

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

BRENNAN CENTER FOR JUSTICE AT NYU  
SCHOOL OF LAW; GERALD BENJAMIN; LIZ  
KRUEGER; and JOHN R. DUNNE,  
Petitioners,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

NEW YORK STATE BOARD OF ELECTIONS,  
Respondents.

Index No. \_\_\_\_\_

**AFFIRMATION OF ELIZABETH S.  
SAYLOR**

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

I, Elizabeth S. Saylor, an attorney admitted to practice law in New York State, affirm the following under the penalties of perjury and pursuant to CPLR 2106:

1. I am a partner at the firm of Emery Celli Brinckerhoff & Abady LLP, located at 600 Fifth Avenue, 10<sup>th</sup> Floor, New York, NY 10020.

2. My firm, together with the Brennan Center for Justice at NYU School of Law (“the Brennan Center”), represents the Petitioners in this action.

3. Attached hereto are true and correct copies of Exhibits 1-17, which are described in the annexed list of exhibits.

Dated: July 13, 2015  
New York, New York

  
\_\_\_\_\_  
ELIZABETH S. SAYLOR

### Plaintiff's Exhibit List

<u>Exhibit No.</u>	<u>Description</u>
1	Board of Elections 2014 Contribution Limits
2	Governor Malcom Wilson's Memorandum on Approving 1974 N.Y. Laws ch. 304
3	1974 N.Y. Laws 1602
4	Excerpts of April 4, 1974 New York State Assembly debate
5	Excerpts of May 13, 1974 New York State Assembly debate
6	N.Y. Board of Elections' Formal Opinion of 1976 #4, dated April 23, 1976
7	N.Y. Board of Elections' Formal Opinion of 1996 #1, dated January 30, 1996
8	Excerpts of Preliminary Report of the New York Commission to Investigate Public Corruption, dated December 2, 2013
9	New York State Department of State Division of Corporations Entity Information for Shared Concepts LLC, accessed July 6, 2015
10	Letter of the Citizens Union, et. al. to the Board of Elections Requesting Re-evaluation of LLC Contribution Limits, dated June 11, 2007
11	Letter of Elizabeth C. Hogan, Enforcement Counsel to the Board of Elections, to Russ Haven of New York Public Interest Research Group, dated February 1, 2008
12	Letter of Attorney General Eric Schneiderman regarding the LLC Loophole, sent to the Board of Elections, dated April 15, 2015
13	Transcript of a portion of the public proceedings of the Commissioners of the Board of Elections on April 16, 2015
14	Excerpts of June 30, 1994 New York State Senate debate
15	N.Y. Board of Elections' Formal Opinion of 1974 #2
16	Excerpt of Moreland Commission Testimony of N.Y. City Council Member Eric Ulrich (R-Queens), dated September 17, 2013
17	N.Y. Board of Elections' Formal Opinion of 1981 #3

# **Exhibit 1**

# NEW YORK STATE

## BOARD OF ELECTIONS



## 2014 CONTRIBUTION LIMITS

Does not include limits for candidates participating in the pilot program for matching financing for the election to the Office of the New York State Comptroller.

To view such limits, go to the Public Financing Pilot Program section of the Board's Website, under Campaign Finance.



## 2014 Statewide Contribution Limits

(Governor, Lieutenant Governor, Comptroller\*, Attorney General)

\*Does not include limits for candidates participating in the pilot program for matching financing for the election to the Office of the New York State Comptroller.

To view such limits, go to the Public Financing Pilot Program section of the Board's Website, under Campaign Finance.

Primary Limits	Non-Family	Family
Democratic	\$19,700	\$136,039
Republican	13,470	67,348
Conservative	6,500	3,700
Independence	6,500	11,048
Working Families	6,500	1,084
Green Party	6,500	543
<b>General/Special</b>		
Election Limits	\$41,100	\$275,417

\*(C)andidates running jointly for the offices of governor and lieutenant governor in the general or special election shall be deemed to be one candidate” for limit purposes. NYS Election Law 14-114(7).

## 2014 Supreme Court Contribution Limits

District	Non-Family	Family
I	\$49,413.80	\$100,000.00
II	50,000.00	100,000.00
III	25,839.00	100,000.00
IV	26,752.50	100,000.00
V	29,856.90	100,000.00
VI	20,815.15	100,000.00
VII	36,517.85	100,000.00
VIII	47,102.30	100,000.00
IX	50,000.00	100,000.00
X	50,000.00	100,000.00
XI	50,000.00	100,000.00
XII	32,498.90	100,000.00
XIII	13,297.35	66,486.75

## 2014 Senate Contribution Limits

### Primary Election Limits

Non-Family Limit: \$6,500

Family Limit: The family limit for a Senate Primary is \$20,000, except for the districts and political parties indicated below, where the result is higher because of higher enrollment numbers.

6	\$20,060.50	Democratic
7	21,258.00	Democratic
8	20,596.25	Democratic
9	23,179.75	Democratic
10	30,984.75	Democratic
11	23,668.00	Democratic
12	23,430.25	Democratic
13	20,531.00	Democratic
14	33,442.50	Democratic
15	21,403.00	Democratic
16	23,993.00	Democratic
17	30,106.00	Democratic
18	37,282.25	Democratic
19	33,598.25	Democratic

## 2014 Senate Contribution Limits

### Primary Election Limits

Non-Family Limit: \$6,500

Family Limit: The family limit for a Senate Primary is \$20,000, except for the districts and political parties indicated below, where the result is higher because of higher enrollment numbers.

20	33,182.00	Democratic
21	36,016.50	Democratic
23	23,093.00	Democratic
25	40,449.00	Democratic
26	31,277.25	Democratic
27	33,759.50	Democratic
28	29,250.50	Democratic
29	35,254.75	Democratic
30	40,586.25	Democratic
31	35,944.50	Democratic
32	31,828.75	Democratic
33	25,599.75	Democratic
34	25,713.25	Democratic
35	23,420.75	Democratic

## 2014 Senate Contribution Limits

### Primary Election Limits

Non-Family Limit: \$6,500

Family Limit: The family limit for a Senate Primary is \$20,000, except for the districts and political parties indicated below, where the result is higher because of higher enrollment numbers.

36	32,776.25	Democratic
37	21,268.00	Democratic
38	21,919.50	Democratic
44	20,482.00	Democratic
46	22,609.25	Democratic
58	24,162.25	Democratic
60	26,067.50	Democratic
63	29,321.75	Democratic

## 2014 Senate Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$10,300

Family Limit: as follows:

District	Family Limits
1	\$53,519.50
2	50,383.00
3	43,405.75
4	46,782.00
5	54,530.75
6	53,442.75
7	53,692.25
8	54,314.00
9	56,879.75
10	40,539.25
11	42,434.00
12	36,705.25
13	29,885.50
14	43,615.75
15	39,607.25
16	38,729.25

## 2014 Senate Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$10,300

Family Limit: as follows:

17	40,564.00
18	47,106.25
19	43,733.75
20	42,091.50
21	45,633.25
22	36,631.00
23	38,436.50
24	47,852.25
25	50,575.25
26	48,670.00
27	51,463.25
28	50,314.50
29	52,205.00
30	50,834.50
31	47,550.25
32	39,523.00

2013 Senate Contribution Limits  
General/Special Election Limits

Non-Family Limit:       \$10,300

Family Limit:            as follows:

33	32,495.25
34	39,502.25
35	42,726.25
36	39,821.50
37	47,133.50
38	48,729.25
39	44,526.50
40	47,401.50
41	46,021.75
42	44,718.00
43	50,603.75
44	46,966.75
45	44,595.50
46	45,927.25
47	41,724.00
48	39,250.75



## 2014 Senate Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$10,300

Family Limit: as follows:

49	44,820.75
50	46,152.75
51	42,088.00
52	42,160.75
53	40,356.00
54	43,904.25
55	47,686.50
56	40,565.25
57	41,267.50
58	44,271.00
59	46,802.25
60	47,026.50
61	48,365.50
62	43,966.25
63	42,837.75

## 2014 Assembly Contribution Limits

### Primary Election Limits

Non-Family Limit: \$4,100

Family Limit: The family limit for an Assembly Primary is \$12,500, except for the districts and political parties indicated below, where the result is higher because of higher enrollment numbers.

District	Family Limits	Party
29	\$13,889.75	Democratic
32	13,933.25	Democratic
33	14,307.00	Democratic
40	13,863.75	Democratic
42	12,899.00	Democratic
43	14,393.75	Democratic
50	12,867.50	Democratic
52	16,279.00	Democratic
53	12,811.50	Democratic
55	14,209.50	Democratic
56	15,738.00	Democratic
57	16,976.25	Democratic
58	14,703.75	Democratic
60	15,061.75	Democratic

## 2014 Assembly Contribution Limits

### Primary Election Limits

Non-Family Limit: \$4,100

Family Limit: The family limit for an Assembly Primary is \$12,500, except for the districts and political parties indicated below, where the result is higher because of higher enrollment numbers.

66	13,986.50	Democratic
67	14,968.50	Democratic
68	15,493.75	Democratic
69	16,751.50	Democratic
70	16,641.50	Democratic
71	16,059.50	Democratic
72	14,024.00	Democratic
74	13,835.00	Democratic
75	14,249.25	Democratic
79	13,106.50	Democratic
83	12,883.50	Democratic
87	12,762.00	Democratic
141	15,222.75	Democratic

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

District	Family Limits
1	\$24,073.75
2	22,168.25
3	19,377.75
4	20,476.75
5	20,909.75
6	14,039.25
7	22,297.75
8	21,844.50
9	22,719.00
10	21,572.00
11	17,663.50
12	23,326.75
13	22,555.00
14	24,811.00

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

15	22,773.25
16	22,864.50
17	23,408.00
18	19,347.00
19	23,269.75
20	23,514.50
21	23,599.75
22	21,870.00
23	15,662.50
24	17,417.50
25	14,730.25
26	17,319.75
27	15,631.00
28	16,847.00
29	17,140.75
30	14,460.50

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

31	14,798.75
32	16,888.25
33	18,799.25
34	12,500.00
35	12,500.00
36	15,451.25
37	14,271.75
38	12,930.75
39	12,500.00
40	16,937.25
41	16,807.75
42	16,326.00
43	17,838.00
44	16,319.75
45	13,620.25
46	16,767.75

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

47	12,500.00
48	12,766.25
49	12,500.00
50	17,628.75
51	13,135.75
52	22,233.75
53	16,922.25
54	15,678.25
55	17,081.75
56	18,946.00
57	21,384.00
58	17,430.75
59	17,337.00
60	18,117.00
61	16,634.00
62	18,978.50

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

63	17,703.75
64	18,418.75
65	18,943.00
66	20,899.50
67	22,316.50
68	20,125.25
69	22,446.75
70	20,601.00
71	20,342.75
72	18,002.00
73	21,899.50
74	20,946.00
75	22,224.00
76	20,109.00
77	13,774.25
78	12,500.00
79	16,141.00



## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

80	13,601.00
81	16,099.00
82	17,348.25
83	15,728.50
84	14,997.00
85	14,249.00
86	12,952.50
87	16,149.50
88	21,498.25
89	20,610.50
90	19,454.75
91	17,391.75
92	21,437.00
93	21,103.25
94	21,127.50
95	18,311.25

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

96	20,292.75
97	20,160.75
98	19,106.75
99	20,954.50
100	18,580.75
101	19,600.50
102	20,039.25
103	21,407.25
104	19,145.25
105	20,249.00
106	19,659.25
107	21,168.75
108	21,334.75
109	22,937.25
110	22,892.25
111	17,983.00

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

112	22,888.75
113	22,006.25
114	20,976.50
115	19,343.50
116	17,796.50
117	18,835.75
118	20,005.50
119	18,567.50
120	19,695.00
121	21,454.25
122	19,412.25
123	18,413.50
124	20,474.50
125	17,245.75
126	21,184.50
127	21,765.00

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

128	19,048.50
129	18,915.25
130	20,812.00
131	20,223.75
132	19,703.00
133	20,547.00
134	21,017.50
135	22,581.25
136	19,770.00
137	17,730.25
138	18,442.25
139	18,820.25
140	20,575.75
141	19,198.25
142	21,328.25
143	21,151.75

## 2014 Assembly Contribution Limits

### General/Special Election Limits

Non-Family Limit: \$4,100

Family Limit: as follows:

144	21,016.25
145	20,730.75
146	20,879.50
147	21,966.75
148	20,571.00
149	19,224.50
150	19,572.75

# **Exhibit 2**



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY, 12224

MEMORANDUM filed with Assembly Bill Number 12485, entitled:

"AN ACT to amend the election law, in relation to election campaigns and to creating a state board of elections, prescribing its powers and duties and making an appropriation therefor and repealing certain provisions of such law relating to the elective franchise"

A P P R O V E D

The New York State Campaigns, Elections and Procedures Law, which I have just approved, represents the product of a successful, bi-par-tisan, Executive and Legislative effort to develop and distill an election law reform program that can and will substantially bolster voter confidence in the electoral process.

The bill will limit campaign expenditures, restrict campaign contributions, tighten existing campaign finance reporting requirements and create a new State Board of Elections with overall administration and enforcement authority. Specifically, in the area of campaign expenditures, the bill will:

-- limit the amount that may be spent by a candidate and all authorized committees on his behalf to 50 cents per enrolled voter in the district in primary elections and 50 cents per registered voter in the district in general elections, with minimum limits in Senate and Assembly races, however, of \$40,000 and \$25,000, respectively;

-- charge to the candidate's expenditure limit an allocated portion of expenditures on his behalf by multi-candidate committees;

-- restrict expenditures on behalf of a candidate by unauthorized committees to 2 1/2 per cent of the amount the candidate may contribute to his own campaign or \$2500, whichever is greater, and make it a class E felony to solicit, organize or coordinate unauthorized committees for the purpose of evading expenditure limitations;

-- charge to a candidate's expenditure limit the balance due on the date of the election of any loan received by the candidate.

To restrict unduly large contributions to any one campaign, either by the candidate himself or by other persons, the bill will:

-- limit the amount that may be contributed by the candidate and his family to five per cent of total permitted expenditures in the case of a candidate for Statewide office and 50 per cent of total permitted expenditures, but not more than \$100,000, for other offices;

-- prohibit receipt by a candidate and his committees from any one contributor of an aggregate amount greater than one per cent of total permitted expenditures in the case of a candidate for Statewide office or 10 per cent of total permitted expenditures, but not more than \$50,000, in the case of other candidates. Contributions by regular party committees will be excluded from the contribution restrictions, but the bill prohibits state committees from spending on candidate campaigns that portion of any one contribution greater than one-half cent per registered voter in the State, and county, city, town, village and Assembly district committees from spending on candidate campaigns that portion of any one contribution greater than one cent per registered voter in the jurisdiction;

-- include as contributions gifts in kind and loans made other than in the regular course of business and not repaid by the date of the election, as well as the provision of security on any loan not repaid by the date of the election;

-- permit corporations to make political expenditures not exceeding \$5000 in the aggregate in any year;

-- limit the total amount that may be spent in the State by any person in any one year for the nomination or election of State and local candidates to \$150,000.

So that the public may be sure the candidates and committees comply with law, the bill will significantly tighten present requirements with respect to the reporting of campaign finances. It will:

-- redefine "political committee" to include organizations of one or more persons and those committees organized in corporate form. A person would not be deemed a political committee, however, solely by reason of making a contribution to a candidate or a political committee;

-- require candidates and committees to file sworn receipt and disbursement statements at such times and in such places as the State Board of Elections determines, subject to statutory guidelines;

-- require each statement to set forth each contribution of more than \$50 and the name and address of the contributor and each expenditure of more than \$10, its purpose and the name and address of the payee; require treasurers to keep detailed records of all contributions and expenditures;

-- require each candidate and committee to designate a treasurer and a depository and file their names and addresses and to accept contributions and make payments of more than \$100 only by check,

-- exempt from the filing requirements candidates chargeable with not more than \$1000 of expenditures and candidates subject to Federal filing requirements, copies of whose Federal statements are filed with the State Board of Elections.

To unify election administration and improve enforcement, the bill establishes a four-member bi-partisan State Board of Elections, appointed by the Governor on the recommendations of the state chairmen and legislative leaders of the two major



political parties; To ensure fairness, the concurrence of three members of the Board will be needed for any official action by it. The Board will be empowered to:

-- investigate alleged violations or require local boards of elections to investigate, and, as appropriate, commence civil enforcement proceedings or refer matters to district attorneys for criminal prosecution;

-- after public hearings, promulgate a Fair Campaign Code, violations of which would be subject to civil penalties imposed by the State Board or to cease and desist orders issued by the Supreme Court upon application of the State Board;

-- prescribe uniform forms, rules and procedures for the operation of local boards of elections; issue regulations relating to administration of the election process; visit and inspect local boards of elections;

-- conduct public or private hearings, administer oaths, subpoena witnesses and documents, and grant immunity upon notice to the Attorney General and appropriate district attorney. (If the Attorney General or an appropriate district attorney objects to the grant of immunity, it may be granted only by unanimous vote of the entire Board.);

-- study all aspects of election administration, monitor the effectiveness of the election laws and annually report and recommend legislation to the Legislature and the Governor;

-- not later than February 15, 1975, submit to the Legislature a proposed recodification of the Election Law.

Election reform has received considerable attention in recent months and this bill embodies the best features of many of the proposals that have been made. The bill is particularly sound in that it will restrict the receipt, rather than the making of large contributions (thereby facilitating enforcement and enhancing constitutionality), and will eliminate any possibility that loans, subsequently forgiven, are used to evade expenditure or contribution limits. Moreover, the bill applies to all primary, as well as general, elections and contains effective transition provisions requiring the reporting of presently outstanding campaign obligations. Finally, the bill will grant the State Board of Elections ultimate responsibility for election law enforcement and administration but will, at the same time, preserve the appropriate roles of the district attorneys and local boards of elections. In this way, election administration will be centralized but not at the cost of creating a large new bureaucracy.

The bill is approved.

/s/ Malcolm Wilson

# **Exhibit 3**

creating a temporary state commission of the water supply needs of southeastern New York, and making an appropriation therefor", as amended by chapter five hundred seventy-two of the laws of nineteen hundred seventy-two, are hereby amended to read, respectively, as follows:

§ 9. The commission shall, no later than the fifteenth day of December, nineteen hundred [seventy-three] *seventy-four*, make a final report to the governor, the legislature and the department of environmental conservation.

§ 10. The commission shall continue in existence until March thirty-first, nineteen hundred [seventy-four] *seventy-five*.

§ 2. This act shall take effect immediately.

## CHAPTER 604\*

AN ACT to amend the election law, in relation to election campaigns and to creating a state board of elections, prescribing its powers and duties and making an appropriation therefor and repealing certain provisions of such law relating to the elective franchise

Became a law May 30, 1974, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The election law is hereby amended by adding thereto a new article, to be article sixteen-A, to read as follows:

\* NOTE.—The sections proposed to be repealed by this act are as follows:

Article 13 of the election law relates to campaign receipts, expenditures and contributions.

Section 334 of the election law relates to certain judicial proceedings and is replaced by section four hundred seventy-one of the election law as added by this act.

Section 439 of the election law relates to furnishing money or entertainment to induce attendance at polls.

Section 447 of the election law relates to political assessments.

Section 449 of the election law relates to failure to file statement of receipts, expenditures and contributions.

Section 453 of the election law relates to soliciting from candidates.

Section 455 of the election law relates to limitation of amounts to be expended by or for candidates.

Section 457 of the election law relates to printing or other reproduction of certain political literature.

Section 460 of the election law relates to political contributions prohibited; penalty.

EXPLANATION -- Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

## ARTICLE 16-A

NEW YORK STATE CAMPAIGNS,  
ELECTIONS AND PROCEDURES LAW

- Section 465. Short title.*
466. *Legislative declaration.*
467. *Definitions.*
468. *New York state board of elections; membership; organization.*
469. *State board of elections; general powers and duties.*
470. *State board of elections; enforcement powers.*
471. *Judicial proceedings.*
472. *Fair campaign code.*
473. *Statements of campaign receipts and expenditures by political committee.*
474. *Statements of campaign receipts, expenditures and contributions by candidates.*
475. *Political advertisements and literature.*
476. *Time for filing statements.*
477. *Place for filing statements.*
478. *Limitation of amounts to be expended by or for candidates.*
479. *Contribution and receipt limitations.*
480. *Political contributions by certain organizations.*
481. *Treasurer and depository of political committee; filing of name and address.*
482. *Campaign contribution to be under true name of contributor.*
483. *Accounting to treasurer or candidate; vouchers.*
- 483-a. *Furnishing money or entertainment to induce attendance at polls.*
484. *Political assessments.*
- 484-a. *Exceptions.*
485. *Violations.*

§ 465. *Short title. This article shall be known as the "New York state campaigns, elections and procedures law".*

§ 466. *Legislative declaration. The legislature intends by this law to create a New York state board of elections vested with authority and responsibility for the execution and enforcement of all laws relating to the elective franchise and to further mandate full and complete disclosure of campaign financing and practices, and to maintain citizen confidence in and full participation in the political process of our state to the end that the government of this state be and remain ever responsive to the needs and dictates of its residents in the highest and noblest traditions of a free society.*

§ 467. *Definitions. As used in this article:*

a. "political committee" means any corporation aiding or promoting and any committee or combination of one or more persons operating or co-operating to aid or to promote the success or defeat of a political party or principle, or of any question submitted to vote at a public election; or to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any party position voted for at a primary election, or to aid or defeat the nomination by petition of an independent candidate for public office; but nothing in this article shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any vote or to a national committee organized for the election of presidential or vice-presidential candidates; provided, however, that a person making a contribution to a candidate or a political committee shall not, by that fact alone, be deemed to be a political committee as herein defined.

b. "party committee" means any committee provided for in the rules of the political party in accordance with section ten of this chapter, other than a constituted committee.

c. "constituted committee" means a state committee, a county committee or a duly constituted subcommittee of a county committee;

d. "duly constituted subcommittee of a county committee" means, outside the city of New York, a city, town or village committee, and, within the city of New York, an assembly district committee, which consists of all county committee members from the city, town, village or assembly district, as the case may be, and only such members;

e. "non-candidate expenditures" means expenditures made by a party committee or a constituted committee to maintain a permanent headquarters and staff and carry on ordinary party activities not promoting the candidacy of specific candidates;

f. "major political parties" means, at any time, the two political parties receiving the greatest number of votes at the preceding gubernatorial election;

g. "district" means the entire state or any part thereof, as the case may be;

h. "candidate" means an individual who seeks nomination for election, or election, to public office or party position voted for at a primary or general or special election whether or not such individual is elected, and, for purposes of this subdivision, an individual shall be deemed to seek nomination for election, or election, to such office or position, if he has (1) taken the action necessary to qualify himself for nomination for election, or elec-

tion, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office or position; and

i. "legislative leader" means any of the following: the speaker of the assembly; the minority leader of the assembly; the temporary president of the senate and the minority leader of the senate.

§ 468. *New York state board of elections; membership; organization.* a. There is hereby created within the executive department a New York state board of elections, hereafter referred to as the "state board of elections", composed of four commissioners appointed by the governor: two commissioners, one each from among not fewer than two persons recommended by the chairman of the state committee of each of the major political parties; and two other commissioners, one upon the joint recommendation of the legislative leaders, of one major political party, in each house of the legislature and one upon the joint recommendation of the legislative leaders, of the other major political party, in each house of the legislature. The commissioners first appointed by the governor shall serve for terms as follows:

1. The person recommended by the chairman of one state committee for a term expiring December thirty-first, nineteen hundred seventy-six;

2. The person recommended by the chairman of the other state committee, for a term expiring May thirty-first, nineteen hundred seventy-seven;

3. The person recommended jointly by the legislative leaders, of one major political party, in each house of the legislature, for a term expiring April thirtieth, nineteen hundred seventy-seven; and

4. The person recommended jointly by the legislative leaders, of the other major political party, in each house of the legislature, for a term expiring November thirtieth, nineteen hundred seventy-seven.

Thereafter, the commissioners shall be appointed for terms of two years each and in the same manner as their respective predecessors. A commissioner appointed to the board to fill a vacancy caused other than by expiration of a term, shall serve for the balance of the unexpired term. The provisions of section five of the public officers law shall not apply to any member appointed on recommendation of legislative leaders.

b. Of the two commissioners of the board appointed upon the recommendation of the legislative leaders one shall be designated by the governor as the chairman and one as the vice-chairman, respectively. Thereafter, upon the expiration of the term of the commissioner designated as chairman, the designation of the vice-chairman, as such, shall also terminate and the chairman and vice-chairman, respectively, shall be the member appointed to the board upon the recommendation of the legislative leaders of a

*different major political party than that of those who recommended his predecessor.*

*c. The commissioners of the state board of elections shall have no other public employment. The commissioners shall receive an annual salary of twenty-five thousand dollars, within the amounts made available therefor by appropriation. The board shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a "state agency", and such commissioners shall be "officers" of the state board of elections for the purposes of such sections. Within the amounts made available by appropriation therefor, the state board of elections shall appoint an administrative director, counsel and such other staff members as are necessary in the exercise of its functions, and may fix their compensation.*

*d. For the purposes of meetings, three commissioners shall constitute a quorum. The affirmative vote of three commissioners shall be required for any official action of the state board of elections.*

*e. The principal office of the state board of elections shall be in the county of Albany.*

*§ 469. State board of elections; general powers and duties. In addition to the enforcement powers and any other powers and duties specified by law, the state board of elections shall have the power and duty to:*

*a. issue instructions and promulgate rules and regulations relating to the administration of the election process, election campaign practices and campaign finances consistent with the provisions of law;*

*b. visit boards of elections, examine their procedures and records and direct that any such procedures be modified in any manner consistent with the provisions of this chapter;*

*c. conduct any investigation necessary to carry out the provisions of this article;*

*d. conduct private or public hearings;*

*e. administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material;*

*f. confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law, in any investigation relating to any crime or offense with respect to which, by express provisions of statute, a competent authority is authorized to confer immunity; provided, however, that such immunity shall be conferred only after the attorney general and appropriate district attorney are afforded the opportunity to be heard respecting any objections which either may have to the conferring thereof; and*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

provided, further, that if either the attorney general or any such appropriate district attorney shall object to the conferring of immunity, immunity may be conferred only by unanimous vote of all four commissioners of the state board;

g. institute or direct a board of elections to institute such judicial proceedings as may be necessary to enforce compliance with any provision of this article or any regulation promulgated hereunder including, but not limited to, application, on notice served upon the respondent in the manner directed by the court at least six hours prior to the time of return thereon, to a justice of the supreme court within the judicial district in which an alleged violation of any such provision or regulation occurred or is threatened, for an order prohibiting the continued or threatened violation thereof or for such other or further relief as the court may deem just and proper;

h. prepare uniform forms for the statements required pursuant to sections four hundred seventy-three and four hundred seventy-four of this article and uniform forms for use by local election officials in the conduct of registration and voting;

i. study and examine the administration of elections within the state including campaign financing, campaign financing reporting, and campaign practices;

j. recommend such legislation or administrative measures as it finds appropriate to promote fair, honest and efficiently administered elections, including, but not limited to, legislation to adjust the expenditure limitations set forth in this article;

k. monitor the adequacy and effectiveness of the election laws and report thereon not later than December thirty-first, nineteen hundred seventy-four and at least annually thereafter to the governor and the legislature;

l. take all appropriate steps to encourage the broadest possible voter participation in elections;

m. perform such other acts as may be necessary to carry out the purposes of this article.

§ 470. State board of elections; enforcement powers. a. The state board of elections shall have jurisdiction of, and be responsible for, the execution and enforcement of the provisions of this article and other statutes governing campaigns, elections and related procedures.

b. Whenever the state board of elections or other board of elections shall determine, on its own initiative or upon complaint, or otherwise, that there is substantial reason to believe a violation of this article or any code or regulation promulgated thereunder has occurred, it shall expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made by the complainant and any political committee supporting his candidacy if the complainant is a candidate or, if the complaint was made by an officer or member of a political



*committee, of reports and statements made or failed to be made by such political committee and any candidates supported by it. The state board of elections, in lieu of making such an investigation, may direct the appropriate board of elections to make an investigation. The state board of elections may request, and shall receive, the assistance of the state police in any investigation it shall conduct.*

*c. If, after an investigation, the state or other board of elections finds reasonable cause to believe that a violation warranting criminal prosecution has taken place, it shall forthwith refer the matter to the district attorney of the appropriate county and shall make available to such district attorney all relevant papers, documents, testimony and findings relevant to its investigation.*

*d. The state or other board of elections may, where appropriate, commence a proceeding under section four hundred seventy-one of this article and the state board of elections may direct the appropriate other board of elections to commence such proceeding.*

*e. The state board of elections may promulgate rules and regulations consistent with law to effectuate the provisions of this section.*

§ 471. *Judicial proceedings. a. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters or by the state or other board of elections as provided in section four hundred seventy of this article may compel by order, any person required under the provisions of this article to file a statement of receipts, expenditures or contributions for campaign purposes, who has not filed any such statement within the time prescribed by this article, to file such statement within five days after notice of the order.*

*b. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters, or by the state or other board of elections in accordance with the provision of section four hundred seventy of this article may compel by order any person required under the provisions of this article to file a statement of receipts, expenditures or contributions for campaign purposes, who has filed a statement which does not conform to the requirements of this article in respect to its truth, sufficiency in detail or otherwise, to file a new or supplemental statement which shall make the statement or statements true and complete within five days after notice of the order. The state board of elections shall be a necessary party in any such proceeding.*

*c. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters, or by the state or other board of elections as provided in section four hundred seventy of this article may*

compel by order any person who has failed to comply, or the members of any committee which has failed to comply, with any of the provisions of this article, to comply therewith.

d. In every proceeding instituted under this section, except a proceeding to compel the filing of a statement by a candidate for nomination to a public office at a primary election or for election thereto, or by the treasurer of a political committee, who has failed to file any statement, the petitioner or petitioners, upon the institution of the proceeding shall file with the county clerk an undertaking in a sum to be determined and with sureties to be approved by a justice of the supreme court conditioned to pay any costs imposed against him or them; provided, however, that no such undertaking shall be required in a proceeding instituted by the state or other board of elections.

e. A special proceeding under the foregoing provisions of this article shall be heard upon a verified petition and such oral or written proof as may be offered, and upon such notice to such officers, persons or committees as the court or justice shall direct, and shall be summarily determined. The proceeding shall have preference over all other causes in all courts. The petition in any such proceeding instituted by the state or other board of elections shall be verified by the persons specified in accordance with rules promulgated by the state board of elections. In the city of New York, a proceeding relating to a run-off primary brought pursuant to this section shall have first preference over all other proceedings.

§ 472. Fair campaign code. a. In addition to the powers and duties elsewhere enumerated in this article, the state board of elections, after public hearings, shall adopt a "fair campaign code" setting forth ethical standards of conduct for persons, political parties and committees engaged in election campaigns including, but not limited to, specific prohibitions against practices of political espionage and other political practices involving subversion of the political parties and process, attacks based on racial, religious or ethnic background and deliberate misrepresentation of a candidate's qualifications, position on a political issue, party affiliation or party endorsement.

b. Such code shall be published at least twice during the three months preceding a general election in one newspaper of general circulation in each county and, in the city of New York, in two newspapers of general circulation in the city of New York. Copies of such code shall also be sent to each candidate, political party, political committee and boards of election upon request.

c. The state board of elections, on its own initiative, or upon complaint or otherwise, may investigate any alleged violation of the fair campaign code and, in appropriate cases, may apply for an order, as provided in section four hundred sixty-nine of this article.

d. In addition to any other civil or criminal penalty which may be provided for by law, the state board may impose a civil

penally, not to exceed one thousand dollars, upon any person found by the board, after a hearing, to have violated any of the provision\* of such code.

Any such finding by the board may only be had after a hearing conducted by it upon reasonable written notice, as the board may determine, to such person and affording such person a reasonable opportunity to be heard and present and examine witnesses thereat.

§ 473. *Statements of campaign receipts and expenditures by political committee.* a. The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election, receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall file statements sworn, or subscribed and bearing a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, at the times prescribed by section four hundred seventy-six of this article setting forth all the receipts, expenditures and liabilities of the committee, and of every officer, member and other person in its behalf. Such statements shall include the amount received, or the fair market value of contributions other than of money, the name and address of the person from whom received or the name of and the political unit represented by the committee from which received, the date of its receipt, the amount of every expenditure, the name and address of the person to whom it was made or the name of and the political unit represented by the committee to which it was made and the date thereof, and shall state clearly the purpose of such expenditure. Any statement reporting a loan shall have attached to it a copy of the evidence of indebtedness. Expenditures in sums under ten dollars need not be specifically accounted for by separate items in said statements, except in the case of payments made for account of or to political workers, watchers or messengers, and receipts aggregating not more than fifty dollars from any one contributor need not be specifically accounted for by separate items in said statements, provided however, that such expenditures and receipts shall be subject to the provisions of section four hundred eighty-one of this article.

b. The state board of elections shall promulgate regulations with respect to the accounting methods to be applied in preparing the statements required by the provisions of this article and shall provide forms suitable for such statements.

§ 474. *Statements of campaign receipts, expenditures and contributions by candidates.* Any candidate for election to public office, or for nomination for public office at a primary election or convention, or for election to a party position at a primary election, shall file statements sworn, or subscribed and bearing a form

\* So in original.

*notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, at the times prescribed by section four hundred seventy-six of this article setting forth the particulars specified by section four hundred seventy-three of this article or by this section, as to all moneys or other valuable things, paid, given, expended or promised by him to aid his own nomination or election, or to promote the success or defeat of a political party, or to aid or influence the nomination or election or the defeat of any other candidate to be voted for at the election or primary election or at a convention, including contributions to political committees, officers, members or agents thereof, and of moneys or other valuable things received by or promised to him to be used for any of the purposes above specified.*

§ 475. *Political advertisements and literature. The statements required to be filed under the provisions of this article next succeeding a primary, general or special election shall be accompanied by a facsimile or copy of all advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced and a schedule of all radio or television time, and scripts used therein, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be.*

§ 476. *Time for filing statements. a. The statements required by this article shall be filed at such times as the state board of elections, by rule or regulation, shall specify; provided, however, that in no event shall the board provide for fewer than four filings in the aggregate in connection with any primary, general or special election, or in connection with a question to be voted on and in any event, at least one of said filings shall be not less than fifteen days nor more than twenty-five days prior to such election. Such rules or regulations shall be promulgated not later than the thirtieth day after the date of the initial appointment of the commissioners of the board.*

*b. Each statement shall cover the period up to and including the fourth day next preceding the day specified for the filing thereof; provided, however, that any contribution in excess of one thousand dollars, if received after the close of the period to be covered in the last statement filed before any primary, general or special election but before such election, shall be reported, in the same manner as other contributions, within twenty-four hours after receipt.*

*c. Each statement shall be preserved by the officer with whom or the board with which it is required to be filed for a period of five years from the date of filing thereof.*

*d. Each statement shall constitute a part of the public records of such officer or board and shall be open to public inspection.*

*e. The state board of elections or other board of elections, as the case may be, shall notify each person required to file state-*

ments in accordance with this article of such person's failure to timely file. Such notice shall be in writing and mailed to the last known residence or business address of such person by registered mail, return receipt requested. Failure to file within five days of receipt of such notice shall constitute prima facie evidence of a wilful failure to file. A copy of any such notice sent by a board of elections other than the state board of elections shall be sent by such other board to the state board.

f. A statement shall be deemed properly filed when deposited in an established post-office within the prescribed time, duly stamped, registered and directed to the officer with whom or to the board with which the statement is required to be filed, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by such officer or such board of its non-receipt.

§ 477. Place for filing statements. The places for filing the statements required by this article shall be determined by rule or regulation of the state board of elections; provided, however, that the statements of a candidate for election to the office of governor, lieutenant governor, attorney general, comptroller, member of the legislature, judge of the court of appeals, justice of the supreme court or for nomination for any such office at a primary election and of any committee aiding or taking part in the designation, nomination, election or defeat of candidates for one or more of such offices or promoting the success or defeat of a question to be voted on by the voters of the entire state shall be filed with the state board of elections and in such other places as the state board of elections may, by rule or regulation provide. Such rule or regulation shall first be promulgated not later than the thirtieth day after the date of the initial appointment of the commissioners of such board.

§ 478. Limitation of amounts to be expended by or for candidates. a. The aggregate of (i) the amount expended by a candidate for a public office or a party position voted for at a primary or general or special election for any purpose tending in any way, directly or indirectly, to promote or aid in securing such nomination or election and (ii) the amounts expended for such purposes by all authorized political committees or taking part in the nomination or election of such candidate, shall not exceed:

1. in any primary election for party position or for nomination to public office, the sum of fifty cents for each voter enrolled in the candidate's party in the district in which he is a candidate, or twenty-five hundred dollars, whichever is greater, or in the case of a nomination for state senator forty thousand dollars, whichever is greater, or in the case of a nomination for member of the assembly twenty-five thousand dollars, whichever is greater; or

EXPLANATION — Matter in italics is new; matter in brackets [ ] is old law to be omitted.

2. in any general or special election, the sum of fifty cents for each voter registered in the district in which such candidate is a candidate, or twenty-five hundred dollars, whichever is greater, or in the election of a state senator forty thousand dollars, whichever is greater, or in the case of the election of a member of the assembly twenty-five thousand dollars, whichever is greater.

The number of such voters shall be determined as of such election or as of the date of the general election in any of the preceding four years, whichever shall result in the greatest number.

Candidates running jointly for the offices of governor and lieutenant governor in a general or special election shall be deemed to be one candidate for the purposes of determining the amount that may be expended under this section.

b. No political committee may aid or take part in the election or nomination of a candidate unless there shall be filed, in the office in which the statements of such committee are to be filed pursuant to section four hundred seventy-seven of this article, a sworn verified statement by the candidate authorizing the political committee to aid or take part in his election or a sworn verified statement by the treasurer of such committee stating that the candidate did not authorize the committee to aid or take part in his election. Expenditures made on behalf of a candidate by any political committee not so authorized shall be limited to two and one-half per centum of the amount which may be contributed in the aggregate to aid or promote such candidate's candidacy by the candidate and members of his family specified in subdivision a of section four hundred seventy-nine of this article or twenty-five hundred dollars, whichever is greater. In any event such political committee shall maintain records and file statements as required by this article for political committees. Any person who shall, acting on behalf of a candidate or political committee, knowingly and wilfully solicit, organize or coordinate the formation or activities of one or more unauthorized committees for the purpose of evading the expenditure limitations of subdivision a of this section, shall be guilty of a class E felony.

c. In computing the aggregate amount expended for purposes of subdivision a of this section, expenditures made by a political committee in support of candidates shall be allocated among such candidates supported by the committee in accordance with any formula based upon reasonable standards established by the committee. The statements filed by such committee in accordance with this article shall set forth, in addition to the other information required to be set forth, the total amount expended by the committee on behalf of all such candidates and the amount allocated to each candidate by dollar amount and percentage. Nothing in this subdivision shall require allocating non-candidate expenditures to candidates.

§ 479. Contribution and receipt limitations. a. 1. A candidate for election to a public office to be voted on by voters of the entire state or for nomination for any such office or for election

*to a party office to be voted on by the voters enrolled in the party in the entire state and all authorized political committees other than party committees or constituted committees aiding or taking part in his nomination or election may not accept from any one contributor contributions, in the aggregate, greater than one percent of the amount which may be expended by and on behalf of such candidate in accordance with the provisions of subdivision a of section four hundred seventy-eight of this article; provided, however, that the maximum amount which may be so accepted, in the aggregate, from the candidate and his or her spouse, child, parent, grandparent, brother and sister and the spouse of any such person shall be five percent of such amount which may be expended.*

*2. A candidate for election to any other public or party office or for nomination to such office, and all authorized political committees other than party committees or constituted committees aiding or taking part in his nomination or election may not accept from any one contributor contributions, in the aggregate, greater than ten percent of the amount which may be expended by and on behalf of such candidate in accordance with the provisions of subdivision a of section four hundred seventy-eight of this article, but in no event more than fifty thousand dollars nor less than one thousand dollars; provided however, that the maximum amount which may be so accepted, in the aggregate, from the candidate and his or her spouse, child, parent, grandparent, brother and sister and the spouse of any such person shall be fifty percent of such amount which may be expended, but in no event more than one hundred thousand dollars.*

*b. For purposes of this section, contributions other than of money shall be evaluated at their fair market value. The state board of elections shall promulgate regulations, consistent with law, governing the manner of computing fair market value.*

*c. As used in this section the term "contributor" shall not include a party committee supporting the candidate or a constituted committee supporting the candidate.*

*d. For purposes of this section, a portion of every contribution to a party committee, expended as other than non-candidate expenditures, shall be deemed contributed to every candidate supported by the committee. That portion shall be determined by applying to such contribution the allocation formula used under subdivision c of section four hundred seventy-eight of this article.*

*e. 1. No constituted committee may expend, in any twelve month period terminating on the day of a general election, other than as non-candidate expenditures, any portion of any individual contribution which exceeds, in the case of a state committee, one-half of one cent for each registered voter in the state, or, in the case of any other constituted committee, the greater of one cent for each registered voter in the district in which the committee is organized or five hundred dollars. The number of such voters shall be*

determined as of the date of such general election or as of the date of the general election in any of the preceding four years, whichever shall result in the greatest number.

2. Nothing in this section shall be construed to increase in any way the permitted maximum expenditures by and on behalf of a candidate as specified in section four hundred seventy-eight of this article.

f. 1. The balance due on the date of a primary, general or special election, as the case may be, on any liability incurred or loans received by a candidate, or political committee to the extent that the expenditure of the proceeds of such loan or the benefit of such liability is allocable to such candidate, shall be deemed an expenditure for the purpose of ascertaining the total expenditures by or on behalf of the candidate.

2. A loan made to a candidate or political committee, other than a constituted committee, by any person, firm, association or corporation other than in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the primary, general or special election, as the case may be, a contribution by such person, firm, association or corporation.

3. A loan made to a candidate or political committee, other than a constituted committee, by any person, firm, association or corporation in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the primary, general or special election, as the case may be, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collateralizing or otherwise providing security for the loan.

g. For the purposes of this section, candidates running jointly for the offices of governor and lieutenant governor in a general or special election shall be deemed to be one candidate.

h. Except as may otherwise be provided for a candidate and his family as specified in subdivision a of this section, no person may contribute, loan, guarantee or expend in excess of one hundred fifty thousand dollars within the state in connection with the nomination or election of persons to state and local public offices and party positions within the state of New York in any one calendar year. For the purposes of this subdivision "loan" or "guarantee" shall mean loan or guarantee which is not repaid or discharged in the calendar year in which it is made.

§ 480. Political contributions by certain organizations. a. No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office,



or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violations, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor.

b. Notwithstanding the provisions of subdivision a of this section, any corporation or an organization financially supported, in whole or in part, by such corporation may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed five thousand dollars in the aggregate in any calendar year.

§ 481. Treasurer and depository of political committee; filing of name and address. a. Every candidate and political committee shall have a treasurer and a depository, and shall cause the treasurer to keep detailed, bound accounts of all money or other valuable things received by or promised to, and of all expenditures, and promises of payment made by the candidate or by the committee or any of its officers or members or by any person acting under its authority or in its behalf. All such accounts shall be retained by the treasurer for a period of five years from the date of the filing of the final statement with respect to the election, primary election or convention to which they pertain. No candidate and no member of any political committee or other person acting under its authority or in its behalf shall receive any money or other valuable things, or expend the same until the candidate or committee shall have chosen a treasurer and depository and filed their names in accordance with this subdivision. There shall be filed in the office in which the candidate or committee is required to file its statements under section four hundred seventy-seven of this article, within five days after the choice of a treasurer and depository, a statement signed by the candidate or by at least two members of such committee and giving the addresses of those members, giving the name and address of the treasurer chosen, the name and address of the depository and in the case of a committee, the names of the candidate or candidates in whose election or defeat the committee is to aid or take part; provided, however, that such statement shall not be required of a constituted committee of a political party. If the treasurer is not a member signatory of the statement, it shall also contain his signature. Any change in the information required in such statement shall be reported, in an amended statement filed in the same manner and in the same office as the original statement filed under this section, within two days after it occurs. Only a banking organization authorized to do business in this state may be designated a depository hereunder.

*b. No candidate, political committee, or agent thereof may receive from any one person an aggregate amount greater than one hundred dollars except in the form of a check, draft or other instrument payable to the candidate, political committee or treasurer and signed or endorsed by the donor. All such checks, drafts or other instruments shall be endorsed by the treasurer for deposit in the designated depository. No candidate or political committee shall expend an amount in excess of one hundred dollars except by check drawn on the depository and signed by the treasurer.*

**§ 482.** *Campaign contribution to be under true name of contributor. No person shall in any name except his own, directly or indirectly, make a payment or a promise of payment to a political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf, nor shall any such committee or any such person knowingly receive a payment or promise of payment, or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or persons by whom it is made.*

**§ 483.** *Accounting to treasurer or candidate; vouchers. a. Whoever, acting as an officer or member or under the authority of a political committee, or under the authority of a candidate for election to public office, or for nomination for public office at a primary election or convention, or for election to party position at a primary election, receives any money or its equivalent, or promise of the same, or expends or incurs any liability to pay the same, shall, within three days after demand and in any event within fourteen days after such receipt, expenditure, promise or liability, give to the treasurer of such committee, or to such candidate if an agent authorized by him a detailed account of the same, with all vouchers required by this article, which shall be a part of the accounts and files of such treasurer or such candidate.*

*b. Every payment required to be accounted for, unless the total expense payable to any one person be not in excess of ten dollars, shall be vouched for by a receipted bill stating the particulars of expense.*

**§ 483-a.** *Furnishing money or entertainment to induce attendance at polls. Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:*

*a. On a day of a general, special or primary election, gives or provides, or causes to be given or provided, or shall pay for wholly or in part, any meat, drink, tobacco, refreshment or provision, or for any person, other than persons who are official representatives of the board of elections or political parties and committees and persons who are engaged as watchers, party representatives or workers assisting the candidate; or,*

*b. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any*

*other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a class A misdemeanor: The cost of preparation and presentation of radio, television, motion pictures or any other means of mass communication, speeches, advertisements or personal appearances, rent of halls and compensation of speakers, music and fireworks, for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circulars, letters, pamphlets and literature bearing on the election; rent of offices and club rooms, compensation of persons rendering accounting services and of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones; the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of vehicles for conveying electors to the polls not exceeding three vehicles for each election district in a city and not exceeding six vehicles in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.*

§ 484. *Political assessments. Any officer or employee of the state, or of a political subdivision thereof who, directly or indirectly uses his authority or official influence to compel or induce any other officer or employee of the state or a political subdivision thereof, to pay or promise to pay any political assessment shall be guilty of a class A misdemeanor. Nothing herein shall be deemed to prohibit an officer or employee of the state or political subdivision thereof from making a voluntary contribution to a candidate or political committee.*

§ 484-a. *Exceptions. a. This article shall not apply to any person, association or corporation engaged in the publication or distribution of any newspaper or other publication issued at regular intervals in respect to the ordinary conduct of such business.*

*b. The filing requirements of this article and the provisions of sections four hundred seventy-eight and four hundred seventy-nine of this article shall not apply to any candidate or committee who or*

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

*which engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report of the campaign receipts, expenditures and liabilities of such candidate or committee with an office or officers of the government of the United States, provided a copy of each such statement or report is filed in the office of the state board of elections.*

*c. The filing requirement of this article and the provisions of sections four hundred seventy-eight and four hundred seventy-nine 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 activities which are not for the express purpose of promoting the candidacy of specific candidates.*

*d. No candidate and no political committee taking part solely in his campaign and authorized to do so by him in accordance with the provisions of section four hundred seventy-eight of this article shall be required to file a statement required by sections four hundred seventy-three or four hundred seventy-four of this article if at the close of the reporting period for which such statement would be required each of the aggregate receipts and aggregate expenditures by and on behalf of such candidate do not exceed one thousand dollars and such candidate and such committees\* each files, on the filing date otherwise provided, a statement, sworn or subscribed and bearing a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, stating that each of such aggregate receipts and aggregate expenditures does not exceed one thousand dollars.*

§ 485. *Violations. a. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not in excess of one hundred dollars, to be recoverable in a civil proceeding to be brought by the state board of elections or other board of elections.*

*b. Any person who knowingly and willfully fails to file a statement required to be filed by this article within ten days after the date provided for filing such statement or any person who knowingly and willfully violates any other provision of this article shall be guilty of a misdemeanor.*

*c. Any person who knowingly and willfully expends or aids or participates in the expenditure of funds in an amount exceeding an applicable maximum specified in this article, or who knowingly and willfully accepts or aids or participates in the acceptance of a contribution in an amount exceeding an applicable maximum specified in this article shall be guilty of a misdemeanor.*

§ 2. For the purpose of computing New York state personal income tax, the federal adjusted gross income shall not be modified to deprive the taxpayer from the benefit of an itemized deduction for political contributions as prescribed by federal law.

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\* So in original.

§ 3. Not later than thirty days after the effective date of this act every person who was a candidate for public office or nomination therefor or for party position at any primary, general or special election prior to January first, nineteen hundred seventy-four, whether or not elected, shall file with the state board of elections a statement of all obligations outstanding as of ten days prior to the date of filing of his statement and shall report the amount and description of all assets in his possession or in the possession of any committee which acted on his behalf available and/or allocated to the retirement of such campaign obligation. Nothing herein shall be construed to prevent such candidate from receiving money or anything of value for the purpose of retiring such debt and such money or such things of value so received shall not be chargeable to any expenditure limit imposed under the provisions of this act, provided that such candidate reports all contributions used for the retirement of such debt in accordance with the provisions of this act.

§ 4. All party committees as defined in section ten of the election law shall within thirty days of the effective date of this act report in detail all obligations outstanding as of the effective date of this act incurred in behalf of any candidate or any committee for any candidate who ran in any primary, general or special election prior to January first, nineteen hundred seventy-four to the state board of elections, whether or not such candidate was elected. Nothing herein shall be construed to prevent such committee from collecting anything of value for the purpose of retiring such debt and such things of value so collected shall not be chargeable to any expenditure limit imposed under the provisions of this act, provided that such committee reports all contributions used for the retirement of such debt used in accordance with the provisions of this act.

§ 5. Within thirty days of the effective date of this act any person or combination of persons, corporation, committee or other entity who collected money or any other thing of value, for the purpose of being a candidate at a primary, general or special election or for the purpose of acting on behalf of or for the benefit of any person\* being a candidate at such election in the calendar year nineteen hundred seventy-four, prior to the effective date of this act, shall report to the state board of elections in accordance with the provisions of this act all receipts, expenditures and obligations as provided in this act. No such receipt, expenditure, or obligation incurred shall place any person in violation of this act, provided that such receipt, expenditure or obligation made prior to the effective date of this act did not violate any other then applicable provision of law.

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\* So in original. [Word misspelled.]

§ 6. Transfer of functions of secretary of state. All of the functions and powers possessed by and all the obligations and duties of the secretary of state pursuant to the provisions of the election law or any other law relating to the conduct of elections in this state are hereby transferred and assigned to, assumed by and devolved upon the state board of elections; provided, however, the division of servicemen's voting within the office of the secretary of state shall be continued as now provided, notwithstanding the provisions of this act.

§ 7. Transfer of functions of the attorney general and the department of law. All of the functions and powers possessed by and all the obligations and duties of the attorney general and the department of law relating to the elective franchise pursuant to the provisions of section sixty-nine of the executive law are hereby transferred and assigned to, assumed by and devolved upon the state board of elections.

§ 8. Transfer of employees. Upon the transfer of functions to the state board of elections, provision shall be made for the transfer of such employees of the secretary of state and department of law performing the functions so transferred, subject to the approval of the director of the division of the budget and, in the case of employees of the department of law, of the attorney general. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status. For the purpose of determining the employees holding permanent appointment in competitive class positions to be transferred, such employees shall be selected in each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

§ 9. Transfer of records. The secretary of state shall place in the custody of the state board of elections all books, papers, records and property of the department of state pertaining to the functions herein transferred.

§ 10. Continuity of authority. For the purpose of succession to all functions, powers, duties, and obligations of the department of state and department of law, transferred and assigned to, devolved upon and assumed by the state board of elections pursuant to this act, the state board of elections shall be deemed and held

to constitute the continuation of such departments and not a different agency or authority.

§ 11. Completion of unfinished business. Any business or other matter undertaken or commenced by the department of state pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned, and pending on the effective date of this act, may be conducted and completed by the state board of elections in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by such department.

§ 12. Continuance of rules and regulations. All rules, regulations, acts, determinations and decisions of the department of state and department of law, pertaining to the functions transferred and assigned by this act to the state board of elections in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the state board of elections until duly modified or repealed by the state board of elections.

§ 13. Terms occurring in laws, contracts and other documents. Whenever the department of state or department of law are referred to or designated in the election law, executive law or any other law, contract or document in relation to the functions, powers, obligations and duties hereby transferred and assigned, such reference or designation shall be deemed, to the extent necessary to effectuate this act, to refer to the state board of elections.

§ 14. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act.

§ 15. Transfer of appropriations heretofore made. All appropriations or reappropriations heretofore made to the department of state or department of law for the functions and purposes herein transferred to the state board of elections by this act, or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the state board of elections subject to the approval of the director of the division of the budget for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the chairman or vice-chairman of the state board of elections or by an officer or employee designated by such board on audit and warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation heretofore incurred by such departments, in connection with the functions herein transferred, shall also be made on vouchers or certificates

approved as set forth herein on audit and warrant of the comptroller.

§ 16. Codification of changes. The state board of elections shall prepare or cause to be prepared for submission to the legislature not later than February fifteenth, nineteen hundred seventy-five, a codification of the election laws\* and other laws relating to the functions, powers and duties of the state board of elections and other acts related to\* thereto and such other measures as may be appropriate to effectuate the purposes of this act.

§ 17. Inconsistent provisions of other laws superseded. Insofar as the provisions of this act are inconsistent with other provisions of the election law or any other general or special law, the provisions of this act shall be controlling.

§ 18. Article thirteen and sections three hundred thirty-four, four hundred thirty-nine, four hundred forty-seven, four hundred forty-nine, four hundred fifty-three, four hundred fifty-five, four hundred fifty-seven and four hundred sixty of the election law are hereby repealed.

§ 19. If any provision of this act or of any rule or regulation promulgated hereunder shall be held by any court to be invalid in whole or in part or inapplicable to any person or situation, all other provisions thereof shall nevertheless remain fully effective and the application of any such provision to other persons not similarly situated† shall not be affected thereby.

§ 20. The sum of seven hundred fifty thousand dollars (\$750,000), or so much thereof as may be necessary is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes fund, not otherwise appropriated, and made immediately available to the state board of elections herein created for the expenses, including personal service in carrying out the provisions of this act. Such moneys shall be payable out of the state treasury on the audit and warrant of the comptroller on vouchers certified or approved by the chairman or vice-chairman of the state board of elections or by an officer or employee designated by such board.

§ 21. This act shall take effect on June first, nineteen hundred seventy-four, but shall be deemed to take effect immediately solely for the purposes of appointment of commissioners of the state board of elections and the performance by such board of such acts including the promulgation of rules and regulations, and the performance of such acts by the attorney general and the secretary of state as shall be necessary to prepare for the implementation of this act.

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\* So in original.

† So in original. [Word misspelled.]



## CHAPTER 606

AN ACT to amend section twelve hundred one of the civil practice law and rules, in relation to including an agency having custody of an infant so that the guardian may be appointed without the necessity of a formal proceeding

Became a law May 30, 1974, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section twelve hundred one of the civil practice law and rules, as amended by chapter eight hundred forty-four of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

§ 1201. Representation of infant or incompetent person. Unless the court appoints a guardian ad litem, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person *or agency* having legal custody, or, if the infant is married, by an adult spouse residing with the infant, and a person judicially declared to be incompetent shall appear by the committee of his property. A person shall appear by his guardian ad litem if he is an infant and has no guardian of his property, parent, or other person *or agency* having legal custody, or adult spouse with whom he resides, or if he is an infant or person judicially declared to be incompetent and the court so directs because of a conflict of interest or for other cause, or if he is an adult incapable of adequately prosecuting or defending his rights.

§ 2. This act shall take effect immediately.

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## CHAPTER 607

AN ACT to amend the environmental conservation law, in relation to the punishment for a misdemeanor with respect to the time to be served in jail for unpaid fines

Became a law May 30, 1974, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section 71-0515 of the environmental conservation law is hereby amended to read as follows:

§ 71-0515. Punishment for misdemeanors.

A person convicted of a misdemeanor under the provisions of this chapter listed in section 71-0501 or under titles 5 through

# Exhibit 4

of the fact that we now have a law which gives us ultimately full disclosure and that, in the long-run, will be a great service to the people of this State. Thank you very much.

THE SPEAKER: Mr. Pesce.

MR. PESCE: On the limitation of that, does that also include not-for-profit corporations?

MR. BIONDO: Yes, it would.

MR. PESCE: And they can contribute to political campaigns?

MR. BIONDO: Yes, they could. May I amplify? I am advised here, if their charters allow it and usually they don't allow it.

MR. STRELZIN: Not-for-profit corporations may not contribute. There are no private funds in not-for-profit corporations.

MR. PESCE: One of the things that bothers me about this bill is the corporate contributions. If a corporation makes a contribution does that include any subsidiary which owns, say, 50 percent or more of the stock? Let's say a corporation makes a political contribution. Can any subsidiary, which 50 percent of the stock is owned by that corporation, also make contributions?

MR. BIONDO: I believe that if it's a separate entity it also can make them. If it's just a subsidiary,

the answer is no.

MR. PESCE: I don't follow that. You mean if it's just a subsidiary it cannot? Can it or can it not?

MR. BIONDO: Let me put it another way: If it is a division of one corporation, the answer is no. If it's a holding company --

MR. PESCE: Let's take a company which has its own corporate charter and officers and Board of Directors and is a subsidiary of a large corporation. Can that subsidiary make a contribution as, let's say, the mother company has?

MR. BIONDO: The answer is yes.

MR. PESCE: You can have a company like IT&T which owns a number of subsidiaries in New York State make such contributions to one particular campaign amounting to, let's say, \$5,000, and that could have a substantial impact on the election of one particular office?

MR. BIONDO: Of course, you understand that there is a \$5,000 limitation absolutely for all purposes in any one year.

MR. PESCE: Yes. My concern is corporations such as IT&T and AT&T and General Motors and many other large corporations which own - which own a number of subsidiaries in New York City and New York State. Can their corporations, or you say joint stock associations which by making a \$5,000

contribution each to one particular campaign -- they can come into my District and really do a job. They can contribute \$5,000 each and you can have as many as 20 or 30 or 40 subsidiaries with \$5,000 each and they can have a substantial impact on the outcome of an election in my district.

MR. BIONDO: It might be interesting to point out to you a comment that Mr. Strelzin just brought to my attention --

MR. PESCE: What is Mr. Strelzin doing on that side of the aisle?

MR. STRELZIN: I have turned Republican for a few minutes.

MR. BIONDO: In the case of IT&T, as you point out, they would not be controlling a lot of subsidiary companies as you tend to believe. Their interest, in many cases, is not a controlling one and the exercise of the privilege of contributing to a campaign would be an exercise independently of the holding company.

MR. PESCE: I am sorry to stay with this point because I think that this is one of the main shortcomings of this bill. It is a good bill and a step in the right direction and there will be amendments following that will correct a lot of the flaws, but I think that's a flaw and a very important flaw because I think that

circulate petitions. I had that in 1970 and in 1972. This is where we get a proliferation of candidates, the community corporations and the other delegate agencies that receive thousands and thousands of Federal funds. That is my concern and I am sure that the Select Committee On The Election Reform Law is going to deal with it and I hope that we can act with dispatch because I got a call the other day from my community that one of these poverticians is already working in an agency that is being paid for by Federal funds and he has his employees ready to go out in my district.

I am concerned and many of the responsible elected officials in my community are concerned. I don't know whether or not this law covers it, but I am sure, if not, there will perhaps be some chapter amendment to deal with this problem. I support the bill.

ACTING SPEAKER KELLEHER: Mr. Beckman, Mr. Haley is next. The next speaker is Mr. Battista and then Mr. Landes and then anyone else who would like to speak. Now, Mr. Haley.

MR. HALEY: Obviously, the whole idea of contributions by corporations may raise hackles but, in my opinion, there is no force in our society that is more out of control at this moment than corporations. I would much rather have the corporations' contributions out in

the open where we can see them and have some control on them than try and pretend that making them illegal will stop them because we have been going that way for a long time and it didn't work.

From my point of view, I would rather have them out in the open with some controls. What is not in this bill is significant, too, and I think that this is a pretty good first step. Obviously we have got a lot further to go, but let's say what's good for progress when we see it.

What is not here is a provision for some public financing and I hope that we are still working on that and going to make progress this year on it. People who have been interested in this have discovered that it is a complicated subject and there are serious constitutional problems and we can't have all public financing of campaigns even if we like it because there is a certain problem with the right of free speech. We have to have some mixed system and the provision for private contributions as part of the mixed system, and above all we have to make sure that those private contributions are in a goldfish bowl so that we know who has contributed, so we are making progress in that area.

Something else not in this bill is provision for forfeiture. If you cheat in the game, the game should be

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(Mr. Landes, continuing)

body but have the concurrent jurisdiction of the elected officials and have a little competition in the public interest between them.

MR. BIONDO: May I make a point to point out to you that the District Attorneys have concurrent jurisdiction, and we have not taken that away from them?

MR. LANDES: I am glad that they do and they are close to the local political picture, and I hope that they do that.

You can't take it away and that has been pointed out to me.

~~Now, I would like to come to a sort of a series of~~  
questions of Mr. Biondo, based on a theoretical situation that could occur in any assembly district about which I am very concerned.

Thank you. I want to set up with Mr. Biondo's permission a series of questions to Mr. Biondo, based on theoretical situations that could occur in any Assembly district. Let us suppose, which is hard to imagine, that there is a proposed opponent to Assemblyman Landes who is a very wealthy gentleman; the opponent, and not Mr. Landes.

And let's suppose that he has a lot of money and buildings, and you and I know that every building that we own as a real estate investor, is a separate corporation.



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(Mr. Landes, continuing)

Is there anything in that bill that would prevent that gentleman donating to a county Committee \$25,000 donations from 20 different building corporations?

MR. BIONDO: You are talking about corporate limits. The answer is no.

MR. LANDES: He has 20 buildings, and each in a separate corporation which is normal, and not set up for elections. And is there anything to prevent this gentleman from donating \$25,000 donations, one from each corporation, to a County Committee?

MR. BIONDO: The answer is no.

MR. LANDES: I think that that is a very serious loophole and I think that it is a loophole that cannot be analogized to the union standpoint. These people and one person, and the union may represent thousands.

MR. MARGIOTTA: Mr. Speaker, would Mr. Landes yield to a question?

THE ACTING SPEAKER: Would you yield on your time?

MR. LANDES: Yes.

MR. MARGIOTTA: Under the provisions of this bill do you know of any prohibition that would preclude an organization, for instance you have United Federation of Teachers with the overall State umbrella and every school district in the State has a local union and is there any preclusion in this bill to prevent every one of those

ACTING SPEAKER KELLEHER: Mr. Berle. The remaining names on the list are H. Posner, Mrs. Cook, Mr. Cooperman, Charles Cook, Mr. Lewis, Mr. Eve and Mr. Margiotta.

Mr. Margiotta has very kindly waived his time. Anyone else who would like to follow Mr. Margiotta down the road to glory?

MR. BERLE: Maybe we can start at the top of the list.

ACTING SPEAKER KELLEHER: Mr. Berle, on the bill.

MR. BERLE: Mr. Speaker, I don't think that it is useful to repeat here the fact that the American political process is on the block and it is for sale and people get elected because they pick their parents well enough to be able to spend money that they didn't earn of that they earned substantial amounts of money at various times in their careers and are prepared to spend it on what may be regarded as their own attempt to engage in a public service or in their own ego trip, depending on how you define it. It is lousy and it has restricted political leadership in this country at high levels to a very small number of people who were either themselves or closely connected to multi-millionaires.

In 1969 I was concerned about this and put what I thought was a fairly tough expenditures bill in before

this Legislature and it got nowhere. I repeated it in 1970 and '71 and again in 1972 and 1973. Unfortunately, the climate in this State was such that that kind of legislation, or even this kind of legislation that we see before us today, was going to go absolutely nowhere because, in fact, we had a Chief Executive in this State who has been able to use his own resources to buy a big piece of the political action, and I well recognize that had good sense and personal attributes as well, but during the Rockefeller era money was used successfully and used without regard for what was really happening to the political process which was excluding a lot of people from participating.

This bill is a step ahead and I think that it is an essential step, but I think that we have to be cognizant of some of the difficulties that it presents because if we go home now and assume that we have solved the problem of Election Law campaign spending we are failing to acknowledge the loopholes which even this bill provides.

We have heard about the corporate loophole, and that really is a problem. It is a real problem particularly in the real estate side of things in which a real estate combine can have multiple corporations in which each particular piece of property is a separate corporation, and there are specific districts which,

# **Exhibit 5**

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MR. C. D. COOK: If I take a personal note at the bank for the purposes of financing my campaign and do not or have not repaid that by the time of the election, that the bank -- and it states here that this is counted as a contribution. There is no possibility of the bank even being held in violation of this law for giving me that loan?

MR. BIONDO: None whatsoever.

MR. C. D. COOK: Thank you.

THE ACTING SPEAKER: Next is Mr. Pesce.

MR. PESCE: Would you yield?

MR. BIONDO: Yes.

MR. PESCE: Listening to Dominick Di Carlo ask you yesterday earlier in the debate, it brought me back to the last debate on the same bill and he made a fine objection then and he made the same objections tonight. If you recall in that debate I also made an objection that your counsel or yourself thought had some merit. My objection to the bill -- which I considered to be one of the main flaws of the bill -- is the fact that we allowed the corporations to make a \$5,000 contribution and we also allowed the subsidiaries of those corporations to make the same contribution, or any affiliate of that corporation so that one huge conglomerate may contribute to an extensive amount or quite a bit in any one individual campaign.

I was wondering, Mr. Biondo, whether or not the possibility of amending the bill was considered in this amended version?

MR. BIONDO: I refer you to page 24, Section 480, Subdivision B. It says "...notwithstanding the provisions of Subdivision A of this section," which is the one allowing corporations to contribute \$5,000, "any corporation or organization financially supported in whole or in part by such corporation may make expenditures including contributions not otherwise prohibited by law," and that section section there should cover subsidiaries. That was added.

MR. C. D. COOK: As a result of my objection?

MR. BIONDO: That is correct.

MR. C. D. COOK: That says this?

MR. BIONDO: Yes.

MR. C. D. COOK: Thank you very much.

THE ACTING SPEAKER: Mr. Solarz.

MR. SOLARZ: Would Mr. Biondo yield to a question?

MR. BIONDO: Yes.

THE ACTING SPEAKER: The gentleman yields.

MR. SOLARZ: Thank you, Mr. Biondo. I would like to direct your attention to page 36 of the bill which I fear may contain a rather substantial loophole in this legislation, Mr. Biondo, and I would like to ask you some

# Exhibit 6

**New York State  
Board of Elections  
1976 Opinion #4**

**Date: April 23, 1976**

**Question Presented:**

How is a political contribution by a partnership treated for purposes of determining the contribution limitations and complying with the reporting requirements of Article 16-A of the Election Law?

**Discussion:**

Section 482 of the Election Law provides in pertinent part that:

"No person shall in any name except his own, directly or indirectly, make a payment or promise of payment to a political committee...nor shall any such committee knowingly receive a payment or promise of payment...in any name other than that of the person or persons to whom it is made."

It is the Board's opinion that if a partnership makes a political contribution from partnership funds, §482 requires that the contribution be made and reported in the names of the members of the partnership. Furthermore, for purposes of determining compliance with the receipt limitations of §479, any such contribution must be allocated to each partner according to the percentage of partnership income to which he is entitled under the partnership agreement.

The above allocation need not be followed, however, if a partnership contribution is made together with a writing that the contribution be allocated to specific individual partners in amounts in excess of those partners' percentage entitlements to partnership income, and if the designated partners' claims to accrued or future partnership income are correspondingly reduced by the amounts of any such excess allocations.

**STATE BOARD OF ELECTIONS**



# **Exhibit 7**

**NEW YORK STATE  
BOARD OF ELECTIONS  
1996 OPINION #1**

**Date: January 30, 1996**

**Question Presented:**

Are limited liability companies, created pursuant to the laws of this state, subject to the corporate contribution limits of Article 14 of the Election Law?

**Discussion:**

Limited liability companies are business organizations, recently created by statute and recognized as separate and distinct from other forms of business organizations. A complete response to the question presented requires an accurate description of limited liability companies.

Limited liability companies have been endowed with some of the characteristics of corporations and some of the characteristics of partnerships; yet they are neither corporations nor partnerships, nor are they trusts. The statutory definition provides clarification.

The limited liability company law defines a limited liability company as:

...an unincorporated organization of one or more persons having limited liability for the contractual obligations and other liabilities of the business, other than a partnership or a trust...formed and existing under this chapter and the laws of this state. Limited Liability Company Law §102(m).

The definition of limited liability companies very clearly states that they are “unincorporated organizations”, therefore, they are not corporations and are not subject to the contribution limits placed on corporations in Article 14 of the Election Law.

The definition further distinguishes limited liability companies from partnerships and trusts, thereby removing them from the operation of any restrictions, regulations or requirements relating to those kinds of business organizations.

Having determined that limited liability companies are not subject to the corporate contribution limits of Article 14, it is appropriate that we determine what limits do apply to these business organizations. Federal Election Commission Advisory Opinion 1995-11 is instructive for these purposes.

In that instance, the Federal Election Commission was asked to decide whether a limited liability company is subject to the prohibition on corporate contributions to federal election campaigns. The Federal Elections Commission looked to the statutory definition of limited liability company of the state where the company was formed. The statute provides as follows: “an entity that is an unincorporated association, without perpetual duration having two or more members that is

organized and existing under this chapter.” Virginia Code Annotated §13-1002. The Federal Elections Commission went on to set out why other parts of their regulations did not apply, and concluded that for purposes of federal campaign contributions, limited liability companies are persons subject to the individual contribution limits.

Also relevant for our purposes, is the definition of person found in the limited liability company law at §102(w):

...any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

Given all of the above, it is the opinion of the Board that limited liability companies are persons, and as such, may make contributions in their own right subject to the limits applicable to other individuals as enumerated in Article 14.

**STATE BOARD OF ELECTIONS**

# **Exhibit 8**

**THE COMMISSION  
TO INVESTIGATE PUBLIC CORRUPTION**



**PRELIMINARY REPORT**

**DECEMBER 2, 2013**

**CO-CHAIRS:**

**KATHLEEN RICE**

**MILTON WILLIAMS, JR.**

**WILLIAM FITZPATRICK**

outside spending groups, and ineffectual enforcement of even the weak laws on the books all enable big-ticket contributions and expenditures to dominate our election campaigns and distort governmental decision-making.

It is expensive to run for office in New York. Candidates and political parties need to raise and spend money if they are to compete effectively, get their messages out, and mobilize voters. Because our laws make it easy to raise very large sums of money from a very small number of special interest donors – and do not provide an alternative source of funding – the system gives candidates and parties a powerful incentive to concentrate their fund-raising efforts on people or entities who have the means (vast resources) and the motive (significant financial interests in government decisions) to write large checks. Some of these large donors expect at least a hearing – if not more – for their views on economic regulation, tax breaks, government contracts, and other public matters in which they have a stake. Ordinary citizens also have a lot at stake in the decisions of our government, but they lack the money, and the access money can buy, to make their voices heard.

Our campaign finance system affects democratic engagement. Ordinary New Yorkers see campaigns and independent expenditures financed largely by wealthy and powerful interests, and they justifiably feel left out of one of the most meaningful ways to participate in politics and affect our government's agenda.

It is time for fundamental and comprehensive reform and a campaign finance system that promotes public trust and democracy. Based upon our investigations to date, the Commission believes that reform must have four basic components:

- Lower contribution limits and the elimination of the loopholes that have allowed moneyed interests to pump millions of dollars into our elections.
- A robust disclosure regime to address the shadowy outside spending that began to enter our elections in the aftermath of the Supreme Court's *Citizens United* decision.
- A small-donor match public financing system, similar to the one that has been in place in New York City since the late 1980s, that will empower ordinary New Yorkers and reduce the role of special interest money.
- An independent and effective agency to vigorously enforce our campaign finance laws.

These reforms are interconnected:

- Lowering contribution limits and closing the loopholes are essential to address the massive donations that are legally contributed to candidates and party committees by a very small number of very big donors.
- But simply curbing campaign contributions will have only a limited effect, because big money can reenter the system through independent committees that can raise and

Yet another example from the Commission's investigation demonstrates how certain loopholes –for LLCs and “housekeeping” accounts, both discussed below – help facilitate the larger pay-to-play culture. In 2008, the chairs of the Assembly and Senate committees responsible for regulating a controversial industry introduced legislation endorsed by the industry's key trade organization. One of the largest players in the industry gave political contributions on both sides of the aisle: \$25,000 to the housekeeping account of the Senate Republican Campaign Committee and \$25,000 to the housekeeping account of the Democratic Assembly Campaign Committee. In late 2008, four of the company's affiliates gave contributions totaling \$10,000 in one day to one of the chairs. Although the 2008 bill did not pass, a bill containing substantially the same language passed in late 2009. Shortly after the bill was signed into law, the company and two of its affiliates each gave \$2,000 contributions to one of the chairs. Several months later, the company and two different affiliates gave contributions totaling nearly \$10,000 in one day to the other chair.

**Pay to Play:** Campaign contributions are often closely connected to lobbying. Lobbying and law firms themselves account for 10 to 12% of business contributions.<sup>41</sup> As this Commission already has seen (and expects to further report) in a number of investigations in this area, trade associations and lobbyists treat campaign contributions as a critical part of their business. Political contributions appear to be the entrance fees that buy access.

For example, in one ongoing investigation,<sup>42</sup> a trade association sponsored a fundraiser for the Democratic Assembly Campaign Committee and urged its members to contribute \$10,000 each to attend the event for this reason: “[o]ur future ability to adopt favorable legislation, stop terrible legislation or modify legislation to limit the pain to our industry is directly tied to our continued positive relationship with all the leaders in Albany. Failure to do so will seriously impact our ability to serve you and our industry.” The same trade association then sent a similar solicitation for donations to the Senate Republican Campaign Committee. Likewise, in another investigation, an attorney working to advance a piece of legislation emailed his client that a lobbyist “strongly suggests a contribution” to an elected official because the “ball is in the hands of the Assembly and [the elected official] has a lot of say on” a particular piece of legislation in which the client was highly interested. The lawyer promptly followed that email up with another, in which he informed his client that although the official had shown willingness to support the legislation, the lawyer would continue making campaign contributions because he was a “believer in not counting the chickens until they hatch as well as knowing from experience with the NYS Legislature it is not over until the fat lady sings.”

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<sup>41</sup> Mahoney Testimony at 6.

<sup>42</sup> Citations relating to this and other ongoing investigations are omitted in order to protect the integrity and confidentiality of those investigations. Moreover, because the investigations cited herein are ongoing, the Commission reserves judgment and draws no conclusions at this time, particularly with respect to the propriety of the particular legislative initiatives sought by the parties involved.

Contributions may also be expected in exchange for political support. In a separate investigation, a lobbyist emailed a prospective client about a bill before the state legislature. In negotiating the terms of his contract, the lobbyist provided the client with what the lobbyist referred to as “a fair projection of expenses.” In addition to informing the client of the lobbyist’s fees, the “expenses” the lobbyist lined out included costly “political contributions” that the client would have to make to certain elected officials, including the chairs of committees that would have jurisdiction over the bill. In this same investigation, the client complained to the lobbyist in an email that an elected official critical of the bill had received over \$50,000 in campaign contributions from an individual who opposed the bill. The client hypothesized that “the money [the individual] spent on [the elected official] is directly related to us” and that such a contribution was an attempt to “pay NOT to let them play.”

These are only some of the casual examples of the pay-to-play culture that has infected our body politic. Again and again, our investigations have uncovered evidence showing that access to elected officials comes at a price, and that the fight over legislation is often between entities with vast financial resources at their disposal. When political power and access is so closely and disproportionately tied to large donations, the majority of New Yorkers are shut out of the political process.

Indeed, the appearance of a relationship between large donations and legislation that specifically benefits large donors is demoralizing to the public. A striking instance of this was the reaction to the news that, in January 2013, an omnibus bill related to affordable housing in New York City provided a very generous tax break for five luxury real estate developments, including four major campaign contributors. Under the section 421-a Property Tax Exemption Program, a condominium developer may receive a ten-year tax abatement if it provides affordable housing subject to certain technical restrictions. The 2013 legislation, however, waived a key restriction for five specifically-identified properties, reducing their real estate tax liabilities by tens of millions of dollars over the abatement period. According to the Commission's investigation thus far, the specific waiver was the result of negotiations between real estate interests and the Assembly. Real estate interests originally pushed to remove the restriction entirely – which they argue was a technical mistake. However, in part because of the City’s concerns about loss of tax revenues, the ultimate legislation waived the restriction only for those projects that had already broken ground. The waiver was part of a larger piece of housing legislation that was vital to the City’s interests. This included amendments to New York City’s Loft Law, and extended and modified both the Condominium and Cooperative real property tax abatement provisions and the J-51 program. Our investigation continues and we draw no premature conclusions on whether the extension of the 421-a tax abatement to these specific properties involved any improper action, but it is clear that the combination of very large campaign contributions and very narrowly targeted benefits to those same donors creates an appearance of impropriety that undermines public trust in our elected representatives.



**The Incumbent Advantage:** Our campaign system skews funding toward entrenched incumbents, making elections less competitive. At the same time, it incentivizes campaign contributions even when there is no competitive race. In the 2012 general legislative elections, in 54% of legislative races (or 113 contests), the winner won with 80% of the vote or more. Of those 113 winners who won with 80% or more of the vote, more than 90% were incumbents. In many of these races, even though the incumbents were virtually assured re-election, they still pulled in more than 40% of all the donations given to current New York State legislators in the 2012 election cycle.<sup>43</sup> Between 2009 and 2012, the 12 longest serving incumbents in the legislature raised over \$5.2 million, while their primary and general election challengers during this same time period raised less than \$1 million. Of these 12 incumbents, only 1 was involved in a general election race in 2010 or 2012 where the winner received less than 60% of the vote.<sup>44</sup> These contributions appear motivated not to influence an election that was never in doubt, but to gain access to an officeholder who was likely to remain in power after the election.

## **B. Unlimited Contributions: High Limits, Party “Housekeeping” Accounts and LLCs**

The dominant role in our election campaigns of very large donations by special interests is a direct result of New York State’s campaign finance laws. Three features of the rules governing contributions make it very easy for wealthy individuals and interest groups to pump virtually unlimited sums into our elections.

**High Contribution Limits:** New York’s contribution limits are substantially higher than those of any other state that has adopted contribution limits. Indeed, they can scarcely be called limits at all. Individuals in New York are permitted to give up to \$60,800 for primary and general election campaigns combined to candidates for state-wide office, \$16,800 for State Senate candidates, and \$8,200 for Assembly candidates.<sup>45</sup> By comparison, federal law limits contributions to a candidate for United States senator or member of the United States House of Representatives to just \$5,200 for the combined primary and general election period and New York City law limits contributions to mayoral candidates to \$4,950.<sup>46</sup>

While both federal and New York City laws bar corporate campaign contributions, state law permits them, subject to a \$5,000 annual limit.<sup>47</sup> State law also limits donations to political party committees from any individual contributor, albeit at the very high level of \$102,300 in a

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<sup>43</sup> Drawn from NYSBOE campaign finance and elections data and Ballotpedia, <http://ballotpedia.org>.

<sup>44</sup> *Id.*

<sup>45</sup> See ELECTION LAW § 14-114; see also New York State Board of Elections, “Contribution Limits,” available at <http://www.elections.ny.gov/CFContributionLimits.html>.

<sup>46</sup> See Federal Election Commission, “The FEC and the Federal Campaign Finance Law,” available at <http://www.fec.gov/pages/brochures/fecfeca.shtml> (explaining contribution limits under the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.*); New York City Campaign Finance Board, “2013 Limits, Requirements, and Public Funds,” available at <http://www.nycffb.info/candidates/candidates/limits/2013.htm>.

<sup>47</sup> See New York State Board of Elections, “Contribution Limits,” *supra*.

calendar year, and caps an individual's aggregate contributions to all candidates and political party committees at \$150,000 per year.<sup>48</sup> However, the corporate, party, and aggregate limits are effectively eroded by the "LLC" and "housekeeping account" loopholes.

**LLCs:** Limited liability corporations, or LLCs, are business entities that have some of the features of both partnerships and corporations. Like corporations, they have such features as ongoing existence even when membership changes, transferable interests, limited liability for members, and the ability to accumulate capital. In 1996, the Board of Elections determined that the \$5,000 annual limit on corporate contributions does not apply to LLCs.<sup>49</sup> Instead, the Board determined to treat LLCs as individuals, subject only to the much higher limits on individual donations to candidates and the \$150,000 aggregate contribution limit applicable to private individuals. At the time of the 1996 opinion, LLCs were a relatively new form of business, and the Board relied heavily on a 1995 opinion of the Federal Election Commission ("FEC") concerning the treatment of LLCs under federal campaign finance law.<sup>50</sup> The FEC changed its position in 1999 and concluded that LLCs in many circumstances should be treated as corporations for campaign finance purposes.<sup>51</sup> The Board, however, continues to adhere to its original position.

As a result, LLCs registered in New York are able to contribute up to \$150,000 in campaign donations per year. Moreover, there is no effective limit on the number of LLCs an individual or firm can create. Each LLC can contribute up to the statutory maximum even though an individual can create multiple LLCs and coordinate their activities such that each can make its maximum individual contribution to the same candidate on the same day. This "LLC loophole" essentially renders meaningless the \$5,000 donation limit applicable to corporations and allows wealthy individuals and businesses to contribute virtually unlimited amounts in New York elections.

The Commission is investigating the use of LLCs as political contribution vehicles in New York State. While we continue to review documents produced in response to our subpoenas, we can already say that numerous entities and organizations unabashedly use this loophole. In one of many examples, an email from an industry group urged its members to donate political contributions of \$25,000, noting that "[u]nder the State's campaign finance rules, such contributions can be provided by LLCs, partnerships or personal accounts. (A corporate account can only write a \$5,000 check.)" Another representative string of emails involves a lively discussion among members of an organization about which of the organization's LLCs should be used to make a round of outsized contributions, based upon which ones had already given outsized contributions in the past. The Commission's investigation reveals that certain

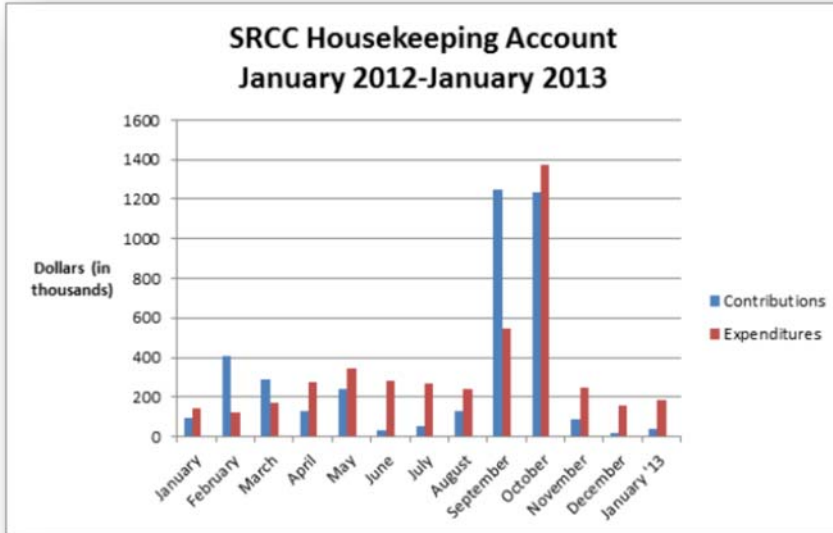
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<sup>48</sup> *Id.*

<sup>49</sup> New York State Board of Elections 1996 Opinion No. 1 (January 30, 1996).

<sup>50</sup> *Id.*

<sup>51</sup> *See* 11 C.F.R. § 110.1(g).

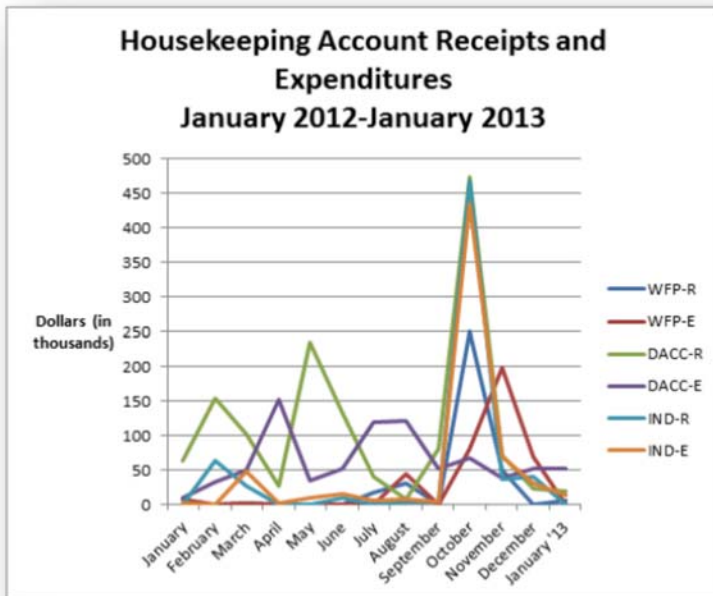


entities use dozens of LLCs in this manner in order to contribute virtually unlimited so-called “hard money.”

To take one representative sample (among many): according to its own documents, one entity has utilized 25 separate LLCs and subsidiary entities to make 147 separate political

contributions totaling more than \$3.1 million dollars since 2008. This allowed the entity to work around the individual contribution limits in some cases. For example, between August and October of 2008, two related entities and LLCs combined to make eight separate donations totaling \$384,000 to the State Assembly and Senate Campaign Committees of both the Republican and Democratic parties.<sup>52</sup> Had it been limited to donating only in its corporate capacity, this entity would only have

been able to give \$5,000 for the entire year. While perfectly legal, this loophole dramatically undermines the limits already in place.



**Party “Housekeeping” Accounts:** As previously noted, corporate donations are subject to an annual aggregate cap of \$5,000 and individual donations to political party committees are subject to an annual cap of \$103,200. But even that extremely high limit has been effectively eviscerated by the provision of New York’s Election Law that exempts donations to so-called “housekeeping” accounts from the contribution limitations.<sup>53</sup> Under

the law, “housekeeping” accounts must be used only “to maintain a permanent headquarters and staff

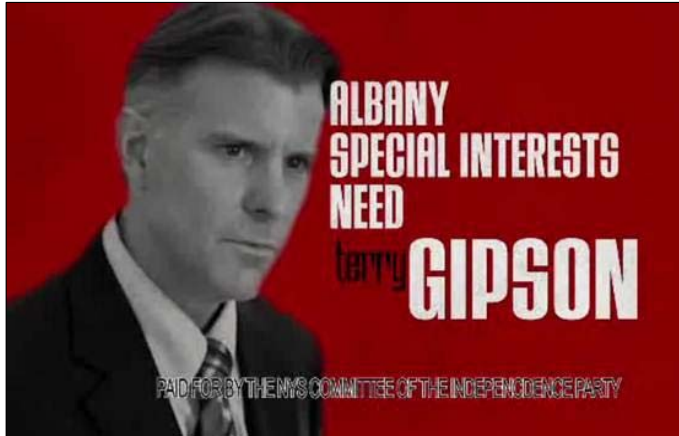
<sup>52</sup> Citation omitted. This investigation is ongoing.

<sup>53</sup> ELECTION LAW § 14-124(3).

and carry on ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates.”<sup>54</sup> However, housekeeping accounts have become a device for raising virtually unlimited sums for campaign use. According to one study, a total of 59 donors gave \$200,000 or more – and 12 donors gave \$1 million or more – to party housekeeping accounts between 2006 and 2013.<sup>55</sup> The Commission has served eleven subpoenas relating to party housekeeping accounts, including nine on the accounts themselves. This investigation continues, but the information already collected, combined with publicly available data, shows how housekeeping accounts have been misused.

Emails and other information reviewed by the Commission reveal that party housekeeping accounts have been used to pay for campaign staffers whose roles included “incumbency projects” and “oversight of individual campaigns,” as well as for political consultants, polling, television advertising, and contributions to community organizing and canvassing groups. As shown in the above graphs, the expenditures from the most active housekeeping accounts, like the Senate

Republican Housekeeping Account, spike dramatically right before an election.<sup>56</sup>



One example drawn from the Commission’s investigation exemplifies the misuse of party housekeeping accounts. During the 2012 election, the Senate Republican Housekeeping Account made a series of three transfers to the Independence Party Housekeeping Account, totaling over \$350,000.

Invoices and communications produced to the Commission reveal that much of this money was then spent by the Independence Party on negative television advertisements, such as the one depicted here attacking Democratic Senator Terry Gipson, who was then locked in a tight race with a Republican challenger. Emails further reveal extensive coordination between the two parties’ housekeeping accounts on attack mailers in several Senate races. In one thread, Tom Connolly, the vice chairman of the Independence Party, commenting on a proof of an attack mailer portraying Democratic Senate candidate Joseph Addabbo as Dracula, asked, “Is this ours? Don’t know anything about it.” Scott Stevens, the Director of Operations for the Senate Republican housekeeping account, replied, “It’s ours but they would like it

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<sup>54</sup> *Id.*

<sup>55</sup> Common Cause New York, Report, *The Life of the Party: Hard Facts on Soft Money ‘Housekeeping’ Accounts in New York State*, May 2013.

<sup>56</sup> Data drawn from NYSBOE campaign finance data as well as data produced to the Commission. In the related graphs, “WFP,” “DACC,” “IND,” and “SRCC” denote the housekeeping accounts of the Working Families Party, the Assembly Democrats, the Independence Party, and the Senate Republicans.

to go through IDP [Independence Party]” To this, the Independence Party representative responded: “Absolutely ok to go with us.”<sup>57</sup>

### C. Undisclosed Independent Expenditures in New York



Under campaign finance law, “independent expenditures” are expenses incurred by individuals or organizations engaging in electioneering activity independently of candidates and political parties. Organizations that make independent expenditures are required to register with the Board of Elections and report their expenditures and contributions. But this disclosure requirement is undermined by the Board’s narrow definition of electioneering, which requires that a campaign message expressly call for the election or defeat of a candidate.<sup>58</sup> Although at one time the United States Supreme Court imposed such a “magic words” test on federal disclosure requirements,<sup>59</sup> the Court more recently has held that disclosure can be required when a group runs ads that refer to a candidate

in the preelection period or are otherwise the “functional equivalent” of express advocacy.<sup>60</sup> Nevertheless, our Board of Elections has failed to adopt this more expansive definition.

The Commission’s ongoing investigation of independent expenditures in New York reveals the growing problem of groups spending large sums of money in our elections without reporting their activities or disclosing their donors. The story of one group with the nom de guerre of “Common Sense Principles” illustrates just how difficult it is to track down the sources of the cash used to influence our elections.

“Common Sense” is a Virginia-based 501(c)(4) group that is very interested in New York politics, but that operates in its shadows.<sup>61</sup> It maintains a professionally-designed website, “commonsenseprinciples.com,” attacking various Democratic members of the New York Senate, as well as a Twitter account and a Facebook page, both of which were active at least through

<sup>57</sup> Citations omitted. This investigation is ongoing.

<sup>58</sup> The Board has interpreted “express advocacy” in the narrowest of terms, requiring the use of “magic words” like “vote for” or “vote against.” See 9 NYCRR § 6200.10. For a detailed discussion see *infra* nn.117-125 and accompanying text.

<sup>59</sup> See *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>60</sup> See *McConnell v. FEC*, 540 U.S. 93 (2003).

<sup>61</sup> Virginia State Corporation Commission, Business Entity Details for Common Sense, available at <https://sccefile.scc.virginia.gov/Business/0721742>.

# **Exhibit 9**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through July 3, 2015.

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Selected Entity Name: D & S PAINTING INC.

Selected Entity Status Information

**Current Entity Name:** SHARED CONCEPTS LLC

**DOS ID #:** 4600733

**Initial DOS Filing Date:** JULY 01, 2014

**County:** ALBANY

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

SHARED CONCEPTS LLC  
677 BROADWAY, SUITE 500  
ALBANY, NEW YORK, 12207

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

**\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

\*Stock information is applicable to domestic business corporations.

**Name History**

Filing Date	Name Type	Entity Name
JUL 01, 2014	Actual	SHARED CONCEPTS LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

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[Homepage](#) | [Contact Us](#)



# **Exhibit 10**

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

**299 Broadway, Suite 700 ■ New York, New York 10007 ■ 212-227-0342**

**COMMON CAUSE/NY**

**155 Avenue of the Americas, 4<sup>th</sup> Floor ■ New York, New York 10013 ■ 212 691-6421**

**LEAGUE OF WOMEN VOTERS/N.Y.S.**

**62 Grand Street ■ Albany, New York 12207 ■ 518 465-4162**

**NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)**

**107 Washington Avenue, 2<sup>nd</sup> Floor ■ Albany, New York 12210 ■ 518 436-0876**

**BY HAND & VIA FAX**

June 11, 2007

Neil W. Kelleher, Co-Chair  
Douglas A. Kellner, Co-Chair  
Evelyn J. Aquila, Commissioner  
Helena Moses Donahue, Commissioner  
New York State Board of Elections  
40 Steuben Street  
Albany, NY 12207-2108

**Re: Re-evaluation of Limited Liability Company Contribution Limits**

Dear Commissioners Kelleher, Kellner, Aquila and Donahue:

We hereby formally request that the state Board of Elections (the “Board”) review its positions on the applicable campaign contribution limits for limited liability and professional service limited liability companies (collectively “LLCs”) and how LLCs under common control are treated under Article 14.

As reported yesterday in *The New York Times* and based upon analysis of Board of Elections data by Common Cause/NY, LLCs are a significant source of campaign contributions, pouring almost \$12 million into state campaign coffers in 2006, up from only \$600,000 in 1999.<sup>1</sup> A single individual, real estate developer Leonard Litwin, has contributed more than \$1 million since the beginning of 2006 to state candidates and political parties.

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<sup>1</sup> *Developers Raise Stake in Politics*, Danny Hakim, *The New York Times*, A-1, June 10, 2007.

In 1994 the Legislature enacted the “New York Limited Liability Company Law, effective October 24, 1994 (the “LLC Law”).<sup>2</sup> The LLC Law allows the formation of a limited liability company to conduct any lawful business unless another statute specifically requires that such business be conducted in another form.<sup>3</sup> The LLC Law sets forth the requirements for formation through dissolution of LLCs for these unincorporated limited liability business entities. LLCs may be organized with as few as one person, person being defined to include a natural person, corporation, business trust or other limited liability company.<sup>4</sup>

Since enactment of the LLC Law, LLCs have become the state’s most popular form of limited liability business entity and are favored by small business owners because it affords them the “managerial flexibility and favorable tax benefits of the partnership [no “double taxation” of both the entity and member], while also providing the conventional limited liability protection of the corporation.”<sup>5</sup> LLCs are also quick, relatively simple and inexpensive to form, with “do-it-yourself” kits touting that organization papers may be drafted in a few hours.

New York’s Election Law was not amended to specifically cover political donations contributed by this new form of business entity.

On January 30, 1996, the New York State Board of Elections issued 1996 Opinion # 1 (January 30, 1996), holding that as defined in the LLC Law, LLCs are not corporations, partnerships or trusts and are not subject to the corporate contribution limits pursuant to Election law Article 14.

Having determined that LLCs were not corporations, partnerships or trusts for purposes of the Election Law, the Board sought guidance from Federal Election Commission Advisory Opinion 1995-11. In that opinion, the Federal Election Commission (“FEC”) addressed whether under federal campaign finance laws LLCs should be treated like corporations and therefore banned from making contributions to federal candidates and committees.<sup>6</sup>

The FEC found that since Virginia law stated that LLCs were not corporations, the FEC would not hold them to the federal ban on corporate political donations.<sup>7</sup> The FEC went on to find that the

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<sup>2</sup> L. 1994, Ch. 576.

<sup>3</sup> LLC Law section 201.

<sup>4</sup> LLC Law sections 102 (m) and 102(w).

<sup>5</sup> Anthony Q. Fletcher, *Publish or Perish: The new York Limited Liability Company Law Publication Requirement*” *The Fundamental Flaw Of An Otherwise Flawless Law*, 1 N.Y.U. Journal of Law & Business 139 (2004).

<sup>6</sup> Note that the FEC opinion concerned Virginia’s limited liability company law, which required provided that an LLC is “an unincorporated association, without perpetual duration having two or more members. . . .” Key distinctions between the Virginia limited liability company law and New York’s LLC Law are that in New York an LLC may be formed by *one person* and that New York LLCs *have perpetual existence* unless otherwise provided for in the organization papers. See LLC Law section 701.

<sup>7</sup> It’s worth noting that New York’s campaign contribution limits are significantly more generous than under federal law. Thus in 1999, treating an LLC like an individual under federal law at the time of the FEC’s decision meant that an LLC could

Virginia LLC was not a partnership and therefore would be subject to the individual limits under federal law.

In 1999, the FEC reversed its position on LLC treatment under federal election law and adopted final regulations with respect to LLC contributions (the “FEC LLC Regulation”).<sup>8</sup> The FEC LLC Regulation adopted a “check the box” rule. The “check the box” rule treats LLCs for federal election purposes as it has chosen to be treated under the Internal Revenue Code. LLCs that check the corporate box on their IRS form or that have shareholders are treated as corporations under the federal election law and banned from making contributions. The “default setting” if an LLC does not check the corporate-status box on its IRS form, is that it is treated as a partnership for purposes of both taxation and federal campaign contribution limits.

The FEC LLC Regulation rejected the FEC’s prior reasoning for treatment of LLCs as persons, noting that members of LLCs that adopt (or default into) partnership status would be able to contribute up to the statutory limits through each separate LLC. The FEC stated that allowing each LLC to have separate partnership contribution limits “could lead to proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through them” and that some members of LLCs that were otherwise barred from making contributions, such as foreign nationals and federal contractors, could evade the law.

This functional approach based upon federal tax status, the FEC said, “accurately describes whether an LLC’s structure and function are more akin to a ‘corporation’ or a ‘partnership.’”

Importantly, the FEC LLC Regulation requires that contributions made by single-member LLCs be attributed to that individual and attach to the single member for purposes of federal election law. The FEC LLC Regulation also requires LLCs to affirm in connection with any contribution that it is eligible to make the contribution and provide information to the recipient committee on how the contribution is to be attributed.

In 2001, the New York City Campaign Finance Board (“NYCCFB”) addressed the issue of whether to apply its “single source” rule to LLCs with a common managing member or separate limited partnerships controlled by a common general partner. In Advisory Opinion 2001-6, issued June 14, 2001, the NYCCFB found that under its rules and under common management practices for LLCs, a single individual typically “not only makes decisions and establishes policies for the [LLC] it manages,

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only give \$1,000 per year per candidate per election; \$20,000 to in a calendar year aggregate to national committees; and not aggregate more than \$25,000 in any calendar year. See Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (p. 37398).

<sup>8</sup> Federal Register, Vol. 64, No. 132, Monday July 12, 1999 (pp. 37397-37400).

but also controls all non-material transactions conducted by such [LLC]. Contributions to political candidates would generally be considered non-material transactions.”

Accordingly, the NYCCFB found that in the absence of some agreement to the contrary, LLCs, together with the common managing member or general partner that controls it, would be considered a single source for purposes of the contribution limits applicable under the New York City Administrative Code.

In addition to creating a loophole in the limits for political donations that apply to very similar business entities, the state's current treatment of LLC contributions frustrates the disclosure requirements of the Election Law, making it difficult if not impossible for the public and candidates to identify the actual donor. In particular, section 14-120 of the Election Law requires that contributions be made “under the true name of the contributor.” As a practical matter this section is rendered virtually meaningless by the LLC loophole.

There is ample basis for revisiting the Board’s position adopted in 1995: LLCs have become the fastest growing type of new business organization formed in New York, that LLCs are a huge source of campaign contributions to state candidates and parties; that the FEC, which has changed its position on treatment of LLC contributions under federal election law, that New York had relied on the FEC’s abandoned position, and that New York City has adopted a “single source” rule for LLC contributions applicable to all donations made for New York City races.<sup>9</sup>

The legal fiction that LLCs are individuals for purposes of the contribution limits in state Election law can no longer stand. We urge the Board to revisit this issue and adopt the FEC and NYCCF positions that LLCs are to be treated as corporations or partnerships based on their IRS tax status and affirm their ability to make such contributions and provide information on how to attribute such contributions; and that the single source rule applies for attributing LLC contributions to the common managing member or general partner who controls it.

Sincerely,

Dick Dadey, Executive Director  
Citizens Union of the City of New York

Rachel Leon, Executive Director  
Common Cause/NY

Barbara Bartoletti, Legislative Director  
League of Women Voters/N.Y.S.

Russ Haven, Legislative Counsel  
NYPIRG

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<sup>9</sup> State Board of Elections Spokesperson Lee Daghlian is quoted in the June 10, 2007 article offering an explanation of why the Board has not reconsidered the treatment of LLCs: “It probably was not revisited because no one asked that it be done.” *Developers Raise Stake in Politics*, Danny Hakim, *The New York Times*, A-1, June 10, 2007.

cc: Peter S. Kosinski, Co-Executive Director, NYS Board of Elections  
Stanley L. Zalen, Esq., Co-Executive Director, NYS Board of Elections  
Governor Eliot Spitzer  
Joseph L. Bruno, Temporary President of the New York State Senate  
Sheldon Silver, Speaker, New York State Assembly  
Senator Joseph Griffo, Chair Senate Elections Committee  
Assemblywoman Ann-Margaret E. Carrozza, Chair Assembly Elections Law Committee

# **Exhibit 11**



State of New York  
**STATE BOARD OF ELECTIONS**

Neil W. Kelleher  
Co-Chair

Helena Moses Donohue  
Commissioner

William J. McCann, Jr.  
Special Deputy Counsel

40 STEUBEN STREET  
ALBANY, N.Y. 12207-2108  
Phone: 518/474-2063  
[www.elections.state.ny.us](http://www.elections.state.ny.us)

Douglas A. Kellner  
Co-Chair

Evelyn J. Aquila  
Commissioner

Elizabeth C. Hogan  
Enforcement Counsel

February 1, 2008

Mr. Russ Haven  
New York Public Interest Research Group (NYPIRG)  
107 Washington Avenue, 2<sup>nd</sup> Floor  
Albany, New York 12210

Dear Mr. Haven:

The Board is in receipt of your January 8, 2008 letter, wherein you set forth your concerns about several campaign finance related matters. The issues raised in the letter were discussed at the Board of Commissioners' meeting on January 23, 2008. The sum and substance of that discussion is set forth below.

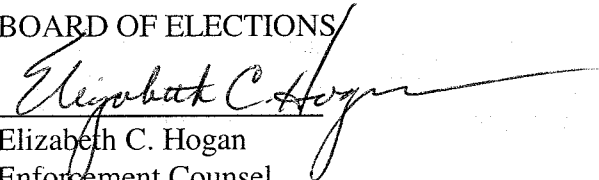
Regarding your 2006 corporate over contribution concern, please be advised that the Board is in the midst of a complete review of filings reporting 2006 corporate political contributions. The project will be completed as soon as practicable.

The Board also considered your request to review its policy as to how an LLC is treated for purposes of assessing any political contribution limit, in light of the changed Federal Election Commission regulation as to treatment of an LLC. The Board is undertaking a review of this issue and the relevant statutes. An initial review indicates that a change in policy would require a statutory amendment.

With regard to disclosure of contributor employer and occupation information, it is unclear whether a Board regulation to mandate such disclosure is sufficient, or whether such a mandate requires a statutory basis. This issue requires examination by Counsel.

Sincerely,

NEW YORK STATE  
BOARD OF ELECTIONS

  
Elizabeth C. Hogan  
Enforcement Counsel

ECH/dch



# **Exhibit 12**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

(212) 416-8050

April 15, 2015

Douglas A. Kellner, Co-Chair  
James A. Walsh, Co-Chair  
Andrew J. Spano, Commissioner  
Gregory P. Peterson, Commissioner  
New York State Board of Elections  
40 North Pearl Street, Suite 5  
Albany, NY 12207-2729

To the Co-Chairs and Commissioners of the Board of Elections:

At this Thursday's meeting, the Board of Elections has the rare opportunity to correct a mistake it made nearly two decades ago. The so-called "LLC Loophole" has made a mockery of the campaign finance rules enforced by the Board of Elections. I urge the Board of Elections to close this loophole immediately.

As detailed in an eloquent joint letter from the Brennan Center for Justice at NYU and the law firm of Emery Celli Brinckerhoff & Abady LLP, there is ample justification for the Board of Elections to reconsider its 1996 decision on this issue. The LLC Loophole is an exception that swallows the rule—allowing wealthy individuals to circumvent contribution caps and steer limitless dollars to favored campaigns. Blair Horner of NYPIRG called it "the mother of all loopholes." He is right: Treating limited liability companies as people, not corporations or partnerships, lets each LLC donate up to \$60,800 to a statewide candidate per election cycle—even when multiple LLCs are owned or controlled by a single person. Moreover, the true owners of an LLC are not disclosed publicly, making it nearly impossible to trace contributions to the people or special interests that they may represent. This secrecy defeats the transparency and accountability that should be the goals of any campaign finance system.

The real world effect of the loophole is substantial. As Senator John DeFrancisco observed on the Senate floor, "if it's in use by everyone, then it's not a loophole." LLCs were responsible for 14 percent of contributions made to state candidates and party committees—three times as much as was given by small-dollar non-corporate donors. Between 2005 and 2013, LLCs contributed over \$40 million to New York State candidates, parties, and PACs.

With the prospects for real reform on hold indefinitely, the BOE must not squander this chance for progress. Last month, I publicly advocated closing the LLC Loophole in remarks to the government reform community. Today, I do so again—to the agency with the power to implement this vitally needed reform on its own authority. Closing the LLC Loophole is as vital as it is overdue. I ask that you do so without further delay.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric T. Schneiderman".

Eric T. Schneiderman

# Exhibit 13

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**Peter Kosinski:** I'd like to welcome everybody to the State Board of Elections Meeting. I am Peter Kosinski and I am chairing this meeting today. I'd just like to make a few opening remarks for myself I guess. I was honored to be appointed to this position yesterday and I want to thank Senator Skelos, Leader Kolb and Governor Cuomo for the appointment. It's an honor and a privilege to be a member of the State Board of Elections Commissioners. As some of you may know I worked here at the Board for many years. I've held various positions around here and always enjoyed my service here and left here a few years ago to work in the legislature so I fortunately have the experience of both working in the Executive Branch, here at the Board, and also in the Legislative Branch. I started my career in the counties, so I also have a local perspective. So I hope I'm bringing something to this job that is worthwhile. I think I am and I look forward to the future in going forward.

In addition to thanking them for the appointment, I want to thank Jim Walsh who I am replacing. Jim is a good friend of mine. I know Jim has been looking to move out, he's a busy man and I think he's happy to move on and do other things, but I want to thank Jim for his service here at the Board. I worked with Jim for years, and he's a very good guy. So I just wanted to also mention him and his service as well.

So, if the other Commissioners have anything they want to say, I just want to make sure to introduce Doug Kellner who's the co-chair of the Commission. Greg Peterson on my left who's a fellow Commissioner and Andy Spano on my far right who's also a Commissioner. So just so everybody knows who the four Commissioners are serving here and I don't know if they had any, I wanted to get to the meeting, if they had any opening statements.

**Douglas Kellner:** Thank you Peter. I want to congratulate you on your appointment, we're very grateful to have you join us because you do bring such experience and qualification to the job, and I know that we worked well together with you as Executive Director, and indeed you were instrumental in setting a very positive path for the implementation of the new voting systems in New York and it was a great accomplishment as well as many other things that you did in your service as Executive Director.

I, in particular want to thank Commissioner Walsh who has done a very great service in his years as a co-chair of the Board. We worked very well together and while I'm very happy to have you on board, we will miss Commissioner Walsh and we want to thank him and acknowledge his very fine service.

**Gregory Peterson:** I want to take this opportunity to first of all welcome you Peter to the Board. It's a great group of people. We have super staff here and I know from your experience not only here but elsewhere in government that you'll be a great addition. I'd also like to extend my gratitude to Jim Walsh who, for those of you who know him, you

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couldn't find a finer gentleman, a man who was also even-keeled, knew how to get things done in a quiet manner, knew when to stand up when standing up was called for, and knew how to compromise and again to accomplish an end. He was very interested in not only the service of this Board but watching it move forward through a computer age as we have shifted from the old lever machines to a new system and he was very much a part of that and I would like to thank him for his service. On a personal note, I consider him a very good friend and certainly will be missed.

**Andy Spano:** I want to welcome you also Peter. You come with a fantastic reputation of knowledge certainly about this particular area. I'm looking forward to working with you but I will miss Commissioner Walsh who I found as amenable as my colleague there did. And I look forward to working with you and I reiterate everything everyone else said.

**Peter Kosinski:** Thank you very much and I also just want to say how thrilled I am that so many people came out today to the State Board of Elections. I didn't even know word was really out. This is fantastic as I really didn't expect this kind of turn out. So thank you very, very much for that as well. I just wanted to say that.

So, I guess I'd like to get to the meeting. What I'd like to do is we have a meeting agenda which I think we should get right to and we do have a few items, some of which I am more familiar with than others probably. I have tried to bring myself up to speed on the issues that are presented before the Board today and I would hope we can move forward on these.

That said, I would like to start with the minutes of the last meeting. I don't feel that I can really act on those but I'd ask if there's a motion...

**Douglas Kellner:** I move to approve the minutes for the public meeting and the Executive Session as printed and distributed.

**Peter Kosinski:** Is there a second? And then I would ask for a vote.

[Chorus of ayes]

And I will abstain since I wasn't at the meeting.

What we would like to do is start with unit reports. Now what I would ask is as I do unit reports I'd like to have the individual that's giving the report to identify themselves and then if you can give the report after that. So first off would be the Executive, Bob Brehm and Todd Valentine.

**Todd Valentine:** Todd Valentine here. Just a couple of things we want to highlight from our written report is obviously the budget has passed and our budget is included in that. We are waiting for the formal certification from the Division of Budget to do the spending. There's other things in there but that should be coming shortly. We have

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joining us today and you'll hear from him shortly is Bill Ryan has joined our staff as the Chief Security Officer at this point is his title. He started last week and just a reminder that the County Election Commissioners Association Conference is upcoming at the end of May. We are on the agenda I think for Tuesday or Wednesday.

**Peter Kosinski:** Excuse me Todd I'm going to interrupt right there. Chief Security Officer.

**Todd Valentine:** Oh in the IT unit I'm sorry. It's a title we have the Chief Information Officer which is currently a vacant position. He is the second level down in that unit. He is the Chief Security, the title is Chief Security Officer, each agency is required to have one.

**Peter Kosinski:** Chief Security of the computers?

**Todd Valentine:** Computer security yes, I'm sorry. And a reminder that, that conference is at the end of May. Its Memorial Day weekend and we typically make presentations. I don't have a copy of the agenda, we can get that to you, we're on Thursday.

**Bob Brehm:** I mean there are a number of items but the State Board portion is Thursday. I think the other item I think, I'm sorry I'm Robert Brehm the other Executive Director. Welcome Peter, it was pleasant working. I arrived here at a time when you were on your way to your legislative accomplishment but we crisscrossed a few years as far as County Commissioner level where we would go off and talk in that capacity. Welcome back.

With regard to I think some of the highlighted issues, I think yes the budget was a major issue and I think we can through fine. There's a number of personnel items that I think we've included in our report to you as part of coming up to full staffing level in the Compliance Unit. We continue to report how, you know, job classifications, etc. but I think we're almost close to being finally up to full staff, training and it's proven to work out I think exceptionally well. It's a fine group of people but I listed for you the most recent staff hirings. We welcome them. One just began today and a number of other ones starting.

**Peter Kosinski:** Are there vacancies in the staff?

**Bob Brehm:** We promoted one so that created a vacancy that we would look to fill and I think there's one other that is pending. So yeah it's in the process of being filled.

I think the only other item and I think we'll talk about it a little bit further probably in the IT is the work we're done on some of these technology projects is taking an awful lot of time without an IT director. Todd and I with the help of John Conklin and Tom Connolly have been helping to meet with the staff to at least keep the IT agenda moving forward

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but they have 3 major projects with the way things are going, are kind of tied together because of the technology that is being deployed. We have the NYSVoter Program that all the equipment we purchase will be at end of life in 2016 so our proposal we've been working on and should be completed in this fiscal year is to have the hardware and the software upgraded so that we address those end of life issues before we meet end of life. So our target date to have that rolled over is December of this year with a little bit of extra work on knowledge transfer, etc. before the end of that contract.

The other issue is the Candidate Management Campaign Finance System. As part of last year's budget was to give us money to upgrade those two systems being as old as it is had a target date to finish later in 2016 and one that has come up is the entire computer network that we have. When we restacked from just down the street to this building, our data center, our computer center was located in State Campus and that was just 2, 2 ½ years ago. That entity is moving to the College of Nanoscale, easier to call it CNSE or the Nano College and that kind of is more urgent because the deadline is this May to move that component. So it's all kind of tied together because the technology has got to be able to cover that. But just so we know it's a major effort for the infrastructure to make sure one, we're current and we meet the deadline, and it's taking a tremendous amount of energy from a number of people staff and as you walk through the building, various consultants from OITS the Information Technology Services.

**Peter Kosinski:** So are you saying that the head of the IT unit is vacant right now?

**Bob Brehm:** Yes.

**Peter Kosinski:** And how long has that been vacant?

**Bob Brehm:** Just shy of a year. It's a civil service position that we have done a round of interviews. They issued a new test, we were told to expect a new list that we could consider a new round of interviews in March. It's now April but they keep telling us any day now we should be getting that list so we can...

**Peter Kosinski:** So you're trying to do this major upgrade of the computers in the agency but that vacancy is a hindrance I'm assuming?

**Bob Brehm:** It's not helpful.

**Peter Kosinski:** Does it seem to be a priority here to try to get this thing filled?

**Douglas Kellner:** We don't even have a list though.

**Bob Brehm:** Well we had a list and it's the same list that we interviewed when we hired the person who moved on and we have enjoyed his continued assistance since he's moved on. He has continued to be...



**Peter Kosinski:** But a years a long time.

**Bob Brehm:** But a years a long time but it is a finite list that we came to the conclusion that there's no one on that list in the reachable category that we could interview that would be appropriate to recommend. So, we are waiting for the new list. As soon as that list comes out we will review it again. The only other option is to reclassify the title to something different and get that list.

**Peter Kosinski:** Well, I will say to you just based on what little I'm hearing, it seems filling this position should be a priority if we're doing all these transitions of the computer system and migrating into new systems and we're doing it without a head person, it just seems to me to be a recipe for problems and to leave that vacant for a year, that's a really long time.

**Andy Spano:** When you get down to the bottom of the list it's difficult sometime to select somebody who's adequate for the position.

**Douglas Kellner:** And we haven't really left it vacant. It's not like...it's not willful.

**Andy Spano:** We are borrowing the previous participant over the year.

**Peter Kosinski:** He's pretty available to us?

**Bob Brehm:** We do have a tremendous, I mean he is available to continue not full time. He did a tremendous job to plan for these events so he did restructure the unit and bring them up to a tremendous amount of training to be ready. So our staff is, I think, doing a tremendous job. So we don't think it's a hindrance but it certainly would be more helpful to have one more person to help even the load. And William, this is his one week anniversary so he brings.

**Peter Kosinski:** Wow, you're not the new guy anymore. You got that going for you.

**Bob Brehm:** So we are very pleased and a number of us have set in on those interviews and we think he will help us to...

**Andy Spano:** There have been situations in the past in local governments and the state government where jobs like this get transferred over to categories that deal with experience and come off the test list. They were on another kind of list. But we get a list quicker and you can interview more people. And we should have the option of discussing that with civil service. I think that would be much better especially in IT positions.

**Peter Kosinski:** Can we follow up on Commissioner Spano's idea?

**Bob Brehm:** Sure.

**Peter Kosinski:** Is that is from the Executive Unit? Okay. Then we'll move onto the Counsel/Compliance Unit, Kim Galvin and Kathleen O'Keefe.

**Kim Galvin:** Thank you Commissioner. My name is Kimberly Galvin. We're a relatively new unit that consists of the Counsel's Office as well as the Compliance people that work for the Board. The Compliance Unit has been extremely busy doing the reviews. As Bob mentioned we have one new hire last week and a new one started today. We are also interviewing for a vacant phone spot in the phone bank and Bob Eckels and Cheryl are starting that interview process off the same sort of lists that they just talked about there.

We've gone through some training with the Compliance Staff. We had some customer service training that came in and was taught to them as well as the training department rolled out the new training webcast or seminar if you will to everyone in the Compliance Unit to get them up to speed on what the new thing looks and feels like.

We participated in the various meetings regarding the change in upgrades to the software and the CAPAS FIDAS redesign project. And we've worked with each other I guess on some of the Hearing Officer regulations that you'll see here and the resolutions that will come before the Board today to get those in order for your vote today. And that's all I have. Kathleen do you have anything to add?

**Kathleen O'Keefe:** Well we have the January period report. Kathleen O'Keefe, I'm the other counsel here. We had the January periodic, all the early letters went out and anyone that did not subsequently file that has been sent over to the Enforcement Counsel. We are continuing to get requests for the political calendar. We have not generated that.

**Peter Kosinski:** By the way do you have a number on how many people did not file in January?

**Kathleen O'Keefe:** I don't have it immediately at hand but it was a pretty significant number. Cheryl do you? No we don't have that number here.

**Douglas Kellner:** It's in the high 100s.

**Kathleen O'Keefe:** Yes, it's a big number yes.

**Peter Kosinski:** They were required to file by law but did not file?

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**Kathleen O’Keefe:** Right. We send them a letter saying, “You should have filed and you didn’t file” and these are the folks that didn’t comply with that letter and that’s the list that goes over to enforcement.

As Kim mentioned, the Unit is meeting at this point daily. Bob and Cheryl are meeting with the IT Unit and literally answering questions everyday on very specific type issues. So that’s really moving forward. The recent budget did impact the Compliance Unit in that there was an amendment to the personal use of campaign funds section. There was also some tinkering that occurred with the Independent Expenditure Law. We’ve already received a significant number of calls on the new personal use law. We had a pending motion before the second circuit to dismiss an appeal that is related to last primary, believe it or not, that motion was recently granted. Brian and I have completed our admission in all four district courts in New York and while we were down getting sworn in in Brooklyn we actually went to the Brooklyn Board and had the opportunity to see print on demand absentee ballot machine which was pretty interesting. So the New York City Board is going to be doing something with that with the special election that’s coming up. It’s a little pilot program.

**Peter Kosinski:** I’m sorry Kathy I don’t mean to interrupt. Can you explain that a little bit more, print on demand absentee ballot how does that work?

**Kathleen O’Keefe:** It was pretty interesting. They have a computer where the information for the voters in there. They put the voter’s ID number in and it generates the ballot that is then sent to the machine that prints the ballot for that particular voter and then a little attachment on the side folds the ballot so that they can print it in batches based on the ED and then they just pick up the stack, put them in the envelop. So in other words instead of ordering the number of ballots ahead of time and not knowing what you need, you’re literally printing as you go. Pretty interesting concept.

**Peter Kosinski:** So is the advantage it reduces the number of ballots that you have to print because you’re doing them individually?

**Kathleen O’Keefe:** Right and also the waste that comes from not needing ballots that you’ve printed.

**Peter Kosinski:** Because I believe I read, there was an article I think I read in the paper that the Comptroller’s Office was somewhat critical of our Boards of printing too many ballots in this state because they are wasting so many ballots I think was the conclusion I believe of the Comptroller’s Office. Would this be an effort to address that issue?

**Kathleen O’Keefe:** The Comptroller’s Office basically, and this is a very broad summary, looked at the different ways that various Boards actually meet their ballot requirements. The Board gave some feedback with respect to this report because we don’t actually agree with the entire summary of the report, but it was comparing the

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various different ways that Boards do it. Some Boards print their own ballots and some Boards order ballots from professional printers.

**Kim Galvin:** I think it was in the works prior to that report coming out but it just happens to address these type of issues.

**Peter Kosinski:** But this type of effort would address that issue. Is that fair to say if other Boards participated in this.

**Bob Brehm:** It's partial because I think the Comptroller review is more the Election Day ballot which is clearly the larger volume. It's along the same lines of, especially in New York City with the thousands of ballot styles is how many do you print wondering if someone needs an absentee ballot as opposed to the Election Day ballot also. So there are a number of counties that have taken on the responsibility to print their own ballots, Schenectady was one of them, Erie County, Albany County. There's a number of counties that do in house, they bought the equipment to print their own Election Day ballots and I think the report kinds of looks at those costs and the flexibility. You know you can print as many as you need because you don't have to wait for some vendor to prepare one.

**Peter Kosinski:** Did we respond to that report at all?

**Kathleen O'Keefe:** Yes.

**Todd Valentine:** No, we haven't responded to that, we have a 90 day window to respond.

**Bob Brehm:** I thought we did. They issued the report.

**Todd Valentine:** They issued the report but then you have another 90...

**Kim Galvin:** We're supposed to report back on their report.

**Peter Kosinski:** Did we respond to their report?

**Kim Galvin:** No we didn't.

**Bob Brehm:** Included in the report is our response.

**Todd Valentine:** There's a second respond that's required upon the issuance of the report from the agency as to the actions taken or not taken with regards to the recommendations of the report. That has not happened.

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**Peter Kosinski:** Are we in the process of doing that? Are we going to respond to that? I mean it seemed like there was a big issue they made about the expense that's being incurred out there amongst our counties for these ballots and that somehow the State Board had a role in trying to limit these numbers and how that is being done around the state. Is there a response we're going to make to that or is there a change we're going to make to that? Or is there somehow we are going to address that?

**Douglas Kellner:** I think we already addressed it in the response to the draft report.

**Bob Brehm:** To the extent the recommendation was to have a further communication with the counties, we figured we would have the May conference, the counties will be there and we will at least review once more with them what we already told the Comptroller we had been doing, our response we had to that but we didn't have any problem including it in one more communication with the counties and we would accomplish that, since the May conference is coming up, we would do it at that conference.

**Peter Kosinski:** Okay, can you get me whatever that response is? I'd like to see that. Sorry, go ahead.

**Kathleen O'Keefe:** Quite alright. So we also have completed the legislative agenda that the Board voted to send to the legislature. We're awaiting for sign-off before we actually do that. But it has been prepared. It's in the right form. There are a couple of additional proposals that we are continuing to discuss to see if those will also be included in our legislative agenda. We're hoping to get that to the legislature shortly.

The contribution limits have increased based on the 4 year cycle with the consumer price index and we are going to have the Board vote on that today because there was a small flaw in the vote that occurred at the last meeting and so we are correcting that today.

We have had many, many calls about town, village, special, fire district elections. There seems to be a big gap out there as far as knowledge. Many times the local Boards are calling us instead of their town attorney or their village attorney or the village attorney or town attorney are calling us. So we're hoping perhaps at the ECA Conference to address some of the laws that are relevant there, hopefully to help the local Boards deal with those types of questions. And I think that's about it.

**Peter Kosinski:** Okay, thank you. Next we have Elections Operations, I believe Ann Svizzero is out today. Is there someone, are you guys going to handle this?

**Bob Brehm:** I know Anna very much wanted to be here today to welcome you back but she will be joining us shortly. And just as part of our personnel, Joe Burns the Deputy has moved onto greener pastures so that vacancy is in that unit.

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I think some of the main items, if I summarize her report of the staff did the required acceptance testing of the central count, Absentee Ballot Counting System that New York City recently purchased since the last meeting. Clear Ballot Central Count System is the system that is currently in for certification testing as a central count ballot counting system. It's my understanding that the preliminary review, the staff identified some issues, some functional issues that their ballot had to address. They submitted the new source code and it is working its ways through that testing process. I think the estimate and I only talked with Anna briefly, but she thought probably by June, she thought that that testing at least would be completed and would be able to make a recommendation to the Commissioners whether or not to recommend it for approval.

**Douglas Kellner:** Bob I see Bob Warren is right behind you and you said that they were required to do new source codes, so there were code issues? What were the functional issues that they had to address?

**Bob Warren:** They were more of user issues. You would click on certain links and you would get an error message. There were no accuracy issues. At this point we found no accuracy issues through our preliminary testing but it was more user type issues. There were some wording issues that they did correct the wording issues that were displayed on the screen. There were some reporting issues that they had where you would click on for a report, the report wouldn't print. It was those types of issues, but nothing along the lines of accuracy at this point.

**Douglas Kellner:** And nothing significant that you don't think that they are not in jeopardy of failing certification?

**Bob Warren:** No, not at this point.

**Douglas Kellner:** Thank you.

**Bob Brehm:** I think the only other item that Anna did since the last meeting is we certified the vacancies for the general election. At this time those are all Supreme Court vacancies. It is a substantial list this year. But other than that it is the routine work of the unit.

**Peter Kosinski:** Okay, thank you. Next is NVRA/PIO. And that I believe is John Conklin

**John Conklin:** Thank you Commissioner. We've been busy with media and public inquiries since our last meeting. Our written report is fairly short. I just have a couple of things I would add. Greg and Patrick in the unit are in Warren County today doing a training for NVRA so for any counties that will see this video file when we get it back, just want to let them know if they have new staff and they want to do some trainings we can come out and help them out with that. They just need to let us know about that and

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we'll be happy to do it. Other than that, I don't have anything to add to the written report. I don't know if Tom has anything he wants to add.

**Tom Connolly:** I do, there are a couple of things. Tom Connolly. As a result of the gubernatorial election we had to make changes to the registration form with the Commissioners had previously approved. It went into a lot of counties and other people have been inquiring. Those forms have been printed and delivered here, they will be going out to the County Boards so they will be available shortly. As part of that we've also been getting the translated versions into the required languages to reflect some of the new language in the enrollment box as well as the new parties, the Women's Equality Party and the Reformed Party. That also affects the affidavit envelopes that are used by County Boards so we will be providing them with revised versions and translations of that document.

We've been working with IT to prepare for Election night reporting for this special election in May. The two counties down in New York City; Kings and Richmond so that we'll be repaired to have those results on our website on Election night. I did go down with a couple of members of IT down to Hawthorne, New York to visit our Disaster Recovery site for our new system. We are putting a more robust system down there than they had previously so that we have almost a full complete backup for our new system that will be going at the College of Nanoscale Science and Engineering. So we just wanted to go down there to see what the possibilities were for the set up so that we were making sure that the stuff that we were ordering which is going down there, we wouldn't have any problems. We had to order some additional connections to facilitate what we kind of envision for the backup process.

And, lastly, I just returned from a conference down in Florida with the Council of State Governments and the Federal Voting Assistance Program, they have the overseas voting initiative and I'm a member of the technology working group to kind of discuss how we can use technology to help military and overseas voters. And one of those things, actually one aspect of technology we will be working with IT to get ready for the national change of address which we will run on the beginning of May and prepare County Boards to send out their notices in August. This year is the first year that they'll actually have military change of addresses implemented into the database so we're looking at writing a separate list of military addresses to kind of improve the quality of the address information that we have. We do find that we do get a lot of ballots back undeliverable because obviously the military can be very mobile and it's not always on the forefront of their mind to make sure that their address information is up-to-date with their local Board of Elections. That and we also decided to participate in the Industry Cross Check which is one of the two list maintenance initiatives that was recommended in the Presidential Commission Election Administration Report. We did get our results back. Just a quick summary of what that is. There are a number of states, roughly 30 that upload their voter roles and so they look for dual registration or dual voting. So we did ask for a number of counties to consider being part of a pilot group to kind of evaluate how efficient or who

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that data is as far as cleaning up the list. So we're going to be working on rolling that out and working with the counties to see how they implement the information that we receive.

**Peter Kosinski:** Tom have any counties volunteered to participate in that?

**Tom Connolly:** Yeah, at this point we have about 4, we'd like to maybe open it up a little bit more just because we have to take a look at being that for the 2 separate things, we're doing pilot programs for the military NCOA and also for the Interstate Cross Check. Obviously, we'll be looking at counties that have higher numbers of military voters to judge the efficacy of the military NCOA. With regard to the Interstate Cross Check I spoke with John also this morning, I think we might take a look at the data that we received back to see which counties really seem to have a larger amount of the results that are coming back.

**Peter Kosinski:** Can you explain that military NCOA a little bit more?

**Tom Connolly:** Sure, a change of address comes to the US postal system.

**Peter Kosinski:** I'm familiar with that. How does it work with military?

**Tom Connolly:** So in September last year there is a separate system called MILPARS, unfortunately I don't know the actual words for that but it's a military change of address system that military personnel will use as they go from base to base. It's for them to update their information so that all their military documentation can get to the right spot. Last year was the first year that they actually kind of merged the databases so they're passing that information on that was in MILPARS into the NCOA database. So right now, for our military voters, we have a couple of different addresses. We have obviously their mailing address, their residence address, but when they request an absentee ballot they often may have a completely separate absentee mailing address. So we're going to be pulling out that separate mailing address, running that through the normal NCOA process to see if we can get any hits from the addition of the military information they put in last year. So this way we're just trying to get updated information from our military voters to ensure that we can get them their ballots.

**Peter Kosinski:** Do we have like a percentage of how many military ballots come back undeliverable?

**Tom Connolly:** I do. It can be significant and it does swing from year to year. At the last general, I'd have to go back and take a look but its high single digits right now, which is always a lot more than your regular absentee voter.

**Peter Kosinski:** What's your regular absentee voter? What would that number be?



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**Tom Connolly:** Low, closer to 1.

**Peter Kosinski:** Yeah it's that low?

**Douglas Kellner:** And it's also one of the highest in the country.

**Peter Kosinski:** It is. Ours is higher than most states.

**Douglas Kellner:** We're either like 48 or 49<sup>th</sup>.

**Bob Brehm:** Well military lumps together both military and overseas voters and we have one of the largest, where there's a few other states, we have larger naval installations. But we have over 40,000 civilian, citizens overseas and the kind that when you do the summary are in the same survey, but that clearly is the largest group for whatever reason.

**Peter Kosinski:** So you think the reason that we're showing up so poorly is because of our overseas voters not our military voters.

**Bob Brehm:** Well I personally, since you've asked, I think the one issue is at the federal level and I keep reminding Tom who goes to these meetings, at the federal level, the federal law requires that every time a military person has a change of duty and they show up at their duty officer at the new base, that person is supposed to provide them the registration opportunity to update their record. And the GAO report that looked into that has quite a critical eye that the military are not doing that. So that would be the opportunity under the law that they would be provided the best chance to update their record. This is a new system to try and help us to find, up until now they would not tell us where they moved because the secrecy issue, it was very hard to get through any of these sites that there is any change of address.

**Douglas Kellner:** One other factor is that we keep a more comprehensive list than almost any other state in terms of most state will cancel a list or require a request for the ballot to be reviewed on an annual or biannual basis and New York does not do that. So, the denominator of the people who get the ballots, we have a process by state law where we will send out more ballots than other states will send out and the result is, is that we have a much higher percentage of...

**Peter Kosinski:** So we're not cleaning up our list as often as other states leading to a larger number of inaccurate?

**Douglas Kellner:** With military voters in particular.

**Bob Brehm:** Right in 2009 the Military and Overseas Voter Empowerment Act changed what had been the standard under UOCAVA which was two general and federal elections

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had to pass and that application was good for that period of time and they went to one general, actually I think its one year. So New York when they amended the law in 2010 wanted it to be more inclusive then less inclusive so we kept the 2 federal general elections, the period of time that an application is good for. So we could look better but we might miss people that are still qualified. I think the policy decision at the time was we're rather be more inclusive than less inclusive.

**Tom Connolly:** And if I may add onto that one of the things we're looking to do and been continuing to try to do with the County Boards and obviously we'll do again in May is that we really try to stress the importance of trying to take every opportunity they can to communicate with the voter to get additional forms of information. I know last January I had given a report where military voters can ask for if they're overseas, their ballots either by mail or by e-mail or by fax, but even for the ones who have requested it by mail, for 50% of those people we also have e-mail addresses. Many County Boards try to send out the ballots to those voters in multiple ways if they can just to kind of really increase the chances that we're at least reaching that voter. There are challenges of getting ballots to the voters. There are certainly challenges with getting those ballots back. We can really only control the outgoing process. As Bob mentioned with regard to what are called voting assistance officers on every single base, I do know because I did meet the commanding officer at the Naval Air Station in Pensacola while I was down in Florida and we did discuss they're trying to really improve these efforts. But unfortunately they have their own challenges where a lot of times they voting assistance officer or the VA duty is really just more of a collateral duty for somebody else and that kind of changes over every couple of years. So it's difficult but the Federal Voting Assistance Program which is part of the Department of Defense certainly acknowledges the problem and they're trying to do what they can on their end to kind of improve getting the ballots back.

**Peter Kosinski:** Are we finished? Thank you. Okay next we have ITU and I guess, I don't know whose going to present. Can you just identify yourself to everybody so everybody knows who...Just identify yourself to everybody.

**Bill Ryan:** Oh sorry, I'm Bill Ryan of the new ITS staff, IT staff person here. Both the Board of Elections and ITS staff continue to work on the Migration Campaign Finance data the old database server to the new system. Phase one development for this project which covers the public phasing reporting aspects of the system is continuing on. The dates for conducting stakeholder meetings for project in putters being finalized and the initial set of goals should be completed by the beginning of May. And delivery of phase one has been retargeted for the fall of 2015 but the remaining phases are still on target. On the data center migration as mentioned, we're holding weekly discussions with ITS and their migration team to finalize the plan for relocating our IT resources currently at building 8 on the Harriman campus to the ITS co-location facility at the College for Nanoscale Science and Engineering. That the CNSE. The scheduled date right now for the move is May 29<sup>th</sup>.

On the NYSVoter Refresh Project work is progressing on the project.

**Peter Kosinski:** I'm sorry can I just go back there for a second. So you're saying they're going to physically move the servers from what one building to another?

**Bill Ryan:** Building 8

**Peter Kosinski:** Building 8 on the campus out to the Nano Tech Center on Wolfe or on Fuller Road? Is that what they're doing?

**Bill Ryan:** Yes.

**Peter Kosinski:** And is that something everybody's doing or is this just the State Board of Elections or is this a statewide effort or, why are we moving?

**Todd Valentine:** We're the last tenant. They're closing up building 8 as a data center. I believe we're the last tenant in there. We've pushed this off until after the election so this is the window of opportunity we've identified.

**Peter Kosinski:** Is this a one day move?

**Todd Valentine:** No it would be a weekend.

**Bob Brehm:** So we're going to communicate both to the counties and to the public we will take it down the Friday of that weekend and we may need a certain amount of Monday to come back up. It is the period of time that we've targeted because it is outside of the window of the May school elections, the June village elections, and the regular political calendar, and our first target date to move was last August and with the statewide election cycle we suggested that that was not the appropriate time to move and they agreed with us. So this was the period of time that we thought we could handle the move.

**Peter Kosinski:** But this is the state moving us, we're not really doing this.

**Bob Brehm:** We are working with them, the state OATS had brought in a consultant, I believe IBM is a consultant to them to help us.

**Douglas Kellner:** This was not voluntary.

**Bob Brehm:** Not voluntary, no.

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**Bill Ryan:** After the NYSVoter Project we're progressing on the project. The OE and HP staff are focusing on the requirements and process for setting up the new environments for both production and disaster recovery PR sites.

**Douglas Kellner:** You mentioned that we're getting what you call the stakeholder groups and stakeholder meetings. Do you want to go into a little more detail on what you envision will take place in that process and the types of people we've invited and how anybody who thinks they want to be involved in that process can do so.

**Tom Connolly:** Well basically with the CAPAS FIDAS system it's going to be one unified system for Candidate Management and also for financial disclosure we kind of identified 3 different categories of users for user groups; first you have the consumers of the data which would be like the media and public who go on to our website and view Campaign Financial Disclosure documents. We do have a kind of treasurer group where the people are actually using the system to facilitate those funds in the first place.

**Douglas Kellner:** We have to upload the data.

**Tom Connolly:** Right and then the last group would be more with the county boards and the county vendors for EMS systems. It's really more for the candidate information we're getting from them. What we're going to be doing since we are in phase 1 of the project, we are going to be holding an initial set of I guess webinars or conference calls, albeit a webinar where we expect to give the opportunity to those groups a quick explanation of the scope of the project and what we plan to do. Obviously giving those people the opportunity to provide their feedback for either comments on what they don't like about the existing system and what they would really like to see in a new system so that we can not really develop the system in a vacuum and get the outside input for those people who are going to be using the system to make sure that as we go into this undertaking that we develop these two very large systems that we're going to "do it right." So we'll kind of run through the basics of what we see different timeframes for the projects. This would only be the initial call. Obviously the consumer group is probably more important at this point because phase 1 is the public phasing reporting. However we are going to have meetings with all 3 groups and then there will probably be subsequent meetings after that depending on the timeframe of the process and the different phases.

**Douglas Kellner:** Who on our side attends those meetings? Or who has control over the development and design of the system is attending those meetings?

**Tom Connolly:** Well obviously I think from the State Board we'll have members from a number of different units because I would say we have Compliance and Counsel with regard to the financial disclosure while Enforcement has been taking part in some of the meetings internally. Election Operations with regard to the Candidate Management side of things and John and I have been there all along. So I think from our side we'll

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certainly be there in the room listening and trying to get feedback. As far as who will be on the other side of the phone call, we'll be kind of opening it up to, we have a treasurer group that we've used in the past for beta testing new software. We've been accepting recommendations from other people who I know who will be looking into different government groups for who are also consumers of the data. Hopefully members of the media. Just opportunity for people to kind of see what we're doing and give them the opportunity to kind of give some feedback.

**Douglas Kellner:** And if there's somebody who wants to be involved in that process, they contact you and John Conklin?

**Tom Connolly:** That would certainly be a fine way of going at it, yes.

**Peter Kosinski:** All set. I guess I wanted to ask another question about the report. I see our budget is in here and I'm just asking how the budget came out for the Board. Is there any issues with the budget that was adopted?

**Bob Brehm:** Well I'll start with, it's better than it has been in the past, but it certainly could be better. If we look at our general funding level it increased by about \$342,000 and I think this time it appears to have addressed a major structural problem in our budget where they will place certain items on the ballot and propositions, constitutional amendments and we have to publish them. And the last we had 6 it cost us \$340,000, last year was about \$260,000 and our budget, even our appropriation level has been closer to our spending level. So we didn't have that flexibility in our budget to cover those items and its been a problem for the last 2 years. So, last year they originally took the money to pay the bill because it had to get paid, out of our technology budget that is paying for this CAPAS FIDAS redesign and thankfully, they've restored that funding fully in this appropriation so we're very happy that that issue won't impact that project.

And the other is, there's a new appropriation of \$340,000 that could be used in the future for any future proposition amendments or for any publications or any other contractual services that we need to do. So it's more than we had. It's always tight, but I believe when we looked at the new model in the last year, I think we are finally coming up to the final staffing level and training level. I think from looking at the work that the group has been doing, we knew we'd fall a little bit behind because we didn't have the staff but we had the biggest report due July 15<sup>th</sup> and the effective date of the law was June 29<sup>th</sup> and then we went into all of the election cycles. So the staff has been working tremendously. I think the model is working as far as getting the work done. I believe once we're fully staffed it will be working. So I think from the model of the money it's okay. This year still would be tight if things break and these new technology items as we bring them up. I think there are new efficiencies that we will see with the technology upgrades, we probably won't see them until the next fiscal year and one of the critical items that we continue to talk to staff about is since the Candidate Management System and the Campaign Finance System is so old, the estimate we had for that project was \$2.4 million

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and as we get into the design, if we run, we had that appropriation to deal with it in 2 sources but if we find, we have 2 options, we might have to put something into a later phase if we run out of money, or we'll have to go back and make the case since it's been since 1990s, we might need a little bit more money to finish that project. But I think overall it's more positive than it has been in the past. It's fortunate that it's higher than certainly going in the other direction over the many years.

**Peter Kosinski:** So, I'm looking at the budget I have here and it shows \$342,000 difference in the regulation of elections. That's the money you're talking about?

**Bob Brehm:** Yes.

**Peter Kosinski:** And then there are down below aide to localities.

**Bob Brehm:** That has not been, there are no new sources of funds for the local governments. There have been no new federal sources of money. That's generally the left-over Help America Vote Act or the money that the legislature appropriated for poll site improvement or inspector training. So those are just reappropriations of those authorities. A little bit of the federal money in that group it all the aid to locality of all the left-over money. The Health and Human Services, Poll Site Improvement money for each of those years all go to that account. So there's no real new activity there. The special revenue, other funds...

**Peter Kosinski:** Are we not spending that money is that why it's still remaining in there?

**Bob Brehm:** It's all appropriated for the counties.

**Peter Kosinski:** So it's showing in our budget but the counties have access to it? Each county was allocated a certain amount and they're just not using it is that a fair statement?

**Bob Brehm:** Correct.

**Peter Kosinski:** Am I seeing \$29 million?

**Douglas Kellner:** They're "banking it."

**Peter Kosinski:** Am I seeing \$29 million here? Is that what I'm looking at here?

**Bob Brehm:** Depending on which fund you're looking at, yes.

**Peter Kosinski:** And that money is for what? Poll site improvement.

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**Bob Brehm:** I don't have the numbers in front of me but largely \$20 million of that was left over in that pot of money that was assigned to the counties for buying new voting equipment. So of the \$190 million that was associated to them that's left over, we call that the Shoe Box Grant and that stands for something. If Anna was here she could tell you but after we certified that we were in compliance with the Help America Vote Act then we could use that money for other purposes to further the administration of a federal election. So that's where the program changed from us submitting the vouchers directly to OGS to buy election equipment to a grant program where the county spends the money that's reimbursed through a contract. And many counties have exhausted that money, others have not yet. The education and training there's still a pot of money there of the original \$10 million appropriations probably over 3, \$3.4 million, in that account. A lot of the Health and Human Services is a series of grants that were annuals so those sunset at the end of 5 years. I think we only have, Greg and Patrick administer that program, I think we only have 1 or 2 more years left but otherwise they either spent the money or they've been taken back by the federal government.

The only other pot of money that we have that's in there is there was that state money that we received in 2006 through Senator Flanagan I believe when John was there for the \$5million appropriation for pole site, for temporary pole site, no pole site access improvement. So that could be used for permanent activity. There has been some talk in the budget discussions where they go in, money that hasn't been spent in over 7 years where they take it back. That pot has not been taken back because we used that \$5 million appropriation as part of New York's 5% local match we had to do for the state portion of the money. So if the state were to take that back here and use it for something else, they would have to restore that money because that's what we claimed as a match money and was accepted as that. So that money is still available to the counties.

**Kim Galvin:** The counties are told continually though about the money and you spend their money and use their money and it's not like they don't know it's there. We tell them often and regularly.

**Bob Brehm:** Yes, especially the federal money, we lose that at the end of the federal fiscal year at the end of September and our staff, there's no doubt that the reason why that money goes back to the federal government is because the county didn't do something. Because Greg and Patrick go around repeatedly to make sure they know and there's no miscommunication that there's a voucher in the work somewhere, because if the voucher isn't paid in the fiscal year it's gone. So we work very hard to make sure that it's not for lack of trying.

**Peter Kosinski:** Okay. So I think we're finished with that and then Enforcement. Risa.

**Risa Sugarman:** We have everything. I've been discussing over the past several meetings about the Division of Election Law and Election Law Enforcement obtaining that case management program and we have been successful in doing that and we are in

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the process of having that program loaded so that it will be available to us to have our cases and all of our processes loaded into that program and that should be able to better serve us in managing and keeping track of all of our investigations and what we're doing within the division. We are working with Compliance and with Counsel, well we have been on the hearing regulations that you'll be looking at today. We made some suggestions some were accepted some were not.

We have been working with the Division on other issues that have been confronting both the Division and the Compliance Unit as to committees that have come to our attention. Sometimes committees that are coming to our attention really deserve to be treated by compliance rather than by the Enforcement Unit. And we had tried to work out a process where we feel or I feel that the committee is better served by compliance that perhaps Compliance takes their first attempt with the committee to deal with the compliance of that committee so that they can come into compliance rather than be treated by the Enforcement Unit.

I think at the last meeting I had a vacancy with one of my attorney's, that attorney has started. His name is Jake Arnold. He has been working I think for the past maybe month and a half. So I am at full staff. And we too are getting many, many calls from the local governments, the villages and the towns seeking assistance. Sometimes we refer them back to the Compliance Unit and sometimes we try to help them and answering their questions as well. So that takes not a good part of our time but it has increased as the months have gone on.

**Peter Kosinski:** Okay, any questions. Okay. I think that finishes the Unit reports. Next order of business is old business. I believe this is the contribution limit issue that was raised earlier. There's a technical mistake as I understand it in the previous Reg and this is meant to correct that.

**Douglas Kellner:** So I move that we adopt the revision to part 6214.0 Campaign Contribution Limits as drafted and submitted to the Commissioners in order to correct the error that was in the list that was adopted last time.

**Gregory Peterson:** Seconded.

**Peter Kosinski:** Is there any discussion? Could someone just identify what the error was?

**Bob Brehm:** It was a typo in the maximum contribution party committee, recalculation comes up to \$109,600, the last one with the typed resolution it said \$109,000. So the calculation work that the staff did when it got translated to the resolution was just a typo.

**Peter Kosinski:** Okay. All in favor say aye.



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[Chorus of ayes] Opposed? It's adopted.

Next is new business. We have a Hearing Officer Process part 6218 in relation to civil enforcement hearings. Who would like to explain that, Todd, Bob?

**Kim Galvin:** I'll take a stab at it if you'd like.

**Peter Kosinski:** Could you explain that?

**Kim Galvin:** Basically when Enforcement was created there are provisions in that authorization that will require the State Board of Elections to do potentially many more frequent hearings, so we needed to establish the requirements that the hearing officers would in fact follow and then create a pool that the Board would approve to be randomly chosen in the event that a hearing is required on a civil non-criminal issue. So, the staff, almost all of us I think worked on the language in this and as Risa I think mentioned, she made some comment some were accepted, some not. I think Brian Quail did most of the drafting in the amendments, but basically this is the agreed to draft that we put before the Commissioners for acceptance. Right Brian?

**Brian Quail:** Yes.

**Risa Sugarman:** Not agreed by me.

**Kim Galvin:** Agreed to by the Board proper staff.

**Peter Kosinski:** So this is a hearing officer process that occurs if there's someone who's out of compliance?

**Risa Sugarman:** The statute provides that after an investigation by me or my staff that if there are no criminal charges that are found during the course of the investigation, if there are violations that could be civil in nature, the legislature has added a step rather than go directly to a special proceeding, there could be a hearing officer process under the SAPA which is the State Administrative Procedure Act. And the statute provides that the Board should appoint a group of hearing officers to conduct those hearings. And it also gives the State Board the power to create regulations, and these are the regulations that came out of that.

**Peter Kosinski:** Can I just, is this the process that's holding up pursuing failures to file?

**Risa Sugarman:** Yes, well this is the process that I have requested that we do. The hearing officer process is the process that I've requested in order to go forward on failure to file as well as other civil enforcement processes. Because the statute does say that if there are not hearing officer's appointed that I could take those directly to a special proceeding. But I feel that there is a better process by going to a hearing officer initially.

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**Peter Kosinski:** So, do you anticipate that a person who fails to file this number that was referenced earlier of 1000 failures to file in January, each one of those would get a hearing before they were pursued?

**Risa Sugarman:** My hope, the last time that we, first of all we got that list yesterday of people. In July for the hearing the failures to file. My division sent out approximately 500, more than 500 letters. Over 270 of those letters came back as undeliverable. Under the former procedure, since those letters came back, those people did not come in to compliance since they didn't get the letter notifying them that they needed to come into compliance that they were not in compliance. That process that was in place, the next step would have been to file a special proceeding. And there would have been an attempt to serve those people with the special proceeding. My goal is to get a good address for those people, to notify those people that they're not in compliance and make an attempt to bring them into compliance before bringing them into a litigation process. I have taken steps to bring a program into my bureau, my division that will help me obtain good addresses so that we can notify those people that they have a responsibility to file, and bring them into compliance. Because I think that it's better to notify people to get them into compliance rather than just filing a special proceeding and a lawsuit when they don't know that they have to come into compliance.

**Peter Kosinski:** I don't disagree. So this regulation we're adopting then really doesn't have any specific impact on the failure to file issue, that's more of an address issue, more of a notice, due process issue. You feel that you're not right now sufficiently giving notice and due process to those individuals before you sue them.

**Risa Sugarman:** Well I would like to have that process and that would include the people that would be coming into the hearing officer process. Because if I file those 270 hearing officer reports, then I don't know how I would notify those 270 people that they have to come before the hearing officer, and we would be in the same situation. The hearing officer would make a ruling and we would be in the same situation.

**Peter Kosinski:** That's very nice. I guess my concern is that we don't make this more cumbersome than it needs to be. I know in the past this Board has been very active in pursuing people who failed to file anything and there's no real dispute about whether they're in compliance, it's just a fact they just didn't file at all which I think is indisputably not in compliance with the statute and they have been pursued and I know they always did pursue them when I was here. We always made the effort to pursue those individuals, those treasurers to try to bring them into compliance meaning file something or we are going to sue you. So, I guess I understand your concern about having accurate information. I guess in my own mind, I'm not clear why it's so inaccurate because my sense is you're using treasurer information that's been filed here by the treasurers themselves so it's curious to me why so many of those addresses are wrong when I think that's the information they've given this Board as to the filer's name,

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the treasurers name and address. But if that's the case, that's the case. But I guess from a procedural standpoint this hearing officer process, to put that other layer on having those people then go through a hearing before they're pursued is adding another, to me, bureaucratic layer to people that just haven't filed anything. And to me, filing is a minimal requirement that people have to meet here.

**Risa Sugarman:** Legislature added to the process and when we're talking about...

**Douglas Kellner:** No the legislature made said though if there's no hearing officer, you can go into court which is what we've been doing and so now you have nobody's filed in July, the non-filers from July have not been prosecuted, the non-filers for the primary have not been prosecuted.

**Risa Sugarman:** When we're talking about the election cycle filers we're talking about different numbers and we're talking about a different process that I put into place. We have been in touch with the people in the non-filers in the election cycle and those people are being treated in a different way. Those people are being reviewed as are, the last time you asked me about the 100 or so people that did come into contact with my division and still didn't come into compliance. Those people are being treated a different way. Those cases are being looked at individually to see how we're going to treat them. So we're bringing those election cycle non-filers either into compliance or we're looking at them specifically to decide whether they're frequent non-filers and needing to be looked at either in a civil manner or a criminal manner and we're making that decision now. So we're not treating the January and July periodic non-filers the same as we are the election cycle non-filers. And those are maybe 50 people not hundreds. So you can't make those, the difference. We're talking completely different categories in those.

**Douglas Kellner:** So, when do you expect to make those decisions with respect to the primary non-filers?

**Risa Sugarman:** Well I think we'll be talking about several of them today.

**Douglas Kellner:** I don't know how that answers the questions. Because what we're talking about today is issuing subpoenas is not pursuing the judgments and the law says if you've missed 3 filings you can get a \$10,000 judgment.

**Risa Sugarman:** No, you can get a maximum of a \$10,000 judgment.

**Douglas Kellner:** Well the Board won every one of those cases. We got \$10,000 on everyone of the non-filers of the chronic non-filers historically and those proceedings were usually started 2 or 3 months after the non-filing date and we're talking about the September primary and still, alright well we can talk about it in Executive Session. But I echo Commissioner Kosinski's comments or inference that for the non-filers I don't see why we're waiting for the hearing officer process to do that.

**Risa Sugarman:** I understand that.

**Douglas Kellner:** But in the meantime I also think that we should get this going so maybe we should talk about the substance if there are any issues that need to be addressed, I'm comfortable with the staff recommendation. But if there are proposed changes decent from any of these provisions perhaps we should hear about them.

**Gregory Peterson:** No, I think they did a fantastic job. It's a work in progress and a cooperative effort and I think what we've arrived at really covers it.

**Peter Kosinski:** My understanding are these are to go out for comment? That's the stage they're in?

**Kathleen O'Keefe:** Well they're ready to be filed and then the formal comment period.

**Peter Kosinski:** Then there will be a comment period and they'll come back to us for final adoption correct?

**Risa Sugarman:** So, I don't delay this anymore I will put my comments in the public comments section.

**Peter Kosinski:** I think that would be appropriate. So I think we should try to move this along to at least get it in the pipeline so. Do I have a motion?

**Gregory Peterson:** So moved.

**Peter Kosinski:** I have a second? All in favor?

[Chorus of ayes] opposed? Okay, so we've adopted those. And those will go out for public comment when? Do you have any idea when they'll actually hit the...

**Bob Brehm:** its 45 days from the publication so the staff will have to submit the paperwork.

**Peter Kosinski:** How soon will those be published, do you have any idea?

**Bob Brehm:** We have a tendency to post them informally on our website to start the public at least seeing this version while that takes its path so people can then have a pathway and start their informal comment here. It all depends on the date the staff submits it.

**Peter Kosinski:** Is that within a week, 2 weeks, a month?

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**Kathleen O’Keefe:** There are regular deadlines. You file it and then it basically gets published 2 weeks later.

**Peter Kosinski:** Right so we’re talking like a month or less?

**Kathleen O’Keefe:** No, days.

**Peter Kosinski:** Okay good. Alright so the next is regulation part 6203 in relation to investigations. This is another regulation. I don’t know who wants to speak to that?

**Todd Valentine:** Regulation that updates the current 6203 to comply with the changes to the structure of agency, to the titles and conform to the new law.

**Peter Kosinski:** You’ve got to tell me a little bit more than that.

**Kathleen O’Keefe:** Basically there is an existing Reg that already addresses this and how subpoenas are issued at the Board by Commissioners or by staff. The current Reg does not reflect the current titles of the staff because there’s been a new configuration here at the Board over the last year or so. So part of it is just technical cleanup type of thing. And then what we were also looking to do was include the subpoena issue that appears in the new Enforcement Statute in order to allow that to make it clear how that works. The Enforcement Counsel comes to the Board, and the Board votes to grant the subpoena. We already have the subpoena Reg so we thought that was the appropriate place to put that.

**Peter Kosinski:** Okay. Motion? Second? Discussion? All in favor?

[Chorus of ayes] opposed? Okay. Now let me ask you this on that, do these also go out for public comment? Is this also in that same vote where these go out?

**Kathleen O’Keefe:** Yes and the thinking was that we would replace the current regulation with this proposed regulation.

**Peter Kosinski:** But does it go out for public comment and then will come back?

**Kathleen O’Keefe:** Yes, same scenario yes.

**Peter Kosinski:** Okay next is a resolution regarding the appointment of members of the Division of Electional Enforcement as Special Investigators. And I don’t know who wants to speak to this?

**Kathleen O’Keefe:** I would be happy to do that, just let me get the...okay so the current statute 3107 addresses special investigators and the way that it reads is primarily in the area of violations of the elective franchise and then there are numerous other pieces in

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that particular section. The new law that affects the Enforcement Counsel requires the Enforcement Counsel to come to the Board to get subpoenas. This resolution makes it clear that the two statutes basically have to be harmonized. In other words, the any kind of authority that 3107 may allegedly provide to special investigators has to be viewed and has to be read in light of the new statute 3104. There was concern raised that if 3107 is read to provide an independent subpoena power for the special investigators that the Board has appointed, then why would the Chief Enforcement Counsel ever have to come to the Board for a subpoena as 3104 requires? So this resolution is just making it clear that 3107 does not provide a separate grant of authority to the special investigators employed by the Enforcement Unit that gets around the requirement in 3104 and it just wasn't clear in the original resolution that that was the case.

**Peter Kosinski:** Did you have a comment Risa?

**Risa Sugarman:** No, I don't know why they think that I would ever do that.

**Peter Kosinski:** I mean do you have any problem clarifying?

**Risa Sugarman:** I mean the original draft was changed at my request so.

**Peter Kosinski:** Okay good.

**Douglas Kellner:** I move the resolution.

**Peter Kosinski:** Is there a second? All in favor say aye

[Chorus of ayes] opposed? Okay. So those three items are completed. Move on.

**Douglas Kellner:** Peter there was one item I wanted to just mention on this, the Commissioners have received two requests for Board opinions on personal use pursuant to the 14130 provisions that were just added to the law by the new budget reforms and my understanding is that well for one of them I'm recusing myself so I'm only applying to the one that I'm not recusing myself for and for that one that the Commissioners were going to direct that counsel prepare an informal response promptly because it relates to a decision that needs to be made immediately and that the Commissioners will review the informal response at the next meeting for a formal opinion.

**Peter Kosinski:** Okay fair enough. I'm expecting now that the legislature's changed the personal use statute there will be probably a large number of these requests coming in. I think we need to be responsive. We need to be prepared, the staff to address them as best you can relatively quickly so people are advised as to what the rules are. But I think you should be prepared for an influx of these because of the change. I haven't fully reviewed the change myself but I'm sure...

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**Kim Galvin:** Yeah, it specifically says that they can come to us and shall issue opinions regarding the personal statute...

**Peter Kosinski:** Yeah so I think we should...

**Douglas Kellner:** I just want to confirm that the 4 Commissioners all agree that the Counsels will promptly respond with an informal opinion.

**Peter Kosinski:** Right. I think some are more time sensitive than others so I understand that. Okay. And then we had one other items that Commissioner's Kellner and Spano wanted to raise today.

**Douglas Kellner:** Alright that's why I think many people are here today. The motion I want to put before the Commissioners is that the Commissioners direct our counsels to prepare an opinion that will rescind opinion 1996-1 and provide updated guidance on the applicability of article 14 to limited liability companies. So that's my motion, I'll ask for a second and then we can start discussion.

**Peter Kosinski:** I'd like to just discuss this briefly. I don't know if there's any other discussion you're in favor of so.

**Douglas Kellner:** Well obviously I'd like to speak in support of my motion

**Peter Kosinski:** Okay so if you want to speak you go ahead and speak.

**Douglas Kellner:** And I note that several people have contacted us and requested to make a short presentation to the Board that would require the Commissioner's consent and I would allow, I would agree to brief presentations, but I realize the Commissioners have to agree to that.

Alright, now in terms of my speaking in support of the proposition, I think many people are familiar with the letter of the Brennan Center that identifies the problem that limited liability companies were not in existence at the time that article 14 was adopted so article 14 does not use the word limited liability companies or specifically address that issue. I might add that there was a time when article 14 did not address partnerships and this Board crafted a policy that has been fairly well defined if I recall it correctly, if a partnership contributes more than \$2500 then it's required to attribute the contributions to the individual members of the partnership and the contribution limitations would then apply to those individual members. At the time this Board adopted the opinion on how to deal with limited liability companies it was following a policy adopted by the Federal Elections Commission which the Federal Elections Commission subsequently decided that it was in error and changed its policy so that the federal policy is to treat limited liability companies as partnerships unless they have elected tax treatment to be treated as corporations in which case they would be treated as corporations. And at the federal

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level corporations are not allowed to make any contributions at all. One of the reasons I haven't actually done a draft but hope that Counsel's could address it and negotiate a resolution on this point is that there are several ways that our Board could go. That in particular I would favor treating limited liability companies as partnerships. I am aware of the letter that was sent by the Business Council objecting to even reconsidering the policy in which they site the definitions of limited liability companies as unincorporated associations. And I would point out that if we actually carefully applied the statute to the theory that the Business Council has advocated that using the strict language of 14-116. 14-116.1 prohibits corporations or joint stock companies from making political contributions and it is subdivision 2 of 14-116 which authorizes corporations but not joint stock associations from making aggregate contributions of not more than \$5000. Applying a limited liability company as an unincorporated joint stock association would prohibit limited liability companies from making any contributions at all and would not even limit them to \$5000 contribution. I am not advocating that and I think that most of the persons who have communicated with us so far are advocating the route that they should be treated in the same way as partnerships so that the contributions are attributed to the members of the LLC on an allocated basis, at least for larger contributions. And one of the issues to discuss would be whether the partnership threshold which was adopted many years ago should remain at \$2500 and whether the same threshold for limited liabilities companies should be as it is for partnerships.

We receive a fairly scholarly letter on the subject from the Brennan Center. We've also received a letter from the Attorney General urging us to take action in this regard and I certainly agree with those sentiments that action is long overdue on the subject and so I would urge that we adopt a resolution to have our Counsels draft a new opinion on this subject. Thank you.

**Peter Kosinski:** Any...sure go ahead. No I'll let you guys go ahead.

**Andy Spano:** I'm the only non lawyer here so I don't understand anything he said. But it was very important. I come at this from a different perspective. I was a candidate numerous times and I accepted money from LLCs. Why? Because it was there and we needed money and you accept it and was legal. So we're not discussing who accepted money, who didn't accept money, we're just talking about fairness and what's happening with money and campaign. So this week I went on the Internet and I said let me look up money campaigns, where it's going, all that stuff and I came up with this sloppy silages so don't hold me to every single fact and number here but I just want to give you an impression, okay? In the 2012 federal elections 1% of 1% of just over 31,000 individuals contributed 28% of all contributions. In many major elections about 5% of the contributors contribute about 60% of the money. Now this I loved, American's spent roughly \$9 billion illegally gambling on the NCA Tournament while \$3.7 billion was spent to influence the mid term elections of 2014. However 12.6% of the population bet on the NCA tournament and only .02% of the population made contributions to the 2014 election. Now there was an article in the New York Times on April 1<sup>st</sup> that talked about



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how this is the first year in a long time that the number of new start ups, corporations and businesses dipped below the number of corporation and businesses that went out of business. So the number went down and a whole article on it but I pulled out this particular comment from one MIT economists. Now we know about economists' one arm and the other arm but this made my point, "*Contemporary American politics have become an economic hindrance*" according to this economist, "*It is becoming more and more difficult to run a successful business in the United States without doing lobbying, campaign contributions and other deals with politicians. This I think is the most dangerous and I would even say nefarious trend for creativity of American business in general and young and new businesses that are so badly needed in particular.*" Now that's the comment, so based on my silages and going up and down if this is true less than 5% of .02% of our population is influence to the government and what the government does. That's the influence of money in politics. Now what we're talking about today is insignificant in terms of that process, in terms of these figures, in terms of that money. What I think is something we should do symbolically, at least as a Board, to say, "Hey we don't think this is what should be happening." You have the President of the United States just the other day saying that opining, is that the word you guys use, opining that we should maybe have mandatory voting because he knows what every politician knows is that if you have everybody turn out, the money gets less and less effective. It doesn't matter how much money you have because the money focused can't do anything when you have such a large group like dropping a pebble in an ocean. So, this is significant if we do something about it and I would like to. If we say, just as a Board to the general public, "Okay, we don't like all this stuff going on with money" its not going to make a significant difference but you know where we are. You've got to make a difference somehow and if all the groups that sent us letters, I admire your passion, but in the scope of things, it's miniscule. This is miniscule. This is just a statement. You want to get to it, get people to turn out and vote somehow change the significance of how they vote. I mean you need a constitutional amendment to change this, I don't even know if you'd get that far. But you have to go somewhere else and think outside the box and not inside the box which is where you are. So I'm in favor of your resolution whatever they're going to bring up.

**Peter Kosinski:** I appreciate that. I know there are a number of people here that I believe are here for this particular issue. We have received the documents that were referred to from the Brennan Center Citizens Union, Business Council, I believe the Attorney General's Office also. If there's anyone here that wants to speak that has something to say that's not in one of these letters that we have received today, I would offer you a couple of minutes to do that to the Board but I would like to restrict it to comments that are not already, we've already read the comments that are in these letters. We're familiar with them, the arguments that have been made. If there's something else that anybody else would like to offer to the discussion, I think we'd be willing as Commissioners to listen to that on a limited basis. I don't think we're going to go on too long but if there is anybody that has a particular point they want to make that hasn't already been made, I think we'd offer maybe 2 to 3 minutes for a person to do that if

they'd like to. If somebody would like to do that. And I don't know what groups are here but if we could have it limited to 1 or 2 people that could do that for us.

**Larry Nordan:** Sure, I'm Larry Nordan and I'm from the Brennan Center, I'm joined here by my colleague Dan Weaner. First of all, thank you for permitting us to have a moment to speak and congratulations Commissioner for being appointed.

I wanted to make, you have our letter so I don't need to repeat what's in there but I do want to make a couple of quick points; one is that this last election showed how much worse the problem has become with LLCs being used to circumvent individual contribution lists. Genet reported that in the last 2 year cycle the amount that was provided to candidates from LLCs was \$25 million. That's the Kennedy's never mind political committee's parties. That's 8 times according to Genet the amount that had been contributed in the previous 12 years. So the flood gates have really opened on the LLC loophole. We've gone from essentially what was a river to an ocean. And there's been a lot of talk about the contribution limits and the circumvention of contribution limits, the fact that these were set up to prevent corruption, in fact when somebody can contribute a million dollars to a single candidate or more than a million dollars, I think for a lot of people that raises corruption concerns through LLCs. But there is also an element of the disclosure regime that was set up by the legislature which again was meant to prevent corruption and was meant to provide the voters with real information and with LLCs we don't have the kind of disclosure that we would under contributions that were made by an individual or partnership attributed to an individual. As you all know the Moreland Commission on Corruption identified this loophole as one of the problems in New York State's Campaign Finance Law and antithetical to the purpose of the Campaign Finance Laws which again was to prevent corruption. The last thing I would say on a day when corruption in Albany is yet again in the headlines I think it would be very appropriate for the Board to act today to revisit it's opinion and frankly as the Brennan Center I think made clear in its letter, we believe that a plain reading of the text means that you're required to do so.

**Peter Kosinski:** Okay, thank you.

**Rachel Fauss:** My name is Rachel Fauss. I'm here from Citizens Union. I just wanted to speak for some of the other groups that I know that many of us have sent you our own letters, our members are also very engaged very involved and we legally bet over 8000 New Yorkers have taken the time to write to you individually to tell you that they believe this loophole should be changed and because of that we think there is significant public support and I just wanted to raise that to your attention. Thank you.

**Douglas Kellner:** If you want to say something that's fine. I have one more comment to make.

**Peter Kosinski:** We have one more person.

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**Susan Webber:** I have something to say. My name is Susan Webber, I'm a volunteer coordinator for Move on.org and I'm a newly appointed member of the Board of Directors of the Albany Museum of Corruption. And I'm happy to, we're having our museum, we're creating our museum because it's what Albany is famous for corruption and I'm here to ask that this Board follow through and do real meaningful LLC closure and the reason I opine that so few people vote nowadays is because they don't think it matters. It doesn't matter because the big people buy the policies and those policies reflect the desires and the needs of the big people not the people who vote. And you can do something to really change this and make it better. Take back our democracy. Thank you.

**Peter Kosinski:** Okay, thank you. I'd like to and I'm sure Commissioner Peterson would like to say something but I'm going to just weigh in I guess. The opinion from 1996 and I know we've looked at it and I was actually here when that opinion was rendered back in those days and it was done based upon New York State law and I just referenced the opinion itself that analyses the limited liability company law in New York State and concludes that they have determined that that law makes them not subject to corporate contribution limits because by definition those entities are unincorporated. I know there's been quite a bit of emphasis put on the whole change of opinion that the federal government put out and that there is a reference in this opinion from 1996 to the federal government's treatment of LLCs but I would note that the opinion itself did not rely on the federal government's treatment, it relied on New York State law's treatment, that has not changed since 1996. This issue has been revisited many time. It's been revisited here several times, I think in 2001 there was another opinion that this Board put out reaffirming the 1996 opinion. Again, I believe in 2008 this was revisited. I know it's also been discussed extensively over in the Capital with the legislature. It's my belief that that's where it should be discussed. This is not a matter for an administrative agency, the State Board of Elections to decide. This is a matter for the state legislature to decide. If the state legislature feels that the limited liability companies should be limited in their contributions further than what they already are then that's their prerogative to do so as they've done with corporations. But to date they have chosen not to and I think a lot of the groups that are here today know that they've spent time in the legislature seeking that change, it has not occurred. In my opinion, it would be inappropriate for a state agency, a bureaucratic agency to usurp the legislative prerogative and to administratively impose a new limit on an entity that's been around for 20 years and that has been treated a certain way, that the legislature has chosen not to change despite a great deal of discussion over these many years about the potential change, but to have a state agency step in and make that change unilaterally I think is inappropriate and I don't think is the role of this Board. Our role is to administer the law not make the law, not change the law. There may be many laws here we don't agree with, there may be many laws we don't like, but our job here is not to change them. We don't have that authority. That authority is across the street in the Legislature. I had the pleasure of working in the legislature for several years and I respect their role in this entire environment. They're

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the ones that set the rules. There's a very complex scheme in this state for campaign finance contribution limits. We have limits on partnerships, corporations, individuals, PACS, associations, they're all treated in many different ways. The legislature has created this very comprehensive system of campaign contribution limits in New York State. I feel we have to honor that. That's their prerogative to do so. We administer it. We enforce it. We make sure it's complied with but we don't create it and I think that what you're asking us to do here today is to create a new law that would impose a new limit on a specific entity. I also feel very strongly that these are very important issues. These are directly affecting first amendment rights in this country. When you start talking about Campaign Finance issues you're talking about people's first amendment rights. I think those are constitutional issues protected by the New York State and federal constitutions. To have a state agency affecting people's first amendment rights I think is also very troubling. I think that's something for the elected officials of this state and this country to do. They're the people that represent the people. They're the people that should be making the laws that affect people's first amendment rights and that is exactly what we're talking about here today. I don't feel that we have the authority to make this change, and I feel that this discussion should be taken to the legislature as it has been and I know its been discussed. I know it was discussed partially in the context of this year's budget, no changes were made and I feel it would be inappropriate for us to make the changes that the legislature has chosen not to make. And that's my position.

**Gregory Peterson:** I served many years in elected office and one thing I learned over those years never turn a deaf ear to what's presented to you. And I know there's a lot of work and a lot of effort put into research in presenting a very cogent and solid argument in the literature that we have received. I read every one of them and I thought about it and then I thought about my responsibility. I'm not in an elected office anymore. I'm in an appointed office and this is an administrative body and if we were to work in an ultra vires manner meaning beyond our authority we are really short circuiting the responsibility of our elected officials. Now some people would say, "Well they don't act properly." Well you know what then they have to be out of office and vote somebody else into office. Well they don't do this right or this ones corrupt and this one's not, you know what the system is changing. There is a tremendous, tremendous spotlight right now on all elected officials especially in the legislative capacity. That light should be shined on them and arguments made and presented to them. We have to look at both sides of an issue. The Citizen's Union and the McCutcheon cases kind of indicate that things are going in a little bit of a different way as far as protecting free speech, first amendment and that is part of an argument but you know what, that's one side of it. There are many sides to many faceted arguments but I look at it, I look at it very honestly as reasonability that was given to me as a Commissioner in the New York State Board of Elections to make sure that the elections that we oversee are done honestly, that they are done properly, where we can facilitate that process that we do that and that we try to the best of our ability that everybody can and does vote, and that those rights are not infringed upon. Once those votes are in and they have elected somebody, it is that person's responsibility that legislator's responsibility and his duty or her duty to make

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changes in the law so that law be appropriately changed, should they feel that that should be changed. Should their constituents say that should be changed, and there obviously are reasons for arguments on both sides of that. I don't think it's our prerogative to short circuit that process. We live in a democratic society, we have elected officials whose responsibility it is to make those changes. So as much as I appreciate what has been presented to us, I certainly cannot, I can't really, well how do I want to put this, I can't vote, no that's not the case, I can't usurp the authority of our legislators and so I can't support a change at this level. It's the wrong place, it's the wrong venue.

**Andy Spano:** Can I respond to that.

**Peter Kosinski:** Sure, go ahead.

**Andy Spano:** This is just a perspective of listening to and if I'm wrong you tell me. Initially the ruling was made here at the Board of Elections?

**Peter Kosinski:** Do you want me to respond to that? Initially the Board issued an opinion interpreting state law. Interpreting state law.

**Andy Spano:** Okay and subsequent to that they went through another sequence where they did that another time is that what you're saying?

**Peter Kosinski:** We interpret state law yes.

**Andy Spano:** No, you said that they met...

**Peter Kosinski:** Oh there were other requests made over the years to revisit the issue.

**Douglas Kellner:** Which have all been unsuccessful. I mean I made the last one in 2007 or 2008.

**Andy Spano:** The point is that wasn't a venue before, why isn't it a venue now? If the Board's opinion is important enough to go through all that rigmarole for what almost 20 years, why can't we discuss this now and why can't we vote on it?

**Peter Kosinski:** We are discussing it now.

**Andy Spano:** Why don't we vote on it?

**Peter Kosinski:** I think we're going to take some sort of vote I guess, you guys have made a motion. I'm telling you though that nothing has changed statutorily since 1996 that would warrant changing what was said in 1996. That's what I'm saying. So the opinion, opinion number one in 1996 is still valid today because the state of the law

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continues to be the same and our only job is to interrupt the statute, the statute remains the same.

**Andy Spano:** Suppose we tell you right now we're interpreting it differently. For every Ph.D. there's an equal and opposite Ph.D. For every lawyer there's an equal and opposite lawyer. I mean just because you went through this for what is it, supreme court ruled Dred Scott, Missouri Compromise and then they're not there now. Same Supreme Court so why should we be there now if we have different evidence. We have different research. We have support why should we be there?

**Peter Kosinski:** I see nothing new that's been presented that changes the analysis that was made in the 1996 opinion.

**Andy Spano:** And I respect that. I don't see it that way.

**Peter Kosinski:** Fair enough.

**Douglas Kellner:** I agree with Commissioner Spano I wanted to add one thing about what people say is the limited liability company loophole and that is that section 14-120 of the Election Law requires that campaign contributions be under the true name of the contributor and that means that it is illegal and a crime to use an entity as a mere conduit for a contribution. So to the extent that somebody provides money to an LLC and then has the LLC make a contribution that is a crime. And I would certainly urge the Independent Enforcement Counsel, Ms. Sugarman to take a look at two classes of suspicious LLC contributions; one is where there is a large contribution from a limited liability company that does not appear to have any business purpose or source of business income and that would be a suggestion that that limited liability company may be being used as a conduit to launder campaign contributions that are not made under the true name of the contributor. And the second area of investigation that I would urge Independent Enforcement Counsel to look at is where there are a large number of LLCs that appear to be making contributions on the same day and that the contributions are coordinated where the aggregate would otherwise exceed the personal contribution limit. And here we get into a little bit of the gray area which is one of the reasons why I urge that the interpretation be corrected to treat limited liability company as a partnership for the purposes of article 14 of the Election Law is that so you see contributions of \$5000 each by multiple limited liability companies and altogether they aggregate more than what the individual contribution limitation would be. The question is whether in fact that is being used as a conduit to launder a political contribution and those should be investigated and that's already illegal.

**Peter Kosinski:** I'd like to stick to the point of this particular request that's before us on the opinion I believe you're not on the issue.

**Douglas Kellner:** Alright I apologize for that.

**Peter Kosinski:** If you have any more comments on that.

**Douglas Kellner:** My last comment is that to me the letter from the Attorney General on this subject was very important because it shows that the Attorney General would be prepared to support that reinterpretation of the Board in a matter that surely will be litigated. Thank you.

**Peter Kosinski:** Any other discussion. So you've made a motion, is there a motion that was to

**Douglas Kellner:** My motion was to direct counsel's to...

**Kim Galvin:** prepare or rescind 1996 #1 on the applicable guidance regarding contributions of LLCs.

**Douglas Kellner:** Thank you Kim.

**Peter Kosinski:** Thank you. Alright I just want to say I do not support that as you may have sensed from what I said. I mean I don't want to be perceived as just saying no necessarily, I just want it understood what our basis here is that this has to do with who has the authority to render the applicable laws related to contribution limits in this state, that's something the state legislatures does, not the State Board of Elections. I cannot support that request.

**Gregory Peterson:** I'm in full agreement as I have said and certainly the laws on the books right now make certain acts that have been described here as criminal.

**Peter Kosinski:** So I believe the motion fails. Okay so that I believe is the end of today's public session. We will adjourn and we have a...

**Douglas Kellner:** You need a formal motion.

**Peter Kosinski:** I'm sorry, is there a motion to adjourn?

**Douglas Kellner:** No we need a motion to go into Executive.

**Peter Kosinski:** I apologize.

**Douglas Kellner:** Well it's your first meeting and you've done a spectacular job too.

**Peter Kosinski:** Okay a motion to go into Executive Session to discuss Enforcement cases.

**Kim Galvin:** Next meeting?

**Peter Kosinski:** Oh I'm sorry next meeting, you want to discuss that now as well, that's fine.

**Bob Brehm:** We didn't have a chance ahead of time that with the....

**Peter Kosinski:** and we will not be going back into public session is that clear because I don't want to let people think that...I don't anticipate going back into public session.

**Bob Brehm:** Well we're looking at because of the conference June 9, 10, 11<sup>th</sup> if that works.

(Everyone talking)

**Peter Kosinski:** I'm retired. Everyday is Saturday. Wednesday the 10<sup>th</sup>.

**Bob Brehm:** Wednesday June 10<sup>th</sup>.

**Peter Kosinski:** Yeah we're going to take a little break everybody because I need some time. We're going to take a few minutes, maybe 15 minutes or so between these meetings.



# Exhibit 14

# **Exhibit 15**

**New York State  
Board of Elections  
1974 Opinion #2**

**Question Presented:**

What is the application of §480 of the Election Law to political activities by an unincorporated trade association?

**Discussion:**

It is the Board's opinion that §480 permits an association and its member companies to contribute up to \$5,000 each to political purposes in the same calendar year, so long as the association does not conduct activities that would make it a "political committee", as that term is defined by §467 of the Election Law.

Under subdivision (a) of §467, a person or corporation that makes a contribution to a candidate or political committee is not, by the fact of such contribution alone, deemed to be a "political committee". If, however, an association solicits or accepts funds (other than regular dues) from its member companies and uses such funds for political purposes, or if an association expends or contributes funds [other than as provided in §467(a)] on behalf of any candidate or political committee, it would itself be a political committee, and its expenditures and contributions would have to be prorated against the amounts that its member companies could expend or contribute in the same calendar year for political purposes.

If such proration is required, the \$5,000 maximum political contribution permitted to each member company in any year would be reduced by an amount equal to that proportion of an association's political contributions or expenditures which a particular member's contribution to the support of the association during the calendar year bears to the total contributions to such support made by all the members of the association during such calendar year.

Finally, the Board does not believe that §480 would permit an association to act as a conduit for its members in accepting from them political contributions of up to \$5,000 per member in a calendar year and then applying those political contributions during such year on their behalf for such political purposes as may have specifically or generally been authorized.

**STATE BOARD OF ELECTIONS**

# **Exhibit 16**

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PUBLIC HEARING ON THE MORELAND COMMISSION  
TO INVESTIGATE PUBLIC CORRUPTION.

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One Pace Plaza  
New York, New York

September 17, 2013  
6:05 P.M.

Reported By:  
Stefanie Krut

1 they too can act as a deterrent against corruption and  
2 misconduct.

3           However, I believe that fixing the broken campaign  
4 finance system will level the playing field significantly  
5 and give a greater voice to every New Yorker. We cannot  
6 allow a system that breeds corruption and complacency to  
7 continue. It's been going on for far too long. I implore  
8 the Commission to include some of these recommendations in  
9 its preliminary report and use every power and tool at your  
10 disposal to help bring about a new era of good government  
11 for the people of New York. And I'm happy to take any  
12 questions. Thank you for listening.

13           MR. FITZPATRICK: Any questions for Eric? Eric,  
14 thank you very much.

15           MR. ZIMROTH: I have one question.

16           MR. FITZPATRICK: Question, Peter?

17           MR. ZIMROTH: So I just want to follow-up with your  
18 comments about the way to voice. Maybe you can just explain  
19 a little bit about the impracticality running of for office  
20 under the New York City system and running - you know, the  
21 small donor matching funds and running in the state system  
22 now. In other words, how does the - how do you - why does  
23 that lead to greater voice of the campaigning?

24           MR. ULRICH: Well, quite frankly, Commissioner, I  
25 believe that some of the people in Albany are more willing

1 to listen to people from the real estate industry, for  
2 instance, or from organized labor, on the other hand,  
3 because they're the ones who are writing \$10,000 checks to  
4 their campaigns. They are the ones who are contributing  
5 excessive amounts of money to the party housekeeping  
6 committees that also spend on behalf of candidates, even  
7 though they're not supposed to because there's not enough  
8 oversight over those accounts as well.

9 In the New York City program, candidates who run for  
10 City Council, for instance, will receive matching funds, \$6  
11 for every dollar that they raise, up to \$175. So in a  
12 sense, \$175 becomes a \$1,050 contribution. And when  
13 candidates were running for Council are able to bundle those  
14 smaller donations together, 10 and 20 and 30 individuals.  
15 You know, those people are playing a very significant role  
16 in that candidate's campaign, because there is also a  
17 spending limit that they have to abide by if they're going  
18 to receive public money. So the contribution limits are  
19 much smaller. The most that a candidate can receive is  
20 2,750, not this \$10,000 amount. There is no corporate  
21 contributions are not permitted to city candidates who are  
22 participating in the program. And really, the role of the  
23 candidate to get the attention of the voters and get the  
24 support of the voters in their district, you don't just get  
25 money for nothing. You have to get 75 of the voters who

# **Exhibit 17**



**NEW YORK STATE  
BOARD OF ELECTIONS  
1981 OPINION #3**

**Date: June 23, 1981**

**Question Presented:**

Would a political committee have to disclose in the financial disclosure reports that it files for a primary election those contributions which have been made toward the general election of a candidate?

**Discussion:**

The political committee which requested the opinion intends to deposit all contributions into one checking account for accounting control purposes. The committee will immediately transfer out of that account into another separate account, all sums which are, or will be, allocated to the general election. These transferred monies will not be commingled or expended for primary election purposes.

Section 14-102 of the Election Law states in part:

"§14-102. Statement of campaign receipts, contributions, transfers and expenditures to and by political committees. 1. The treasurer of every political committee which, or any officer member or agent of such committee who, in connection with any election, receives or expends any money . . . shall file statements . . . setting forth all of the receipts, contributions to and expenditures by and liabilities of the committee . . ."

The Board is of the opinion that although these contributions which were given specifically for the general election will be immediately transferred to a separate account for use in connection with the general election, the fact that they are all deposited into one account would necessitate that the contributions be reported on the financial disclosure reports that the committee files for the primary election.

If separate primary and general election accounts were established and contributions deposited directly into the appropriate accounts, the financial disclosure statement filed in connection with the primary election would be required to include only those contributions made in connection with the primary election and deposited in the primary election account. The same would be true for the general election reports. If any funds deposited in the general election account were used for primary election purposes, the activity of both accounts would be required to be reported in connection with the primary election.

**STATE BOARD OF ELECTIONS**