>16</sup> Notwithstanding this, JCOPE's Source of Funding Regulations require organizations that meet the threshold requirements for disclosure to report *both* contributions "specifically designated for lobbying in New York" *as well as* contributions "not specifically designated for lobbying in New York" (the latter of which are reported as a percentage of the actual contribution).<sup>17</sup> The regulations therefore require that organizations disclose information about contributions that are merely *available* for lobbying activities, regardless of whether they are ever utilized for such a purpose.

This regulatory scheme extends beyond lobbying activities, requiring the disclosure of personal information from contributors whose funds will never be used to fund lobbying activities. The compelled disclosure of contributions which may only incidentally support an organization's attempts to influence legislation is unconstitutionally over broad. The NYCLU therefore objects to the disclosure scheme to the extent that it requires the public sharing of personal donor information related to contributions that are not utilized by organizations to influence legislation.

**IV. In seeking the disclosure of personal information, JCOPE's regulations will undoubtedly have a "chilling effect" on the willingness of individuals to engage in constitutionally protected expression.**

In assessing compelled government disclosure requirements, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights."<sup>18</sup> Regulations which encroach upon constitutionally protected rights "must be justified by more than a showing of a mere rational or legitimate interest."<sup>19</sup>

The mandated disclosure of contributors' names, addresses, employers, and contribution information is likely to result in people either contributing less to advance issues that they believe in (so they do not fall within the scope of the compelled disclosure) or altogether withholding their support from organizations that are required to report on the identity of their donors. As a result, the Single Source Disclosure requirements may inhibit the full and free exercise of the First Amendment right to petition the government, and to associate with likeminded individuals.

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<sup>16</sup> *Harris*, 347 U.S. at 622 (internal quotation mark omitted).

<sup>17</sup> 13 N.Y.C.R.R. 938.2 ("Amount of Contribution(s)").

<sup>18</sup> *Doe v. Reed*, 130 S.Ct. 2811, 2818 (2010).

<sup>19</sup> *Commission on Independent Colleges & Universities*, 534 F. Supp. at 494.

Disclosure requirements have been upheld only to the extent that they advance the important government interest in "stemming the reality or appearance of corruption in the electoral process."<sup>20</sup> Government regulation of campaign finance speech rests upon an interest in preventing any corruption which may be created by the relationship between a contributor and an elected official.

The concerns about corruption in the lobbying context are quite different. While there may be an interest in knowing which organizations are expending resources to influence legislation, there is a more attenuated interest in the personal information of donors who contribute to organizations which then use those funds to hire a lobbyist to take action on a variety of proposed issues. As a matter of policy, it is unclear why the government's interest in maintaining transparency would not be adequately served in this context by limiting the disclosure requirement to expenditures related to an organization's lobbying activities.

**V. The standards for granting controversial organizations an exemption from the disclosure requirements deviate impermissibly from the constitutionally mandated standard.**

A government requirement that an organization disclose the identity and personal information of financial supporters "can seriously infringe on privacy of association and belief guaranteed by the First Amendment."<sup>21</sup> Therefore any government-mandated disclosures of such contributors must provide exemptions for individuals or organizations for whom disclosure could result in harassment or reprisals.<sup>22</sup> The Supreme Court has found that the constitution requires that organizations be granted exemptions from compelled disclosures if they can demonstrate "a *reasonable probability*" that the forced disclosure of their donors or members will "subject them to threats, harassment, or reprisals from either Government officials or private parties."<sup>23</sup> Organizations must be afforded "sufficient flexibility" in the evidence that they are permitted to offer in demonstrating a likelihood of injury from the disclosures.<sup>24</sup>

JCOPE's regulations provide that the Commission "may" grant an exemption from the Single Source disclosure requirements for 501(c)(4) organizations, provided that the organization "shows that its primary activities involve areas of public concern that create a *substantial likelihood* that disclosure of its Single Source(s) will cause harm, threats, harassment or reprisals to the Single Source(s) or individuals or property affiliated with the Single Source(s)."<sup>25</sup> This standard deviates from the constitutionally required standard that exemptions are provided whenever there is a "*reasonable probability*" of harm to contributors. Further, the "substantial

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<sup>20</sup> *Citizens United*, 130 S. Ct. at 903.

<sup>21</sup> *Buckley v. Valeo*, 424 U.S. 1, 64 (1976).

<sup>22</sup> See, e.g., *Brown et al. v. Socialist Workers' '74 Campaign Committee*, 459 U.S. 87 (1982).

<sup>23</sup> *Socialist Workers*, 459 U.S. at 93 (citing *Buckley*, 424 U.S. at 74) (emphasis added); see also, *Citizens United v. F.E.C.*, 130 S. Ct. 876, 914 (2010).

<sup>24</sup> *Socialist Workers*, 459 U.S. at 93.

<sup>25</sup> 13 N.Y.C.R.R. 938.4(b) (emphasis added).

likelihood” standard appears to require a higher evidentiary showing of the likelihood of actual harm. Accordingly, the standard for exemptions should be amended to bring it closer in line with the standard required by the constitution – allowing for the granting of exemptions whenever there is a “reasonable” likelihood that the disclosure will lead to harassment or reprisal.

In order to protect the associational privacy of contributors to organizations that work on controversial issues, the NYCLU urges JCOPE to grant such exemptions upon the showing of a reasonable likelihood that the disclosure will lead to harm. As the Legislature noted in enacting the Lobby Act, “organizations whose primary activities focus on the question of abortion rights, family planning, discrimination or persecution based upon race, ethnicity, gender, sexual orientation or religion, immigrant rights, and the rights of certain criminal defendants are expected to be covered by such an exemption.”<sup>26</sup> Granting exemptions to organizations engaged in such issues will ensure that their financial supporters do not become the targets of harassment, and worse, for their support of controversial work. This will also ensure that organizations are not undermined in their ability to engage in such advocacy.

## **VI. Conclusion**

JCOPE’s Source of Funding Regulations implicate speech and activities at the core of the First Amendment’s protections. The NYCLU encourages JCOPE to narrow its reporting requirements so that they require only the reporting of information that actually advances the State’s interest in promoting transparency, without compromising First Amendment rights. The regulations should define “lobbying” activities consistent with the definition upheld by the Supreme Court: attempts to influence legislation which include direct contact with legislators or a choreographed grassroots campaign. Further, the disclosure requirements should only require reporting on contributions that are actually utilized by an organization to support lobbying activities. As a matter of policy, the NYCLU questions the mandated disclosure of personal information about contributors, given the foreseeable chilling of constitutionally protected activities, and the absence of any clear connection or relationship between such contributions and the effort to contact, or influence, elected officials. Finally, the standard for granting controversial organizations exemptions from the disclosure requirements should be amended so as to be consistent with the constitutionally necessary standard for such exemptions.

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<sup>26</sup> 2011 NYS Legislative Bill and Veto Jackets, S:5679, L 2011, ch. 399, at 10 (2011).

Vandewalker, Ian

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**Testimony of Ian Vandewalker  
Counsel, Democracy Program  
Brennan Center for Justice at NYU School of Law**

**Submitted to the Moreland Commission to Investigate Public Corruption**

**Public Hearing, September 24, 2013**

Co-chairs Fitzpatrick, Rice, and Williams, and members and staff of the Commission, thank you for the opportunity to testify today on behalf of the Brennan Center for Justice at NYU School of Law.<sup>1</sup> As you know, democracy cannot function without the trust of the people, and your mission is vitally important to restoring public trust.

The problems we face are systemic, and the solution must be comprehensive. Piecemeal, limited measures will not lead to the cultural change that we desperately need in Albany. Meaningful change will occur only if we enact sweeping campaign finance reform — including a small-donor matching system; robust, independent, and bipartisan enforcement; lower contribution limits; and meaningful transparency.

Bribery and extortion scandals harm public trust, but that damage is compounded by public awareness of the legal corruption pervading the system. Even the ablest prosecutor can't address the ability of moneyed interests to use legal campaign contributions to secure access and influence. When big money holds so much power over Albany, members of the public turn away in disgust, and democracy loses its lifeblood.

The package of reform that the Brennan Center and others recommend is not merely a laundry list of discrete policies, it is an interlocking set of reforms with public campaign financing as the keystone. New York's current system makes

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<sup>1</sup> The Brennan Center for Justice is a non-partisan public policy and legal advocacy organization that focuses on fundamental issues of democracy and justice. Our Money in Politics project works with policy makers and activists to help draft and enact legislation, defend campaign finance laws in court, and promote innovative public financing solutions nationwide, particularly small donor matching funds. The Brennan Center is affiliated with New York University School of Law, but this testimony does not purport to represent the school's institutional views on this or any topic.

policymakers dependent on a tiny slice of the population to fund their campaigns, skewing legislative priorities. Implementing reform will make Albany represent all of us.

In 2012, state legislative candidates raised 74 percent of their funds from donors of \$1,000 or more and special interest groups; only 8 percent came from individuals who gave \$250 or less.<sup>2</sup> In contrast, candidates participating in the New York City public funding system in 2009 gathered 37 percent of their private contributions from donors who gave \$250 or less.<sup>3</sup> When public matching funds are considered, small donations take on even greater importance to the candidates, constituting 64 percent of their funds, as compared to 24 percent from donors of \$1,000 or more and special interests.

Lowering contribution limits from their current sky-high levels will reduce the disparity between what most can afford to give and the highest contributions, ensuring that the public match acts as a strong incentive for candidates to seek out donations from average New Yorkers. In order to make lower contribution limits meaningful, loopholes must be closed and there must be a strong, independent enforcement agency.

A professional and adequately funded agency is necessary to effectively administer a public funding program, as well as to enforce all of the state's campaign finance laws. The current lack of enforcement encourages scofflaws. Robust administrative enforcement would be a valuable tool in rooting out and preventing corruption.

Independent expenditures are protected under the Supreme Court's *Citizens United* decision, and they continue to increase, forcing candidates to fundraise under the looming threat of massive outside spending. In 2012, just three outside groups spent at least \$5 million; the total amount for last year's state elections is impossible to know because of inadequate disclosure requirements.<sup>4</sup> New York State needs detailed, mandatory disclosure to allow the voters to properly evaluate

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<sup>2</sup> CAMPAIGN FINANCE INST., PUBLIC MATCHING FUNDS IN NY STATE, REVERSING THE FINANCIAL INFLUENCE OF SMALL & LARGE DONORS, WOULD LEAVE THE CANDIDATES "WHOLE" WHILE COSTING NEW YORKERS ONLY \$2/YEAR (2013), [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>3</sup> CAMPAIGN FINANCE INST., MICHAEL MALBIN ET AL., WHAT IS AND WHAT COULD BE: THE POTENTIAL IMPACT OF SMALL-DONOR MATCHING FUNDS IN NEW YORK STATE ELECTIONS (2012), [http://www.fairelectionsny.org/old/wp-content/uploads/2012/02/CFI\\_Impact-Matching-on-NYS.pdf](http://www.fairelectionsny.org/old/wp-content/uploads/2012/02/CFI_Impact-Matching-on-NYS.pdf).

<sup>4</sup> Jimmy Vielkind, *NYSUT Spent \$4.5M to Be Heard at the Polls*, ALBANY TIMES UNION, Nov. 14, 2012, <http://www.timesunion.com/local/article/NYSUT-spent-4-5M-to-be-heard-at-the-polls-4038821.php>; Jimmy Vielkind, *Outside Groups Will Boost Cecilia Tkaczyk*, ALBANY TIMES UNION, Oct. 22, 2012, <http://blog.timesunion.com/capitol/archives/161389/outside-groups-will-boost-cecilia-tkaczyk>.

the trustworthiness of the sources of campaign messages.<sup>5</sup> But even with improved transparency, significantly lower contribution limits, and robust enforcement, candidates could still be drowned out by independent and unaccountable spending. A small-donor match is needed to amplify grassroots support and allow candidates who depend on small donations from constituents to effectively respond to outside spending with their own messages.

Public financing has the power to improve our democracy by reducing corruption, making elections more competitive, allowing candidates to spend less time fundraising and more time engaging with constituents, and substantially increasing the number and diversity of people who donate to campaigns. Anything less than comprehensive reform with public financing at its core will fail to change the culture of Albany and cannot be called real reform.

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<sup>5</sup> See *Buckley v. Valeo*, 424 U.S. 1, at 67 (1976). The Supreme Court recognized that the disclosure of information about political spending “allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.”

*Werner, Rob*



[www.acrreform.org](http://www.acrreform.org)

**Testimony of Rob Werner, National Field Director of  
Americans for Campaign Reform**

**Submitted to the Moreland Commission to Investigate Public Corruption  
Public Hearing, September 24, 2013**

Co-Chairs Fitzpatrick, Rice and Williams, and members of the Commission, thank you for the opportunity to testify today. Your work in illuminating the corrosive effects of the undue influence in money in our political system is essential to the cause of reform – thank you for your efforts on behalf of the people of New York.

Americans for Campaign Reform (ACR) is a national organization with offices in Concord, New Hampshire and Washington, DC. We are chaired by former US Senators Bill Bradley (D-NJ), Bob Kerrey (D-NE) and Alan Simpson. In addition, our work is supported by a bi-partisan group of over 175 former members of congress, including New Yorkers Mike Arcuri, Scott Murphy, Sherwood Boehlert, and Amo Houghton. ACR works closely with a large number of New York based advocates on behalf of comprehensive campaign finance reform, including the Brennan Center for Justice at New York University.

ACR supports small donor voluntary public funding of federal elections through a system which encourages candidates to rely on small donations from a large number of supporters, provides matching funds to maximize the impact of small donations, requires full disclosure of money spent to influence elections, has reasonable contribution limits and provides each eligible candidate with the resources necessary to run an effective, competitive and winning campaign. Such a public funding system should be based on the following principles:

- Our leaders should be elected by, and accountable to, the voters based on their ideas, ability, experience, and character, not their access to individuals, entities or special interests that can give and raise large campaign contributions. A public funding system should support candidates who can show widespread support by building a base of small donor contributions.
- No individual, organization or entity should be allowed to contribute to a candidate, political party or political committee at a level that gives rise to the appearance or reality that such contributions will provide the contributors with undue access or influence and increase the potential for real and apparent corruption.
- Our campaign finance system must allow every eligible individual to have a meaningful opportunity for his/her voice to be heard and to participate in

voluntarily supporting the candidates of their choice. Matching small contributions with public funds in an amount that empowers each small donor should be the foundation of any public funding system.

- Candidates who qualify for public funds must have access to sufficient funds to communicate their ideas, values and perspectives, and to engage their opponents, so that they can fully make their case as to why they should be elected and, so that the voters can then make an informed choice. After each election, there should be an independent review to identify any adjustments needed to qualifying requirements and funding levels consistent with the goals and principles of the public funding system
- The rights of independent and third party candidates must be respected.
- Changes in society and technology often require elections and campaigns to evolve and adapt to most effectively reach voters. Our campaign finance system should encourage and support such changes to the extent they support the goals and principles of the system.
- Efficient, effective and independent administration and enforcement of the campaign finance system is necessary to allow citizens and candidates to have confidence in the system and our democracy. Recognizing the problems inherent in elected officials administering and enforcing the system that governs their own reelection, there must be an independent, non-partisan commission to administer and enforce the law and make appropriate adjustments to the rules, including qualifying and funding levels.

Weber, Susan

**Statement by Susan Weber, Regional Organizer, MoveOn.org:**

**I have a petition to present to you, signed by over thirty thousand citizens of New York, seeking comprehensive campaign finance reform, including:**

Public financing of legislative and statewide races, lower limits and full disclosure of campaign contributions, and strong enforcement.

New Yorkers deserve better than the current pay-to-play culture in Albany. To change the culture, we need to change the system.

*Mandle, Joan*

MORELAND COMMISSION HEARING  
SEPTEMBER 24<sup>TH</sup>  
ALBANY NY

I am Joan Mandle from Hamilton, NY. I am Professor of Sociology at Colgate University, Chair of the Board of Directors of Public Campaign, and Executive Director of the Democracy Matters Institute. My research as a sociologist has focused on policies that increase the inclusion of all Americans in decisions that affect their lives. As Chair of Public Campaign, I have been involved for over 10 years in national and state efforts to pass public financing of election campaigns, and as Executive Director of The Democracy Matters Institute I have worked for 13 years with college and high school students in New York State and throughout the country who are committed to, and I quote, "getting big money out of politics and people back in."

All of these experiences inform my brief testimony here today. I urge the Moreland Commission to recommend that the NY legislature enact comprehensive campaign finance reform with public campaign financing, based on the model of the New York City, as its core. Since this hearing is focused on lobbying, let me begin with the fact that the existence of hundreds of registered lobbyists in Albany, with employers who spend millions of dollars to gain access to, face time with, and influence over our

legislators, is an important source of the growing citizen cynicism and hostility to politicians, politics and government. New York citizens know they cannot compete with these paid lobbyists who - on the basis of campaign contributions by their employers - exercise outsized influence on legislation. So much so that ordinary citizens feel they have no voice in their own government. This leads many to simply opt out of the political process altogether.

But it can be different. We can restore trust in the New York government -- that it is truly of, by and for the people; not bought and paid for by lobbyists and their employers. We need campaign finance rules that encourage, not discourage, New Yorkers to be active political actors. This includes voting of course, but it also includes enabling individuals who are not wealthy or connected to wealth to run for office with a real chance of actually winning. Public financing of campaigns has worked well in other states. It has contributed to more competitive elections, more diverse candidates including young people, and yes, to ideas becoming important in winning races, rather than their simply being decided by whoever spends the most money.

I have personally heard Janet Napolitano, the former Governor of Arizona, talk enthusiastically about how exciting it was for her to run for

office (and win) as a publicly financed candidate. She especially noted two differences. First, she said, campaigning as a publicly financed candidate gave her much more time to spend talking with her constituents because she was not spending hours on the phone with potential funders or flying to New York or Los Angeles to raise money. And she particularly emphasized her ability to personally reach out to groups like Native Americans, many of whom had never had a gubernatorial candidate campaign in their community.

And second, she said that, once elected, she was not beholden to the many lobbyists who flocked to the Governor's office. "They had to get in line like every other Arizona citizen" she said, "and plead their case on the merits."

New York State needs to pass fundamental campaign finance reform and give our government back to the people.

*McKee, Michael*

**Prepared Testimony of Michael McKee:**

Testimony before the Moreland Commission to Investigate Public Corruption

Tuesday, September 24, 2013

My name is Michael McKee. I am a board member and treasurer of Tenants Political Action Committee, an all-volunteer organization that engages in direct election activity on behalf of pro-tenant candidates for elected office in New York State. I am also a member of the board of directors of Metropolitan Council on Housing, the citywide tenants union.

For obvious reasons, Tenants PAC focuses our efforts on the state legislature, and for the same obvious reasons, we focus on the state senate. In a typical two-year election cycle, we have been able to contribute between \$30,000 and \$50,000 to candidates we endorse. All of this is money raised from tenants and tenants' rights supporters. Our overhead for rent, phone, internet and related costs of operations is modest, so the lion's share of funds we raise go to support our endorsed candidates.

The contrast between the funds we contribute to candidates and the campaign contributions made by the real estate industry – the New York City real estate industry to be precise – is clear. We could never match their money. But we bring something else to the table in elections which the landlords cannot, in that we recruit volunteers to door knock, phone bank, and all the other grunt work needed to win elections.

The tenant movement has been repeatedly clobbered in Albany. In the last twenty years there have been a series of legislative enactments that have steadily eroded tenant protections and removed apartments from regulation.

Since 1994 we have lost at least 300,000 rent-stabilized apartments in New York City and suburban counties, possibly as many as 400,000, which have been converted to market rate status when they become vacant – a process commonly known as Vacancy Deregulation. The individuals and families moving into these deregulated units have no basic protections from arbitrary rent increases or arbitrary eviction. The weakening of our rent

protection laws has greatly exacerbated the affordability crisis in the downstate housing market, while landlords' profit margins have swollen.

Attempts to reverse the phase out of our rent protection laws have failed so far. We have been unable to win enactment of repeal of Vacancy Deregulation, or to win significant reforms in the rent laws that would better protect rent-regulated housing and renters, better protect market-rate renters, and stop the loss of affordable housing.

The reason for this failure is clear: real estate money. Major landlords and developers in New York City contribute staggering amounts of money every year to politicians in Albany.

And they spread it around. The real estate lobby gives millions of dollars each year to the governor, leaders of the state senate and assembly, campaign committees controlled by the legislative leaders, individual legislators, and candidates challenging pro-tenant incumbents. Of course, they also give to candidates for local offices, including Mayor of New York City.

Big real estate gives to state political parties, including the Democratic Party, the Republican Party, the Conservative Party, and the Independence Party. They give to PACs run by the Real Estate Board of New York and the NYC Rent Stabilization Association – despite its odd name, a landlord organization. (RSA has two PACS, RSA PAC and the Neighborhood Preservation Political Action Fund. Most of their contributions to politicians come from the latter, probably because it sounds neutral.)

How are big landlords and developers able to get around the annual \$5,000 limit on contributions from corporations? It's no secret. They set up a Limited Liability Company for each of their properties. Because of a loophole in our already lax campaign finance system that defies all logic, LLCs are not treated as corporations, and each LLC is considered an individual contributor allowed to make \$150,000 per year in contributions.

The LLC loophole is used by other industries, but the New York City real estate industry is the major abuser of this legal but corrupting mechanism. Closing the LLC loophole should be high on your list of recommendations for reform.

We also urge that you recommend capping contributions to the party housekeeping accounts. While this money is not supposed to go to support candidates, everyone in or around state government knows that it is used for that purpose.

Real estate doesn't seem to use the housekeeping account loophole as much as the other industries do, because they maximize their hard dollars through the LLC loophole, having so many more LLCs at their disposal than other industries.

In addition to closing the LLC loophole and capping housekeeping account contributions, we urge that you recommend lower contribution limits, and public matching funds for all state elections.

We are not naïve, and we know that there will be enormous resistance in Albany to changing the status quo and tightening our loose campaign finance laws. But if this commission adopts a strong reform position, it will help move the cause forward with the public.

*Benjamin, Jaron*

**Prepared Testimony of Jaron Benjamin:**

Thank you. I'm Jaron Benjamin, the executive director of the Met Council on Housing, an organization working to ensure safe, stable and affordable housing for New Yorkers since 1958. I'm here today because the influence of big money interferes with my organization's mission.

In January, the legislature quietly passed a multi-million dollar giveaway in the form of a tax subsidy for five Manhattan luxury towers. Governor Cuomo approved the tax break as part of a larger housing bill, which he signed this January 30.

The tax breaks are part of the 421-a program, a city program originally intended to spur development and later revised to encourage affordable housing construction as well. Although this program only affects New York City, changes in the program, named after the section of the state tax code that established it, requires state legislative approval.

Specifically, the legislature had to allow the five developments – located at 99 Church Street, 520 Fifth Avenue, 157 West 57 Street, 109 Nassau Street and 78-86 Trinity Place – to get the 421-a tax breaks even though the buildings would not normally be entitled to them. New construction in midtown Manhattan is ineligible for the 421-a tax subsidy unless the development includes on-site affordable units, which all towers lacked. But the five developers wanted the tax breaks anyway. Buildings aren't eligible for the tax breaks unless they meet a list of prerequisites, but somehow these five luxury developments were grandfathered in to a program that closed five years ago.

That's because a handful of developers wanted it and expected it, after using campaign finance loopholes to contribute heavily to the campaign chests of state legislators, party committees and the governor himself.

In our report, the Metropolitan Council on Housing reviewed what the luxury real-estate developers spent and what they received in return. We found that 4 of the 5 companies gave more than \$1.5 million (\$1,531,531) to state elected officials, political parties and real-estate PACs between 2008 and 2012, including at least \$440,962 to PACs, state offices, and political parties in 2012 alone. And Governor Cuomo, who had to sign the legislation, received \$150,000 from the four developers in 2012. He was

the biggest recipient of cash from these developers last year.

A handful of real-estate developers winning such a huge giveaway - at a time where there are more homeless people in New York City than ever before, and an unsettling number of families are severely rent burden (that is to say a paycheck away from being homeless) - is a reflection of real-estate's outsized influence and just how broken the current campaign finance system is.

Even legislators who have a long history of favoring the expansion of affordable housing voted for the bill, since it contained items they favored. In fact, 12 democratic state senators (including Adriano Espallat and Liz Krueger) have called for a repeal of the tax breaks because the 421-a tax breaks went beyond the typical horse-trading in the legislature. One57, the "Billionaires' Tower," is a luxury high-rise near Carnegie Hall. The two penthouses sold for \$90 million each, but thanks to the 421-a tax break, each of the two One57 penthouse owners will save more than one million dollars in city taxes over ten years (\$2.4 million combined). It's important to note that there are nearly 130 more apartments in the building.

And this comes at a time when New York City is facing its worst housing crisis.

These tax breaks represent millions of dollars that the city has lost. The money could have been used for real housing needs, like rent subsidies for the more than 50,000 people sleeping in homeless shelters or for the repair of dilapidated apartment buildings. The 421-a program cost the City \$755 million in 2010 in lost real property tax revenue, according to the Pratt Center for Community Development.

New York needs an election system that reduces the political influence of real estate and the amount developers can spend on candidates and campaigns. We urge Albany to close the LLC loopholes that allow real estate to send endless amounts of cash to campaigns. A better, reformed system would ensure that our elected officials are accountable to regular voters, amplifying their voices above those of Extell and other mega-developers. Greater transparency, lower contribution limits, repeal of the LLC loophole and, public matching funds will help achieve the kind of accountability New Yorkers need and deserve.

Sefcik, Diane  
(pronounced "SEFF-CHICK")

**Prepared Testimony of Diane Sefcik:**

Re: Campaign Finance Reform/Money in Politics

The establishment of political integrity in NYS and the nation requires election reform and a will to restore public control vs. corporate control over the political process.

This includes:

- 1) Implementation of Public Financing of elections to give ALL candidates the chance to represent their constituents uncompromised by personal resources and special interest support.
- 2) Implementation of campaign fund limits, so that all candidates have an equal pool of money to use. This would free up time otherwise spent on fund-raising activities, give incumbents more time to pay attention to legislative issues, and reduce the influence of marketing experts to manage public perception.
- 3) Implementation of legal and ethical structures that deny privileged access to politicians and government staff by well-financed special interest lobbyists and by entities such as ALEC (American Legislative Exchange Council).
- 4) Implementation of Plain English INDEPENDENT and scrupulous attention to money matters that includes audit trails for trips, conferences, gifts, etc. and the public disclosure of same in a timely manner on a government website.
- 5) Implementation of Plain English INDEPENDENT interpretation of legislation that separates special interest clauses and extrapolates financial benefits to those special interests, published in a timely manner alongside the legislation on a government website.
- 6) Implementation of INDEPENDENT public service announcement campaign educating voters about issues related to political corruption.

Thank you.

Dianne Sefcik  
194 Clickman Rd  
Westerlo, NY 12193

*Sacha, Mark*

Public Hearing of the Moreland Commission  
to Investigate Public Corruption in New York State  
Prepared Testimony of Mark A. Sacha, Esq.  
September 24, 2013

Chairpersons Fitzpatrick, Rice and Williams, members of the Moreland Commission and members of the public, I appreciate the opportunity to be here today.

My name is Mark A. Sacha, and for twenty-three years, under four District Attorneys, I was an Assistant District Attorney in Erie County, New York. For almost ten years, I was a Deputy District Attorney who was in charge of prosecuting public corruption cases. I speak today as an informed citizen.

I am here to advise the public and the voting citizens of New York of the "elephant in the room", the hypocrisy which has not yet been addressed before this Commission. Election fraud and public corruption are not prosecuted properly, not because of a lack of laws in this State, but by a lack of will. The sad reality is that District Attorneys are political. Many have horrible conflicts of interest, which affect their ability to act. In order to reach their position, they make alliances, accept money and cut political deals with other politicians. They reach their goals through these people.

The public has the right to know the truth based on my own personal experience. In 2008, I conducted an investigation that uncovered widespread criminal election law violations by a number of individuals, including Steven Pigeon, a person who has close political ties to Pedro Espada, Governor Cuomo, former Erie County District Attorney Frank Clark, and present District Attorney Frank Sedita, who is also a member of this panel. I personally handed Mr. Sedita a 53 page memo outlining the facts surrounding my 2008 investigation.

As a result of my attempt to do the right thing and hold Mr. Pigeon accountable, I was retaliated against by his friend, Frank Sedita. When I informed the public of Mr. Sedita's hypocrisy and misconduct, I was fired.

Now four years later, the same pattern of misconduct is occurring in Erie County. The September 22, 2013 edition of the Buffalo News contained a lengthy article detailing new allegations of illegal conduct by Pigeon. Current election campaigns are wrought with allegations of false filings, straw donors and donations which exceed contribution limits. This Commission has received a complaint about Mr. Pigeon. These allegations of corruption in Erie County have gone on for years.

Prosecuting the powerless is easy. The real test is when you are asked to investigate the powerful. District Attorney Sedita has failed the test.

The truth is that election law cases are not pursued because few elected District Attorneys will prosecute their political friends and political family. District Attorneys have subpoena power but choose not to use it. They have the power and means, but lack the will. This is the sad truth.

Mr. Sedita has made public statements making it clear that he will not investigate election crimes, yet he sits on this panel. This is wrong and an abdication of his sworn duties. I commend Preet Bharara for breaking the mold and for changing this dynamic that has plagued our state. Mr. Bharara has had the courage to expose the culture of corruption that has been allowed to exist in Albany and in New York State. His ongoing efforts have forced the creation of this panel.

I say to the voting public, free and fair elections are your right. Demand that your elected District Attorneys protect that right. Demand that your elected District Attorneys act in the public interest, not their own. Thank you.

*Smith, Robb*  
*Gilbert, Richard*

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**Testimony for the Moreland Commission Hearing**

**September 23, 2012**

**Campaign Finance and the  
Corruption of Public Policy**

Interfaith Impact of NYS is deeply concerned about the inequitable campaign finance system in New York, its potential to corrupt public policy making, and its effects on democracy.

Because the Legislature has failed to pass campaign finance reform year after year, individual citizens are now in serious danger of losing their power to participate in democratic government. Until we reform the money-driven political process, we will find democracy slowly but surely slipping from our grasp as a moneyed oligarchy increasingly takes control of the political system. This will not only corrupt public policy and widen the already gaping disparities between rich and poor, but also deny the inherent dignity of the individual - which is as much a religious\* as a political issue.

The Commission has an opportunity to look deeply into the effects this inequality of access has on ethical government and to consider whether large campaign donations may not be the moral, if not the legal, equivalent of bribery.

IINYS supports a public financing program that will provide matching funds to qualified candidates for public office. We also support lowering New York's extremely high contribution limits, which ensure the dominance of wealthy contributors. The combination of reasonable contribution limits and matching small contributions with public funds to increase their impact can help level the playing field for all campaign contributors.

Money is not speech; money is power. We urge the Commission to look into the power of special-interest money and how public campaign financing could dilute, increase the opportunity for contributors of modest means to have a genuine impact, provide voters with a wider choice of candidates, reduce the amount of time candidates and elected officials need to spend raising money from wealthy donors, and provide more opportunity for more people to participate in the electoral process.

Interfaith Impact of NYS is a statewide organization of congregations, clergy and lay leaders from Protestant, Reform Jewish, Unitarian Universalist and other faith traditions. We urge Gov. Cuomo and the NYS Legislature to pass meaningful campaign finance reform during this session of the legislature.

Respectfully submitted by  
Robb Smith, Executive Director  
Interfaith Impact of NYS

***Interfaith Impact of NYS: Working for the Common Good  
through Progressive Religious Advocacy***

## Prepared Testimony of Rev. Richard S. Gilbert, Interfaith Impact of NYS

Campaign Finance Reform A Theological Issue

by The Reverend Richard S. Gilbert  
President, Interfaith Impact of New York State

Joseph Campbell in *The Power of Myth* speaks of "...a time when...spiritual principles informed the society. You can tell what's informing the society by what the tallest building is. When you approach a medieval town, the cathedral is the tallest thing in the place. When you approach an eighteenth-century town, it is the political palace that's the tallest thing in the place. And when you approach a modern city, the tallest places are the office buildings, the centers of economic life....That's the history of Western civilization."

I believe Campbell's compelling image is at the heart of American political problems. The market dominates not only our economic life, but our political life as well. We might call it market imperialism, as the market invades and dominates every other phase of human existence. It is a case of money operating outside its sphere. This is plutocracy - government by the few - rather than a democracy - government by the many - and that is where we are heading as the economic losers increasingly abdicate responsibility to the winners and opt out of the political system.

Lord Acton once said that "power tends to corrupt, and absolute power corrupts absolutely." It might also be said that "money tends to corrupt, and unlimited money corrupts absolutely." Finance reform scandals emerging out of the 1996 American political campaign corroborate those words. The result is that Americans increasingly believe political power is for sale to the highest bidder.

Conservative thinkers understand economic and political freedom as inextricably interwoven. Economist Milton Friedman sees the capitalist economy as a voting booth - each person voting with his/her dollars for the goods and services (including government presumably) that he/she wishes. But increasing concentration of economic power as the rich get richer and the poor get poorer and large corporations control decision-making threatens this philosophy of human freedom. In political democracy it is one person, one vote. In political economy we are in danger of seeing one dollar, one vote, since those with dollars exert a disproportionate influence on public policy. To a disturbing degree power grows out of the end, not of a gun barrel, but a dollar bill. Since members of the House and Senate need to raise thousands of dollars a day to conduct a campaign for election or re-election, we have a new Golden Rule of Politics: those with the gold make the rules - or at least control those who do.

The Hebrew Bible warns about such concentration of money and power. The prophet Isaiah warned, "Woe to those who joined house to house, who add field to field, until there is no more room, and you are made to dwell alone in the midst of the land. The Lord of hosts has sworn in my hearing: 'Surely many houses shall be desolate, large and beautiful houses, without inhabitant.'" (5:8-9) The idea of a radical equality was suggested in the "Year of the Jubilee," in which land was redistributed to its original owners as a means of equalizing land ownership, in those days the primary source of wealth.

Amos was powerful in his denunciation of those "who trample upon the needy" and "buy the poor for silver and the needy for a pair of sandals." (8:4-6).

In the Christian scriptures we find a very strong bias toward the poor and powerless. In Matthew Jesus is reported to have said, "... it will be hard for a rich man to enter the kingdom of heaven. Again I tell you, it is easier for a camel to go through the eye of a needle than for a rich man to enter the Kingdom of God." (Matthew 19:23-24) It was said that St. Jerome would rather store money in the stomachs of the poor than in a purse. Economic resources were given in common for the use of all people, not

merely the rich. Clearly the concentration of power and wealth was not anticipated by early Christianity. The Social Gospel movement at the turn of the century and the Roman Catholic bishop's articulation of God's "option for the poor," also articulated by Protestant theologians, suggests the need to guard against the rich and powerful exploiting the poor and powerless.

To be sure each citizen has formal freedom to participate in the process, but lack what political philosopher John Rawls calls "the worth of freedom," the capacity and opportunity to participate in those decisions that affect one's life. To political pundits like George Will, who believes campaign spending limits inhibit free speech, we can only note that in the current mass media context it takes considerable sums of money to exercise that free speech to the degree necessary to support political campaigns. Anatole France wrote of the "majestic equality of the laws, which forbid rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread."

Unitarian Universalists affirm the "inherent worth and dignity of every person," a value undermined when concentrations of power render individual political activity relatively meaningless. The Unitarian Universalist Association's covenant affirms the "use of the democratic process ... in society at large," a value compromised when economic powers exert a disproportionate influence on public policy. Democracy is here understood as the capacity of people to participate in the decisions that affect their lives.

Religious educator Hugo J. Hollerorth once wrote, "To be a human being is to be a dwelling place of power. To move about the world, and interact with it, is to encounter power. We live in a world inhabited by power - power which impinges upon us and affects us every moment of our existence.... Religion arises ... out of the effort of human beings to make their way in a world of conflicting powers."

Individual citizens are in serious danger of losing their power to participate in democratic government. Unless we reform the money-driven political process we will find democracy slowly but surely slipping from our grasp as a moneyed oligarchy increasingly takes control of the political system. This will not only corrupt public policy and widen the already gaping disparities between rich and poor, but also deny the inherent dignity of the individual - which is as much a religious as a political issue.

Our calling as religious people is to work to create a community in which the commercial, the political and the religious edifices are in creative balance, and no one enterprise dominates the skyline. We must extend the democratic process throughout the society if we are to create the Beloved Community of which Martin Luther King, Jr., among others, spoke