



VIA EMAIL

Commissioner Henry Berger
Commissioner Mylan Denerstein
Commissioner Kimberly Galvin
Commissioner DeNora Getachew
Commissioner Jay Jacobs

Commissioner John Nonna
Commissioner David Previte
Commissioner Crystal Rodriguez
Commissioner Rosanna Vargas

November 4, 2019

Dear Commissioners:

Thank you for holding your October 29th public discussion in Buffalo. We appreciate the Commission's dialogue with the public, and in that spirit offer some thoughts on the issues you discussed at your meeting in Buffalo.

Unfortunately, we believe the Commission is on the wrong path. The Commission appears ready to undercut the goal of reducing the power of big money and empowering small donors by: 1) only matching in-district contributions for state legislative races; and 2) allowing a public match on the first portion of large contributions. Data clearly showed that for both the [New York City mayor's race](#) and [City Council incumbents](#), over 90 percent of public funds matched large contributions above the matchable portion - in part because the City's contribution limits were too high. This flaw in the public financing system led directly to 80% of New York City voters approving the 2018 Charter Revision proposal to dramatically lower contribution limits.

Regarding the Buffalo hearing, we heard you discuss eight topics:

1. Public Match Ratio
2. Qualifying Thresholds
3. Doing Business Restrictions
4. Contribution Limits on Corporations, LLCs and Unions

www.reinventalbany.org
OPEN, ACCOUNTABLE, EFFECTIVE GOVERNMENT
148 Lafayette, 12th Floor, New York, NY 10013

5. Party Committees – Contribution Limits and Transfers
6. Prohibited Expenditures/Limits on Use of Public Funds
7. “Sure Winner” Provisions/Non-Competitive Races
8. Small Primaries

For each of these eight topics, we have summarized what we heard, and our recommendations.

1a. What We Heard on Public Match Ratio

The Commission held a preliminary 5-4 vote on 10/22 to only match in-district contributions for state legislative races.

The Commission is now proposing matching in-district contributions for legislative races using an adapted version of the Montgomery County match ratio. Contributions would be matched for donations up to \$250, with the match ratio decreasing as the contribution increases in size. The Commission discussed matching the first \$50 of a contribution at a rate of \$12:\$1, \$9:\$1 for the amount between \$50.01-\$100, and \$6:1 for the amount above \$100.

1b. What We Recommend on Public Match Ratio

Reinvent Albany opposes only matching in-district contributions, as [outlined in the October 28th Fair Elections letter sent to the Commission](#). We believe all in-state contributions should be matched, with a higher match for in-district contributions.

If the Commission decides to only match in-district contributions, a higher match ratio could help participants raise more money to campaign without the out-of-district match. The Montgomery County model is certainly a reasonable approach to encourage smaller contributions, as we recommended the Commission review it in [our comprehensive recommendations](#) (see page 12).

Commissioners Berger and Galvin have raised concerns about the complexity of administration numerous times. Under a Montgomery-style system, staff would have to repeatedly check donations against what candidates have already received to ensure that contributions are being matched at the correct rates. This can be challenging because New York State campaign finance filings are typically rife with errors, omissions, and inconsistencies. However, if Montgomery County can administer the program successfully, New York State should certainly be able to. We recommended issuing a Requests for Information and Proposal to purchase modern technology to do so.

We note that participants in Montgomery County’s program can only accept small contributions up to \$150, which is matched, even while non-participant contribution limits are \$6K. Reinvent Albany previously recommended the Commission only match small donations instead of the first portion of all contributions. The Commission should only match small donations rather than subsidizing large ones.

2a. What We Heard on Qualifying Thresholds

Qualifying thresholds are thresholds candidates must reach before they can receive *any* public funds. They require candidates to raise a certain number and dollar amount of in-district contributions.

The Commission appears interested in lowering its proposed qualifying thresholds, particularly for state legislative offices, with even lower thresholds for districts with less than the Average Median Income (AMI).

Commissioner Previte said thresholds for statewide offices ought to increase proportionally from the base established for state legislative offices. Commissioner Jacobs provided examples of how he felt the qualifying thresholds could be reached fairly easily. Commissioner Berger pointed out that the Assembly thresholds are higher than the New York City Council’s, despite Assembly districts having smaller populations.

The Commission proposed on October 14th the following qualifying thresholds, which would be lowered by as much as half for districts where residents earn less than the average median income.

Commission’s Proposed Qualifying Thresholds

Office	Minimum Funds Raised*	Number of Contributors
Governor	\$600,000 (in-state)	6,000 (in-state)
Lt. Governor, Attorney General, Comptroller	\$100,000 (in-state)	1,000 (in-state)
State Senate	\$18,000 (in-district)	150 (in-district)
State Assembly	\$7,500 (in-district)	75 (in-district)

*Only the matchable portion counts towards the total.

Minimum Funds Raised may be reduced by as much as half in districts below the Average Median Income

2b. What We Recommend on Qualifying Thresholds

In response to the most recent discussion by the Commission, Reinvent Albany recommends lowering the qualifying thresholds for state legislative offices so that the legislative districts with Average Median Incomes (AMI) in the bottom half have thresholds below those for the New York City Council. This is a compromise between Commissioner Jacobs's belief that the proposed qualifying thresholds are already sufficient if candidates work hard at fundraising and Commissioner Berger's point, that Reinvent Albany made, that proposed Assembly thresholds are higher than the Council's despite lower population size.

We agree with Commissioner Prevote that the threshold for Governor needs to be lowered.

[Reinvent Albany previously proposed lower thresholds for Governor and state legislative offices than the Commission's in our comprehensive recommendations \(see pgs. 6-8\).](#)

3a. What We Heard on Doing-Business Restrictions

For the second time, the Commission discussed lower contribution limits for those doing business with the state. The discussion focused on whether unions and corporations should be treated the same, and whether the Commission has the authority to impose doing-business restrictions. Commissioner Berger felt the Commission had the authority if the restrictions were limited to contribution limits for candidates. Commissioner Prevote felt the Commission did not have the authority to impose restrictions on bidding, which falls outside of Election Law. Commissioner Berger outlined the city restrictions related to doing business contributions. NYPIRG Executive Director Blair Horner called the Commission's attention to doing-business restrictions in New Jersey.

3b. What We Recommend on Doing-Business Restrictions

[Reinvent Albany's recommendations on doing-business restrictions were provided in our comprehensive recommendations \(see p. 17\).](#) We recommended adopting [New York City's restrictions](#), which "strictly limit campaign contributions to all candidates by lobbyists and senior officers affiliated with companies that have contracts, franchises or concessions, economic development agreements, pension investment business, or land use or real property agreements with government." We subsequently said Reinvent Albany would also support restrictions on contributions by union officers, which New

York City's restrictions do not apply to. We agree with Commissioner Berger that the Commission does have authority if it imposes contribution limits on candidates.

It is important for the Commission to understand that New York City's doing-business restrictions only apply to individuals that have an equity stake in or are senior leaders at companies doing business with the City. The restrictions do not forbid other employees or shareholders from donating, or from the company donating through a PAC, which some do.

The Commission should also review components of New Jersey's program, as raised by Blair Horner. We have attached a [memo](#) outlining that program. Most notable are the provisions that apply to party committees: Companies are barred from receiving state procurements if their owners have donated more than \$300 to a party or candidate committee less than 18 months before a state contract is awarded. This provision goes further than the City's restrictions and we believe is worthy of the Commission's consideration.

4a. What We Heard on Contribution Limits on Corporations, LLCs and Unions

The conversation related to doing business restrictions extended to restrictions on contributions by entities, including corporations, LLCs and unions. Much of the discussion was related to whether unions and corporations should be treated the same, and the recent restrictions that were passed regarding LLCs.

4b. What We Recommend on Contribution Limits on Corporations, LLCs and Unions

[Reinvent Albany recommended banning all corporate and LLC contributions in our comprehensive recommendations \(see pages 18-19\)](#). We subsequently recommended banning union contributions as well. This means the entities themselves would be banned from giving from their treasuries. All the entities could still set up a PAC and make contributions. Therefore, this proposal has a modest impact. Under the LLC restrictions passed last year, entities can still create numerous LLCs and give \$5,000 annually from each, as explained in our comprehensive recommendations. As Commissioner Galvin noted, the corporate contributions by the LLC are attributed to the individual LLC members so that their *individual* giving is limited.

5a. What We Heard on Contribution Limits to Party Committees

The Commission discussed whether it had the authority to limit contributions to party committees. Commissioner Jacobs suggested the Commission did not have the authority

because it was limited to addressing candidate contributions. Commissioner Berger noted in Election Law party distribution of funds to candidates are technically transfers, not contributions. Commissioner Galvin pointed out the Commission is interpreting their mandate broadly in some instances but narrowly in others.

5b. What We Recommend on Contribution Limits to Party Committees

We support the Commission getting an opinion from its lawyers on whether it has the authority to limit contributions to party committees, as suggested by Commissioners Previte and Getachew.

The law creating the Commission states, “The commission shall make its recommendations in furtherance of the goals of incentivizing candidates to solicit small contributions.” Limiting contributions to party committees arguably fulfills this mandate because candidates will solicit more small donations if they do not receive large infusions of money from party committees. However, we can’t say with certainty the Commission has the authority to limit contributions to party committees.

If the Commission’s lawyers determine that it does not have the authority, Reinvent Albany believes the Commission should recommend in its final report that the legislature act to lower contribution limits to party committees. The Commission should also make recommendations to the legislature more generally for the legislature to address.

6a. What We Heard on Prohibited Expenditures/Limits on Use of Public Funds

Commissioner Berger briefly raised prohibitions on expenditures with public funds that New York City imposes.

6b. What We Recommend on Prohibited Expenditures/Limits on Use of Public Funds

[Reinvent Albany recommended in its comprehensive recommendations the Commission write into law a detailed list of items public funds should not be spent on \(see p. 14\).](#) We added prohibited items to the list in the Governor’s FY2020 Executive Budget proposal, which we also support. Below is the list we think should be added to the Governor’s list of prohibited expenditures:

- Payments to family or family businesses, including spouses, parents, grandparents, children, grandchildren, siblings, nephews, nieces, cousins and in-laws
- Mortgage or rent for personal residences, even if used as office headquarters

- Vehicle repair and maintenance
- Personal debt
- Payments for country clubs, health clubs, spas, etc.
- Duties of the elected official's office

If the Commission is going to use the City's list of prohibited expenditures, we recommend including all of the City prohibitions in addition to the following:

- Mortgage or rent for personal residences, even if used as office headquarters
- Vehicle repair and maintenance
- Payments for country clubs, health clubs, spas, etc.

7a. What We Heard on “Sure Winner” Provisions/Non-Competitive Races

Commissioner Berger discussed New York City's approach to restricting the distribution of public funds to participating candidates when they have nominal opposition. In order for a candidate to receive any public funds, they must have an opponent on the ballot. Participating candidates in New York City will only receive a full public funds payment if their opponent meets one of seven criteria. Those criteria are the opponent:

- 1) is a nonparticipating self-funding candidate;
- 2) received endorsements from elected officials or member organizations;
- 3) received substantial media exposure;
- 4) has run for office before in the same area and received 25 percent of the vote;
- 5) is a community board district manager or chair;
- 6) has a similar sounding name as the candidate;
- 7) has a family member that has held public office in the same area.

If the participating candidate's opponent does not meet one of these seven criteria, the candidate will receive a partial public funds payment.

7b. What We Recommend on “Sure Winner” Provisions/Non-Competitive Races

Reinvent Albany strongly supports “Sure Winner” provisions to protect taxpayer money and the integrity of the public financing program. As discussed in our comprehensive recommendations, the New York City Campaign Finance Board has recommended restricting these criteria to numbers 2, 3 and 7 above, which we support.

8a. What We Heard on Small Primaries

Commissioner Berger raised the issue of how minor party primaries would work with a public financing system. The cost of public financing for minor party candidates has also

been raised by Governor Cuomo and Commissioner Jacobs. Commissioner Jacobs explained how New York City's system addresses minor party primaries. Public fund distributions are limited to \$5,000 for minor party primaries when there are less than 1,000 eligible voters in the district.

8b. What We Recommend on Small Primaries

Reinvent Albany has not previously taken a position on this issue, but we now recommend adoption of the City's approach for distribution of public funds to candidates in a minor party primary.

Reinvent Albany has pointed out many times that public funds flow to candidates, not parties in the New York City system. Candidates with multiple party lines in New York City are treated no differently than candidates with one party line, except for the rare scenario in which a candidate only has a minor party line in a contested election. This still requires candidates competing in the minor party to reach the qualification thresholds for all candidates for the office to receive public funds. If they do, New York City's system limits public funds distributions in minor party primaries to \$5,000 per candidate since they have to get their message to fewer eligible voters in a minor party primary. In New York City, only one candidate exclusively in a minor party primary received public funds last election cycle, costing the city \$5,000.

Regards,

Alex Camarda
Senior Policy Advisor