

April 9, 2015

James A. Walsh, Co-Chair  
Douglas A. Kellner, Co-Chair  
Andrew J. Spano, Commissioner  
Gregory P. Peterson, Commissioner  
New York State Board of Elections  
40 Steuben Street  
Albany, NY 12207-2108

**Re: Request to**

- (1) Rescind Board of Elections 1996 Opinion #1**
- (2) Issue an Opinion Treating LLCs As Either Corporations or Partnerships Depending on the Tax Status They Elect**
- (3) Clarify that No Person May Circumvent Contribution Limits and Disclosure Requirements by Donating Money Through Multiple LLCs**

Dear Commissioners Walsh, Kellner, Spano, and Peterson:

The Brennan Center for Justice at NYU School of Law and Emery Celli Brinckerhoff & Abady LLP respectfully request that the Board of Elections (“Board”) revise the manner in which the contribution limits of Election Law Article 14 apply to limited liability companies (“LLCs”), by eliminating the so-called “LLC Loophole.”<sup>1</sup> The LLC Loophole undermines New York’s contribution limits and disclosure requirements, frustrating the Legislature’s intent. In 2008, the Board, responding to a similar request, stated that it would “undertak[e] a review of this issue and relevant statutes.”<sup>2</sup> To our knowledge, no further action was taken. We request that the Board revisit this issue and correct its application of the law.

Specifically, we request that the Board issue a formal opinion rescinding its 1996 Opinion #1, which created the LLC Loophole. Under that Opinion, LLCs (limited liability *companies*) are treated as individuals rather than “corporations” or “partnerships” under the Election Law, entitling LLCs to a contribution limit that is more than eight times the corporate limit in statewide races, far higher than what the Legislature intended for artificial business entities. Moreover, the Board has permitted individuals who control multiple LLCs to use them to evade contribution limits entirely. In one of the starkest examples, one wealthy contributor

---

<sup>1</sup> This petition does not purport to convey the position of NYU School of Law, if any.

<sup>2</sup> Letter of Elizabeth C. Hogan, Enforcement Counsel, to Russ Haven, Feb. 1, 2008.

used 27 LLCs to contribute at least \$4.3 million to political committees in the state over the past two years.<sup>3</sup> The prevalence of such conduct is impossible to fully ascertain, because LLCs need not disclose the identities of their members or officers in their corporate filings.

As an alternative to its current flawed approach, the Board should treat LLCs as corporations or partnerships, depending on the tax status they voluntarily elect, like the Federal Election Commission (“FEC”) has done since 1999. Treatment of LLCs as corporations or partnerships depending on their voluntary tax status is consistent with the text of both Article 14 and the LLC Law, and would better reflect the Legislature’s intent. 1996 Opinion #1 relied on the FEC’s prior rule, which treated LLCs as individuals, but the FEC itself has changed course. The Board should do so as well, and adopt current federal policy. To fully comply with state law, the Board must also forbid circumvention of contribution limits and disclosure requirements through the use of multiple LLCs controlled by a single source.

The Board’s current treatment of LLCs thwarts the underlying purpose of New York’s campaign finance system, making contribution limits and disclosure requirements extremely easy to evade. It is imperative that the Board close the LLC Loophole and faithfully adhere to New York’s Election Law.

#### *Relevant Statutory Provisions*

New York has restricted corporate contributions for well over a century, in order to guard against corruption and to preserve the confidence of citizens in their government.<sup>4</sup> Until the 1970s, corporations were banned entirely from contributing to political campaigns. In 1974, the ban was replaced with a \$5,000 limit (today part of Election Law § 14-116),<sup>5</sup> significantly less than the limits for individuals in most races (currently \$41,100 for general election contributions for statewide office).<sup>6</sup> According to the sponsor of this change in the Senate, the Legislature lifted the ban in favor of a \$5,000 limit “to ‘put what’s going on under the table over the table.’”<sup>7</sup> That is, the Legislature lifted the ban to discourage corporations from evading the rules by directing their officers to make contributions.<sup>8</sup>

While the Legislature sought to bring corporate political spending out into the open, it remained concerned about corruption resulting from abuse of the corporate form—as evidenced by the fact that it limited corporate contributions far more strictly than it limited contributions by

---

<sup>3</sup> Bill Mahoney, *State’s largest campaign donor a client of Silver’s second firm*, CAPITAL N.Y., Dec. 30, 2014, <http://www.capitalnewyork.com/article/albany/2014/12/8559323/states-largest-campaign-donor-client-silvers-second-firm>.

<sup>4</sup> *Schwartz v. Romnes*, 495 F.2d 844, 849 (3d Cir. 1974) (examining legislative history and historical roots of New York corporate contribution limits beginning with 1894 Constitutional Convention).

<sup>5</sup> See Jeffrey D. Friedlander, et al., *The New York City Campaign Finance Act*, 16 HOFSTRA L. REV. 345, 346 (1988); 1974 N.Y. Laws 1612-15.

<sup>6</sup> N.Y. Bd. Elec., *2014 Contribution Limits 2*,

<http://www.elections.ny.gov/NYSBOE/Finance/2014FamilyContributionLimitsRev06202014.pdf>.

<sup>7</sup> Judith Bender, *Election Reform Revs Up*, NEWSDAY, Apr. 3, 1974, at 9 (quoting Sen. John Calandra (R-Bronx)).

<sup>8</sup> *Id.*

individuals.<sup>9</sup> During the Assembly debate on April 4, 1974, several members nevertheless worried that corporate entities controlled by the same persons might each be allowed to give up to \$5,000, thereby circumventing the new limit.<sup>10</sup> Of particular concern was how the rule would apply to real estate entities, since “every building . . . is a separate corporation.”<sup>11</sup> In response to those concerns, on May 13, a cosponsor of the legislation assured members that the statutory language had been adjusted to prevent such abuse of the law.<sup>12</sup>

Partnerships are subject to even lower contribution limits than corporations. Notably, in 1992, the Legislature opted to require partnership contributions exceeding \$2,500 to “be attributed to each partner whose share of the contribution exceeds ninety-nine dollars.”<sup>13</sup> In doing so, the Legislature partially codified the Board’s own policy that had been in place since 1976.<sup>14</sup>

Along with setting contribution limits, Article 14 also requires the names of all contributors to candidates, political parties, and other PACs to be disclosed.<sup>15</sup> “No person shall in any name except his own, directly or indirectly” make a contribution.<sup>16</sup>

In 1994, the Legislature passed a statute allowing for creation of LLCs.<sup>17</sup> In enacting the law, New York followed a trend that began in 1977 in Wyoming, when an oil company lobbied for establishment of a new entity that would allow it to limit its liability like a corporation but obtain the favorable tax status of a partnership.<sup>18</sup> The following decade, the IRS ruled that LLCs could elect to be taxed as partnerships, and within eight years all fifty states had passed laws allowing for their creation.<sup>19</sup> New York’s law defines a limited liability *company* as an unincorporated organization other than a partnership or trust “unless the context otherwise requires.”<sup>20</sup> The Legislature did not specify how such entities should be treated under the Election Law.

### *The LLC Loophole*

Because the Legislature did not update the Election Law to expressly account for LLCs, it fell to the Board to determine how they should be treated for purposes of applying state

---

<sup>9</sup> See also 50 N.Y. Jur. 2d Elections § 522 (“The purpose of the legislature in enacting this provision is to prevent corruption of legislators and other elected officials through corporate contributions to political parties and candidates.”); *Hispanic Leadership Fund, Inc. v. Walsh*, 42 F. Supp. 3d 365, 369 (N.D.N.Y. 2014) (noting that New York’s system of corporate and individual limits is intended “[t]o protect against corruption and the appearance of corruption”).

<sup>10</sup> N.Y. Assembly Debate Apr. 4, 1974 at 3158-60.

<sup>11</sup> *Id.* at 3190-91.

<sup>12</sup> N.Y. Assembly Debate May 13, 1974 at 9047-48.

<sup>13</sup> N.Y. Elec. Law § 14-120(2); 1992 Sess. Laws of N.Y. Ch. 79 § 26 (S. 7922, A. 11505).

<sup>14</sup> See N.Y. Bd. Elec. Formal Op. 1976 #4 (Apr. 23, 1976).

<sup>15</sup> See N.Y. Elec. Law §§ 14-102, 14-104.

<sup>16</sup> N.Y. Elec. Law § 14-120(1).

<sup>17</sup> 1994 Sess. Laws of N.Y. Ch. 576 § 1 (S. 7511–A, A. 11317–A).

<sup>18</sup> Susan Pace Hamill, *The Origins Behind the Limited Liability Company*, 59 OHIO ST. L.J. 1459, 1464-66 (1998).

<sup>19</sup> *Id.* at 1460.

<sup>20</sup> N.Y. Ltd. Liab. Co. Law § 102(m).

contribution limits. In its 1996 Opinion #1, the Board reasoned that, because the LLC Law defines an LLC as an “unincorporated” organization “other than a partnership or a trust,” none of the Election Law statutes applicable to corporations or partnerships could apply.<sup>21</sup> For support, the Board cited a (now superseded) FEC Advisory Opinion holding that a Virginia LLC should be treated as an individual under federal law (and therefore not subject to the federal ban on corporate contributions), and concluded that New York would follow the same approach.<sup>22</sup> The Board did not cite, let alone analyze, the Legislature’s inclusion of the phrase “unless the context otherwise requires” in the definition of LLC.

1996 Opinion #1 was a departure from past practice with respect to “unincorporated” artificial entities. In a 1974 Opinion, the Board held that an “unincorporated trade association” could give up to the corporate limit of \$5,000 each year under Election Law § 480, the precursor to Election Law § 14-116.<sup>23</sup> Likewise, long before it was statutorily obligated to do so, the Board allocated partnership contributions to individual partners.<sup>24</sup> The Board provided no explanation for why it adopted neither approach in 1996 Opinion #1, apart from citing the definition of an LLC and the FEC’s practice.

As a result of the Board’s decision and the proliferation of LLCs over the last twenty years, New York now “has some of the most porous campaign fund-raising laws in the nation,” according to the *New York Times*.<sup>25</sup> In the most recent election cycle, a single donor used the LLC Loophole to contribute \$1 million to Governor Cuomo’s reelection campaign, and over \$3 million to other political committees.<sup>26</sup> Last summer, ProPublica reported that, in the first three years of his first term, the Governor raised over \$6 million in LLC contributions, which at that point amounted to about 19% of his total campaign fundraising.<sup>27</sup> During the same period, LLCs provided Attorney General Eric Schneiderman with approximately \$1 million and gave the Senate Republican Campaign Committee \$851,000.<sup>28</sup> New York PIRG’s analysis found that in the first half of 2013, LLC contributions accounted for 14% of all money raised by statewide candidates and parties, more than three times the amount contributed by donors who gave \$1,000 or less.<sup>29</sup> Approximately 60% of the LLC contributions given to Governor Cuomo’s campaign in

---

<sup>21</sup> N.Y. Bd. Elec. Formal Op. 1996 #1 at 1 (Jan. 30, 1996).

<sup>22</sup> *Id.* at 1-2 (citing FEC AO 1995-11).

<sup>23</sup> N.Y. Bd. Elec. Formal Op. 1974 #2.

<sup>24</sup> N.Y. Bd. Elec. Formal Op. 1976 #4 (Apr. 23, 1976). That decision was based on a precursor to § 14-120 that did not contain a provision equivalent to § 14-120(2), which requires allocation for contributions above \$2,500.

<sup>25</sup> Thomas Kaplan, *Awash in Campaign Cash, Cuomo Benefited From Big Donors and Loopholes*, N.Y. TIMES, Nov. 4, 2014, <http://www.nytimes.com/2014/11/05/nyregion/in-lopsided-money-race-cuomo-campaign-is-awash-in-cash.html>.

<sup>26</sup> Bill Mahoney, *State’s largest campaign donor a client of Silver’s second firm*, CAPITAL N.Y., Dec. 30, 2014, <http://www.capitalnewyork.com/article/albany/2014/12/8559323/states-largest-campaign-donor-client-silvers-second-firm>.

<sup>27</sup> Theodor Meyer, *Cuomo Has Raised Millions Through Loophole He Pledged to Close*, PROPUBLICA, June 13, 2014, <http://www.propublica.org/article/cuomo-has-raised-millions-through-loophole-he-pledged-to-close>.

<sup>28</sup> *Id.*

<sup>29</sup> N.Y. PUB. INTEREST RESEARCH GRP., *Testimony of the New York Public Interest Research Group Before the Moreland Commission on Public Corruption*, Oct. 28, 2013, <http://publiccorruption.moreland.ny.gov/sites/default/files/NYPIRG-Moreland-1028.pdf>.

the last reporting period before the 2014 election exceeded the \$5,000 limit for corporate contributions.<sup>30</sup>

A significant number of LLC contributions appear to originate from a small number of wealthy individuals who contribute through multiple LLCs.<sup>31</sup> The identities of the individuals behind many other LLCs cannot be easily ascertained because the Department of State does not require LLCs to identify their members or managers. Their contributions thus are not subject to meaningful disclosure in many instances.<sup>32</sup>

### *The FEC Changes Course*

Although the Board's treatment of LLCs was based primarily on the FEC's 1995 Advisory Opinion, in 1999 the FEC changed course through a formal rulemaking. The current FEC rules provide that an LLC will be treated as either a corporation or a partnership for purposes of federal contribution limits, depending on the tax status it elects under IRS rules.<sup>33</sup> In its rulemaking, the Commission first found that Congress "did not directly address . . . whether the definition of corporation includes LLCs."<sup>34</sup> The Commission nevertheless reasoned that treating LLCs as either corporations or partnerships depending on their tax status would best effectuate congressional intent, by taking into account the starkly different characteristics an LLC has depending on its tax status and "the special advantages which go with the corporate form of organization."<sup>35</sup> In particular, an LLC electing partnership status must maintain individual accounts for each partner, meaning that contributions made by such entities can fairly

---

<sup>30</sup> N.Y. Bd. Elec., Cuomo Hochul 2014, Inc., 27 Day Post General Report, Schedule C: Other Monetary Contributions, [http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs\\_sch\\_report+p\\_filer\\_id=A31966+p\\_e\\_year=2014+p\\_freport\\_id=F+p\\_transaction\\_code=C](http://www.elections.ny.gov:8080/reports/rwservlet?cmdkey=efs_sch_report+p_filer_id=A31966+p_e_year=2014+p_freport_id=F+p_transaction_code=C).

<sup>31</sup> Aside from reports about an individual giving \$4.3 million during an election cycle, see Bill Mahoney, *State's largest campaign donor a client of Silver's second firm*, CAPITAL N.Y., Dec. 30, 2014, <http://www.capitalnewyork.com/article/albany/2014/12/8559323/states-largest-campaign-donor-client-silvers-second-firm>, journalists who have investigated LLC contributions have often found evidence that multiple large LLC contributions have come from a common source. One such search provided evidence that Shared Concepts LLC and Real Source LLC (which each gave \$25,000 to the Governor, but whose members cannot be easily identified) may have come from a single Ulster County developer. Casey Seiler, *Lost in a Forest of LLCs*, TIMES UNION, Nov. 15, 2014, <http://www.timesunion.com/opinion/article/Casey-Seiler-Lost-in-a-forest-of-LLCs-5895470.php>. Another report found that four developers in the Capital Region used at least 48 separate entities to give over \$600,000 to political committees in a five-year period. Lauren Stanforth, *4 developers make good use of campaign finance 'loophole,'* TIMES UNION, Nov. 3, 2014, <http://www.timesunion.com/local/article/4-developers-make-good-use-of-campaign-finance-5863746.php>.

<sup>32</sup> While LLCs must register with the New York Department of State, that office "does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies." N.Y. Dep't of State, Div. of Corporations, Entity Information, Shared Concepts LLC, [http://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=4601017&p\\_corpid=4600733&p\\_entity\\_name=Shared%20Concepts%20LLC&p\\_name\\_type=A&p\\_search\\_type=BEGINS&p\\_srch\\_results\\_page=0](http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=4601017&p_corpid=4600733&p_entity_name=Shared%20Concepts%20LLC&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=0). A search for "Shared Concepts LLC," which donated \$25,000 to Governor Cuomo for the 2014 election, lists no registered agent or members.

<sup>33</sup> See 11 C.F.R. § 110.1(g); Final Rule: Treatment of Limited Liability Companies under the Federal Election Campaign Act, 64 Fed. Reg. 37397 (1999).

<sup>34</sup> 64 Fed. Reg. at 37399 (1999)(internal emphasis and quotation marks omitted).

<sup>35</sup> *Id.* (internal quotation marks omitted).

be attributed on a pro rata basis.<sup>36</sup> When an LLC elects corporate status, on the other hand, “it is essentially telling the IRS that its organizational structure and functions are more akin to a corporation.”<sup>37</sup>

Tellingly, the FEC did not seriously consider continuing to treat LLCs as individuals who could separately make unattributed contributions. As the Commission explained, that “approach could lead to possible proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through each of them.”<sup>38</sup>

### *The 2007 Request*

In light of the FEC’s changed position and the harm caused by the LLC Loophole, in 2007 a number of groups wrote to the Board urging it to revisit 1996 Opinion # 1.<sup>39</sup> The Opinion, they argued, not only “creat[es] a loophole in the limits for political donations that apply to very similar business entities,” but also “frustrates the disclosure requirements of the Election Law, making it difficult if not impossible for the public and candidates to identify the actual donor” behind many LLC contributions.<sup>40</sup>

Almost six months after receiving that request, the Board sent a one page letter stating that it would “undertak[e] a review of this issue,” but that “[a]n initial review indicates that a change in policy would require a statutory amendment.”<sup>41</sup> The Board provided no reasons for this preliminary conclusion, and we are not aware of any further action being taken.

Seven years later, the LLC Loophole remains, undermining the Legislature’s intent to effectively limit contributions from both individuals and business entities.

### *The Board Should Rescind 1996 Opinion #1 and Treat LLCs as the Entity Type They Elect For Tax Purposes*

We urge the Board to rescind 1996 Opinion # 1, which subverts the Legislature’s intent in amending the Election Law to create a lower contribution limit for artificial business entities. The Board should treat LLCs as either corporations or partnerships, depending on the tax status they elect. Such an approach is consistent with the relevant statutory text and would better serve the intent of the Election Law. Treatment of LLCs according to the entity type they elect for federal tax purposes is also consistent with federal policy.

---

<sup>36</sup> 64 Fed. Reg. at 37398 (1999). As in New York, contributions by partnerships are generally attributed to each partner in proportion to his or her share of profits. 11 C.F.R. § 110.1(e). If an LLC has only a single natural person member, the contribution is “attributed only to that single member.” *Id.* § 110.1(g)(4).

<sup>37</sup> 64 Fed. Reg. at 37399

<sup>38</sup> *Id.* at 37398-99.

<sup>39</sup> Letter of Citizens Union et al. to N.Y. Bd. Elec. Requesting Re-evaluation of LLC Contribution Limits, June 11, 2007.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> Letter of Elizabeth C. Hogan, Enforcement Counsel, to Russ Haven, Feb. 1, 2008.

The case for rescission of 1996 Opinion #1 is clear. The Court of Appeals has instructed that state statutes should be read to “give effect and meaning to the entire statute and every part and word thereof.”<sup>42</sup> The Opinion fails to do so. It focuses largely on the LLC Law’s use of the phrase “unincorporated organization” in the definition of “limited liability company.” The Board failed to consider or even cite an important part of the statutory text: under § 102(m), LLC “mean[s], *unless the context otherwise requires*, an unincorporated organization . . . .”<sup>43</sup> Thus, the drafters of the LLC law expressly recognized that the newly-created hybrid entity should sometimes be treated as a corporation or partnership.

Based on the text of the LLC Law, courts and agencies in New York frequently treat LLCs as corporations or partnerships where circumstances warrant. For example, the New York Department of Taxation and Finance treats LLCs as either corporations or partnerships for tax purposes, depending on their federal elections.<sup>44</sup> Similarly, courts have applied the requirement that corporations and voluntary associations be represented by an attorney to LLCs, even though the attorney representation law does not mention them. As the Second Department explained, “[a]n LLC, like a corporation or voluntary association, is created to shield its members from liability and once formed is a legal entity distinct from its members.”<sup>45</sup> Similarly, an Albany court determined that an LLC should be permitted to bring a commercial claims action even though such an action could only be brought by “a corporation, partnership or association.”<sup>46</sup> While the court recognized that none of those categories applied to an LLC directly, it concluded that an LLC “is a cross between an association and a corporation,” and therefore should be treated as such under the law.<sup>47</sup> A federal court recently agreed, citing several New York cases for the proposition that LLCs should be treated as corporations or voluntary associations under the Judiciary Law.<sup>48</sup>

As in these cases, LLCs should be treated like other similarly situated artificial business entities under the Election Law. The failure to do so thwarts the Legislature’s intent to create a set of laws that effectively and reasonably limits contributions from both individuals and business groups. These limits predate the existence of the LLC form, but the LLC Law leaves the Board with ample room to take into account the true characteristics of such entities. Considering

---

<sup>42</sup> *Friedman v. Connecticut Gen. Life Ins. Co.*, 9 N.Y.3d 105, 115 (2007) (internal quotation marks and alterations omitted).

<sup>43</sup> N.Y. Ltd. Liab. Co. Law § 102(m) (emphasis added).

<sup>44</sup> N.Y. Dep’t of Taxation and Finance, *New York Tax Status of Limited Liability Companies and Limited Liability Partnerships*, Publication 16, Nov. 2014, <http://www.tax.ny.gov/pdf/publications/multi/pub16.pdf>. See also *Captain’s Galley LLC*, Case No. 6020 9539, 2003 WL 21995078 (N.Y. Work. Comp. Bd. 2003) (treating LLC members as partners for purposes of processing members’ workers compensation claims).

<sup>45</sup> *Michael Reilly Design, Inc. v. Houraney*, 835 N.Y.S.2d 640, 641 (2d Dep’t 2007); see also *Comm’rs of State Ins. Fund v. Lawrence LaRose Constructions, LLC*, 875 N.Y.S.2d 819 (Sup. Ct. 2008); *Monte Carlo v. Yorro*, 761 N.Y.S.2d 766, 767 (Dist. Ct. 2002).

<sup>46</sup> *Richard G. Roseetti, LLC v. Werther*, 800 N.Y.S.2d 355 at \*1 (City Ct. 2005).

<sup>47</sup> *Id.* at \*1. The court also cited *North4ore Realty LLC v. Bishop*, 770 N.Y.S.2d 193 (3d Dep’t 2003), in which the Third Department affirmed a judgment in a commercial claim brought by an LLC, but did not directly address whether LLCs could bring commercial claims.

<sup>48</sup> *Jacoby & Meyers, LLP v. Presiding Justices of Appellate Div. of Supreme Court of New York*, 847 F. Supp. 2d 590, 595 (S.D.N.Y. 2012) (“Accordingly, even if plaintiffs had not waived the point, this Court would hold that J & M LLC is a ‘corporation or voluntary association’ within the meaning of Judiciary Law Section 495.”).

their hybrid nature as “a cross between the traditional corporation and a partnership,”<sup>49</sup> the best approach is to treat them as one or the other, depending on their tax status, exactly as the FEC does. We urge the Board to do so.

### *Preventing Circumvention through Use of Multiple LLCs*

Apart from treating LLCs as corporations or partnerships, any new opinion or rule the Board issues should also make certain that a proliferation of multiple LLCs cannot be used by a single source to circumvent contribution limits and disclosure requirements. Even if LLCs are no longer treated as natural persons, wealthy individuals and businesses may still be able to evade the limits and hide their identities by giving in the name of different LLCs under common ownership and control. The Moreland Commission identified this proliferation problem in its 2013 report, explaining that one entity “utilized 25 separate LLCs and subsidiary entities to make 147 separate political contributions totaling more than \$3.1 million [] since 2008.”<sup>50</sup>

The Board’s tolerance for such conduct conflicts with the clear intent of the Legislature as reflected in the legislative history of the 1974 amendments to the Election Law. It also expressly contravenes the Election Law’s prohibition on giving in the name of another.<sup>51</sup> Failure to address this issue would significantly diminish any improvement resulting from other changes to the Board’s treatment of LLCs and constitute a dereliction of the Board’s statutory responsibilities.<sup>52</sup>

### *Conclusion*

For the reasons stated above, we request that the Board (1) rescind 1996 Opinion #1; (2) provide that LLCs will be treated either as corporations or partnerships depending on their tax status; and (3) clarify that no person may use multiple LLCs to circumvent contribution limits and disclosure requirements. The Board has a responsibility to ensure the integrity of New York’s campaign finance system, which its current approach fails to do. More than seven years have passed since the Board last promised to revisit this problem. Remedial action is long overdue. With parties and candidates already gearing up for 2016, there is no time to lose.

---

<sup>49</sup> 64 Fed. Reg. 37397, 37398 (1999).

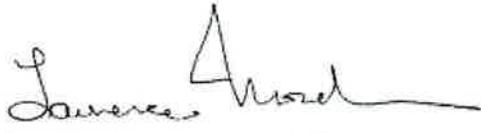
<sup>50</sup> N.Y. COMM’N TO INVESTIGATE PUBLIC CORRUPTION, PRELIMINARY REPORT 37 (2013), [http://publiccorruption.moreland.ny.gov/sites/default/files/moreland\\_report\\_final.pdf](http://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf).

<sup>51</sup> N.Y. Elec. Law § 14-120(1).

<sup>52</sup> One option is for the Board to require that contributions from one LLC be aggregated with contributions of all other affiliated LLCs. The aggregation method is often used for purposes of corporate or LLC contribution limits, and effectively prevents affiliated entities from using their formal legal status as distinct business entities to circumvent contribution limits. *See, e.g.*, N.Y.C. Campaign Fin. Bd., Advisory Op. 2001-6 (June 14, 2001), available at [http://www.nyccfb.info/act-program/ao/AO\\_2001\\_6.htm#fn2](http://www.nyccfb.info/act-program/ao/AO_2001_6.htm#fn2); 11 C.F.R. §§ 100.5(g)(2), 110.3(a); Cal. Gov’t Code § 85311.

Respectfully submitted,

Lawrence D. Norden

A handwritten signature in black ink that reads "Lawrence Norden". The signature is written in a cursive style with a long horizontal flourish at the end.

Brennan Center for Justice at  
NYU School of Law

Andrew G. Celli, Jr.

Elizabeth S. Saylor

A handwritten signature in blue ink that reads "Andrew G. Celli, Jr.". The signature is written in a cursive style with a long horizontal flourish at the end.

Emery Celli Brinckerhoff & Abady LLP