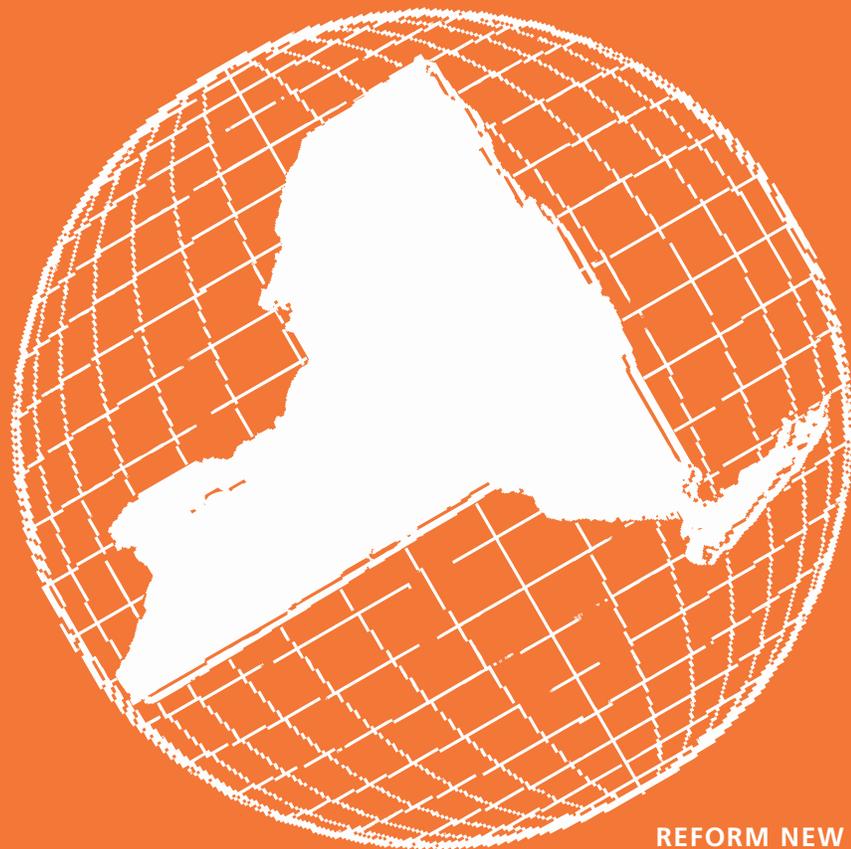


**PAPER THIN:
THE FLIMSY FACADE
OF CAMPAIGN FINANCE LAWS
IN NEW YORK STATE**

SUZANNE NOVAK AND SEEMA SHAH



**REFORM NEW YORK
SERIES**

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- *The New York State Legislative Process: An Evaluation and Blueprint for Reform* by Jeremy M. Creelan & Laura M. Moulton
- *Boards of Elections Continue Illegally to Disenfranchise Voters with Felony Convictions: A study by the Brennan Center for Justice at NYU School of Law and Demos: A Network for Ideas & Action*
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PREFACE

For centuries, New York State has been a leader in efforts to reform government and politics – and, not coincidentally, has been a leader in the *need* for reform.

On the one hand, there was Governor Benjamin Fletcher of New York Colony, who took protection money from pirates in the 1600s. “To recount all his arts of squeezing money both out of the publick and private purses would make a volume instead of a letter,” one contemporary wrote. On the other, it was in New York that the theories of American representative government were first given voice by young advocates in the first great op-ed war – what we now know as the “Federalist.”

And it was in New York – a magnet for power, money and churning populations – that the notion of governmental reform as an engine for social progress took hold in the 20th Century. From Theodore Roosevelt to Al Smith and the entire citizen-driven Progressive Movement, our state built a government that led the nation in efficiency and in providing services for the public.

Today, there is wide agreement that government in New York is broken. There is a sense of inertia and torpor, of long-deferred problems, and of a political culture far less robust than elsewhere. The Brennan Center in 2004 published a widely quoted study on the state legislature, concluding that it was “dysfunctional” and the country’s worst. The report’s impact was so sharp not because people believed it was wrong, but because they knew it was right.

This new Brennan Center report looks at another troubling aspect of New York’s democracy: the paper-thin campaign finance laws. As the authors demonstrate, New York State’s laws are among the nation’s weakest – on a par with libertarian states that don’t pretend to care about the role of money in politics. The result is interest group paralysis and an incumbent re-election rate all too reminiscent of the Supreme Soviet.

There’s good news. We can feel the ice breaking, a widespread recognition that New York’s government needs to change. New York City’s model public financing system is nearly a decade old. To the East, Connecticut has enacted a strong and pathbreaking public financing system. With new experiments in public financing underway in Trenton, we risk lagging behind *New Jersey* when it comes to reform. New Yorkers may be seeing a rare “reform moment,” when politicians of all parties compete to prove they are true agents of change. If informed citizens demand change – and insist that officials keep their promises – then New York’s government can again lead as an engine for progress and a reflection of robust democracy.

Michael Waldman
Executive Director, Brennan Center for Justice at NYU School of Law

INTRODUCTION

Appropriately designed campaign finance laws play a crucial role in ensuring an effective and inclusive democracy. By making campaign finance more transparent and reducing the influence of wealthy interests, such laws:

- ensure that the electorate receives crucial information about candidates and their supporters,
- combat real and perceived corruption in government,
- provide more equal opportunities for qualified candidates to run for office and for ordinary people to influence electoral outcomes, and
- permit candidates and officeholders to focus on policy and public service instead of on fundraising.

Campaign finance laws vary widely. Some states require nothing more than the reporting of contributions and expenditures, leaving the influence of money on politics otherwise unchecked. Those states do not limit contributions, control corporate or union expenditures, or offer public funding. Other states, including New York, have extensive regulatory systems. But those systems are not equally effective, and they sometimes appear cynically calculated to defeat the very purposes they are ostensibly intended to fulfill.

This report provides a critical analysis of campaign finance law in New York State. To prepare the analysis, the Brennan Center reviewed campaign finance laws in all 50 states, examining how New York measured up in four core areas: disclosure, contribution limits, public funding, and enforcement. Thirteen states have no campaign finance regulation other than disclosure requirements. But, among the remaining systems ostensibly designed to control the grip of monied interests on elected officials, New York's is a farce. Consider the following:

- In the area of disclosure, form is elevated above substance. New York has recently mandated electronic filing and has improved the campaign finance section of the State Board of Elections website. But the State does not require reporting of key information related to contributions and expenditures, including the costs of certain electioneering advertisements disseminated close to elections.
- New York's contribution limits, which climb as high as \$84,400, are *the highest*, or among the highest, in the country. In fact, in many categories, New York's contribution limits would still rank among the nation's highest *even if they were cut in half*. To make matters worse, loopholes make even the high limits functionally meaningless.

- Unlike New York City, and the neighboring states of Connecticut and New Jersey, New York offers no public financing for any of its offices. Candidates have no choice but to solicit funds from wealthy donors.
- Enforcement of New York's campaign finance laws is virtually nonexistent. No civil penalties exist for violations of contribution limits, and the maximum civil penalty for violation of disclosure laws is only \$500. Minimal resources are devoted to civil enforcement, and criminal enforcement is available only for willful violations.

In sum, our analysis reveals a series of glaring weaknesses in New York's campaign finance regime. Setting aside its disclosure regime, the State's campaign finance law is functionally meaningless. *On the books, New York pretends to address the undue influence of money on politics, but in reality the State's regulatory system is a sham.*

To place New York's law in perspective, we begin with an overview of the objectives of campaign finance regulation and an explanation of how key elements of campaign finance law further those ends. We then examine the particulars of New York's regime of disclosure, contribution limits, public funding, and enforcement. Finally, we conclude with a recommended package of reforms that would significantly improve New York's performance with respect to the stated measures of a meaningful democracy.

THE ENDS AND MEANS OF CAMPAIGN FINANCE LAW

■ PROMOTING AN INFORMED ELECTORATE

One of the most important and least controversial elements of campaign finance law is a requirement that certain political contributions and expenditures be reported to regulatory agencies for disclosure to the public. Reports of the sources and amounts of contributions to candidates give the public clues to the candidates' actual and perceived policy preferences and flag the interest groups to which the candidates are likely to be responsive. Voters may also glean such information from reports of large independent expenditures made in support of or opposition to candidates. The objective information in the official reports can provide a badly needed supplement to campaign advertising, especially if the reported information is easily accessible to the media and interested citizens in searchable, web-based databases. With more information, voters are better able to choose candidates who share their values and to hold politicians accountable for failures to represent their constituents' interests.

■ COMBATING THE REALITY AND APPEARANCE OF CORRUPTION

Campaign finance reform is frequently justified by interests in preventing corruption and the appearance of corruption. Actual corruption undermines the legitimacy of democratic government, which is supposed to reflect the interests of ordinary voters, not the influence of wealthy donors. The appearance of corruption contributes to public cynicism and apathy, reducing voters' motivation to participate in the democratic process.

Although many candidates and officeholders are people of high integrity, political corruption is a chronic problem. Money has been at the heart of political scandals throughout American history, from Teapot Dome to Jack Abramoff. Many modern scandals have involved campaign contributions apparently made in exchange for political favors. The major federal campaign finance law reforms passed in the mid 1970s received much of their impetus from public outrage over President Nixon's fundraising practices, which strongly suggested that campaign contributions were serving as bribes. Combating corruption is crucial to ensure that government serves the public interest, not special interests.

In addition to actual corruption, the appearance of corruption undermines the functioning of our democracy. When people believe that public policy is for sale to the highest bidder, confidence in government evaporates. When that mistrust depresses voter engagement, it further undermines democracy, which cannot function properly without an actively participating electorate. Courts have uniformly recognized the importance of preventing both corruption and the appearance of corruption.

Generous public funding systems break the connection between the support of wealthy interests and electoral success, allowing candidates to respond to the full spectrum of voters.

A variety of campaign finance measures can be crafted to combat real and perceived corruption. Reporting requirements open contributions and expenditures to public scrutiny, making it easier to detect exchanges of political favors for political donations. Limits on the size of contributions to candidates, and of contributions to entities (such as political action committees or political parties) that may serve as conduits to candidates, reduce the potential influence of particular wealthy donors on particular cash-hungry candidates. Aggregate limits on contributions may prevent such donors from purchasing influence by spreading largesse across entire legislatures. Public financing can significantly thwart corruption by reducing or eliminating reliance on private funds for political campaigns. Campaign finance systems with ineffective disclosure requirements, high contribution limits (or none at all), and heavy reliance on private funding, on the other hand, leave elected officials vulnerable to real and apparent corruption.

■ PRESERVING POLITICAL EQUALITY

Political equality is one of the core values of our Constitution. The Supreme Court has repeatedly recognized that the principle of “one person, one vote” is central to American democracy. But while all voters are equal in the voting booth, all voters are not equal in their ability to influence elections. Only wealthy individuals and monied interests can make the substantial political contributions and advertising expenditures that move public debate and affect electoral outcomes. Although a \$5 contribution from a low-income constituent may represent a much greater commitment and intensity of support than a \$1,000 contribution from a millionaire, the latter usually has more power to influence the outcome of the election and greater access to the candidate, once elected to office.

Well-crafted campaign finance regulations can help to prevent economic inequality from undermining political equality. Low contribution limits encourage candidates to reach out to a broader base of supporters, including low- and moderate-income constituents. Rebates, refunds, or tax credits can encourage small donors to invest in democracy. Generous public funding systems break the connection between the support of wealthy interests and electoral success, allowing candidates to respond to the full spectrum of voters. Public funding also opens doors to public service for individuals of modest means who cannot self-finance their candidacies and do not have wealthy friends to bankroll their campaigns.

■ REDUCING THE BURDEN OF FUNDRAISING

Politicians operating privately financed campaigns spend much of their time raising money for reelection. Spending tremendous amounts of time fundraising harms effective representation in two ways. First, time spent fundraising cannot be spent on more valuable tasks, such as studying and attempting to find the solutions to public policy problems, and meeting, listening to, and understanding the concerns of ordinary citizens. Second, the need to spend time fundraising is a major deterrent from running for office. Increasingly, experienced elected

officials cite a desire to avoid the endless fundraising as a primary reason for not seeking re-election.

When qualified, dedicated people choose to avoid public service because of the burden of fundraising, society suffers. As a result, voters face an artificially constricted choice. Through loss of the expertise and wisdom of veteran officeholders as well as the new ideas, perspectives, and talents of potential candidates who never run, the quality of government also suffers. Courts recognize that reducing the burden that fundraising places on candidates' time is an important goal that public funding can promote.

NEW YORK'S LAWS IN PERSPECTIVE

New York State's campaign finance laws lag far behind current best practices. New York law could markedly improve in all four core areas of campaign finance reform: disclosure, contribution limits, public financing, and enforcement. For example, New York has state-of-the-art procedures for electronic filing, but there are no laws requiring the disclosure of several categories important for public understanding of contributions and expenditures made. New York also compares unfavorably with other states that limit campaign contributions, imposing ceilings that are among the highest in the nation. New York offers no form of public funding whatsoever. And New York has not developed any serious, comprehensive program to deter or to punish campaign finance abuses. In short, New York State is in need of an overhaul of its campaign finance laws.

■ DISCLOSURE

New York's disclosure laws are in need of improvement. While New York should be commended for recent positive changes to its disclosure laws and practice, more needs to be done to keep the electorate informed.

In October 2005, after an independent nationwide study of campaign disclosure laws and practices gave New York a C- in accessibility (ease with which the public can access disclosure information on paper and on the internet) and an F in usability (ease with which the public can access disclosure information, including reports and analyses, from the state's home page),¹ the New York State Board of Elections redesigned and improved its website. For example, there is now a searchable database of expenditures that can be sorted by the name and zip code of the entity that made the expenditure, the expenditure date, and the amount of the expenditure. Voters can now also view the aggregate amounts raised and spent by statewide and legislative candidates. In 2005, New York also changed its laws to require candidates and committees for local elections who raise or expend more than \$1,000 per year to file their disclosure reports electronically with the New York State Board of Elections, while continuing to file paper or electronic statements with the county or New York City Board of elections.

But New York's disclosure system still has major flaws. First, New York fails to require reporting of information in a variety of key categories. For example, New York does not require reporting of the occupations and employers of large contributors, candidates' accrued expenses, or expenditures that are owed but not paid at the time a service is provided (such as money owed to political consultants or other vendors for goods or services). These weaknesses caused New York to receive a D for the comprehensiveness of its campaign finance law in the previously mentioned study of campaign disclosure.

Second, New York fails to require disclosure of independent expenditures for political advertising other than ads that expressly advocate the election or defeat

¹ Campaign Disclosure Project, Grading State Disclosure 2005. <http://campaigndisclosure.org/gradingstate/ny.html>.

of a candidate. As experience in federal elections has shown, such limited regulation allows much electioneering to go completely unreported, because advertisers can easily communicate their messages without using the “magic words” of express advocacy (such as “vote for” or “vote against”). The federal government and an increasing number of states now regulate a new category of advertising known as “electioneering communications,” which includes advertisements made close to a primary or general election that refer unambiguously to a candidate for office. States can and do regulate electioneering communications the same way they regulate independent expenditures on express advocacy: some limit or ban corporate and labor union spending on such ads (except through affiliated political action committees), and organizations or individuals paying for such ads are required to disclose their financial backers. In *McConnell v. FEC*, 540 U.S. 93 (2003), the Supreme Court ruled that regulations of electioneering communications in the Bipartisan Campaign Reform Act of 2002 are constitutional.

Since the U.S. Supreme Court upheld the federal electioneering provisions in 2003, 17 states have incorporated such provisions into their laws. New York has not done so, however, leaving the public in the dark about the financing of major independent advertising campaigns that influence elections.

■ CONTRIBUTION LIMITS

Limits on the amounts that a donor can give to a candidate reduce the candidate’s dependence on a small number of wealthy donors. Without such limits, candidates typically seek to raise as much money as possible with the least amount of effort, which means raising large contributions from wealthy donors who can be given focused fundraising attention. Relying on large contributions inherently raises the risk of real and perceived corruption and, perhaps more importantly, fails to involve large numbers of ordinary citizens in the political process.

In order to be effective, contribution limits must be set low enough to encourage a broad-based fundraising strategy, yet high enough to allow candidates to run an effective campaign without spending all of their time fundraising. Effective contribution limits also require strong protections against their circumvention. For example, limits must apply not only to contributions to candidate committees, but also to donations to PACs and political parties, to ensure that wealthy donors cannot evade the basic limits by funneling additional contributions to candidates through such groups. States may also limit the aggregate amount of multiple contributions by any one donor, irrespective of who receives the donations, to prevent a single donor’s widely disseminated contributions from exerting undue influence on a legislative body.

New York’s contribution limits lack all of the components that make such caps effective. For most types of contributors, the limits are among the highest in the country.² Even seemingly reasonable limits, such as those placed upon corporations, are undermined by loopholes that allow significant flows of soft money to

² Contribution limits discussed in this report are current as of January 1, 2006. Washington D.C. is counted as a state only with respect to categories that are applicable to it, making for a total of 51 states in those categories. Nebraska is treated as a state without limits, because it imposes only aggregate limits on the total amount a candidate may receive “from persons other than individuals.”

New York also permits individuals, unincorporated labor unions, and political action committees to make unlimited contributions to “housekeeping accounts,” which may be used to finance ordinary party activities not promoting the candidacy of specific candidates.

political parties. For example, a corporation can create an unlimited number of subsidiaries, each of which is entitled to make a contribution at the maximum level. New York also permits individuals, unincorporated labor unions, and political action committees to make unlimited contributions to “housekeeping accounts,” which may be used to finance ordinary party activities not promoting the candidacy of specific candidates. Moreover, the opportunities for corruption opened by New York’s weak contribution limit regime are exacerbated by its laws allowing the personal use of campaign funds. The most egregious examples of New York’s contribution limits are summarized below.

■ ■ CONTRIBUTIONS FROM INDIVIDUALS

Individuals are subject to an aggregate contribution limit of \$150,000 per year to all candidates and committees. Specific limits, and how they compare to limits in other states, are detailed below.

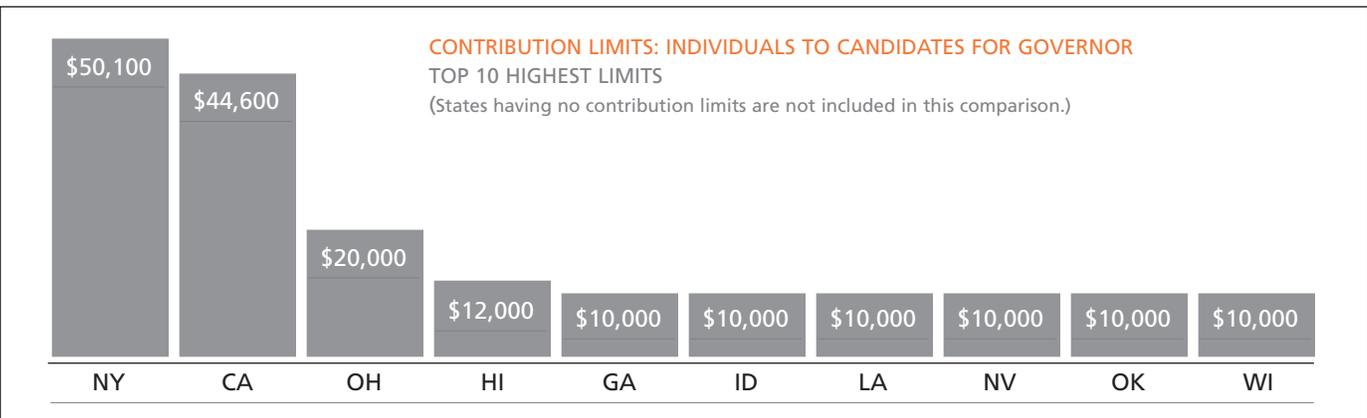
■ ■ ■ CONTRIBUTIONS FROM INDIVIDUALS TO GUBERNATORIAL CANDIDATES

Of the 37 states that limit contributions from individuals to candidates for Governor during an election cycle,³ defined in this report as a primary and general election, New York’s limit of \$50,100 is the highest. Notably, New York’s limit for the general election (\$33,900) is far above California’s (\$22,300), which has the second highest limits. Moreover, 95 percent of the states with limits have caps that are less than half of those in New York.

■ ■ ■ CONTRIBUTIONS FROM INDIVIDUALS TO CANDIDATES FOR THE STATE LEGISLATURE

New York limits contributions to candidates for State Senator to \$5,400 for the primary and \$8,500 for the general election, for a total of \$13,900 in each election cycle, the highest such limits in the nation. The contribution caps in New York far exceed those in other states. In fact, the limits in 84 percent of states capping contributions are less than half the level of those in New York.

³ Thirteen states allow individuals to make unlimited contributions to gubernatorial and legislative candidates.



Of the 37 states that cap individual contributions to candidates for State Representative, only Ohio, Nevada, Oklahoma and North Carolina have a higher limit than that of New York, which is \$6,800 per election cycle.

■■■ CONTRIBUTIONS FROM INDIVIDUALS TO PACS

Of the 24 states that limit contributions to political action committees, or PACs, only one state, Louisiana, imposes higher limits than New York.⁴ Individuals in New York can contribute up to \$50,100 per election cycle to PACs, depending on the candidate supported, while states such as Massachusetts impose limits as low as \$500 per year, or 0.1 percent of New York's limit.

■■■ CONTRIBUTIONS FROM INDIVIDUALS TO PARTY COMMITTEES

Of the 22 states and the District of Columbia that impose limits on contributions from individuals to state political parties, only Louisiana has higher limits per campaign cycle than New York.⁵ While New York imposes limits of \$84,400 per year from individuals to political parties, other states impose limits as low as \$1,000.⁶ In fact, 91 percent of all the states that limit individual donations to political parties set ceilings at less than half the level of New York's. In addition to its high limits on contributions from individuals to party committees, New York places *no* limit on contributions from individuals to parties for the purpose of "housekeeping" expenses.

■■ CONTRIBUTIONS FROM PACS

■■■ CONTRIBUTIONS FROM PACS TO GUBERNATORIAL CANDIDATES

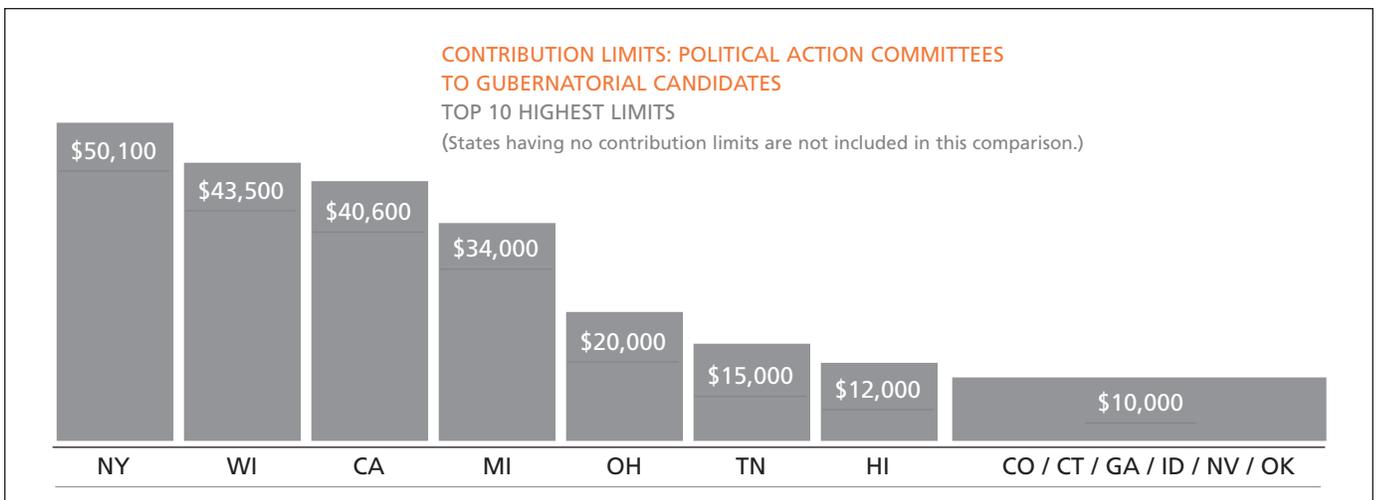
Of the 34 states that limit contributions from PACs to gubernatorial candidates, New York has the nation's highest limit at \$50,100 per election cycle, which is more than twice the amount of limits in 88 percent of the states that impose contribution caps.⁷

⁴ Twenty-seven states allow individuals to make unlimited contributions to PACs.

⁵ Twenty-eight states allow individuals to make unlimited contributions to state political parties. Maine limits contributions to political parties if the funds are directed to specific candidates but allows unlimited donations as long as they are not earmarked.

⁶ South Carolina, South Dakota, Colorado, Kentucky, New Hampshire, Vermont and West Virginia impose contribution limits that range from \$1,000 to \$3,500.

⁷ Sixteen states allow PACs to contribute unlimited amounts to gubernatorial and legislative candidates.



New York's failure to limit contributions from parties to candidates makes the state's already sky-high contribution limits functionally meaningless.

■■■ CONTRIBUTIONS FROM PACS TO CANDIDATES FOR THE STATE LEGISLATURE

Of the 34 states that restrict contributions from PACs to candidates for the state legislature, New York ranks fourth highest in contributions to candidates for State Senator (\$13,900 per campaign cycle), and eighth highest in contributions to candidates for State Representative (\$6,800 per campaign cycle).

■■■ CONTRIBUTIONS FROM PACS TO OTHER PACS

New York and 29 other states allow PACs to make unlimited contributions to other PACs.

■■■ CONTRIBUTIONS FROM PACS TO POLITICAL PARTIES

Of the 25 states that limit contributions from PACs to political parties, New York's limit of \$84,400 per year is the highest in the nation. In fact, Louisiana's limit, which has the second highest limit (\$100,000 per four years), is only 30 percent of New York's cap for the same four year period.⁹ Additionally, New York permits PACs to contribute unlimited amounts to party housekeeping accounts.

■■ CONTRIBUTIONS FROM POLITICAL PARTIES

New York and 23 other states allow political parties to make *unlimited* contributions to candidates. In New York, that loophole makes the state's already sky-high contribution limits functionally meaningless. Individuals, corporations, unions, and political action committees can all circumvent those caps by making contributions to political parties, which can in turn funnel unlimited contributions to candidates.

■ SPECIAL SOURCE RESTRICTIONS ON CONTRIBUTIONS

Some states restrict or ban outright contributions from particular sources, including lobbyists, public contractors, corporations and unions.

Large contributions from lobbyists and public contractors to elected representatives, including the very officials lobbied or determining contract awards, has generated a widespread public belief that contributors are "paying" those officials for the opportunity to "play" with the government. The common Albany practice of holding political fundraisers attended by professional lobbyists exacerbates the perception that lobbyists are buying access to elected officials. A growing number of states and localities, including our neighbors Connecticut and New Jersey, impose what are known as "pay-to-play" restrictions on campaign contributions from lobbyists and public contractors. New York has no such limits.

Special restrictions on contributions from corporations and unions exist in many states. Such restrictions are commonly justified by concerns about particularly

⁸ Although Louisiana has a \$100,000 limit in this category, that limit is per four-year calendar period, while New York's \$50,100 limit is per election cycle, which can be as short as two calendar years. In 28 states, PACs are permitted to give unlimited contributions to other PACs. Only one state, Wisconsin, prohibits this type of contribution.

⁹ No state prohibits PACs from giving to political parties. Twenty-six states allow PACs to donate unlimited amounts to parties.

severe threats of corruption and the distortion of the political process that may result from the large concentrations of wealth that corporations and unions can amass and use to influence public policy.

■■ CONTRIBUTIONS FROM CORPORATIONS

While New York places reasonable contribution limits on corporations, loopholes make them ineffective. New York imposes limits on direct campaign contributions from corporations, but the limit is essentially meaningless because of a loophole that allows all legal subsidiaries of a company to contribute as separate entities. For example, a company with twenty subsidiaries could give over \$100,000 to a candidate in one year, despite the limit of \$5,000 per year from corporations to candidates.

Moreover, New York's treatment of limited liability companies (LLCs) under its campaign finance law is a loophole that allows individuals and business entities legally to circumvent contribution limits placed on corporations. LLCs can be established relatively easily and are considered individuals, separate from those who control them. In a statewide race, LLCs can contribute up to \$50,100 to statewide candidates, just as individuals can. Individuals who have multiple LLCs can also easily exceed individual contribution limits by making contributions through each of their LLCs.

■■■ CONTRIBUTIONS FROM CORPORATIONS TO GUBERNATORIAL CANDIDATES

Contributions from corporations to gubernatorial and legislative candidates are prohibited in 23 states, limited in 22 states, and unlimited in 4 states. New York's limit of \$5,000 per year allows corporations to contribute up to \$20,000 over the four year period in which a governor is in office. Only one state, California, has higher corporate limits than New York per campaign cycle.

■■■ CONTRIBUTIONS FROM CORPORATIONS TO CANDIDATES FOR THE STATE LEGISLATURE

Twenty-one states prohibit contributions from corporations to candidates for the state legislature, and five allow unlimited contributions. New York is among the 24 states that limit such contributions.¹⁰ New York's limit of \$5,000 per year, or \$10,000 for the two years in which state representatives and senators are in office, is the highest in the country.¹¹

■■■ CONTRIBUTIONS FROM CORPORATIONS TO PACS

Twenty-two states prohibit contributions from corporations to PACs, and 14 states allow unlimited contributions of this sort. Of the remaining 15 states that limit corporate contributions to PACs, New York's limit of \$5,000 is exceeded by only one other state. In sum, of the 37 states that either prohibit or limit corporate contributions to PACs, only one state has higher limits than those of New York.

New York imposes limits on direct campaign contributions from corporations, but the limit is essentially meaningless because of a loophole that allows all legal subsidiaries of a company to contribute as separate entities.

¹⁰ Washington, DC imposes limits on contributions from corporations to candidates for State Representative and does not have state senators. Accordingly, the total number of states that impose such contributions for state representatives is 25.

¹¹ Idaho and Nevada also have a limit of \$10,000 per campaign cycle for contributions from corporations to candidates for State Senator. Nevada applies the \$10,000 limit to corporate contributions to candidates for State Representative as well.

New York's cap of \$84,400 per year is the highest of the group of 18 states that limit such contributions.

■■■ CONTRIBUTIONS FROM CORPORATIONS TO POLITICAL PARTY COMMITTEES

Corporations are prohibited from making contributions to political party committees in 23 states. Eleven additional states impose no limits on corporate contributions to such committees. New York is among the 19 remaining states that impose limits on such contributions. In New York, corporations and all subsidiaries of corporations may each contribute up to \$5,000 per year to state party committees. While this limit is not the highest in the nation, the subsidiary loophole allows large sums of money to go to parties, which may then contribute unlimited sums to candidates.

■■ CONTRIBUTIONS FROM LABOR ORGANIZATIONS

Contribution limits placed on unincorporated unions are consistently among the highest in the nation, making them largely ineffective. New York imposes limits on direct campaign contributions from unincorporated unions.¹² Not only are the limits comparatively high, but the availability of various avenues through which unions can channel money to candidates renders such limits meaningless. For example, labor unions in New York can give unlimited amounts to PACs, which can then give very large contributions to candidates.

■■■ CONTRIBUTIONS FROM LABOR ORGANIZATIONS TO GUBERNATORIAL AND LEGISLATIVE CANDIDATES

Sixteen states prohibit contributions from labor unions to candidates for gubernatorial and legislative office, and eight states allow unlimited contributions from labor unions to such candidates. New York law treats unincorporated labor unions as PACs with regard to campaign contributions, allowing unions to give gubernatorial candidates up to \$50,100 per campaign cycle, making its limits among the highest in the country. Of the 26 states that impose limits on contributions from labor organizations to legislative candidates, New York's contribution restrictions are also among the highest in the country.

■■■ CONTRIBUTIONS FROM LABOR ORGANIZATIONS TO PACS

Contributions from labor organizations to PACs are prohibited in 14 states and limited in 18 states. New York is among the 19 states that allow unlimited contributions of this type.

■■■ CONTRIBUTIONS FROM LABOR ORGANIZATIONS TO POLITICAL PARTY COMMITTEES

Sixteen states prohibit contributions from labor unions to state political party committees, 18 states limit such contributions, and 16 states allow unlimited contributions of this kind. New York's cap of \$84,400 per year is the highest of the

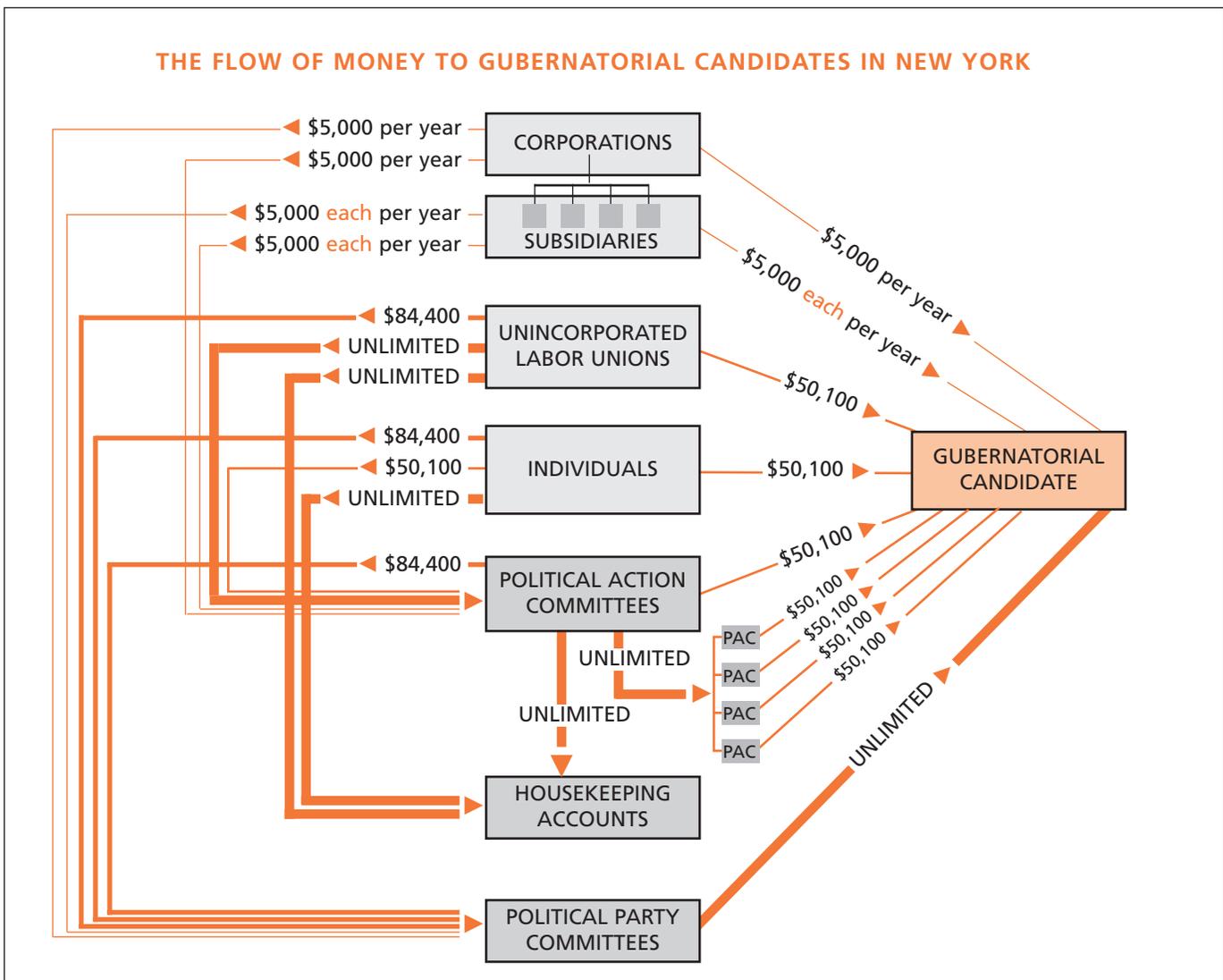
¹² Incorporated unions are treated like all other corporations for purposes of contribution limits. Accordingly, all references in this report to labor unions under New York campaign finance law refer to unincorporated labor unions, unless otherwise specified.

group of 18 states that limit such contributions. Unincorporated labor unions may also give unlimited contributions to political parties for “housekeeping” expenses.

**CONTRIBUTION LIMITS SUMMARY:
THE FLOW OF MONEY IN NEW YORK**

As discussed in previous sections, contribution limits in New York are largely ineffective. Not only are the existing limits some of the highest in the nation, but they can be circumvented easily. For instance, political parties can receive up to \$84,400 per year from every PAC, labor union, and individual. Parties can then channel an unlimited amount of such money to gubernatorial and legislative candidates. Contribution limits on corporations, while relatively low, can be multiplied via subsidiaries and then routed through parties.

The flow of money in New York runs freely. One need only learn the proper channels through which to direct it.



JURISDICTION	COST/VAP
Arizona	\$1.61 ¹³
Maine	\$2.77 ¹⁴
New York City	\$6.96 ¹⁵

■ PUBLIC FINANCING

By reducing candidates' reliance on private money, public financing serves many campaign finance reform goals. First, public financing is designed better than other reforms to substantially reduce the appearance and actuality of corruption. Second, it provides a mechanism for leveling the playing field among all candidates with a proven base of support. Third, it reduces time candidates must spend fundraising so that they can devote that time to interacting with voters or fulfilling official responsibilities.

There are many forms of public financing systems. Subsidies of different levels can go to candidates or parties, and the source of public funds can vary as well. While all public financing systems relieve candidates from fundraising and a dependence on wealthy donors to some degree, generous partial and full public funding systems offer greater incentives for increased candidate-voter interaction and encourage a more diverse candidate pool. Although New York City has an extremely successful partial public financing system for municipal candidates, *New York State has no public financing for any of its offices.*

While public financing systems cost money, even full public financing can be relatively inexpensive per voter. A few dollars per taxpayer per year can cover the costs of a full public financing system for all state offices. For instance, an analysis of the cost of the public financing systems in Maine, Arizona, and New York City reveals that those systems have cost a mere \$1.61–\$6.96 per person of voting age.

■ ENFORCEMENT

The best campaign finance regulations imaginable can be worthless without adequate enforcement. Violations of campaign finance laws must trigger penalties sufficient to deter future misconduct, and the body charged with enforcing such laws must have adequate resources and powers to do its job effectively. New York State's system is lacking in both of these categories.

It is far from assured in New York that a violation of campaign finance laws will be pursued or punished. The Campaign Finance Unit of the New York State Board of Elections (SBOE) is responsible for receiving and processing federal, state, and various county campaign finance disclosure reports. If the Campaign Finance Unit suspects that a required report was not filed, or if it notes the acceptance of illegal contributions, it decides internally whether or not to investigate the matter. If it investigates the matter and determines that a violation has likely occurred, it must refer civil matters to the SBOE's Enforcement Counsel Unit and criminal matters to the district attorney's office.¹⁶

The three people constituting SBOE's Enforcement Counsel Unit are charged with the civil enforcement of all of the State's election laws, including campaign finance reporting requirements. When mandatory disclosure reports are not

¹³ Public Campaign. "Myth v. Fact." http://www.publiccampaign.org/publications/factsheets/myth_vs_fact.htm. Public financing in Arizona cost \$1.61 per person of voting age in 2000. March 5, 2006.

¹⁴ The Clean Election Fund spent \$2.7 million on the 2004 legislative elections. The voting age population in Maine is 974,000, making the cost per person of voting age for that election cycle \$2.77.

¹⁵ In 2001, the New York City Campaign finance Board spent \$42,251,905 in public financing funds. With a voting age population of 6,068,009, the cost of public financing in New York city per person of voting age was approximately \$6.96. In 2005, the New York City Campaign Finance Board spent \$24,216,200 in public financing funds. With a voting age population of 6,031,603, the cost of public financing in New York City per person of voting age is approximately \$4.01.

¹⁶ N.Y. Elec. Law § 3-106(3).

received, the candidate or committee is notified via mail. If, after five days of receipt of the letter, the report has not been submitted, the board can obtain a monetary penalty only by initiating a court proceeding.¹⁷ But there is no mechanism by which ordinary citizens can institute a civil proceeding for violation of campaign finance laws. And prosecutions for criminal violations can be instituted only by a district attorney, who has discretion whether to pursue an alleged violation.¹⁸

Moreover, penalties for violating New York campaign finance laws are weak. Under state law, there are no civil penalties available for violations of contribution limits. In addition, the maximum civil penalty for violation of campaign finance disclosure laws is only \$500. In contrast, the maximum civil penalty for violations of New York City's campaign finance provisions, including violations of contribution limits, is \$10,000. Criminal penalties are available only for willful violations of New York State campaign finance rules. Thus, *lenient civil penalties and a criminal standard that is rarely met combine to provide no real incentive to comply with New York's campaign finance regulations.*

Finally, the SBOE is not required to publicize names of campaign finance violators and does not disclose them even in annual reports, providing little deterrence and making it relatively easy for violators to escape public scrutiny. In contrast to New York State's laws, the New York City Campaign Finance Board ("CFB") is required to publicize the names of candidates who violate campaign finance provisions.¹⁹ In addition to posting the names of violators on its website, the CFB issues press releases as it assesses penalties, alerting the public to candidates' transgressions, so they may be held accountable for misconduct.

Under state law, there are no civil penalties available for violations of contribution limits.

¹⁷ N.Y. Elec. Law § 14-126(1); New York State Board of Election Annual Report 2004.

<http://www.elections.state.ny.us/download/AnnualReport2004.pdf>

¹⁸ N.Y. Elec. Law § 3-104(3).

¹⁹ New York City Administrative Code §3-708(6).

RECOMMENDATIONS FOR REFORMING NEW YORK'S CAMPAIGN FINANCE LAWS

■ PUBLIC FINANCING

New York should pass a public financing bill. Passage would most effectively achieve the core goals of campaign finance reform: preventing real and apparent corruption, attracting a more diverse candidate pool, allowing voters of modest means a meaningful opportunity to influence elections, and reducing the time a candidate must spend fundraising. New legislation should do the following:

- Implement either a full public financing system or a partial public financing system with a generous match. The full public financing programs in Maine and Arizona and the partial public financing system in New York City, which provides a 4:1 match and low contribution limits, offer alternative acceptable models.
- Include expenditure limits at high enough levels to attract wide participation.
- Have flexibility so that participating candidates who are outspent by non-participating opponents or face large independent expenditures by their opponents' supporters can adequately respond to such spending.

■ CONTRIBUTION LIMITS

New York should dramatically lower its contribution limits and close up current loopholes in order to effectively prevent corruption and the appearance of corruption. Meaningful limits will also encourage candidates to implement a broadly based fundraising strategy. New legislation should do the following:

- Decrease the amount of money that individuals and labor unions are permitted to give to candidates, PACs, and political parties.
- Prohibit or severely limit contributions by individuals, unincorporated unions, and PACs to party housekeeping accounts.
- Establish rules regarding aggregate contributions of a corporation, all of its subsidiaries, and related LLCs.
- Restrict contributions between party committees and between candidate and party committees.
- Extend contribution limits placed on corporations to LLCs and include aggregate limits for related LLCs or treat contributions from LLCs as contributions from LLC partners.

■ DISCLOSURE

New York should ensure that voters are able to learn the information about contributions and expenditures needed to make educated decisions. New legislation should do the following:

- Improve the amount of information required to be disclosed. For instance, in addition to reporting the names and addresses of large contributors, candidates should also be required to disclose those contributors' employers and occupations. It should also require the reporting of accrued expenses, regardless of when they are paid.
- Define and regulate electioneering communications in the same way current law regulates independent expenditures for express advocacy.

■ ENFORCEMENT

New York should back up its regulatory system with mechanisms designed to promote compliance. Without meaningful enforcement, New York invites violation of its already lax laws. New legislation should do the following:

- Provide funding and personnel for the SBOE at levels sufficient to support meaningful investigations of all types of campaign finance violations.
- Require the Investigative Unit of the SBOE to investigate all campaign finance violations referred to it by its Campaign Finance Unit.
- Provide a mechanism whereby members of the public can file complaints of campaign finance violations in court.
- Require the Enforcement Counsel Unit of the SBOE and the district attorney's office to determine whether there is good cause to believe that campaign finance violations have occurred and, where good cause is found, to institute enforcement proceedings.
- Authorize reasonable and proportionate civil fines for campaign finance violations, including violations of contribution limits.
- Require public disclosure by the SBOE of the names of persons and entities found to have violated campaign finance laws.

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