

Architectural blueprints in shades of blue, showing various floor plans and elevations. A dark blue rectangular overlay is centered on the page, containing white text. The blueprints include labels such as 'SOUTH ELEVATION', 'NORTH ELEVATION', 'WOODEN HOUSE FINISH', and 'BRICK FACED'. Dimensions and other technical notes are scattered throughout the drawings.

Blueprint FOR Reform:

**NYPIRG'S RECOMMENDATIONS
TO THE
MORELAND COMMISSION TO
INVESTIGATE PUBLIC CORRUPTION**

New York Public Interest Research Group/NYPIRG
November 2013

Acknowledgements

Established in 1973, the New York Public Interest Research Group (NYPIRG) is the state's largest student-directed consumer, environmental and government reform organization. NYPIRG is a nonpartisan, not-for-profit group whose mission is to affect policy reforms while training New Yorkers to be citizen advocates.

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**RECOMMENDATIONS OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
TO THE
MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION:
*EXECUTIVE SUMMARY***

Governor Cuomo has appointed “The Moreland Commission to Investigate Public Corruption,” in order to examine New York State’s laws regulating public officials’ ethics as well as its campaign financing system. His power to create this Commission stems from the Moreland Act,¹ a law which allows him to convene a panel to examine waste in government and to make recommendations for reform. The Commission’s powers have been bolstered by Attorney General Schneiderman’s actions to “deputize” the commission members as deputy attorneys general. Doing so has given the Commission a broader legal reach than those powers contained in the Moreland Act.

The Commission offers an historic opportunity to change New York State’s political culture. New Yorkers have too often experienced controversies and scandals that grow out loopholes in campaign finance and ethics laws, lax limits on political fundraising, and too often ineffective or non-existent enforcement of such laws from agencies that seem structurally designed to fail. This document summarizes NYPIRG’s recommendations to the Commission for changes to the state’s inadequate systems of campaign financing, ethics, and its state Board of Elections.

SUMMARY OF CAMPAIGN FINANCE RECOMMENDATIONS:

Create a campaign finance system that includes a voluntary, public financing option. A system of public financing will help create greater electoral competition, give New Yorkers without access to wealth or a deep involvement in a political party, a real opportunity to run for office, as well as encourage greater engagement between candidates and voters.

Lower campaign contribution limits and eliminate “housekeeping accounts.” New York has the highest campaign contribution limits of any state that has limits in the nation. For example, it is legal to make a contribution of more than \$60,000 for someone running for state office, yet the maximum for federal office is less than \$3,000 for a general election. Even these high limits are easily circumvented through loopholes, such as those allowing donations of any size to political parties through “housekeeping accounts” and contributions from LLCs.

Require the disclosure of independent expenditures. Despite a statutory requirement that “independent expenditures” be disclosed, inadequate regulations have weakened this requirement. As a result, too often such entities are allowed to impact the electoral process while skirting the disclosure requirement.

¹ New York State Executive Law Section 63(8).

Ban the “personal use” of campaign donations. New York has lax restrictions on the use of campaign contributions for non-campaign, “personal,” expenditures. As a result, candidates can use campaign dollars for spending that supplements their personal lifestyle. Candidates’ ability to spend their campaign funds however they want often allows them to circumvent the state’s gift ban. Clear guidelines limiting the use of campaign funds to election-related activities must be established. Additionally, the use of donations should be limited to the election in which they were received. There should be requirements for candidates to close down their committees soon after an election, and restrictions prohibiting them from transferring excess funds to other committees, either within the state or nationally.

Enhance disclosures. Independent expenditure committees, including those which do not explicitly tell voters to elect a specific candidate yet are clearly engaged in electioneering, must file disclosure reports similar to those filed by other committees. Additionally, committees should identify bundlers and disclose the employers of their donors. The online disclosure database should be updated to provide a more user-friendly experience.

SUMMARY OF CAMPAIGN FINANCE ENFORCEMENT RECOMMENDATIONS:

Establish a new independent campaign finance enforcement and regulatory agency. The New York City Campaign Finance Board is the model which the Moreland Commission should use for a recommendation to bolster enforcement. There should be an odd number of appointees to this new entity from a variety of sources. NYPIRG recommends five commissioners should be appointed by the governor and legislative leaders, with no more than two from any one party and one without party affiliation or governmental involvement. The new commission must have the power to enforce all aspects of the campaign finance law and issue regulations. The results of all votes should be made public.

Ensure adequate staffing and resources. While the Board’s most serious problems result from its hyper-partisan structure, it has additionally suffered from a lack of resources. The new commission should have a budget proportional to other campaign finance regulatory agencies and one that sees its budget automatically annually increased by an index tied to the cost of elections in New York.

SUMMARY OF ETHICS REFORM RECOMMENDATIONS:

Restructure the board of the Joint Commission on Public Integrity (JCOPE). Two years ago, the state overhauled its ethics law. One change was the creation of the JCOPE. Unfortunately, the structure of the JCOPE board is flawed. The board allows membership by elected officials. The board is structured to allow legislative appointees to short-circuit investigations of lawmakers, even if a majority of the board votes for action. Moreover, the size of the board is unwieldy: the 14 member board should be reduced.

Place “revolving door” restrictions on the hiring of staff for JCOPE and the Legislative Ethics Commission (LEC). JCOPE has been criticized for the hiring of staff with close ties to the governor. The public must feel confident that the state’s ethics regulations are being

enforced without fear or favor. Ensuring that staff have not been recent employees of those whose ethics they monitor is important to ensuring such confidence.

Ensure that both the JCOPE and LEC are covered by the Freedom of Information Law and Open Meetings Law. There is no reason for ethics agencies to be outside the scope of the state's FOI and Open Meeting laws. Both laws currently allow for investigations and related activities to be exempt from public disclosure. Public support is bolstered by openness. Thus, the state's ethics watchdogs must operate in the open and be accountable to the public in which they serve.

Provide additional resources to enhance the power of local District Attorneys to investigate and prosecute illegal ethical activities. The governor has proposed additional powers be granted to local District Attorneys to investigate and, if necessary, prosecute political crimes. However, DAs are currently deeply involved in fighting street crime and other activities in which the public rightly demands action. Such a plan to boost DAs' involvement will fail unless that proposal couples additional powers with enhanced resources.

Restrict lobbyists' involvement in campaign fundraising. Given the unique role lobbyists play in the development of public policy, they should be subject to unique restrictions on their involvement in electoral activities.

**RECOMMENDATIONS TO THE
MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION:
INTRODUCTION**

Given the mind-boggling number of scandals, controversies and investigations that have plagued Albany in just the past few years, it is critical that New York State takes clear steps to begin to restore public confidence in state government. Mechanisms must be put in place to ensure that state government acts in a transparent manner and that it can be held to account for its actions.

One point can't be stressed enough: It will take the cooperation of the legislative branch to fully attack the problems of state government. To fully confront the problems that beset Albany, the legislature will have to be a partner with the governor if the state is to address the failure to resolve the public's needs, the gridlock, and the secrecy that have become the hallmarks of doing business in the State Capitol.

New Yorkers deserve a new Albany – one in which the government is responsible to the public, not the political parties, political leadership or special interests of the state. The ultimate goal is the restoration of a state government that meets the highest standards.

In the same way that Governor Theodore Roosevelt championed the civil service system as a way to reduce cronyism in government, so should Governor Cuomo and lawmakers champion measures to reduce political interference and bolster oversight.²

The governor and state lawmakers must begin to solve people's problems, set new ethical standards for the executive branch and take actions that help restore public faith in Albany. We urge that The Moreland Commission to Investigate Public Corruption recommend that the following actions be taken to chart a new course for the state.

² *"The spoils system was more fruitful of degradation in our political life than any other that could have possibly been invented. The spoils monger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office."* – Theodore Roosevelt, U.S. Civil Service Commissioner, in a letter dated February 8, 1895.

**RECOMMENDATIONS TO THE
MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION:
CAMPAIGN FINANCE**

New York State’s campaign finance law has been described as a disgrace. Essentially, limits don’t exist, disclosure requirements are weak and enforcement virtually non-existent. This “Wild West” approach to campaign finance has seriously eroded the public’s trust in its own democracy.

Fixing this system must be “Job 1” of the Moreland Commission.

Establish a voluntary system of public financing of elections that would boost electoral competition, encourage voter engagement, and greater reliance on donations from constituents.

Implement a system of public financing modeled after New York City’s successful program.

- Like most of the rest of the nation, New York State relies on private donations to fund its political campaigns. Since New York State has the highest campaign contribution limits of any state with limits, candidates focus their fundraising of those who can give the most – and those individuals and entities usually have business before the government.³
- Political campaigns are typically financed by a relative handful of donors. In the 2012 legislative election cycle, only 3.3% of money entering the system came from individual donors who gave aggregate totals of \$250 or less. By contrast, 61.7% came from businesses or unions, and 15.4% came from individuals giving \$2,500 or more.⁴
- In the New York City system of voluntary public financing, candidates who voluntarily choose to participate see their contributions enhanced when they raise donations of \$175 or less. In those cases, each \$1 raised is matched with \$6 in public funds.
- In the first three years of the 2013 election cycle for New York City Council candidates, 93% of the money raised came from individuals.⁵ This stands in sharp contrast to state-level legislative elections, in which only 29.5% of money comes from individuals.⁶
- That system has shifted the balance from relying on a small number of large donors to a system relying on a large number of small donors. It has given candidates an incentive to

Campaign finance recommendations:

√ Create a system of voluntary, public financing of elections.

√ Lower contribution limits and eliminate “housekeeping accounts.”

√ Require disclosure of independent expenditures.

√ Ban the “personal use” of campaign donations.

√ Enhance disclosures.

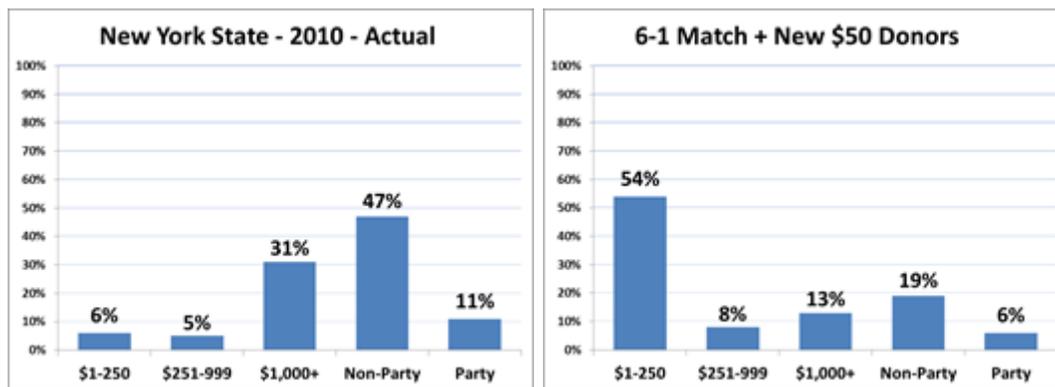
³ See, e.g., NYPIRG, *Albany’s Pay-To-Play Culture*, 19 April 2013.

⁴ NYPIRG, *Capital Investments 2012* (January 7, 2013).

⁵ New York City Campaign Finance Board, see: <http://www.nycffb.info/press/news/testimony/pdf/cfb/2013-05-01-AL-Testimony.pdf>.

⁶ NYPIRG, *Capital Investments 2012* (January 7, 2013).

turn their attention toward small donors through a program that matches donor contributions 6 for 1 up to \$175. A study by the Campaign Finance Institute showed that a similarly dramatic result would be likely in state elections. Below shows the CFI analysis using 2010 data. Assuming a similar outcome to what has occurred in New York City, a state public financing system would result in 54% of donors coming from small donations of less than \$250.⁷



- Thus, a key way to minimize the obvious conflict that results from relying on campaign contributions from those with business before the government is to create a system of public financing of elections. New York City has a system of public financing in which candidates who voluntarily opt into the system receive \$6 public for every \$1 raised from small contributions (up to \$175), thus encouraging the solicitation of large numbers of small donors.⁸ This stands in stark contrast to the state, where candidates rely on a small number of big donors.

Under the current system, most candidates rely on large donors who live outside of their district. As long as there is no incentive to raise money from constituents, legislators will continue to reduce their time spent fundraising by seeking contributions from those with the greatest incentive to give, particularly interests with business before state government.

As seen below, over half of the money donated by individuals (not including donations made by candidates' family members or the candidates themselves) came from contributors who gave amounts of \$2,500 or more to legislative candidates.

⁷ Campaign Finance Institute, "Public Matching Fund System Would Reverse the Importance of Small and Large Donors in New York State Elections," 4/17/12, see:

http://www.cfinst.org/Press/PReleases/12-04-17/Public_Matching_Fund_System_Would_Reverse_the_Importance_of_Small_and_Large_Donors_in_New_York_State_Elections.aspx. The percentage of money coming from small individual donors in these charts is slightly higher than in the numbers provided by NYPIRG, since we aggregated all donations from individuals whose names were presented with multiple spellings.

⁸ New York City Campaign Finance Board, see:

<http://www.nyccfb.info/candidates/candidates/publicmatchingfunds.aspx>.

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%

These donations are from a tiny fraction of the state's population.

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.⁹ By comparison, this number is:

- Less than the number of votes the *Rent is Too Damn High* candidate for governor received in 2010.¹⁰
- Almost 15,000 fewer than the inmates in state prisons (55,328).¹¹
- Less than the population of 55 New York counties.

With a system of public financing similar to New York City's successful program, candidates would have an incentive to spend time seeking small checks from constituents whose donations would be matched. They would spend less time fundraising, and the role of huge checks from special interests would be reduced.

Lower contribution limits to reduce the role of special interest money in New York's elections

- *The "housekeeping" loophole should be eliminated, and there should be no distinction between "hard" and "soft" money.*
- *Donations of "hard money" to political parties should be capped at reasonable limits similar to the federal maximum for individuals of \$32,400 per year.*

Donors to state parties in New York can give a whopping \$102,300 each year in money explicitly spent on elections.¹² This "limit" is more than *three times* the limit imposed by any state which regulates the size of donations from individuals to parties¹³ and almost twice the state's median annual household income.¹⁴

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

¹⁰ New York State Board of Elections, "Governor/Lt. Governor Election Returns November 2, 2010, see: <http://www.elections.ny.gov/NYSBOE/elections/2010/general/2010GovernorRecertified09122012.pdf>

¹¹ Rochester Democrat & Chronicle, "New York Prison Population," see: <http://rocdocs.democratandchronicle.com/database/new-york-prison-population>.

¹² Contribution limits, based on statute, are summarized on the Board of Elections' website at: <http://www.elections.ny.gov/CFContributionLimits.html>.

¹³ National Conference of State Legislatures, *Limits on Contributions to Political Parties* (February 5, 2008): <http://www.ncsl.org/research/elections-and-campaigns/limits-on-contributions-to-political-parties.aspx>

¹⁴ United States Census Bureau: Quick Facts, New York: <http://quickfacts.census.gov/qfd/states/36000.html>.

Unfortunately, these astronomical limits have been rendered meaningless by the state's "housekeeping" loophole, which allows donations to the political parties of *unlimited amounts* so long as their money is not spent for explicitly election-related purposes. Weak enforcement by the Board of Elections has resulted in the use of housekeeping money being spent for nearly *any* purpose. Recently, many of these committees have been paying for things such as campaign headquarters, campaign mailings, and campaign staff, all while managing to stay within the Board's informal definition of non-campaign expenditures.¹⁵

This lax interpretation has led to even more "creative" uses of housekeeping funds. For example, in 2012 the Senate Republican Campaign Committee's housekeeping account transferred over \$200,000 to the Independence Party, which was used to pay for campaign mailings.¹⁶ This certainly circumvents any reasonable definition of non-campaign expenses. Further, the idea that "party-building expenses" can involve sending money to different political parties is *prima facie* ludicrous. How can funding a competing political party be part of building the party making the donation? This expansion of permissible uses means that candidates can now raise unlimited donations on behalf of parties with the not-unreasonable expectation it could benefit their reelection efforts. Thus, contribution limits have been rendered meaningless.

- *Donations to all candidates should be capped at levels similar to the federal government's maximum of \$2,600 per election*

37 states limit the size of contributions individuals can make to candidates for office. New York's limits - \$60,800 to a candidate for statewide office – are the highest of any of these, and are more than twenty times the limit of the majority of these states.¹⁷

These limits encourage candidates to reach out to wealthy donors who have a desire to buy access with officials whose actions they hope to influence. In the first two-and-a-half years of the current election cycle, Governor Cuomo raised more than the state's median household income (\$56,951¹⁸) from 87 different donors. If candidates for the U.S. Senate running in New York are able to raise the money needed to fund a successful campaign while faced with the federal government's \$2,600 per election limit, there is no reason that state offices cannot do the same.

- *Corporations and their subsidiaries should be prohibited from donating more than \$1,000 to any committee in a calendar year or election cycle.*

The sections of existing law dealing with *contribution limits* treat corporations more stringently than individuals. Currently, corporations are prohibited from donating more than a combined \$5,000 to all candidates, PACs, and party committees in a calendar year. The sections that deal with *receipt limits*, however, do not treat corporations differently from other donors. The only language which keeps a corporation from donating \$60,800 to a candidate for governor is that which limits their total annual giving to \$5,000.

¹⁵ Information compiled by NYPIRG with information obtained from the Board of Elections.

¹⁶ Lovett, K., "Independence Party Goes Along with GOP Scheme to Dodge Campaign Finance Laws, Insiders Allege," *The New York Daily News*, March 4, 2013.

¹⁷ National Conference of State Legislatures, *State Limits on Contributions to Candidates* (June 1, 2012): http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012v2.pdf.

¹⁸ United States Census Bureau: Quick Facts, New York: <http://quickfacts.census.gov/qfd/states/36000.html>.

Despite the lack of receipt limits, the contribution limits have effectively provided reasonable restrictions for donations from most corporate entities. However, *McCutcheon v. FEC*, which is currently being argued before the U.S. Supreme Court, has the potential to create a national prohibition on all aggregate contribution limits while allowing the continuation of receipt limits. Corporations have more stringent contribution limits than individuals because it is clear that as money-making enterprises, their resources dwarf those of individuals and they thus have a greater potential to influence the policymaking process. In order to avoid a situation in which the U.S. Supreme Court opens up a flood of corporate money shortly before the 2014 election, the \$5,000 limit should be duplicated as a receipt limit. For future election cycles, more stringent receipt limits should be imposed. A reasonable level would be a \$1,000 maximum donation for corporations and their subsidiaries to any candidate in an election cycle and a \$1,000 maximum donation to PACs and party committees in a calendar year. All corporations – for-profit, non-profit, and union should be treated equally.

- *New York should immediately follow the federal example and treat LLCs as either corporations or partnerships depending on their structure. Recommendations by the Commission should include language that treats all LLCs as corporations and aggregates the donations made by different LLCs controlled by the same sources.*

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

Since the Board’s administrative decision, the role of LLCs in New York’s political system has skyrocketed. In the first six months of 2013, they accounted for 14% of all money raised by state-level candidates and party committees, giving more than three times as much as individuals who wrote checks smaller than \$1,000. While the Board in 1996 claimed the power to interpret this area of election law, when petitioned to reconsider their opinion, they have claimed that they do not have this power, and refuse to revisit the issue. This is true despite the fact that the FEC - which the Board used to justify its 1996 decision – has reversed course.¹⁹

Through various entities and campaign accounts, real estate developer Leonard Litwin has given Governor Cuomo \$625,000 at this point in the 2014 election cycle. He is perhaps the most frequent user of the LLC loophole, and often uses it to give more than \$1 million in a calendar year. In the six months between January 12 and July 11, 2013, Mr. Litwin was able to donate \$1,064,809, more than seven times the legal limit for an individual for an entire calendar year. Some of these donations are unconnected to the LLC loophole, and were the result of *Citizens United* or the housekeeping loophole. He gave \$639,809 in “hard” money directly to candidates.

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

¹⁹ Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400).

Personal Use

- *Clear guidelines must be established limiting campaign funds to campaign-related activities. These should mirror the regulations established by the IRS.*

The Board of Elections' informal approval of the permissible use of campaign funds has given campaign committees *carte blanche* to spend money however they want. One of the Board's spokesmen let candidates know unless they "out-and-out stick it in [their] pocket and walk away, everything's legal."²⁰ Candidates have taken full advantage of this. For example, former state Senator Bruno used his campaign funds to purchase an in-ground pool cover, ostensibly because he held political party meetings at pool side.²¹ In a typical year, legislators spend around half a million dollars on golf, \$200,000 on new cars, \$70,000 on flowers, and \$30,000 on cigars.²² Effectively, this means that legislators from districts in which they rarely see serious electoral challenges can treat their campaign donations as a way to boost their personal lifestyles.

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

²⁰ Medina, J. "State Campaign Finance Rules Need Tightening, Study Says," *The New York Times*, May 26, 2006.

²¹ "Gov. Cuomo's Next Big Task," *The New York Times*, December 23, 2011.

²² Information compiled by NYPIRG with information obtained from the Board of Elections.

- *Committees should be closed after an election.*

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

Several states have implemented restrictions on the ability of candidates to retain campaign funds after an election.²³ While carrying money over between election cycles does not necessarily lead to personal use to the same degree as retaining campaign funds after retirement, it does pose a serious problem. Campaign donations designed to help a candidate win an election should be limited to helping a candidate win that election. When candidates repeatedly take war chests from one election cycle to another, they are able to deter challengers and effectively circumvent contribution limits, as donors are able to repeatedly contribute the maximum for what can amount to one election effort. All candidates should thus be prohibited from retaining unspent campaign funds for more than a few months after an election.

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

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

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

A 2004 decision by a State Supreme Court found that a candidate who controls two committees designated for different offices within the state cannot transfer money between these committees beyond the recipient committee’s regular contribution limits.²⁴ For example, a candidate who has money left over from a run for a statewide office cannot transfer money to a senate committee beyond this office’s current combined primary/general election limit of \$16,800. This decision should be enforced and clearly stated in election law. This recommendation – especially when combined with the earlier recommendations that require candidates to close down their political committees soon after election and that no candidate can control more than one committee – should ensure that candidates do not unfairly benefit from incumbency.

Since it is impossible for New York to regulate receipts by committees established at the federal level or in other states, legislation should also prohibit the transfer of money from state campaign

²³ Charts provided by the FEC at <http://www.fec.gov/pubrec/cfl/cfl02/cfl02.shtml> dated (this was published in 2002), but show a number of states which, at least as of this year, required committees to dissolve after an election. Alaska, for example, requires the dissolution of committees by February 1st in the year after an election: <http://www.legis.state.ak.us/basis/statutes.asp#15.13.114>

²⁴ *Albany Times Union, Capitol Confidential*, “Klein lost key elections case, didn’t suffer consequences,” see: <http://blog.timesunion.com/capitol/archives/184503/klein-lost-a-key-elections-case-but-didnt-suffer-the-consequences/>.

committees to committees or Super PACs registered elsewhere. When Governor Pataki declined to run for reelection in New York and began eyeing a run for office at the federal level, he took advantage of porous campaign finance laws in states like Virginia to increase his national presence.²⁵ Recent media reports have suggested that Governor Cuomo might consider transferring some of his war chest to a federal Super PAC.²⁶

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

Improve transparency

- *Independent expenditure committees, including those which do not explicitly tell voters to elect a specific candidate yet are clearly engaged in electioneering, must file disclosure reports similar to those filed by other committees.*

A recent regulation issued by the Board has the potential to wreak more havoc on the state's democracy. In an attempt to deal with the U.S. Supreme Court decision in *Citizens United*, the New York State Public Integrity Reform Act of 2011 mandated that the Board create regulations for the disclosure of "independent expenditures" by January 1, 2012. The Board was over nine months late in finalizing these regulations and ultimately left disclosure requirements unchanged from those that had been required for decades.²⁷ Now Super PACs only need to disclose how they raise and spend their money if they *explicitly* tell voters whom they should vote for. In the 2012 elections, several issued mailings informing recipients that particular candidates like raising taxes or would vote to take rights away from women.²⁸ While these mailings were sent mere days before the election, the Board's regulations let them avoid disclosure.

- *All contributions should identify any individuals who "bundled" them.*

While lobbyists give large amounts of money directly from their personal bank accounts, they are able to deliver even more through "bundling" money on behalf of their clients. Participants in this practice multiply their political contributions and influence by aggregating checks written by members, clients, or associates. Other governments, notably New York City's, require committees to disclose which of their donations were bundled and by whom.²⁹ 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

²⁵ Details of former Governor Pataki's transfers can be found at <http://www.nysun.com/new-york/ny-republicans-press-pataki-to-release-funds/38474/>

²⁶ Erica Orden and Derek Kravitz, "Cuomo Stockpiles Cash," *The Wall Street Journal*, November 17, 2013. <http://online.wsj.com/news/articles/SB10001424052702303789604579196360485378496>

²⁷ New York State Register, October 24, 2012; Volume XXXIV, Issue 43, p. 1.

²⁸ For an example of this activity in the 2012 elections, see Jimmy Vielkind, *Senate GOP is Paying Super PAC Founder*, *Albany Times-Union: Capitol Confidential*, October 22, 2012.

²⁹ New York City Administrative Code Section 3-701 (12) defines bundlers as follows: "The term 'intermediary' shall mean an individual, corporation, partnership, political committee, employee organization or other entity which, (i) other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity to a candidate or authorized committee; or (ii) solicits contributions to a candidate or other authorized committee where such solicitation is known to such candidate or his or her authorized committee."

within the time of one week; these donations were often reported on the same day. There were 287 such donations overall, totaling \$559,383. An additional \$978,256.87 in donations came from the firm, its clients, or related organizations over the past year, though these donations were not reported by committees during the same weeks in which they reported donations from other clients. While there is nothing unlawful about this conduct, taken together, these numbers total \$1,537,639.87, meaning that more than 3% of the total money raised by all candidates and state parties during the time period examined came from one lobby firm.

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

- *The employers of any donors who contribute more than \$99 in a calendar year to any one committee should be identified.*

The purpose of campaign finance disclosure is to enable voters to discern who is contributing to their elected officials. Often, the appearance of a name, especially a common one, is not enough for a viewer to determine whether or not a donor has a unique relationship to the government, perhaps as a recipient of state funds. The New York City Campaign Finance Board's regulations can be used as a model.³⁰

- *The online campaign finance database should be updated to reflect 21st-century technology. Filings and search results should be easily exportable, and search options should emulate those available on the Attorney General's "NY Open Government" page.*

The Board's campaign finance disclosure website debuted in 1999; the software system supporting this system was created in 1994,³¹ a year in which *Time* ran a cover story called "The Strange New World of the Internet."³² Obviously, the capabilities of web-based technologies have changed over the past two decades. The new campaign finance regulatory entity should be required to reconstruct the presentation of data in a modern user-friendly way.

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

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

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

³⁰ New York City Campaign Finance Board, see: <http://www.nycffb.info/act-program/rules/index.aspx>

³¹ Celeste Katz, "NYS Board of Elections Pleads Poverty. . .," *New York Daily News* (October 28 2013)

³² *Time Magazine*, July 25, 1994, see: <http://content.time.com/time/covers/0,16641,19940725,00.html>.

**RECOMMENDATIONS TO THE MORELAND ACT COMMISSION:
STATE BOARD OF ELECTIONS**

New York’s campaign finance enforcement system fails.

Reforming the New York State Board of Elections is critical to the effort to end campaign finance dysfunction. In recent decades, the Board has too often failed to fulfill its mandate to enforce the state’s existing laws. Moreover, it has managed to weaken the state’s already inadequate campaign finance regulations by creating new loopholes. Much of this is the result of the Board’s makeup. The Board consists of two Democrats and two Republicans, and the resulting partisan gridlock ensures that enforcement actions are rarely taken. It’s important to note that while the state Constitution mandates that bipartisan boards of elections oversee the process for qualifying voters and monitoring the voting process,³³ there’s no such requirement for the campaign finance system and enforcement issues. Thus, establishing an independent campaign finance agency can be accomplished without amending the state Constitution. This current structural problem leads to serious consequences.

Campaign finance enforcement recommendations:
√ **Establish a new independent campaign finance enforcement and regulatory agency.**
√ **Ensure adequate staffing.**

- *Too many violations go unpunished.*

The most obvious failures of the Board have been in its failure to enforce election law. In filings submitted between January 2011 and January 2013, we have identified over 103,805 violations of election law.³⁴

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

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

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

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

Clearly, the decision to leave campaign finance oversight with the Board of Elections has failed. Fortunately, the Commission does not need to look far to find an example of a much better way to regulate and oversee campaign fundraising and spending. Over the course of 25 years the New York City Campaign Finance Board has established a well-deserved reputation as an

³³ New York State Constitution, Article II, Section 8.

³⁴ NYPIRG, *Malignant Neglect: The Abject Failure of the State’s Campaign Finance Laws*, May 7, 2013.

independent, vigorous watchdog entity that has ensured that both the spirit and letter of New York City's election regulations are followed.

Recommendation: Urge the creation of a new, independent campaign finance enforcement and regulatory entity modeled on the New York City Campaign Finance Board.

We strongly encourage the Commission to recommend an improved enforcement and oversight entity that will make a tremendous difference in the functionality of New York State's campaign finance system. The following recommendations should help ensure success:

- The new enforcement and regulatory commission should have an odd number of members appointed by a variety of officials. Such a model could include that each of the four legislative leaders and the governor appoint a total of five commissioners. The governor's appointment should have no partisan affiliation and have had no recent involvement as a public official.
- The new enforcement agency must exist outside of the state Board of Elections. However, the Board must still be required to regularly update the enforcement board with information pertaining to the occurrence of elections and candidates that have declared their candidacy for these races.
- This independent commission must have full regulatory power of all aspects of campaign finance law. Within six months of its creation, they must hold a public hearing to solicit input on existing regulations and advisory opinions that need review.
- Any votes to change state regulations shall require a simple majority, and all vote results will be made public. Such decisions must be discussed in full compliance with the state's open meetings and freedom of information laws.
- Random audits must be performed each year on at least 5% of state-level committees and 5% of local committees that are not already subjected to auditing by the New York City Campaign Finance Board. Any findings resulting from these audits will be subjected to the penalties that are described below.
- Staffing. At least one full-time staff member should be dedicated exclusively to identifying committees belonging to candidates, local parties, independent expenditure organizations, and any other group involved in electioneering that appear to have crossed thresholds of spending that would obligate them to register, yet have not done so.
- For minor violations, such as a committee's failure to disclose all of the required information for a donor or their misuse of labels designed to clarify the purposes of expenditures, regulatory actions should be handled at the staff level. Enforcement staff should notify treasurers about updates that are needed on their forms, and have the power to issue minor fines for a failure to comply.

- More serious violations, such as a failure to submit disclosure forms in a timely fashion, a refusal to correct minor violations identified by the enforcement staff, or donations made over the legal limits, should be subject to the actions by the newly-created commission. The commission would also handle every complaint made by a member of the public. It should be required to meet and vote on all complaints for which the staff has completed investigatory work at least once every two months between December and July, twice between the beginning of August and the date of the primary, and thrice between the primary and general elections. The result of every vote shall be made public.
- The most serious violations, including intentional attempts to mislead the source of a committee's donations and refusal to remit fines or submit information after being penalized by the board or its staff, should be referred to the Attorney General. The full list of these referrals must be posted on the new commission's website to ensure that political allegiances do not lead to partisan-driven prosecutions. District Attorneys will retain the freedom to prosecute any campaign finance violations they choose.
- Once an initial budget for enforcement staff is established, it should be indexed to ensure adequate future funding. As a starting point, the new commission should have enough funding to guarantee a proportional number of staff as is currently employed by the Campaign Finance Board.

RECOMMENDATIONS TO THE MORELAND ACT COMMISSION: *ETHICS*

The problems plaguing the state's campaign finance system are not the only issues in which the Moreland Commission must review and make recommendations. The centerpiece of New York's efforts to monitor the ethical behavior of state officials and those who seek to influence them is its ethics laws. This area is one in which reforms are needed.

Ethics reform recommendations:

- √ **Restructure JCOPE board.**
- √ **Institute “revolving door” restrictions for JCOPE and LEC staff.**
- √ **Open up JCOPE and LEC.**
- √ **Provide resources for local DAs’ public integrity responsibilities.**
- √ **Restrict lobbyists’ involvement in campaign fundraising.**

Recommendations to strengthen ethics oversight

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

- JCOPE's board consists of 14 members, 6 of whom are appointed by the governor.³⁵ The panel's size is far too large, the largest in the nation.³⁶ Instead, the board should be smaller in number. Large boards are unwieldy, inhibit substantive discussion and make decision making more difficult. The law also must be bar the involvement of elected officials from the ethics watchdog panel.³⁷
- The current provision giving appointees of legislative leaders a veto on JCOPE investigations of the legislators must be repealed.³⁸
- There should be a “revolving door” limitation that prohibits legislative or executive staff from becoming JCOPE staff.
- The executive directors of both JCOPE and the Legislative Ethics Commission (LEC) should serve for a fixed term (with removal during that term, only for cause) to enhance her or his independence from political retribution.
- JCOPE and the LEC should be covered by the provisions of the Freedom of Information and Open Meeting Laws requirements and make all investigation records open to public inspection when a matter is closed, as was the practice of the Temporary State Commission on Lobbying.
- Both JCOPE and the LEC must have budgets that are predictable, adequate, and not subject to political pressures.

³⁵ See, e.g., *About Us*, <http://www.jcope.ny.gov/about/commission.html>.

³⁶ National Conference of State Legislatures analysis shows that no other ethics agency has as many members as New York. For more information, see: www.ncsl.org/research/ethics/state-ethics-commissions.aspx.

³⁷ National Conference of State Legislatures analysis shows that the overwhelming majority of states prohibit public officials from membership on their ethics agencies. For more information see: www.ncsl.org/research/ethics/state-ethics-commissions.aspx.

³⁸ New York State Executive Law §94 13(a).

Reactions to the Governor's Proposed Public Trust Act

Governor Cuomo's proposed Public Trust Act calls for increased penalties for violation of public corruption statutes might deter officials from engaging in illegal behavior and granting District Attorneys additional powers to pursue violations of the public trust by public officials should create additional opportunities for enforcement.

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

A weakness of the governor's plan is that its reliance on the District Attorneys to aggressively enforce the laws, without adding resources, could create a hodgepodge system of enforcement in which questionable acts could be more aggressively investigated in some parts of the state than the same conduct in other areas of the state. Overall, empowering District Attorneys could help to deter official misconduct, but in order to truly fix New York's government comprehensive reform that ensures there are dedicated, independent enforcement and regulatory agencies is desperately needed. *NYPIRG recommends that the governor's legislation must include adequate resources to enable DAs to enforce ethics laws. We also recommend that the Attorney General be given clear authority to act in this area.*

Improve Ethics Disclosure

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

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

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

Improve Lobbying Disclosure

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

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

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

Restrict lobbyists' involvement in campaign fundraising.

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

Lobby firms donated over \$2.3 million in the 2012 legislative election cycle. This figure is even higher with the inclusion donations from their employees. In the first half of that two-year period alone, lobby firms, their PACs, and their employees directly donated \$1,838,009.84 to state-level candidates and party committees. This figure represents about 4% of the total money raised during this time, and indicates that lobbyists working for retained firms donated nearly 70,000 times as much money per capita as other state residents.

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

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

- In *Central New York*, 70% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 52.9% of all itemized donations came from these interest groups.
- In *Western New York*, 64% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 43.5% of all itemized donations came from these interest groups.

- In the *Finger Lakes Region*, 68% of the money legislators raised from incorporated entities came from registered lobbyists or their clients; 49.44% of all itemized donations came from these interest groups.³⁹

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

Unique restrictions on the campaign involvement of lobbyists are not unusual. According to the National Conference of State Legislatures, 18 states place campaign fundraising restrictions on lobbyists.⁴⁰ Typically, there are restrictions on campaign fundraising during the legislative session. However, some states go beyond that, for example:

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

³⁹ NYPIRG released analyses of these three regions on April 19, May 30, and May 31, 2013.

⁴⁰ National Conference of State Legislatures, "Contributions by lobbyists,"

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