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Campaign Financing: Preliminary Report

New York State Commission on Government Integrity

CAMPAIGN FINANCING: PRELIMINARY REPORT

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

DECEMBER 21, 1987

PRELIMINARY REPORT ON CAMPAIGN FINANCING

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Preliminary Report on Campaign Financing

I. BACKGROUND AND SUMMARY

The Commission on Government Integrity is investigating the adequacy of New York's "laws, regulations and procedures relating to campaign contributions and campaign expenditures."[1] Although the Commission's work on this subject is not yet complete, its members have already reached certain firm and unanimous conclusions, which can be succinctly summarized: New York's campaign financing laws and procedures are so inadequate and outmoded[2] that they

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[1]Executive Order No. 88.1, Paragraph II. 5, (April 21, 1987)

[2]One of the nation's most experienced campaign financing administrators, and a nationally recognized expert in the field, Kent Cooper, summed up New York's standing among the states when it comes to analyzing and disseminating campaign contribution and expenditure information:

"If you want to be a leader... you have got to be out front, you have got to be thinking of new ideas, you have to have a budget, you have to have the staff to do it, you have to have the support of the legislature to do it. I don't think that New York has done very much at all. I would probably put New York where New Jersey was about fifteen years ago.

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"New York has a long, long way to go. I don't think it is anywhere near being a leader. You are not even in

(Footnote Continued)

undermine public confidence in the honesty and integrity of government, and will remain a public embarrassment unless and until they are reformed.

This preliminary report on campaign financing provides the Governor and the public with the Commission's earliest conclusions and preliminary recommendations, which are an essential first step to accomplish the necessary reform of the campaign financing system.

The Commission's ongoing investigations have revealed patterns of large campaign contributions often shrouded in secrecy, leaving at least the impression that they are given in return for government benefits.

To the extent that New York's laws and procedures require campaign financing disclosure at all, they require too little and too late, and they permit some filings to be made in locations too remote from the particular campaign for easy scrutiny of the local citizenry and press. Current

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(Footnote Continued)
consideration in that regard." State of New York, Commission on Govenment Integrity, Hearings on Campaign Financing, Transcript ("Hearings Tr.") pp. 229-230 (October 21 1987).

New York law permits disclosure of individual contributors without disclosure of their employers or business affiliations. Disclosure of corporate contributors can be made without disclosure of affiliated or subsidiary corporations. Moreover, under current law and procedures, recipients of many campaign expenditures are never disclosed. As a result, the central purpose of New York's disclosure requirements -- informing the public in a timely fashion of the nature and extent of the sponsorship of candidates for public office -- is defeated.

The agencies charged with enforcement of the law, the New York State Board of Elections and the various local boards including the New York City Board of Elections, do not have the resources to deal adequately with campaign financing. These agencies serve only as repositories for the campaign disclosure forms filed with them. They have almost none of the data from those filings on computers, and they do not compile or analyze the data or disseminate it to the public. As current law permits, the State Board of Elections discards the disclosure forms after five years[3]

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[3]New York Election Law Section 14-108(3) (McKinney 1978).

and keeps none of the information from the discarded forms, in statistical form or otherwise. As a result, public access to vital information and meaningful enforcement of New York's campaign financing laws is all but impossible.[4]

Further, while New York law technically contains proscriptions on the amounts individuals can contribute to campaigns, those amounts are so high (e.g., more than $40,000 for statewide general elections) that it is ludicrous even to refer to them as limits. And considering the disclosure weaknesses and lack of enforcement, it is abundantly clear that there are no practical restraints on the amounts which can pour into the campaign coffers of elected officials. In order to keep up with or discourage potential adversaries, those officials often obtain large amounts from wealthy contributors, many of whom do business with the government. The public then perceives that large campaign contributions are the quid pro quo for the government business.

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[4]In fact, the inadequacy of information available from the State Board of Elections, combined with the weaknesses in the disclosure laws, have hampered Commission investigations and have caused postponement of certain recommendations, such as those involving public funding of state legislative campaigns.

The Commission's ongoing investigations illustrate these weaknesses in New York's campaign financing practices. The Commission's investigation into a recent upstate town council election demonstrates the disastrous inadequacy of current disclosure requirements and the ineffectiveness of the State Board of Elections. This continuing investigation has revealed that, unbeknownst to the citizens of that town, outside investors played a decisive role in the election by funneling huge contributions through a political action committee ("PAC") and a state political committee to support the campaigns of candidates who were sympathetic to the investors' proposed construction project in the town.

The Commission is also investigating the secret, so-called "housekeeping" accounts of the two major political parties.[5] The Commission is not yet in a position to make a recommendation on this subject because this complicated investigation is far from complete. However, the Commission has found evidence that these political party accounts have been used to hide sensitive contributions. There is also evidence that these accounts are then used to benefit candidates, also without the knowledge of the voters.

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[5]See p. 24 n. 19 below.

The Commission is also investigating whether government contracts are awarded to large campaign contributors and, if so, how and why.

The Commission's recommendations are also grounded in a thorough study of this complex field. The Commissioners have reviewed New York's current law and the significant literature in the field and have benefited from public testimony of experts, including officials from enforcement agencies around the nation, and from communications with scores of interested persons around the State.

In formulating its recommendations, the Commission has fully considered the delicate balance necessary to achieve true reform. Any change brings about a reaction and experience in the campaign financing field has shown that no matter how well intended, reforms may cause unexpected reactions. For example, amendments to the federal election campaign laws in the 1970s have undeniably caused a proliferation of PACs and a new set of controversies.

Similarly, unless great care is taken, certain reform measures may increase the advantages which incumbents already enjoy. For example, if contribution limits,

expenditure limits, or public funding amounts are set too low, challengers may be unable to raise or spend enough money to overcome the advantages of incumbency. Or, if disclosure requirements are too technical or burdensome, they could favor candidates with the best staffs of attorneys or accountants.

With investigations in progress, the Commission cannot now submit a full and final list of conclusions and recommendations. The Commission is continuing these investigations, and initiating others, so that it may identify and highlight further the deficiencies in the existing framework and issue comprehensive, final recommendations and other interim reports. For now, the Commission urges that the following steps are the least that must be taken, and taken soon, to restore some semblance of public confidence in New York's electoral system.

II. SUMMARY OF MAJOR RECOMMENDATIONS

A. Creation of a new, independent, adequately funded Campaign Financing Enforcement Agency with extensive powers to implement and enforce the campaign financing laws and regulations.

B. Full, detailed and timely disclosure of all campaign contributions and expenditures.

C. Drastically reduced campaign contribution limits and prohibitions on direct contributions from corporations, labor unions, and those doing business with the government.

D. Optional public funding of elections for the statewide offices and removal of state law barriers to public funding for local elections.

E. Carefully prescribed expenditure limits to accompany any public funding scheme.

III. RECOMMENDATIONS

A. Independent Campaign Financing Enforcement Agency

A separate, permanent New York State Campaign Financing Enforcement Agency ("CFEA") should be created to administer and enforce the campaign financing laws. The agency should have six commissioners (not more than three from any political party) whom the Governor appoints, with the advice and consent of the Senate, to staggered terms,

after nomination by a commission patterned after the state commission which nominates candidates for the New York Court of Appeals.[6]

The nominating commission should be comprised of four appointees of the Governor, not more than two from any political party, and one appointee each of the speaker of the assembly, the temporary president of the senate, and the minority leaders of each house of the legislature. The nominating commission should include representatives of leading civic groups and business and religious leaders. It should be charged with nominating three candidates for each of the six commissioner positions on the CFEA, and three for each vacancy thereafter.

The nominating commission should strive to make nominations to the CFEA which will help make the agency non-partisan and independent of the statewide officials and the legislature. Ultimately, the CFEA should be comprised of citizens who have demonstrated integrity and commitment to civic affairs, representing a broad cross-section of the

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[6] See New York Const. art. VI, Section 2(c)-(f).

electorate. The chairman should be full-time and the other commissioners part-time, reimbursed on a per diem basis.

The CFEA should have a significant budget which allows it to perform all of the functions listed below from offices throughout the State and which is automatically increased for inflation.[7] One of the most important functions of the agency should be to promulgate clear and concise regulations so that all those affected understand their responsibilities. Of equal importance, the agency should be required to computerize immediately all data from campaign disclosure filings and to compile this information so that it may be readily understood by, and disseminated

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[7]The Federal Election Commission ("FEC"), recognized as an exemplary agency for compilation and dissemination of data from campaign disclosure filings, has a $14 million annual budget and receives 40,000 filings annually. While the total number of campaign disclosure filings throughout New York is not available, the State Board estimates that it will receive 9,000 next year, and the New York City Board between 3,000 and 4,000. It is likely, therefore, that there are at least 20,000 annual filings statewide, or half the number received by the FEC. Given that the new state agency would have substantial start-up costs, an appropriation in its first year of between seven and nine million dollars would be required to put the agency on a par with the FEC. Such an appropriation would be approximately half of the 1987-1988 recommended appropriation for relocating the remaining state offices from the World Trade Center. State of New York, Executive Budget, April 1, 1987 - March 31, 1988, A33.

to, the public and the press during the campaign. Original filings should be made with the CFEA. In addition, each filing that contains a contribution or expenditure affecting a local election should also be filed with the appropriate county office so that voters and the local press are promptly informed of the financing of their local elections.

The agency should have authority to issue advisory opinions to candidates, their committees, and affected citizens. It should have full investigatory and enforcement powers, including the authority to issue subpoenas, conduct audits of political committees, and refer criminal violations to the appropriate District Attorneys. Knowing and willful violations of the campaign financing laws should be treated as class A misdemeanors and fraudulent activities as felonies. The CFEA should, in addition, have the authority to impose significant fines for disclosure and contribution and expenditure limitation violations.

The CFEA should attempt to resolve disputes by settlement. Investigations, whether initiated upon the complaint of a private party or the CFEA itself, should be confidential and disclosed to the public only upon completion. Candidates and committees should have an opportunity to express their positions during the course of the agency's

investigation, as well as upon its completion, and the agency should be required to state fully its reasons for acting.

The CFEA should be required to act upon complaints within 90 days and should have the authority to assess costs for baseless complaints made for the purpose of engendering publicity. The agency should be required to produce an annual report to the Governor and the Legislature and should make proposals for changes in the law to promote its more effective functioning.

The Commission strongly recommends that the functions enumerated above reside in a new, independent agency and not additionally burden the Board of Elections. The experience of the campaign financing experts consulted by the Commission is that the Board of Elections' responsibilities are and should remain those relating to the ballot process.[8] The Commission's own inquiries strongly support this conclusion.

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[8]Frank P. Reiche, former chairman of both the New Jersey and federal campaign financing agencies, made this point emphatically:

(Footnote Continued)

It is not happenstance that the Commission's first recommendations concern the CFEA: they are of paramount importance. Although public funding, disclosure reform, and contribution limit reform are essential and, perhaps, more dramatic issues, they are reforms which all depend on reform of the enforcement mechanism. Without an independent, vigorous agency which has both the ability and reputation for effective enforcement, public funding of campaigns will be ineffective and disclosure requirements and contribution limits will continue to be ignored and circumvented. In short, unless there is an independent enforcement agency, New Yorkers will not realize the benefits of other campaign financing reforms, however well-considered and wide-ranging.

(Footnote Continued)

"My feeling and conclusion that it would be best to have a single agency charged with campaign finance disclosure responsibility, that is simply because of the nature of the work involved.

"Contrast it, if you will, with what the State Board of Elections does. They do extremely important work but entirely different. They are involved in insuring that everything goes well on Election Day, that we all vote, and if that ever becomes tarnished, we are all in trouble and we know it.

"But what you're talking about in terms of campaign financ[ing] is very sophisticated investigation, and I think that's best left to one specific agency, if we are talking about the financing of elections." Hearings Tr. pp. 407-408 (October 22, 1987).

B. Disclosure Requirements: Full and Timely Disclosure

The importance of full and timely disclosure can not be overestimated. As Justice Brandeis stated: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[9] Thus, campaign financing disclosure requirements serve a number of compelling public interests. As the United States Supreme Court observed, they "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[10] Of equal importance, disclosure requirements reveal candidates' financial supporters and thus enable voters to assess candidates more intelligently.

1. Current Disclosure Laws and Practices Are Utterly Inadequate

New York's existing disclosure requirements must be dramatically improved to inform the public of the true nature and extent of candidates' support. In contrast to

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[9]L. Brandeis, Other People's Money, 62 (Nat'l Home Library Foundation ed., 1933)

[10]Buckley v. Valeo, 424 U.S. 1, 67 (1976)

other jurisdictions, our disclosure requirements barely provide the people of this State with the illumination of a candle, much less of the sun. For example, patterns of contributions from businesses and other entities cannot readily be detected because, among other reasons, a contributor's place of principal employment or relationships between subsidiary or affiliate corporations need not be identified on any disclosure form.

Other weaknesses in the laws pertaining to disclosure of campaign expenditures keep New Yorkers in the dark. Although Election Law Section 14-102(1) requires political party committees to disclose the purpose of campaign expenditures, there is no express requirement that they identify the candidate or candidates on whose behalf the expenditures are made. Nor has the Board of Elections, which has the power to promulgate regulations supplementing the disclosure requirements of Article 14, required disclosure of such information. Thus, current campaign filings are replete with "disclosures" by political committees reporting only that they expended large sums for the purpose of "consulting" or "postage" in a particular locale. The electorate does not and cannot know whether these large disbursements were intended to benefit particular candidates and, if so, which ones.

Ultimate recipients of expenditures are often hidden from public view. The Commission's investigations reveal that in some cases when political committees make and report large payments to an entity and identify the purpose of the payment as "consulting fees," in fact the consultants are acting as general contractors and using part of the funds disbursed to them to pay subcontractors for campaign services. The involvement of these subcontractors is hidden from the public.

Existing disclosure weaknesses also prevent the public from obtaining timely information concerning the amount of money spent on particular candidates. The Board of Elections disclosure form does not require political committees to disclose campaign liabilities, despite Election Law Section 14-102, which requires those committees to report both campaign expenditures and liabilities in their pre-election filings. Rather, the forms require disclosure only of "unpaid bills incurred" during the filing period. Thus, political committees can and do arrange for vendors not to submit bills until the close of the last pre-election filing period, and thereby avoid disclosure before the election of large campaign liabilities. The result, again, is a woefully ill-informed electorate.

Under current law, political committees must file their final pre-election report 11 days prior to the election.[11] The report, however, must only be current as of the fifteenth day prior to the election.[12] Thus, current law consigns voters to a position of near total ignorance in the often crucial, final two weeks of campaigns.

This general rule has one commendable exception: contributions in excess of $1,000 received during this period must be reported within 24 hours of receipt.[13] For several reasons, however, this requirement does not significantly enlighten voters.

First, under current law campaign financing disclosure statements are deemed to be timely filed if mailed within the prescribed time period.[14] Thus, if the final pre-election statement is mailed on the eleventh day

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[11]New York Election Law Section 14-108(1) (McKinney Supp. 1986); 9 NYCRR Section 6200.2(a)(1985).

[12]New York Election Law Section 14-108(2) (McKinney 1978).

[13]New York Election Law Section 14-108(2)(McKinney 1978).

[14]New York Election Law Section 14-108(6) (McKinney 1978).

before an election, it is timely filed. The statement, however, may take several days to reach the state or county Board of Elections. In the interim, of course, the public remains ignorant. Moreover, even the 24-hour notice requirement for last-minute contributions in excess of $1,000 can be met by mailing a statement disclosing such contributions the day after they are received. Accordingly, the Board of Elections may not receive statements reporting large contributions made during the last week of a campaign until after the election, when it is obviously too late for voters to react. And, even if the Board of Elections receives them timely, the limitations of the Board are such that the filings will often still not be readily available.

Second, there is no requirement under current law that large expenditures or liabilities (as opposed to contributions) be reported on a 24-hour basis during the two weeks before the election, although large expenditures and liabilities are often made and incurred during that time. Indeed, elections can and sometimes do turn on campaign expenditures and liabilities (such as for radio and television) made or incurred in the final phases of campaigns. Such large expenditures and liabilities can be made or incurred either by candidates (through their committees) or by independent political committees. Either way, voters

should know immediately the amounts given and the identities of those providing such support. With regard to candidates specifically, the amount of money they spend can itself be a factor of considerable importance to voters.

Further, current New York law does not require political advertisements or literature to contain disclosures of even the identity of the person or committee paying for the advertisements or literature. Nor does New York law require that such advertisements or literature reveal whether they are authorized by the candidates on whose behalf they are made. In the upstate town discussed earlier, out-of-town investors financed a barrage of political advertisements and literature (including radio advertisements, brochures and other mailings) during the final stages of a political campaign. These advertisements and literature made no mention of those responsible for them or of the issue with which the investors were particularly concerned. Rather, the advertisements and literature urged voters to vote for the candidates supported by the investors on the basis of the candidates' positions on other issues. Not until after the election of most of those candidates did the fact and extent of the out-of-town financial sponsorship begin to emerge.

Other aspects of current campaign financing disclosure practices must be addressed. Modern campaign financing techniques make those who successfully solicit large contributions perhaps even more valuable to candidates than those who make large contributions. Astute campaign managers will form a network of well-connected persons who, in addition to making their own large contributions, will draw on business, social or other contacts to collect additional large contributions. Those who are thus able to raise large amounts, of course, receive political credit for both the contributions they make and those they collect. Yet, under present law, the identities of these solicitors (and "bundlers" or couriers) remain unknown. Current law is seriously deficient in this respect, because only the most naive could fail to recognize that public officials who owe their electoral success to these individuals will, at the very least, appear to be indebted to them and the interests with which they are affiliated.

Currently, a single candidate may be supported by more than one political committee, each of which may or may not expressly be authorized by the candidate. As a result, voters must refer to a number of disclosure statements, some of which may be filed locally and others in Albany, to determine the identities of all the candidate's supporters

and the total amount of the candidate's expenditures. Similarly, a single committee may support more than one candidate, and each candidate may or may not expressly authorize the committee to act on his or her behalf. As a result, the electorate's ability to discover a candidate's supporters and expenditures can become an even more difficult task. Moreover, the prevalence of multi-candidate committees can make and has made enforcement of New York's contribution limits a far too arduous task.

2. Recommendations

This discussion demonstrates that the following reforms in disclosure laws are critical:

--- For all contributions of over $100, the contributors' place of principal employment, by name and address,[15] as well as home address, must be disclosed, so that patterns of contributions may be fully analyzed by computer and reported.

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[15]When a contributor works for a subsidiary corporation, the identity of the parent corporation should also be disclosed.

--- Ultimate recipients of campaign expenditures must be disclosed by name, address, and date. The specific purpose of each expenditure or liability, its amount, and the candidates it is intended to benefit must also be disclosed.

--- Just as current law imposes record-keeping obligations on political committees[16] and requires all political committees, including PACs and political party committees, to have one official depository and treasurer,[17] each candidate should have only one campaign committee with one official depository and a treasurer charged with responsibility for compliance with the law.

--- Filings by all candidate committees should be made on a monthly basis in election years, and quarterly in all other years. A party committee or PAC supporting more than one candidate should be required to file in accordance with the campaign cycle of each of the candidates it supports.

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[16]New York Election Law Sections 14-118(3); 14-122(1),(2) (McKinney 1978).

[17]New York Election Law Section 14-118(1) (McKinney Supp. 1986).

--- After the last monthly filing in the month preceding the election, there should be a report filed ten days prior to the election. The report should be current as of the twelfth day prior to the election and should be deemed timely filed only if it is received by the CFEA by the close of business on the tenth day prior to the election.

--- During the twelve days prior to the election, each contribution received which equals or exceeds $1,000, and each expenditure made or liability incurred which equals or exceeds $5,000, should be reported to the CFEA within 24 hours of the receipt of the contribution, the making of the expenditure, or the incurring of the liability.[18] These 24-hour statements, too, should be deemed timely filed only if received by the CFEA within 24 hours of the triggering contribution, expenditure or liability. The Commission recognizes that the precise amount of many liabilities will not be determinable when first incurred. With respect to such liabilities, a reasonable estimate of the amount of the liability should suffice. To encourage reasonable

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[18]Splitting contributions or expenditures in order to avoid disclosure immediately before the election should be prohibited.

estimates, the Election Law should expressly provide that the estimated amount of an indeterminate liability is not admissible to prove liability in any lawsuit brought by the vendor against the political committee.

--- Any advertisement of whatever nature (e.g., newspaper, television, radio, billboards, posters, brochures and mailings) should conspicuously disclose the name of the person or committee paying for the advertisement and whether the advertisement has been authorized by the candidate or the candidate's committee.

--- Committees should disclose intermediaries who solicit and deliver contributions. These bundlers should be defined to exclude those who deliver fewer than five contributions in a year, and contributions from immediate family members should not count toward that total.[19]

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[19]The Commission is currently examining the "housekeeping" exemption. Section 14-124(3) of New York's Election Law states:

> The filing requirements and the expenditure, contribution and receipt limits of this article shall not apply to monies received and expenditures made by a party committee or constituted committee to maintain a permanent headquarters and staff and carry on ordinary

(Footnote Continued)

The Commission recognizes that these disclosure proposals constitute a dramatic departure from present requirements. They are, nevertheless, essential to meaningful reform. There should be no concern that they will have deleterious consequences. They are, after all, in large part modeled on the federal system, which has received uniform recognition as an effective model, as well as other more modern state campaign financing systems.

At the same time, the Commission recognizes that in smaller localities, such as villages and small towns, volunteerism and civic participation in small campaigns should not be discouraged by filing requirements which may be too complex or onerous. Accordingly, the CFEA should be permitted to promulgate simplified forms for village and

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activities which are not for the express purpose of promoting the candidacy of specific candidates.

Not requiring disclosure of contributions "received" for such ill-defined purposes seems literally to invite manipulation. Commission investigations to date indicate that the invitation has been accepted on more than one occasion. Recommendations on this subject must await completion of these investigations.

town candidates and their committees and to exempt entirely campaigns which will receive or expend less than $2,000.[20]

C. Contribution Limits Must Be Drastically Reduced

A rational scheme of contribution limits should seek to strike a balance between two competing goals: one, deterring corruption and the appearance of corruption which ineluctably flows from very high limits, and two, permitting contributions in sufficiently large amounts both to respect First Amendment values and to permit meaningful challenges to be waged against incumbents.[21]

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[20]The CFEA should also permit exemptions from disclosure requirements for unpopular splinter parties which may be subject to harassment.

[21]The Commission is investigating allegations from certain recent elections that public funds were used to benefit the campaigns of incumbent officials. We recognize that it is difficult to draw lines in this area, but we are confident that New York State, like other jurisdictions, can accommodate the tensions between the need to curtail the improper use of public funds for campaign purposes and the need to protect elected officials' ability to communicate with the public on matters of legitimate public concern. The Commission expects to make recommendations to maximize the likelihood that incumbents will not improperly use taxpayers' monies for purely political advantage.

Measured by these standards, New York's present contribution limits are seriously deficient. Indeed, it is hypocritical even to assert that New York's laws and regulations effectively impose contribution limits. The reality is that the exceptions and loopholes with which our present laws are riddled engulf the ostensible limitations which exist, if at all, in the text of New York's statutes.

First, annual limits are much too high: $150,000 per person per year for political purposes within the state.[22] Second, even this limit is more illusory than real. Under the "housekeeping" exemption just mentioned, individuals, partnerships, unions, and companies can all contribute without any limitation at all if the contributions end up in a "housekeeping" account. Under one interpretation of this exemption, moreover, even corporations, otherwise prohibited from contributing more than $5,000 per year, can make unlimited contributions to "housekeeping" accounts. Third, current law expressly provides that there are no limits -- other than the $150,000 annual limit -- on the amounts which can be given to

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[22]New York Election Law Section 14-114(8) (McKinney 1978).

political party committees, including state, county, city or other local "constituted" committees of a political party. Fourth, current law implicitly permits huge contributions to other multi-candidate committees. So long as a committee supports numerous candidates and does not request and receive their authorization, it can, as a practical matter, receive up to $150,000 from any contributor.

Moreover, the purported limitations on individuals' contributions to particular candidates are themselves absurd. For example, candidates for New York City-wide office may legally accept a $50,000 contribution from an individual for a primary and another $50,000 contribution from the same individual for the general election. Thus, a husband and wife can contribute a total of $200,000 to one candidate. Candidates for statewide office may legally receive similarly large amounts.

Finally, these limits are described, in part, by a formula involving multiplication of a certain amount (e.g., 25 cents) by, for example, the number of voters in the district. This scheme adds an unwarranted level of complexity, promotes public confusion about amounts which may be contributed, and falsely suggests that the setting of limits proceeds on some reasoned mathematical basis.

The setting of campaign contribution limits is not a science. There are two criteria, however, which should be, but have not routinely been, included in any contribution limit scheme: first, simplicity requires that the limits be expressible in round numbers; and second, fluctuation in the value of money requires that any limits be adjusted periodically to reflect inflation (or deflation). Thus, all contribution limits should be tied to an appropriate inflation index and automatically increased and rounded upward to the next $100 for every percentage increase that would result in an increase of $50.01. Every ten years the Legislature should review the limits to determine whether they are still appropriate.

1. Individual Contributions

The Commission believes that the following sets forth a proper range of limits on individual contributions from which the legislature should choose:

i. Governor, Lieutenant Governor, Attorney

General, and Comptroller of the State of New York: $2,500 to $4,000 per election.[23]

ii. State Legislature: $1,500 to $2,000 per election.

iii. Mayor, President of the City Council, and Comptroller of the City of New York: $2,500 to $4,000 per election.

iv. All other city and county offices: $1,000 to $2,000 per election.

v. Town, village and other local offices: $500 to $1,000 per election.

The Commission views these limits as appropriate whether or not public funding is permitted or authorized.

To the extent that the higher ranges are used, some consideration should be given to limiting the total contributions made to any candidate by members of a single

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[23]"Per election" denotes a separate contribution limit for a primary election, a general election, and any run-off election.

household. Any proposal on this score, however, may face significant legal challenges and may be at odds with the realities of modern families.

Consideration should be given to a provision, based on a California proposal,[24] which would allow candidates to accept a specified amount of "seed money", i.e., first contributions, in individual contributions which are subject to higher limits. For example, a statewide candidate might be permitted to accept his or her first contributions up to a limit per contribution of $25,000 from an otherwise permissible source until the candidate has raised a specified amount to enable the campaign to get under way, e.g., $100,000.[25] This would counter the potential effect of the lower contribution limits, which might, under certain circumstances, make it very difficult for challengers to start campaigns.

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[24]California Commission on Campaign Financing, "The New Gold Rush: Financing California's Legislative Campaigns," at 232 (1985)

[25]Of course, if a public funding system were in place (see Point III D. below), these contributions would not be entitled to be matched by public funds.

2. Political Party and Political Action Committees

Political parties should and, indeed, must continue to play a significant role in the process. Therefore, the Commission recommends that the ceiling on contributions to political parties be higher than the one on contributions to candidates. While, once again, there is no bright line, the Commission recommends that contributions to political parties which have fielded candidates on the ballot in statewide elections be limited in the range of $10,000 to $15,000 per person per year and that all other contribution limits, whether to PACs or political party committees which have not placed candidates on the statewide ballot, be limited to $5,000.

Contributions to county, city, or other local committees affiliated with a statewide political party committee should be aggregated with contributions to the statewide committee. Transfers between political committees (party committees or PACs) should be deemed contributions to the recipient committee and subject to the same limits as other contributions to that committee. This will have the effect of channelling contributions from political committees directly to candidates rather than indirectly through other committees.

In order to prevent circumvention of the contribution limits by the expediency of contributing to a proliferating number of formally distinct committees and to insure that no single contributor is perceived as exerting undue influence, the Commission recommends an aggregate limit on all political contributions of $25,000 per person per year. Thus, if Contributor A contributed $15,000 to either party's state committee, he or she could contribute in that year only an additional $10,000 to all other candidates or committees. Or, Contributor B could make one $5,000 contribution to a statewide committee and be limited to another $20,000 in that year to all candidates. As noted, contribution limits to candidates or candidates' committees should be calculated on an election cycle basis and not on a yearly basis.

Just as contributions to political parties should be encouraged, contributions by political parties to candidates or their committees should also be encouraged in order to strengthen further the political parties. But current law goes too far. It provides that there are no limits on the amount of contributions parties can make to their candidates. Indeed, for the purposes of New York's contribution limits, political party committees and their constituted committees are deemed not to be contributors at

all.[26] That provision should be replaced by one permitting a political party to make contributions to a candidate of up to five times the limits for individual contributors, but which imposes no limit on the amount the party may spend on voter registration and get-out-the-vote drives which are carried on without reference to particular candidates.

3. Corporations, Membership Organizations, and Government Contractors

Finally, the Commission recommends that corporations, labor unions and other unincorporated membership organizations, and those entities which contract with the government be prohibited from making direct contributions.[27] Rather those entities should be permitted to create and pay for the administrative expenses of PACs. Those PACs could solicit contributions from executive or administrative personnel or shareholders of the corporation, or members of unions or other membership organizations. Direct solicitation of an employee by his or her superior should be

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[26]New York Election Law Section 14-114(3) (McKinney Supp. 1986).

[27]Those who do business with the government of a particular locality would be prohibited from making contributions to candidates for office in that locality.

prohibited, and significant penalties for coercion of campaign contributions should be enacted.

The present system, which permits corporate contributions in the aggregate of $5,000 per year but which allows related corporations to have separate limits permits, in effect, virtually unlimited corporate contributions and results in the improper intrusion of corporate wealth into the political system.

Similarly, contributions to government officials or candidates by those who contract with the government necessarily raise at a minimum an appearance of impropriety. The Commission has specifically investigated the enforcement of a recent legislative effort to respond to this problem in New York City and has concluded that it is inadequate primarily because it does not prohibit contributions from government contractors, but only limits the amounts which they can give during certain time periods, and it is probably unenforceable because of record-keeping weaknesses.[28]

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[28]In 1986, the Election Law was amended to prohibit those whose business transactions with New York City require
(Footnote Continued)

4. Other Contribution Recommendations

Contribution limits should apply not only to cash and checks, but also to in-kind contributions, loans (except

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(Footnote Continued)
approval by the Board of Estimate from making contributions or loans in excess of $3,000 to a member of the Board six months before or twelve months after the Board officially considers the transaction. Election Law Section 14-114(9)(a). The same prohibition applies to partners, corporate officers, and certain corporate shareholders whose partnership or corporation has business pending before the Board.

The City appears unable to monitor or enforce this prohibition; in any event, it has not done so. First, the Board of Estimate does not warn those who have business which requires Board approval about the law's restrictions on campaign contributions. Second, the Board of Estimate had not, until last month, complied with its obligation under the new law to inform the Board of Elections of the names of those to whom the new restriction applies. Although the law expressly requires the Secretary of the Board of Estimate to send to the Board of Elections a monthly list identifying those who have had business before the Board, it was not until late November 1987, after this Commission had begun to make inquiries about the enforcement of the seventeen-month old law, that the Board of Elections first received such a list from the Board of Estimate. Finally, because the Board of Elections does not computerize the campaign contribution disclosure statements it receives from the various candidates and political committees, it is in no position to determine whether those whose names appear on the monthly Board of Estimate lists have complied with the $3,000 contribution ceiling. To match up the names on the Board of Estimate lists with the names of contributors who appear on the campaign disclosure statements is, in the words of the Executive Director of the New York City Board of Elections, a "herculean task", one which the Executive Director cannot undertake until the records are computerized.

those from banks in the ordinary course of their business), guarantees, and anything of value with the exception of volunteer activities and certain minimal exemptions for activities performed in the home. Contributions from spouses and other members of the candidates' families should be treated as any other contribution.

Gifts and honoraria have sometimes been used to circumvent contribution limits; there should be some limits on those which should relate to individuals' annual total contribution limits.

D. Public Funding For Statewide Elections

Public funding of candidates for statewide office is currently in place in a number of states, most notably New Jersey, Michigan, Minnesota and Wisconsin, and at the local level in Tuscon, Arizona, Seattle, Washington and Sacramento County, California.

The experience in those jurisdictions demonstrates that if properly constituted, public funding allows increased opportunity for candidates to participate in the political process, lessens the influence (real and apparent) of individual contributions, and permits candidates to spend

their time campaigning rather than raising money. At the same time, experience shows that public funding requires significant administration, auditing, and compliance efforts by the enforcement agency, and may also require significant additional expenditures of public money.

It is not clear how much popular support there is for public funding. Studies have indicated that when voters are given an opportunity to check off a space on their tax returns in order to finance a political campaign, participation has not exceeded 40 percent, and has much more often been in the 15 to 20 percent range,[29] even though there is no additional cost to the taxpayer.

Public funding is often used to secure expenditure limits, and thereby theoretically to diminish the cost of campaigns. If expenditure limits are set too low, however, the natural advantage of incumbents from superior name recognition and the like eliminates any real possibility of competition. Further, public funding of primary candidates can be extremely costly and can result in the expenditure of

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[29]Hearings Tr. p. 18 (October 21, 1987) (testimony of Dr. Herbert E. Alexander).

public funds on candidates who have no real possibility of electoral success. Also, because money attracts money, public funding can have the effect of accentuating incumbents' advantage.

After careful consideration of the pros and cons of public funding and the record compiled by the Commission to date, the Commission is in a position to make a limited number of recommendations concerning that subject, and the counterpart subject, expenditure limits. As discussed below, additional recommendations must await completion of ongoing Commission investigations and studies.

The Commission recommends public funding of all statewide elections with funds raised by a check-off on the state income tax set between two and four dollars per return.[30] In the primary, there should be a system of matching small contributions. In the general election, a grant should be given to each major party candidate (with proportionate amounts based upon voter registration to any

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[30]According to the New York State Department of Taxation and Finance, approximately 7,500,000 returns are filed each year. Therefore, a four dollar check-off with a 20 percent check-off rate would yield six million dollars per year.

minor party fielding statewide candidates and whose candidate received more than 50,000 votes in the last election).[31] These grants should encourage participation by qualified candidates who might otherwise hesitate to challenge an incumbent and should help insure that there is at least some competition even in years such as 1986, when the public perception was that the incumbent Governor was likely to prevail by a large margin. Even if victory appears assured, encouraging the loyal opposition serves to further the public debate.

With respect to local campaigns, including New York City, other cities, counties, towns and villages, the

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[31]The Commission urges that its recommendations be enacted as soon as possible and that this public funding recommendation, in particular, be effective for the next statewide election. The Commission recognizes that the transition to a public funding system presents many technical issues, such as the use that may be made of contributions received under the former system. The Commission will be formulating recommendations for an appropriate transition based on study of other states' experiences. One possible analogy is also presented by Federal Election Commission regulations governing the transfer of funds from the committee of a state candidate who wants to use those funds to run for federal office. 11 C.F.R. Section 104.12 (1986 ed.). This regulation prohibits the candidate for federal office from spending funds received at any time in a manner which violates federal law (e.g., corporate contributions or individual contributions of more than a $1,000).

State should at a minimum remove any obstacles to the adoption by a local government of public funding of campaigns. Thus, to the extent that it might be argued that New York City requires state legislation before the City Council can authorize public funding (an argument on which the Commission takes no position) the State should remove any existing obstacles so that the City Council in its wisdom may pass a public funding law should it choose to do so. The same treatment should be accorded to all other municipalities.

However, any public funding law adopted by a locality should be subjected to scrutiny to insure fairness and specifically to insure that expenditure limits are not set too low to inhibit competition or allow for an unfair division of public funds. Thus, before it becomes effective, any local public funding law should comply with specific criteria enumerated by the Legislature.

Furthermore, with respect to local campaigns, in the event that the local governing body does not pass a public funding law, the State should provide a public initiative mechanism by which citizens of the governmental unit can call for a referendum for public funding based upon a model law which the CFEA recommends.

If there is to be public funding, threshold amounts must be set for a candidate to be eligible for public funds. These amounts should vary depending on the level of government involved, and contributions should be counted for the purposes of meeting the threshold amount only up to a limited amount for each contribution. There should be a specific list of permissible uses of public funds and a requirement that unexpended funds be returned to the treasury.

The Commission intends to investigate and study further public funding of campaigns in order to prepare additional recommendations. The Commission will determine appropriate threshold contributions, matching ratios, and grant amounts for public funding of statewide elections and how much that system will cost. The Commission will also study contribution and expenditure patterns in past state legislative campaigns in order to determine whether public funding of those contests is appropriate and, if so, the Commission will propose a framework for such a system. The Commission will also be considering appropriate criteria for local public funding laws. These and similar questions must await further Commission consideration.

E. Expenditure Limits

Although there are unresolved constitutional questions in this area, Buckley and its progeny have made clear that expenditure limits are, in general, unconstitutional unless made a condition of participating in an optional system of public funding.

As noted above, one of the reasons for adopting public funding is to provide the legal basis to impose expenditure limits. As also noted, such limits must be fairly set in order to prevent increased advantages to incumbents.[32]

In order to enhance competition, the Commission recommends that any expenditure limits be set in the first instance at no less than 75 percent of the largest amount spent in each of the last three elections for the particular

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[32]Robert M. Stern, the Director of the California Commission on Public Financing put it succinctly: "Expenditure limits, though, if adopted, have to be high enough....if you adopt low expenditure limits, you're going to reduce competition and hurt challengers....if the expenditure limits are high enough, it will encourage competition and help challengers." Hearings Tr. p. 49 (October 21, 1987)

office (recalculated for inflation), and that, in the future, that expenditure limit be keyed to an appropriate inflation index. (Statewide, New Yorkers must be satisfied with using data from the last two elections, because the State Board of Elections maintains filings for only five years[33] and keeps no summary data once it destroys those filings. As a result, expenditure information for campaigns before 1982 is not available from the Board.)[34]

Expenditure limits should exclude costs relating to compliance with campaign financing laws. Otherwise, complaints of violations may be filed solely to cause an adversary to spend money responding to those complaints.

Any candidate accepting public funds should be required to agree to the expenditure limits set for the

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[33]New York Election Law Section 14-108(3).

[34]The Commission plans to propose more specific expenditure limits when it has analyzed available data. One problem that can be noted now is that when using past expenditures as a guide to setting future limits, aberrations from past norms, such as a gubernatorial candidate's expenditure of more than $16 million in the 1982 campaign, should not be permitted to skew the data because that would result in unreasonably high limits.

particular campaign, and to limit expenditure of his or her own funds to the applicable individual contribution limit.

Committees of political parties should be deemed to be affiliated with the candidate for spending purposes so that political committees' expenditures on behalf of a candidate would be included in that candidate's expenditure limit. Get-out-the-vote and voter registration drives, which are not for the benefit of specific candidates, should not be included.

One of the most irksome problems with expenditure limits is the regulation of independent expenditure committees. The benefits of expenditure limits can be easily offset by wealthy individuals acting with each other, but independently of the candidate they support, to purchase media time or print advertising. Various proposals have been made to regulate this activity, but none has been deemed effective to date. Certain of the Commission's disclosure and contribution limit proposals (sections B. and C. above) are designed in part to deal with this issue.

Now pending before the United States Senate is a proposal which would give a candidate supported by public funds additional funds in the event independent expenditures

were made for his or her opponent.[35] An unintended effect of such a proposal might be for the supporters of candidate A to prepare an independent expenditure advertisement for candidate B which is actually detrimental to candidate B, knowing that such an advertisement would result in additional public funds for their own candidate. The Commission believes that an effective and constitutional limit can be placed on independent expenditures only by limiting contributions to political committees, which usually undertake such activity, as the Commission recommends (at p. 32 above).

A related problem is raised by a candidate who does not opt for public funding and is therefore not governed by expenditure limits. Such a candidate has a potentially enormous spending advantage over a candidate who does accept public funding. In order to encourage the acceptance of public funding, the Commission recommends that the following system be adopted on a trial basis, perhaps with its own sunset provision to insure its demise if it proves ineffective: In the event that a publicly funded candidate's opponent declines public funding and (a) exceeds

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[35]The "Boren Bill", S.2, 100th Cong., 1st Sess. (1987).

the expenditure limit which applies to the publicly funded candidate or (b) either (i) uses in excess of a specified amount of his or her own personal funds (perhaps $50,000 for the statewide races) for the campaign, or (ii) independent expenditure advertisements costing in excess of that amount are made on behalf of the candidate who has not accepted public funding, with the result that he or she exceeds the expenditure limit, then, in any of these three cases, the expenditure limit of the publicly funded candidate would be increased to the extent of the adversary's expenditures which exceed the expenditure limit. In the primary, the publicly funded candidate would then be permitted to receive additional matching contributions, and in both the primary and the general election, that candidate would be permitted to raise by special contributions, having a much higher limit (again, approximately $50,000) or spend from his or her own funds amounts up to 100% of the amount expended by the adversary from his or her own funds or by independent groups. Such special contributions could still only be made by persons otherwise eligible to contribute (which would,

under the Commission's proposals, exclude corporations, unions, and government contractors).[36]

Thus, for example, assume that candidate A declined public funding and spent $200,000 of his own funds and also exceeded the expenditure limit. Candidate B, who had accepted public funding, would ordinarily be limited by the contribution limit in the amount he could spend from his own funds. Under this proposal, he would then be able to make an additional $150,000 contribution ($200,000 minus the $50,000 he already presumably made) from his own funds or raise up to an additional $150,000 from eligible contributors who could contribute up to $50,000 each. This plan would diminish the advantage of the wealthy candidate who might otherwise decline public funding, or the candidate with reason and ability to exceed the expenditure limit, without the expenditure of an additional large amount of public funds.

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[36]A similar proposal has been made by the California Commission on Campaign Financing. See California Commission on Campaign Financing, "The New Gold Rush: Financing California's Legislative Campaigns," 227 (1985).

IV. CONCLUSION

There can be no dispute that the existing system lacks the capacity for proper enforcement, disclosure and compilation of data in a timely fashion. Similarly, there can be no dispute that contribution limits are too high and that disclosure is inadequate.

While debate is more intense with respect to public funding, the Commission believes that the limited proposals it has made at this time represent an equitable accommodation of competing considerations and square with the realities of political campaign financing it has so far uncovered.

The Commission feels strongly that local option on public funding should be preserved and obstacles to it removed. Local legislatures should at least have authority to spend public monies for campaign funding if they believe it is a proper priority for their governments. And the public should be able to petition its government to install such an option if the citizens believe it appropriate.

The Commission is pleased to provide the Governor with these preliminary proposals, and intends to continue

its investigations and study of the issues relating to campaign financing.

These preliminary recommendations reflect the unanimous view of the members of the Commission that New York can not abide the status quo and that drastic changes in the campaign financing system are needed.

STATE OF NEW YORK
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