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IN ILLINOIS

Suzanne Novak and Seema Shah

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ABOUT THE BRENNAN CENTER

The Brennan Center is a public policy institute that works to strengthen democracy and secure justice through law, scholarship, education and advocacy. With Justice Brennan, we believe that a “living constitution” is the genius of American law and politics – and that the test of our institutions is the ability to apply timeless values to a changing world.

ABOUT THE BRENNAN CENTER'S CAMPAIGN FINANCE REFORM PROJECT

The Brennan Center has long been a leader in the fight for campaign finance reform on the national, state and local levels. We helped to draft the federal Bipartisan Campaign Reform Act of 2002, published path-breaking studies of television advertising that were introduced into the congressional record, and played a key role on the legal defense team winning a major victory in the U.S. Supreme Court. After assisting in the drafting of Connecticut's landmark public funding legislation, enacted in 2005, we were retained as lead counsel for intervenors in two consolidated cases challenging that law. We played the same role in the successful defense of full public financing systems in Arizona and Maine.

Building on ten years of experience in the field, the Center offers top-flight legal and policy assistance to government officials and activists seeking to develop and defend effective and constitutionally defensible campaign finance bills and initiatives. We identify each jurisdiction's core policy goals and then translate those goals into language appropriate for legislation or ballot measures. The Center reviews and analyzes text drafted by others for potential constitutional or other legal problems. Once legislation is introduced, Brennan Center attorneys accept invitations to deliver written and oral expert testimony. When campaign finance reforms are challenged in court, the Brennan Center has skilled and experienced litigators to present a vigorous defense.

Finally, the Center's publications and public advocacy have amplified the First Amendment values in robust debate and participatory democracy served by campaign finance regulation. For advocates and legislators, we offer an accessible treatise on campaign finance law: *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, now in its fourth edition. Written by Brennan Center attorneys who have litigated campaign finance cases in federal and state courts throughout the nation, this 200-page book offers both practical tips and legal analysis for drafters of campaign finance reform bills or initiatives – both those who want to stay within current constitutional constraints and those who want to test those limits.

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FOREWORD

Full participatory democracy: it's been a national goal since America's founding. Today citizens recognize that money sometimes plays a warping role in electoral politics and hobbles progress towards full democracy. During the past decade, with Washington, D.C. mired in stalemate and in thrall to special interests, many states have stepped forward and introduced innovative laws that enhance the power of ordinary citizens in the political process. States as different in political culture as Arizona and Connecticut have created bold systems to reform campaign finance laws, create voluntary public financing, and ensure that enforcement is fair and vigorous.

This report is the second of a five-part series that examines campaign finance laws and the ways they've worked – or haven't worked – to limit the influence of money on politics in the heartland. This report assesses Illinois's campaign finance system; we are developing similar reports for Wisconsin, Michigan, Minnesota, and Ohio. Throughout the last century, governments in these states often led the way for the rest of country, providing “laboratories of democracy” (in the phrase of Supreme Court Justice Louis Brandeis) that test and perfect new policies. Today, the governmental decisions made in these states affect millions of people and set the tone for the rest of the nation.

The campaign finance studies are part of a comprehensive evaluation of democratic institutions that has been undertaken by the Midwest Democracy Network, a collaboration among national research and policy institutions and state-based advocacy organizations that work for honest and accountable government. With generous support from the Joyce Foundation, the Network is examining campaign finance, election administration, redistricting procedures, state courts, and local news coverage of politics in the five Midwestern states.

Illinois has long been proud of its brass-knuckles, results-oriented political culture. (And, on occasion, less than proud.) Reform for its own sake has never been a fashion. Yet a look at Illinois's campaign finance laws, in the context of the rest of the Midwest and the rest of the country, is sobering.

- Illinois has the weakest campaign finance laws in the five major states of the Midwest.
- Alone among major Midwestern states, Illinois places no restrictions on campaign contributions, allowing unlimited donations from any source.
- Disclosure laws, supposedly the bulwark against corruption instead of contribution limits, are easily evaded.
- The State Board of Elections has failed to enforce the law. In significant measure, this is because the Board is by law split evenly among Democrats and Republicans. Wary of conducting investigations and resolving cases that could have political ramifications, the Board has signaled that campaign finance laws can be evaded without repercussion.

There is a better way. Indeed, the most significant improvements in campaign finance law have been advanced by Illinois's senior U.S. Senator, Dick Durbin. He is leading the efforts to pass a reformed system for congressional elections, including voluntary public financing with spending limits. The Durbin approach is modeled after successful state schemes that have been put in place in other jurisdictions across the country. Politics in Illinois would be invigorated, and voters given a huge new voice, were such reforms instituted for state legislative and executive offices. Public financing for the state's judicial offices would be a giant step toward courts that are fair and impartial in reality and appearance.

Now there is a new Congress in session in Washington and a new hunger throughout the country for honest, accountable government officials who answer the basic economic, health, and education needs of ordinary citizens. This is the time to revive laws consistent with public interest in government that is elected by – and answers to -- ordinary citizens, not big-money interests. Nowhere is this more true than in the heartland, in what was once and can be again, the testing ground for progress.

Michael Waldman

*Executive Director, Brennan Center for Justice at NYU School of Law
February 2007*

CAMPAIGN FINANCE REFORM: WHY DOES IT MATTER?

Campaign finance laws seek to make government more honest and accountable to ordinary people, so that bread-and-butter issues – such as education, taxes, and health care – are not held hostage to moneyed interests. By placing limits on the influence of money on elections, campaign finance laws make it easier for elected officials in Illinois to respond to their constituents’ concerns, rather than those of wealthy political supporters. Illinois currently is alone among the Midwestern states in placing no limits on campaign contributions.

While all voters are equal in the voting booth, all voters are not equal in their ability to influence elections and policy. In states with inadequately regulated campaign finance systems, only wealthy individuals and special interests can make the substantial political contributions and advertising expenditures that move public debate and affect electoral outcomes. And although a \$5 contribution from a low-income constituent may represent a much greater commitment than a \$10,000 contribution from a millionaire, the latter usually has more power to influence the outcome of the election and to secure access to the candidate, once elected to office.

Suppose, for example, that the utility industry wants the Illinois legislature to secure rate hikes. If contributions from that industry, its executives, and its lobbyists represent a large proportion of a candidate’s campaign funds, that candidate may risk her political future if she later resists industry pressure. She may find it hard to keep a promise to protect middle class homeowners with high heating bills, if small donations from moderate-income supporters cannot compensate for the loss of corporate largesse. The temptation to protect an industry rather than ordinary taxpayers will be even greater if there is no way for the public to learn exactly who is financing the candidate’s campaign and to connect the dots between utility industry contributions and utility rate hikes.

When wooing wealthy supporters is the key to political success, honest government is difficult to sustain. Although many candidates and officeholders are people of high integrity, political corruption is a chronic problem. Money has been at the heart of political scandals throughout American history, from Teapot Dome to the indictment of Jack Abramoff. Recent scandals in the states also have involved campaign contributions made in exchange for political favors. Combating corruption is crucial to ensure that the government’s policies on everything from the economy to the environment serve the public interest, not special interests.

Campaign finance laws can have other benefits as well. Public funding helps to ensure that whether a citizen can run for public office and conduct an effective campaign is determined more by the force of his ideas in the public arena than by his personal fortune or access to wealthy supporters. Such laws also free candidates and government officials from the rigors of fundraising so they can spend more time listening to their constituents and formulating the best policies for the State. Regulations that reduce this influence of money help voters hold their representatives accountable for policy-making that serves the common good.

HOW DO CAMPAIGN FINANCE LAWS PROMOTE HONEST GOVERNMENT?

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

Contribution limits also help to protect governmental integrity. A large donation presents a much greater temptation to stray from campaign promises than a small contribution. Limiting the potential benefits of corruption may help to keep candidates and elected officials honest. Public financing also helps in this respect, by ensuring that candidates will be able to run effective campaigns without becoming beholden to private donors.

Of course, none of the campaign finance tools will keep government honest without consistent and vigorous enforcement of the law. If candidates and contributors know that they can break campaign finance rules with impunity, they will have no incentive to follow legal requirements. An agency that is able and willing to enforce the law without regard to the partisanship of any candidate is essential to protecting the integrity of government.

HOW DO CAMPAIGN FINANCE LAWS KEEP OFFICIALS RESPONSIVE AND ACCOUNTABLE?

A variety of campaign finance measures can be crafted to ensure that elected representatives are accountable to their constituents, not wealthy interests. Disclosure requirements identify candidates' financial supporters and allow voters to call elected officials to account if the policies they enact bear a suspiciously close resemblance to the policies favored by special interest contributors.

Contribution limits of various kinds also promote accountability. Limits on the size of contributions to candidates, and of contributions to entities (such as political action committees or political parties) that may serve as conduits to candidates, reduce the potential influence of particular wealthy donors on particular cash-hungry candidates. Aggregate limits on contribu-

tions may prevent such donors from purchasing influence by spreading largesse across entire legislatures. Low contribution limits also encourage candidates to reach out to a broader base of supporters, including low- and moderate-income constituents. A candidate who needs widespread support from ordinary people is more likely to respond to their needs.

In addition, generous public funding systems break the ties between access to wealth and electoral success, allowing candidates to respond to the full spectrum of voters. Arizona's Governor Janet Napolitano, twice elected under Arizona's full public financing program, has explained how public financing was connected to her executive order creating a discount prescription drug program for the people of Arizona:

If I had not run [under the public funding program], I would surely have been paid visits by numerous campaign contributors representing pharmaceutical interests and the like, urging me either to shelve that idea or to create it in their image. . . All the while, they would be wielding the implied threat to yank their support and shop for an opponent in four years.

With public financing in place, government officials need not worry that honoring campaign promises popular with ordinary voters will translate to a lack of funds for their next campaign.

Public financing programs, which provide partial or full grants for a candidate's campaign in exchange for limited spending, also permit candidates and officeholders to spend time on tasks more valuable than fundraising, such as studying and attempting to find the solutions to public policy problems and listening and responding to the concerns of ordinary citizens. Moreover, many qualified, dedicated individuals will not run for office if doing so forces them to dial for dollars all day. By lifting that burden, public funding encourages public service by people who care about constituents, not contributors.

Finally, public funding opens doors to public service for individuals of modest means who cannot self-finance their candidacies and do not have wealthy friends to bankroll their campaigns. For example, Deborah Simpson, now in her fourth term in the Maine State Legislature, was a politically active single mother and waitress, who never considered running for office before Maine implemented public financing for its elections beginning in 2000. But she realized that with public funding she could run for office "without having to figure out how to ask for money from donors when [she] really didn't live in that world." Because the public holds the campaign purse-strings, Rep. Simpson's constituents can keep her accountable for her legislative record and turn her out of office if she fails to respond to public needs.

ILLINOIS'S LAWS IN PERSPECTIVE

Illinois's campaign finance regulation is unique among the major states of the Midwest – including Michigan, Minnesota, Ohio, and Wisconsin. The state places no restrictions on campaign contributions, allowing unlimited donations from any source. Instead of limiting the flow of money, it chooses to focus on public awareness, requiring extensive disclosure of campaign finance activity. Despite the relatively limited scope of regulation in Illinois, some persons and organizations have worked to circumvent even those basic, yet crucial, disclosure requirements. Advocates have tried to enforce compliance by publicizing violations and filing complaints with the State Board of Elections. But an evenly split bipartisan Board, wary of conducting investigations and resolving cases that could have political ramifications, has signaled that campaign finance laws can be evaded without repercussion.

CONTRIBUTION LIMITS

Limits on the amounts that a donor can give to a candidate reduce the candidate's dependence on a small number of wealthy donors. Without such limits, candidates typically seek to raise as much money as possible with the least amount of effort, which means raising large contributions from wealthy donors who can be given focused fundraising attention. Not only does such a system fail to involve large numbers of ordinary citizens in the political process, but it inherently raises the risk and perception that such candidates, if elected, will be responsive and accountable only to the small segment of their constituency who can be relied upon to bankroll their campaigns in the future. Contribution limits also help keep government officials honest, by reducing the temptation to trade votes and policy decisions for large contributions.

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

The state of Illinois is the only major state in the Midwest that does not regulate campaign contributions from any source. Many states prohibit contributions from unions and corporations, but Illinois does neither, making it the only state in the Midwest to permit direct contributions from corporations to any candidate or political entity and one of four Midwest states to allow contributions from unions to candidates and political entities.¹

In Illinois, there is no statewide regulation of contributions from entities that do business with the state, such as state contractors. Such “pay-to-play” restrictions decrease the chances that elected officials unfairly give, or are perceived to give, business to those entities that contributed

Limits on Contributions from Individuals to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$3,400/election cycle*	\$3,400/election cycle	\$1,000/election cycle
Minnesota	\$2,000/election year**	\$500-\$1,000/ election year	\$500/election year
Ohio	\$10,000/election***	\$10,000/election	\$10,000/election
Wisconsin	\$10,000/election cycle	\$10,000/election cycle	\$1,000/election cycle

Limits on Contributions from PACs to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$34,000/election	\$34,000/election	\$10,000/election
Minnesota	\$2,000/election year	\$500-\$1,000/election year	\$500/election year
Ohio	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities	\$10,000/election from political action committees or political contributing entities
Wisconsin	\$43,128/election cycle	\$8,625 - \$21,560/election cycle	\$1,000/election cycle

Limits on Contributions from Political Parties to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	\$68,000/election cycle	\$68,000/election cycle	\$10,000/election cycle
Minnesota	\$20,000/election year	\$5,000-\$10,000/election year	\$5,000/election year
Ohio	\$564,000/election from state and county political parties in aggregate; prohibited from legislative campaign funds	\$564,000/election from state and county political parties in aggregate; prohibited from legislative campaign funds	\$112,500/election from state and county political parties in aggregate
Wisconsin	\$700,830/election cycle from all committees including political parties	\$140,156 - \$350,350/election cycle from all committees including political parties	\$22,425/election cycle from all committees including political parties

Limits on Contributions from Corporations to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	Prohibited	Prohibited	Prohibited
Ohio	Prohibited	Prohibited	Prohibited
Wisconsin	Prohibited	Prohibited	Prohibited

Limits on Contributions from Labor Unions to:

Candidates for			
	Governor	Other Statewide Candidates	State Senator
Illinois	Unlimited	Unlimited	Unlimited
Michigan	Prohibited	Prohibited	Prohibited
Minnesota	\$100/year	\$100/year	\$100/year
Ohio	\$10,000/election	\$10,000/election	\$10,000/election
Wisconsin	Unlimited	Unlimited	Unlimited

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$500/election cycle	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election	\$10,000/year	\$30,000/year to state political party	\$10,000/year to any political contributing entity; \$10,000/year to any county political party; \$15,000/year to any legislative campaign fund
\$500/election cycle	\$10,000/year	\$10,000/year	

* Election cycles may differ by state and by office (i.e. 4-year cycle for governor, 2-year cycle for state senators).

** States with limits per election year also have lower limits on non-election year contributions.

*** Primary, general, and special elections are considered separate elections.

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election	Unlimited	Unlimited	
\$500/election year	Unlimited	Unlimited	
\$10,000/election from political action committees or political contributing entities	\$10,000/year from one political action committee or political contributing entity to another	\$15,000/year to any one legislative campaign fund; Prohibited to county political parties	
\$500/election cycle	Prohibited	\$6,000/year	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
\$5,000/election cycle	Unlimited	Unlimited	
\$5,000/election year	Unlimited	Unlimited	Party expenditures that do not name any candidate or that fund mailings, phone calls, fundraising or party committee staff that benefit three or more party candidates are not counted toward the contribution limits for individual candidates.
\$56,000/election from state and county political parties in aggregate	\$10,000/year to any one political action committee or any one political contributing entity	Prohibited from county political party to another county political party; Unlimited from legislative campaign fund to state candidate fund of political party	Individual Limits differ for contributions from county parties; Individual limits differ for contributions from legislative campaign funds
\$11,213/election cycle from all committees including political parties	Unlimited	Unlimited	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	

Entities			
State Rep	PACs	Political Parties	Other
Unlimited	Unlimited	Unlimited	
Prohibited	Prohibited	Prohibited	
\$100/year	\$100/year	\$100/year	
\$10,000/election	\$10,000/year to another PAC or political contributing entity	\$30,000/year to any state political party candidate fund	Other limits apply for legislative campaign funds and contributions to Levin accounts
Unlimited	Unlimited	Unlimited	

the most to their campaigns. Individual officials, however, have taken steps to limit such abuse. Richard M. Daley, the Mayor of Chicago, signed an executive order in 2005 that banned contributions to his office from companies with City contracts, their owners, and the owners' spouses. The reform came in the wake of a scandal in which contractors with close ties to the Mayor swindled the City of Chicago through fraudulently obtained contracts. Two other state officials have issued similar executive orders. In 2005 State Comptroller Dan Hynes prohibited persons or entities with more than \$10,000 in contracts with the Comptroller's office from making campaign contributions to his campaign, and just last month the newly elected State Treasurer Alexi Giannoulias issued an executive order prohibiting his campaign fund from accepting contributions from banks, Treasurer's Office employees, and contractors who do business with his office. These orders are commendable, though they apply only to a limited number of offices and, in some cases, are unlikely to be fully effective even for those offices because of a failure to include anti-circumvention provisions or penalties for violations. House Bill 1, which addresses the pay-to-play problem and is currently pending in the Illinois General Assembly and supported by Comptroller Hynes, Treasurer Giannoulias, and many state legislators, applies to all state officers and includes anti-circumvention and penalty provisions.

PUBLIC FINANCING

By reducing candidates' reliance on private money, public financing serves many campaign finance reform goals. First, public financing is designed better than other reforms to reduce the influence of money on politics, increasing the likelihood that officials are kept honest and stay responsive and accountable to all constituents. Second, it makes elections fairer by leveling the playing field and giving any person with a proven base of support an opportunity to run for office and have her ideas heard. Third, it reduces time candidates must spend fundraising so that they can devote that time to interacting with voters or fulfilling official responsibilities.

There are many forms of public financing systems. Subsidies of different levels can go to candidates or parties, and the source of public funds can vary as well. While all public financing systems relieve candidates from fundraising and a dependence on wealthy donors to some degree, generous partial and full public funding systems are likely to offer greater incentives for increased candidate-voter interaction and encourage a more diverse candidate pool.

Each of the other four Midwestern states has some sort of public financing system, of varying effectiveness, but Illinois has none. A public financing program in a state that lacks contribution limits, as in Illinois, is less likely to attract candidates with connections to wealth (because they can raise more private funds than the public can provide), and therefore is unlikely to reach its full potential. Implementing such a program in Illinois nevertheless can benefit the public by:

- providing candidates with an alternative financing option that both frees them from reliance on special interests and allows them to spend more time interacting with ordinary constituents; and

- increasing and broadening the choice of candidates by enabling persons with a base of support, but without connections to wealth, to spread diverse messages and run viable campaigns.

Concerns about private financing of elections in Illinois are heightened for its judicial seats. Any system requiring judges to run for office with private financing, like the one in place in Illinois, inherently raises doubts about judicial independence and impartiality because campaign contributors routinely appear before judges whose campaigns they helped to finance. This concern is particularly acute in Illinois, where spending in races for judgeships has exploded in the past few elections.² The Illinois Senate passed a judicial public funding bill in the last legislative session, but that legislation ultimately died in the House Rules Committee. A new version of the bill will be introduced in the 2007 General Assembly.

While any public financing system costs money, even full public financing can be relatively inexpensive. A few dollars per taxpayer per year can cover the costs of a generous public financing system for covered offices. For instance, a June 2006 analysis of the cost of the public financing systems in Maine, Arizona, and New York City revealed that those systems cost a mere \$1.61-\$6.96 per person of voting age.

DISCLOSURE

In 1974, in the aftermath of the Watergate scandal, Illinois instituted extensive disclosure requirements for election-related contributions and expenditures. In 1998, Illinois enacted legislation requiring the electronic reporting of most campaign contributions and expenditures. In 2003, Illinois further strengthened its disclosure laws as part of a comprehensive ethics package. It also amended the laws in 2005 in an attempt to clarify the reach of the disclosure laws. As the discussion below illustrates, however, more work must be done by the Illinois General Assembly and the State Board of Elections to ensure that Illinois's laws keep the public fully apprised of election-related activity. Because disclosure is the only campaign finance tool used by the State, it is imperative that disclosure laws are comprehensive and that they are vigorously enforced.

WHO MUST REPORT – NOT A SIMPLE ISSUE

Which persons and entities must file campaign finance disclosure reports is a continuous source of contention in Illinois. While the laws could be improved to provide more clarity about who needs to report, more effective enforcement by the State Board of Elections (discussed further below) would likely also increase compliance with the letter and spirit of the law.

Illinois has historically required state political committees to register and file disclosure reports. Such political committees have been defined as: (1) candidates, or any individual, trust, partnership, committee, association, corporation, or other organization or group of persons, that raises or spends more than \$3,000 in any 12-month period in support of or in opposition to a

candidate or question of public policy, or (2) any nonprofit organization that raises or spends more than \$3,000 in any 12-month period; has as its primary purpose the furtherance of governmental, political or social values; and publicly endorses or publicly opposes a candidate or candidates for public office. In 2003, that definition was expanded to include entities that raise or spend the threshold amount on electioneering communications, or campaign advertising issued close to an election that plainly supports the election or defeat of a clearly identified candidate (discussed in more detail below).³

The Illinois law, as amended in 2003, was designed to close loopholes and ensure that the public is kept informed about election-related activity. But new efforts to avoid disclosure continued. For example, 2004 saw a proliferation of nonprofit organizations that failed both to register as political committees and to file the required reports. The non-reporting organizations typically were nonprofits that made donations to other, sometimes affiliated, political committees, which in turn supported candidates' campaigns. The non-reporting nonprofits evidently adopted interpretations of Illinois law that freed them from the requirements, and acted on the well-founded belief that the Board would be unlikely to challenge their interpretation.

The interpretations stretched the meaning of two statutory definitions and a regulatory provision. First, in Illinois, a "contribution" includes money or anything of value "knowingly received in connection with the nomination for election, or election, of any person to public office."⁴ And the definition of a political committee includes entities that make expenditures or receive contributions (but does not expressly include those that make contributions) over a certain amount. Finally, an administrative rule provides that individuals, nonprofit and for-profit corporations, labor unions, trade associations and similar groups, religious groups, fraternal societies, and luncheon and dinner organizations do not qualify as political committees "by simply making contributions from personal income or profits, regardless of the amount of the donations."⁵ These provisions likely emboldened some nonprofits to develop theories why they were not political committees whose donors must be disclosed, such as: (1) they did not accept "contributions", because donations to the non-reporting nonprofit were not earmarked (and thus were not "knowingly received") for a specific election; (2) they simply made contributions to candidates, political committees, or party committees; and, (3) contributions they made were from personal income or profits.

Reformers expressed outrage at the failure of nonprofits responsible for major campaign funding to disclose the original sources of money they received and spent to influence elections and, therefore, filed complaints with the State Board of Elections. Likely in response to those complaints and public sentiment, the Illinois General Assembly amended the disclosure law in 2005. Oddly, instead of amending the definition of a political committee, the General Assembly enacted a separate provision requiring reporting by nonprofit organizations, except for labor unions, that accept contributions, make contributions, or make expenditures exceeding \$5,000 in any 12-month period in support of or in opposition to a candidate or question of public policy or for electioneering communications. That reporting requirement overlaps

considerably with the reporting requirement applicable to political committees, but the new law clarifies that nonprofit organizations must file disclosure reports if they make contributions otherwise covered by the provision (even if they make them from “personal income or profits”). Despite the changes to the law, and the legislature’s clear intent to require disclosure of all electioneering, local advocates have concluded that entities are continuing to funnel money to candidates through intermediaries such as political committees and parties, without registering or filing disclosure reports with the Board. Apparently some groups believe that when monetary donations are not earmarked for a particular candidate, or are not made directly to a candidate, they are not “knowingly received in connection with the nomination for election, or election, of any [particular] person to public office” and thus do not qualify as “contributions” triggering reporting requirements. That interpretation plainly defies the intent of the law. Moreover, even if the contributions were earmarked, the failure to require disclosure of earmarking makes it difficult to enforce disclosure requirements, especially with lax enforcement by the Board, discussed further below.

CONTENTS AND TIMING OF REQUIRED FILINGS

All political committees and nonprofits required to report must file two semi-annual reports of contributions and expenditures. In addition, all committees and nonprofits also must file supplemental reports before elections in which they are participating. These supplemental reports list all reportable contributions in the period since the last semi-annual report, up to the 30th day prior to the election. Reporting of contributions of more than \$500 received during the last 30 days before an election is also required within two working days.

Contributions received and expenditures made in amounts less than \$150 are reported as a sum, while those that are \$150 or more must be itemized. The \$150 threshold for itemized contributions and expenditures is the highest such threshold in the Midwest. Wisconsin, for example, requires itemized reporting of all contributions and expenditures over \$20, while Ohio sets the bar at \$100. Itemized entries must include the amount of the contribution or expenditure, the contributor’s or recipient’s name, mailing address and date of the donation or expense. While Illinois law also requires that a good faith effort be made to include the contributor’s occupation and employer for contributions from individuals in excess of \$500, such information is often omitted from reports.

Electronic filing is required of those committees that have a balance or an accumulation of contributions of \$10,000 or more, make aggregate expenditures of \$10,000 or more, or receive loans of an aggregate of \$10,000 or more.

Illinois is one two states in the Midwest that requires disclosure for electioneering communications, an important positive aspect of Illinois law.⁶ Electioneering communications are defined as advertisements made in any media: (1) within 60 days of a general election or consolidated election or 30 days of a primary election; and (2) that refer to a clearly identified candidate or candidates who will appear on the ballot, a clearly identified political party, or a

clearly identified question of public policy that will appear on the ballot.

Regulation of electioneering communications was necessary to meet the goals underlying campaign disclosure. Previously, campaign advertising that plainly supported the election or defeat of a clearly identified candidate was able to escape public scrutiny by simply avoiding the use of express words of advocacy, such as “vote for” or “vote against.” Illinois’s content-neutral law now requires political committees and certain nonprofits to report electioneering expenditures, helping to keep the public informed of the sources of funding for these ads and the amounts that are being spent.

There are several problems with the required timing and content of campaign finance disclosure reports in Illinois.

REPORTING LOOPHOLES FOR NONPROFIT ORGANIZATIONS

As is discussed above, in 2005, the General Assembly amended Illinois’s disclosure laws to clarify that certain nonprofit organizations engaged in election-related activity had to file contribution and expenditure reports. The amendment was enacted even though many of those nonprofits qualified as political committees and were required to file such reports anyway. The new law also identified what information the reports must contain and specified that they must be filed at the same time as reports required for political committees.⁷ In 2006, however, the State Board of Elections inexplicably adopted an administrative rule exempting nonprofits required to register and report electoral activity from reporting donations of more than \$500 within the 30-day period prior to an election, as is required for political committees.⁸ This administrative rule completely vitiates the apparent purpose of the 2005 law by keeping the public in the dark about the sources of money spent on elections precisely at the time when the most money is spent.

EXCEPTION TO REPORTING OF ELECTIONEERING COMMUNICATIONS BY CERTAIN NONPROFIT ORGANIZATIONS

Illinois law specifically excludes any communication by any nonprofit organization operating under Section 501(c)(3) of the Internal Revenue Code from qualifying as an electioneering communication. While such organizations might jeopardize their federal tax status if they engage in certain electoral activities, there is no reason such groups should be exempt automatically from the reach of Illinois’s disclosure laws.

CONFUSION ABOUT THE “BENEFICIARY” OF EXPENDITURES

Illinois law provides that expenditure reports must identify the “beneficiary” of the expenditure, but does not provide any definition of the term. As a result, most reports indicate that the beneficiary is the committee that made the expenditure, rather than the candidate supported or opposed by means of the expenditure. For example, disclosure reports often reveal that an expenditure was made for “robo calls” to the benefit of the political committee that made the expenditure, but fail to reveal whom the message of the robo calls supported or opposed.

INFREQUENT REPORTING

Requiring only biannual reports, with supplementary contribution reports prior to elections, does little to keep the public informed about campaign activity conducted throughout the year. In Illinois, much fundraising is done during the legislative session, while legislation is pending, but contributions received during this period often do not get reported until months later. Even states that do not permit unlimited contributions, and do not rely solely on disclosure to regulate campaign finance, often require more reporting than Illinois.

LOOPHOLE FOR REPORTING OF IN-KIND CONTRIBUTIONS

Finally, Illinois law requires that entities making in-kind contributions valued at more than \$50 report the value of the contribution to the recipient within five business days.⁹ If the donor fails to do so, however, recipients can describe the contribution on their disclosure reports without listing its value.

ENFORCEMENT

Illinois's one-tool campaign finance system is further undermined by an evenly divided, bipartisan, deadlocked, and therefore ineffective State Board of Elections composed of eight members. While the state constitution provides that "no political party shall have a majority of members of the Board," it does not affirmatively require partisan members.¹⁰ The General Assembly, however, passed a statute that specifically requires the Governor to appoint members to the board in equal numbers from the top two political parties. The Board members have staggered four-year terms, and they elect a Chairman and Vice Chairman of opposite party affiliations. The legislatively mandated make-up of the Board often leads to partisan deadlock, whether from party loyalty or fear of political reprisal. This result is antithetical to the purpose behind establishment of the Board which was, as described by the Illinois Supreme Court, "to negate partisanship as much as possible to guarantee the Board's independence."¹¹

The Board is empowered to conduct investigations, inquiries, and hearings concerning campaign finance violations. The Board, however, does not act as an affirmative enforcer of campaign finance laws, except in the case of unquestionable violations. For matters that require some investigation, the Board functions as a tribunal that relies upon and facilitates private actions.

Upon the receipt of a complaint, the Board must hold a closed preliminary hearing to determine whether or not the complaint has been filed on justifiable grounds. Unless the Board determines that there are justifiable grounds for the allegations, in which instance the case will proceed to a public hearing, the complaint is dismissed, and no public record is created.

The procedure is implemented in a manner that inevitably produces under-enforcement. Local practitioners report that the Board does not permit a complainant to engage in discovery

to prove that justifiable grounds exist. As a result, if the evidence demonstrating that an entity unlawfully failed to report is largely in the hands of that entity, there is no way for a complainant to obtain the proof necessary to establish justifiable grounds. For example, if a group raises funds to support a particular candidate, and contributes the funds to a political party with specific instructions that they be spent in support of that candidate, but fails to register and report as a political committee, it is nearly impossible to prove the violation without access to documents under the exclusive control of the group and the party.

Moreover, although a deadlocked decision over whether justifiable grounds were demonstrated used to result in the case moving forward, a 2003 amendment to the law ensured that partisan deadlock would provide the death knell for any complaint. Now when the Board is tied over whether justifiable grounds have been shown, the law requires the dismissal of the complaint. For example, after the 2004 elections, an Illinois reform organization filed a complaint against an entity called the Illinois Coalition for Jobs, Growth & Prosperity, arguing that the entity qualified as a political committee and should have registered and filed disclosure reports.¹² The Board dismissed the complaint after evenly splitting 4-4 as to whether the complainant had shown justifiable grounds to proceed. Such dismissals, with no record of the Board's reasoning, leave the public with no guidance concerning interpretations and applications of the law and embolden political committees and nonprofits to flout the law.¹³

In the rare instance where a case that requires investigation is permitted to proceed, the Board itself does little to enforce the law. While the Board is empowered to conduct investigations, in reality it is up to the complainant to do so. For instance, the Board may issue a subpoena for a witness, but the costs and burdens of taking depositions, producing evidence and other investigative activity fall upon the complainant. These costs deter action by resource-strapped watchdog groups seeking to promote full compliance.

Even when a violation is cited, penalties often provide little deterrence. Violators of Illinois's campaign finance laws are subject to a maximum penalty of \$5,000, except for state officers and candidates and political committees formed for statewide office, who are subject to a maximum penalty of \$10,000. Most first-time offenders, however, are not fined more than \$500, and the Board also is empowered to, and does, reduce fines for many violations down to ten percent of the contribution that was not reported. Such low fines provide little deterrence, especially for wealthy entities that easily can afford the fees.

In addition to having the ability to issue civil penalties against entities that fail to register and report, the Board may apply for a court order against an entity to cease operations and the expenditure of funds until a statement of organization is filed.

RECOMMENDATIONS FOR REFORMING ILLINOIS'S CAMPAIGN FINANCE LAWS

PUBLIC FINANCING

- Institute either a full or partial public financing system for Illinois statewide, legislative, and judicial offices.

CONTRIBUTION LIMITS

- Consider banning contributions from and expenditures by corporate and union treasury funds.
- Set reasonable limits on contributions from all sources, including individuals, political committees, and political parties.
- Once contribution limits are enacted, ban the earmarking of contributions to intermediaries, such as committees or parties, that make donations to candidates.

DISCLOSURE

- Streamline the laws regarding who is required to register and report electoral activity so that there is one standard applicable to all entities, regardless of an entity's tax status.
- Require nonprofits to report donations of more than \$500 within the 30-day period prior to an election, as is required for political committees.
- Clarify that an entity routing money for campaign contributions or expenditures through any intermediary (including a nonprofit, political committee, or party), is subject to reporting requirements, including the obligation to disclose its own donors, unless the entity is subject to separate rules governing unions or for-profit corporations.
- Clarify that all nonprofit organizations that make contributions must register with and report to the Board, regardless of whether the contributions could be deemed to come from "personal income or profits."
- Require the filing of disclosure reports on a more frequent basis, especially during the legislative session, to help the public continually stay abreast of campaign contributions made while policy is being considered.
- Require committees to identify the candidate who was supported or opposed by expenditures.
- Enhance reporting requirements so that recipients of in-kind contributions must determine and include the market value of such contributions if donors fail to report the value to them.

ENFORCEMENT

- Eliminate the current Board nomination system and create an odd-numbered, independent, and non-partisan board.
- Empower the Board to conduct random audits, and affirmatively require it to engage in more aggressive investigations and enforcement, and address relevant legal issues.
- Provide that cases shall proceed to a public hearing when the Board becomes deadlocked about whether a complaint has been filed on justifiable grounds. At the very least, the issue presented to the Board that resulted in a split vote should be made public.
- Make civil penalties proportionate to violations, rather than flat fees.

¹ All the other states in this region – Michigan, Minnesota, Ohio and Wisconsin – prohibit direct corporate contributions. Ohio permits contributions from unions, but limits the amount each union may contribute. While Minnesota technically permits contributions from unions, unions may not contribute more than \$100 in aggregate in one year to candidates, political committees, and party units.

² Deborah Goldberg, et al., *The New Politics of Judicial Elections 2004*, available at http://www.brennancenter.org/dynamic/subpages/download_file_10569.pdf.

³ “Electioneering communication” is defined as “any form of communication, in whatever medium, including but not limited to a newspaper, radio, television, or Internet communication, that (1) refers to a clearly identified candidate or candidates who will appear on the ballot, refers to a clearly identified political party, or refers to a clearly identified question of public policy that will appear on the ballot and (2) is made within (i) 60 days before a general election or consolidated election or (ii) 30 days before a primary election.” 10 Ill. Comp. Stat. § 5/9-1.14. The statute also carves out some communications that are not considered electioneering communications. *Id.*

⁴ 10 Ill. Comp. Stat. § 5/9-1.4 (defining contribution, in part, as “a gift, subscription, donation, dues, loan, advance, or deposit of money or anything of value,

knowingly received in connection with the nomination for election, or election, of any person to public office, in connection with the election of any person as ward or township committeeman in counties of 3,000,000 or more in population, or in connection with any question of public policy”).

⁵ Ill. Admin. Code tit. 26, § 100.10(g).

⁶ Ohio also regulates advertisements that are run close to an election and unambiguously refer to a candidate.

⁷ 10 Ill. Comp. Stat. § 5/9-7.5(a),(c).

⁸ Ill. Admin. Code tit. 26, § 100.130(b).

⁹ 10 Ill. Comp. Stat. § 5/9-6(b).

¹⁰ Ill. Const. art. III, § 5.

¹¹ *Lunding v. Walker*, 359 N.E.2d 96, 101 (1977).

¹² *Illinois Campaign for Political Reform v. Illinois Coalition for Jobs, Growth and Prosperity*, Case No. 05CD003 (2005).

¹³ The composition of the vote by the members of the Board also is not a matter of public record since the case did not proceed to a public hearing.

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