



To: NYS Public Campaign Financing and Election Commission Members

From: Reinvent Albany

Re: 18 Policy Recommendations for a Strong NYS Public Financing System - Revised and Updated (Version 3)

Date: September 2019

A. List of Recommendations for a Strong Public Financing System

The New York State Public Campaign Financing and Election Commission has the unique opportunity to finally fix our state’s broken campaign finance system by establishing a strong public financing program similar to New York City’s.

Reinvent Albany believes Governor Cuomo’s bill in the Fiscal Year 2019-2020 Executive Budget is a good foundation to work from for establishing a strong public financing program. **For your consideration, we have provided 18 recommendations, across 5 major areas, that build on the Governor’s proposal or express support for noteworthy elements of the Governor’s proposal.** Our recommendations are listed beginning on the next page, with description in the body of this document. We are also available to provide additional information and research for these recommendations or other related issues should the Commission be interested.

Establish Effective Campaign Finance Administration and Enforcement

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Following our recommendations, Reinvent Albany provides the rationale for a strong public financing system (Section C, Page 21) and addresses common misconceptions about the system that have been raised by elected officials and in the press in recent months (Section D, Page 23). In this final section, we demonstrate that incumbent re-election and the state’s budget are little impacted by the public financing program. We show that a public financing program has little to no impact on independent expenditures or minor party lines, and provide data on New York City Campaign Finance Board enforcement regarding the public financing program.

B. Description of Recommendations for a Strong Public Financing System

[The Governor’s FY2019-2020 Executive Budget proposal laid a solid foundation for a public financing system, which the Commission can](#)

strengthen.¹ Reinvent Albany makes the following recommendations to build on the Governor’s proposal or to express support for important elements in his proposal:

Establish Effective Campaign Finance Administration and Enforcement

Recommendation #1: Create an Independent Campaign Finance Board Outside of the Board of Elections

Reinvent Albany believes a new, independent campaign finance agency consisting of a board and staff is needed to administer campaign finance for *all* candidates. The State Board of Elections should be limited to administering elections, handling election day operations, petitioning and nominating of candidates, and voter registration.

The Governor proposed in his Executive Budget creating a Campaign Finance Board within the State Board of Elections that will only address public financing and campaign finance matters for candidates participating in the public matching system. This is not a workable solution due to existing friction and jurisdictional issues between the Compliance Unit and the quasi-independent Enforcement Division headed by Chief Enforcement Counsel Risa Sugarman, both of which are part of the State Board of Elections. For example, the Compliance Unit and Enforcement Division have different approaches regarding how to address the over 1,000 political committees that have not filed statutorily required periodic campaign finance reports, and to date the entities have not resolved their differences. The Board also reined in the subpoena authority of the Chief Enforcement Counsel by promulgating rules requiring more layers of approval to issue subpoenas, causing the Enforcement Counsel to sue the Board, a matter still being litigated.²

These divisions point to the problems inherent in establishing a Campaign Finance Board within the State Board of Elections. New York City has a separate Campaign Finance Board appointed by the Mayor and City Council. Its members and support staff conduct campaign finance administration for all candidates, while the Board of Elections in the City of New York administers local elections.

¹ Governor Cuomo FY2019-2020 Executive Budget. Good Government and Ethics Reform Article VII Legislation, Part B, pgs. 6-44.

² Bragg, Chris. “Sugarman sues to strike down rules reining in subpoena power,” Times Union, January 23, 2019. Available at: <https://www.timesunion.com/news/article/Sugarman-sues-to-strike-down-rules-reining-in-13555375.php>

Recommendation #2: Conduct Mandatory Post-Election Audits of All Committees for Statewide Office and High-Spending Legislative Districts; Randomly Audit Remaining Legislative Districts

Reinvent Albany supports mandatory audits for statewide office, and for legislative districts in which committees collectively exceed certain fundraising and spending thresholds. Mandatory audits should include all committees seeking to influence the outcome of the election for the office, including participating and nonparticipating candidates in the public financing system and non-candidate committees.

The Governor's proposal requires mandatory auditing of participating candidates for statewide offices and random selection for audits of legislative offices. For the randomly selected legislative districts, all participating candidates are audited. Districts are weighted in the random selection process so once they have been chosen, it is less likely they will be chosen again for an audit. New York City, in contrast, audits all participating and nonparticipating candidates, and reviews independent expenditure committee activity.

Reinvent Albany recommends a mix of mandatory and random audits because the newly created Campaign Finance Board will be under substantial pressure to complete many hundreds of timely audits. It will be unable to audit every committee or even every participating candidate because of the number of offices and the two-year election cycle. However, it does not make sense to randomly audit legislative districts, as the Governor's bill prescribes, without auditing districts in which committees raise and spend the most money in highly contested races. Campaign committees beyond participating candidates in randomly selected legislative districts must also be audited to ensure compliance with all election laws.

Recommendation #3: Establish a Penalty Schedule and Only Hold Hearings for Large Fines and Offenses

Reinvent Albany believes a penalty schedule should be established in law laying out fines for different types of infractions, with fines varying in size between: 1) repeat and one-time offenses; 2) cured and uncured infractions; and 3) willful and unwillful infractions. Public hearings should be held for fines totaling more than a particular threshold (for example, \$1,000, as 57% of New York City candidates receive total fines of this amount or less). Hearings should not be held for small fines or multiple small fines totaling a small sum. Campaign Finance Board staff should be given the authority to assess fines totaling less than a specified amount to ensure swift adjudication of alleged violations of election law.

Recommendation #4: Provide an Enforcement Agency Budget That is a Fixed Percentage of the Division of Budget's Funding

Reinvent Albany supports providing a budget based on a fixed formula for the new Campaign Finance Board tethered to the Division of Budget's funding. A fixed budget provides further independence to the campaign finance enforcement agency.

In New York City, the Independent Budget Office's (IBO) budget is a fixed percentage of the Office of Management and Budget (OMB). The New York City Campaign Finance Board's budget is not fixed, but the budget requested by the Board must be included in the Mayor's Preliminary Budget. It can be changed later in the budget process.

Recommendation #5: Begin the Public Financing Program in the 2021-2022 election cycle

Reinvent Albany recommends the public financing program begin in 2021.

With the Commission expected to create a public financing program by December 1, 2019, it will be challenging for a new Campaign Finance Board or the State Board of Elections to set up a program for the 2020 elections. The State Board testified to this challenge before the New York State Senate in March 2019. Administration would be further complicated by the many election-related reforms passed into law in 2019 and because of the 2020 presidential election. If the program begins in 2021, candidates will also have the benefit of not having to consider opting into a new public financing system mid-election cycle.

Create a Public Matching Program Maximizing Participation

Recommendation #6: Establish Low Qualifying Thresholds Candidates for State Offices Must Meet to Receive Public Matching Funds

(Revised from Reinvent Albany's Initial Recommendations)

Qualifying thresholds are thresholds candidates must reach in order to receive *any* public funds. In New York City's public financing program and bills introduced by state leaders, candidates must raise a certain number and dollar value of matchable contributions. The dollar value is the sum of the matchable portion of all donations received (rather than the sum of the full value of the contributions).

As shown on the charts on the next page, Reinvent Albany believes the qualifying thresholds candidates must reach to receive public matching funds in the [Governor's proposal](#) are too high, which will limit participation in the public matching program.

For example, in the Governor’s proposal, a candidate for Assembly must raise \$10,000 and at least 100 matchable contributions from district residents. In contrast, a City Council candidate in New York City’s program must raise \$5,000 and 75 matchable contributions from district residents, yet Assembly districts have about 40,000 fewer people.³ In short, an Assembly candidate under the Governor’s proposal must raise double the dollar threshold and 33 percent more contributions.

Upon further consideration, we have revised the qualifying thresholds from our previous recommendations to establish separate lower limits for the statewide offices other than Governor. We have also revised the qualifying thresholds for the minimum funds raised and number of matchable contributions so that it is based on a \$100 matchable contribution, the most common donation in New York City.⁴ The thresholds for citywide offices appear to have worked well so we believe they should be a model for the state.

Governor Cuomo’s 2020 Executive Budget Proposal - Qualifying Thresholds			Reinvent Albany Recommendations - Qualifying Thresholds (Revised)		
Office	Minimum Funds Raised*	Number of Qualifying Donations	Office	Minimum Funds Raised*	Number of Qualifying Donations
Governor	At least \$650,000	At least 6,500 matchable contributions from New York State residents	Governor	At least \$550,000	At least 5,500 in matchable from New York State residents
Lieutenant Governor, Comptroller and Attorney General	At least \$200,000	At least 2,000 matchable contributions from New York State residents	Lieutenant Governor, Comptroller and Attorney General	At least \$275,000	At least 2,750 in matchable from New York State residents
State Senate	At least \$20,000	At least 200 matchable contributions from district residents	State Senate	At least \$12,500	At least 125 contributions from district residents
Assembly	At least \$10,000	At least 100 matchable contributions from district residents	Assembly	At least \$5,000	At least 50 contributions from district residents
* - only the matchable portion of a contribution is counted toward the threshold)			* - only the matchable portion of a contribution is counted toward the threshold)		

³ New York City Campaign Finance Board. Limits and Thresholds. Available at: <https://www.nyccfb.info/candidate-services/limits-thresholds/2021/>

⁴ Ibid, p. 55.

For the Governor's Office, we support lowering the qualifying threshold of \$650,000 in at least 6,500 matchable contributions in the Governor's bill. The qualifying threshold for the Office of Mayor in New York City, which consists of about 43 percent of the state's population, is \$250,000 and 1,000 matchable contributions.⁵ The thresholds for other citywide offices are \$125,000 and 500 matchable contributions.⁶ Applying the thresholds for the citywide offices to the state's population results in a threshold of \$550,000 in at least 5,500 in matchable contributions for Governor, and \$275,000 in at least 2,750 matchable contributions for other statewide offices, which we think is more reasonable for statewide offices.

Recommendation #7: Establish Public Match Caps for the Election Cycle Rather than Per Election

(Revised from Reinvent Albany's Initial Recommendations)

A public match cap limits the amount of public funds candidates can receive, regardless of how many contributions or how much money they raise that are eligible for public matching funds.

Reinvent Albany supports having a public match cap for the election cycle covering both primary and general elections rather than separate caps for each election.

Public Match Caps for State Legislative Offices

In the Governor's FY2020 Executive Budget proposal and other public matching bills before the legislature, a cap on public matching funds disbursed is proposed for the primary election and a separate cap is proposed for the general election (the general election cap is the same as the separate cap for special elections).

In our view, the public match limits in the Governor's bill are too low (\$375,000 per election for state senate; \$175,000 per election for state assembly) for many competitive state legislative races and too high for uncompetitive races.

Reinvent Albany analyzed the 2018 state legislative elections and found for 44 competitive races (those decided by 10% or less of the vote), the median campaign expenditures were as follows:⁷

⁵ Ibid.

⁶ Ibid.

⁷ For this analysis, Reinvent Albany only included expenditures and payments (Schedule F filed with the NYS Board of Elections) made through the campaign account for the office that the candidate sought. Please note that expenditures made through a candidate's campaign accounts for different offices were not included as part of this analysis. Letitia James, for example, spent over \$1.6 million through her

2018 State Legislative Campaign Expenditures - Competitive Races (44)	
Legislative Body	Median Spending
State Senate Primary	\$446,000
State Senate General	\$574,000
Assembly Primary	\$30,000
Assembly General	\$69,000

However, candidate campaign expenditures ranged widely from \$18,441 to \$3.2 million in the Senate, and \$475 to \$561,715 in the Assembly. In the Senate, 13 candidates spent more than \$750,000 on their campaigns, and in the Assembly, two candidates spent more than \$350,000.

Reinvent Albany therefore concludes that having a cap for the cycle covering both elections makes more sense than a cap per election. Adapting the caps in the Governor’s bill to the election cycle would result in caps for the cycle of \$750,000 for the State Senate and \$350,000 for the Assembly. This will enable more public financing to be accessed for the most expensive competitive races that can cost much more than the public financing caps for a single election.

Public Match Caps for Statewide Offices

Reinvent Albany did not recommend a statewide public match cap in our recommendations previously provided to the Commission.

After more analysis, Reinvent Albany now believes the Commission should consider a \$5 million public match cap *per election cycle* for the Offices of Attorney General, Comptroller, and Lieutenant Governor (effectively for the primary election) based on 2018 campaign spending by statewide candidates. For Governor, we suggest the public funds cap be lowered significantly from the Governor’s proposal in his FY2020 Executive Budget to \$10 to \$12 million and also apply to the election cycle.

The Governor in his 2020 Executive Budget proposal recommended a public match cap of \$4 million per election for the Offices of Attorney General and Comptroller. For Governor, he recommended a cap of \$8 million for the primary (and \$4 million for Lieutenant Governor) and \$10 million for the general election for both Governor and Lieutenant Governor.

campaign account for Public Advocate between 2015 and 2018. Our analysis only pertains to her Attorney General campaign account. Several other candidates also had multiple accounts.

Governor Cuomo's FY2020 Executive Budget Proposal Public Match Caps				Reinvent Albany's Recommended Statewide Public Match Caps	
Office	Primary Election Public Match Cap	General Election Public Match Cap	Total Public Match Cap (Election Cycle)	Office	Public Match Cap-Election Cycle
Governor	\$8 million	\$10 million	\$18 million	Governor	\$10 - \$12 million
Lieutenant Governor (primary), Attorney General, Comptroller	\$4 million	\$4 million	\$8 million	Lieutenant Governor (primary), Attorney General, Comptroller	\$5 million

Based on statewide candidate spending during the 2018 election cycle, the public match caps in the Governor's proposal are too high, as no statewide candidate spent more than \$5.11 million *in total* for the election cycle except for Governor Cuomo. This suggests the \$4 million public match cap per election (\$8 million per cycle) is too high for the offices of Attorney General, Comptroller, and for the primary election for Lieutenant Governor. Instead we recommend a public funds cap of \$5 million for the election cycle for these offices. Letitia James' candidacy for Attorney General illustrates why election cycle caps makes more sense. Even candidates that faced well-funded opponents in both the primary and general elections, such as Letitia James, tend to fall under \$5 million. James spent \$1.84 million for the primary election, and \$1.81 million after for a total of \$3.64 million.

Governor Cuomo spent nearly \$35 million during the election cycle, but we believe the Governor's fundraising totals are outliers and go far beyond what gubernatorial candidates typically raise. We also want the Commission to dramatically lower contribution limits for statewide offices, which should result in lower public match caps as well. We therefore suggest a public match cap of \$10 to \$12 million for Governor for the election cycle.

On the next page is a chart showing what previous candidates for statewide offices spent.

Statewide Candidate	Party	Office	Election Cycle	Election	Expenditures/Payments
Andrew Cuomo*	Democrat	Governor	2015-2018	Primary & General	\$ 34,939,947
Cynthia Nixon	Democrat	Governor	2015-2018	Primary	\$ 2,431,678
Marcus Molinaro	Republican	Governor	2015-2018	General	\$ 2,369,402
Kathy Hochul	Democrat	Lt. Governor	2015-2018	Primary & General	\$ 2,268,623
Jumaane Williams	Democrat	Lt. Governor	2015-2018	Primary	\$ 322,376
Thomas DiNapoli	Democrat	Comptroller	2015-2018	General	\$ 4,181,879
Jonathan Trichter	Republican	Comptroller	2015-2018	General	\$ 248,527
Zephyr Teachout	Democrat	Attorney General	2015-2018	Primary	\$ 1,938,643
Sean Patrick Maloney	Democrat	Attorney General	2015-2018	Primary	\$ 5,116,668
Leecia Eve	Democrat	Attorney General	2015-2018	Primary	\$ 426,912
Letitia James*	Democrat	Attorney General	2015-2018	Primary & General	\$ 3,643,649
Keith Wofford	Republican	Attorney General	2015-2018	General	\$ 2,171,117

Cuomo spent \$27.5M before the primary on September 13th, and \$7.478M afterwards.

Letitia James spent \$1.84M before the primary on September 13th, and \$1.81M afterwards through her James for NY state committee.

Type of Election	Median	Average	High	Low
Attorney General Primary Election	\$ 2,791,146	\$ 2,781,468	\$ 5,116,668	\$ 426,912
Attorney General General Election	\$ 2,907,383	\$ 2,907,383	\$ 3,643,649	\$ 2,171,117
Attorney General	\$ 2,171,117	\$ 2,659,398	\$ 5,116,668	\$ 426,912
Comptroller General Election	\$ 2,215,203	\$ 2,215,203	\$ 4,181,879	\$ 248,527
Lt. Governor Primary Election	\$ 1,295,499	\$ 1,295,499	\$ 2,268,623	\$ 322,376
Governor Primary Election	\$ 18,685,813	\$ 18,685,813	\$ 34,939,947	\$ 2,431,678
Governor General Election	\$ 18,654,674	\$ 18,654,674	\$ 34,939,947	\$ 2,369,402
Governor	\$ 2,431,678	\$ 13,247,009	\$ 34,939,947	\$ 2,369,402

For the above table, expenditures for candidates running in both the primary and general elections were counted in full for each election for calculating the median, average, high and low.

** - Tish James had multiple campaign committees through which she made expenditures during the 2015-2018 election cycle including: 1) James for NY (OAG); 2) Letitia James 2017 (Public Advocate); 3) Letitia James 2021; 4) James 2013. We have only included her expenditures through James for NY, which is her campaign committee for Attorney General. James made expenditures during the 2015-2018 cycle of \$1.64 million through Letitia James 2017; \$31,504 through Letitia James 2021; and \$76,216.85 through Letitia James 2013. Her total spending during the cycle is \$5.4 million through these committees.*

For special elections, Reinvent Albany believes the public match cap should be half of the election cycle cap. The Governor’s proposal establishes a public match cap for special elections that is half of the general election cap, which we adapted to our proposal. The Campaign Finance Board halves contribution limits for special elections, with the implication that less spending is needed for a much shorter election season.

Election cycle caps may result in more public funds disbursements to candidates if many candidates fundraise up to the cap amount even if they do not need it all to run a campaign. We believe costs to the taxpayer can be mitigated by including “sure winner” provisions, limiting campaign war chests, and placing strict restrictions on eligible expenditures and matchable contributions in establishing the program (our comprehensive recommendations and coming testimony go into greater detail on this).

Recommendation #8: Provide a Public Match for Small Contributions Only (Do Not Match the First Portion of Large Contributions)

Reinvent Albany supports limiting the public match to small contributions only rather than the first portion of any contribution, including larger donations. The public match should also not be applied to multiple small contributions from the same donor that are effectively a large contribution when summed.

The Governor's bill provides for a \$6:\$1 match on the *first* \$175 of any eligible contribution, even for contributions as high as \$6,000 per election. We do not support the Governor's proposal that matches \$6,000 contributions per election with an additional \$1,050 in public funds (a \$6:\$1 match on the first \$175) bringing the contribution to a total of \$7,050. Reinvent Albany similarly does not support one of the options in the old New York City system, now being phased out, that allows for \$5,100 contributions to be matched with an additional \$1,050 (a \$6:\$1 match on the first \$175), bringing the total contribution to \$6,150. We think doing so undercuts one of the goals of the public matching program, which is to incentivize small donor fundraising. Taxpayers should not be subsidizing larger contributions.

New York City recently raised its match to \$8:\$1 on the *first* \$250 for citywide offices, and \$8:\$1 on the *first* \$175 for all other offices for contributions up to \$2,000 per election cycle. Candidates can opt into this new system for the 2021 elections. The new New York City system is better because while the first \$175 of *any* eligible contribution is matched, the contribution is limited to \$2,000 per election cycle so the matching of larger donations is limited.

The Commission should review a recently established public matching program in Montgomery County, Maryland that has a tiered public matching rate. The Montgomery County program phases out the match for both offices as a donation increases in size. For County Executive, a \$6:1 match is received for the first \$50 of a contribution; a \$4:1 match for the second \$50 tranche; and \$2 for the remainder of the contribution up to the maximum amount of \$150 from individuals. For County Council, the structure is the same, but the matching amounts are \$4:\$3:\$2 rather than \$6:\$4:\$2.⁸

⁸ Maryland County Council. Public Campaign Financing Available at: https://www.montgomerycountymd.gov/COUNCIL/public_campaign_finance.html

Recommendation #9: Release Some Public Funds to Candidates At Least Six Months Before an Election

(Revised from Reinvent Albany's Initial Recommendations)

Reinvent Albany believes that for the public financing program to be meaningful to candidates and encourage participation, a substantial portion of payments to candidates should be made at least six months before an election if certain criteria are met.

Reinvent Albany advocated for this change to the New York City program as part of 2018 New York City Charter Revision Commission. Ultimately, the commission proposed and voters approved substantial public funds payments earlier in the election cycle. Before these changes, candidates could not receive most of their public funds for a primary election until about one month before the primary election. This was too late in the election season.

As a result of the recent Charter Revision changes in New York City, candidates can receive public funds early if they submit a Certified Statement of Need to the Campaign Finance Board indicating they have an opponent who meets at least one of seven criteria. These seven criteria ensure the candidate's opponent is viable. The criteria include the candidate's opponent: 1) is a self-financing nonparticipant 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 name that sounds similar to the candidate's; or 7) has a family member that has held public office in the same area.⁹ Candidates can also receive early payments if they are running for an open seat or their opponent has qualified for public funds, irrespective of their opponent meeting one of the seven criteria.

Candidates meeting one of the seven criteria are eligible for early funds payments distributed by the New York City Campaign Finance Board beginning as early as December 15th for the June primary (as a result of Local Law 128 of 2019). Candidates can receive up to the full amount of public funds they are eligible for on any of the five early payment dates (once monthly between December and April 15th) or on the three payment dates within 45 days of the primary election. For the general election, candidates receive public matching funds on July 15th after the primary election and/or on four payment dates within 90 days of Election Day.

⁹ Section 3-705(7)(a)(b) of the New York City Administrative Code

Protect Public Funds

Recommendation #10: Establish Clear and Detailed Expenditure Guidelines

Reinvent Albany believes the Commission should outline as clearly as possible which campaign expenditures can be covered by public funds, and prohibit spending that may personally benefit candidates.

New York already has limits on how campaign funds can be used, but the state should take extra precautions to clarify that public funds can only be used to further the campaign. Even in New York City, which has clear rules for so-called qualified expenditures, candidates have occasionally been found to abuse funds received via the matching program, and looser restrictions are likely to allow for more egregious abuses. While some states, such as Arizona¹⁰ and Maine,¹¹ provide a long and detailed list of what expenditures qualify, others leave more room for interpretation.

We urge that the Commission make its list as detailed as possible to prevent the misuse of public funds. In addition to the provisions in the Governor's bill, the Commission should state that the following uses of public funds are expressly prohibited:

- 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

Recommendation #11: Expand Non-Matchable Contributions

Reinvent Albany recommends making certain contributions ineligible for receiving a public fund match. These include:

¹⁰ 2018 Campaign Finance Candidate Guide, Arizona Secretary of State Michele Reagan. Available at: <https://azsos.gov/sites/default/files/2018%200926%20-%20Campaign%20Finance%20Handbook%20-%200Candidates.pdf>

¹¹ Maine Clean Election Act, 2016 Expenditure Guidelines. Available at: <https://www.maine.gov/ethics/pdf/2016ExpenditureGuidelines.pdf>

- contributions from contractors
- contributions from bundlers/intermediaries
- contributions from state grant recipients
- contributions from clients of lobbyists
- contributions from candidate and party committees
- loans
- in-kind contributions
- party transfers (which are not currently legally defined as contributions)
- unitemized anonymous contributions
- contributions from a previous election cycle
- contributions from minors
- contributions from campaign vendors (political consultants)
- contributions from lobbyists

Governor Cuomo’s Executive Budget proposal already prohibits counting as matchable contributions the last eight items above. The Governor’s prohibitions are a good starting point and track many of New York City’s non-matchable contributions. We believe they should be extended further.

Recommendation #12: Establish “Sure Winner” Provisions

Reinvent Albany supports limiting the distribution of public funds when a candidate does not have a viable opponent so that taxpayer money is spent wisely and the public has confidence in the matching system.

New York City law limits the distribution of public funds to so-called “sure winners” by requiring candidates to file a Certified Statement of Need and certain criteria be met demonstrating a need for public funds. As mentioned in Recommendation #9, to receive public funds they are eligible for, candidates must have an opponent (if there is no incumbent running for the office) and at least one of seven other criteria must be met. These seven other criteria ensure the candidate’s opponent is viable. The criteria include 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.¹² [The New York City Campaign Finance Board has recommended tightening these criteria to restrict unnecessary public funds payments to candidates who face minimal opposition](#)

¹² Section 3-705(7)(a)(b) of the New York City Administrative Code

[by narrowing the criteria to #s 2, 3 and 7 above \(see p. 129\).](#)¹³ We support the Campaign Finance Board's tightening of this criteria.

Ensure Fairness Between Nonparticipants and Public Financing Participants

Recommendation #13: Establish Lower Contribution Limits for All Offices and Party Committees, and Impose Doing Business Restrictions

Reinvent Albany believes contribution limits must be dramatically lowered for *all* candidates for *all* offices, and even lower doing business contribution limits should be established. Contribution limits to party committees should also be sharply lowered.

According to the National Conference on State Legislatures, the median individual contribution limit per election for state office, for the 39 states that have limits, is \$3,800 for governor and \$1,000 for the state senate and state house.¹⁴ The contribution limit varies from state to state as to how it is applied; in most states it is per election while in others it is per year or per election cycle.¹⁵ New York has the highest contribution limits of any state that has limits.¹⁶

Illinois's individual contribution limits are worthy of review because they are lower than those for larger states (\$5,800 per election cycle) and are lifted in the face of six figure independent expenditures or self-financed opponents.¹⁷ The Illinois limits mitigates the concern that much lower contribution limits will cause money to move from candidates to less accountable and transparent independent expenditure committees. It is also very important that the Commission lower contribution limits for all candidates, otherwise

¹³ New York City Campaign Finance Board. *Keeping Democracy Strong: New York City's Campaign Finance Program in the 2017 Citywide Elections*, p. 129. Published 2018. Available at: https://www.nycconfb.info/pdf/2017_Post-Election_Report_2.pdf

¹⁴ National Conference on State Legislatures. Campaign Contribution Limits: Overview. Available at: <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>

¹⁵ National Conference on State Legislatures. State Limits on Contributions to Candidates, 2017-2018 Election Cycle. Available at: <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx> and http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf

¹⁶ New York State Board of Elections. Candidate Contribution Receipt Limits. Available at: <https://www.elections.ny.gov/CFContributionLimits.html>

¹⁷ National Conference on State Legislatures. State Limits on Contributions to Candidates, 2017-2018 Election Cycle. Available at: <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx> and http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf

there will be a disincentive to participate in the public matching system. Furthermore, if the first \$175 of a contribution is matched with public funds (rather than matching only small contributions), taxpayers will be providing matching funds for very large contributions, undercutting the goals of the public matching system.

The Governor's bill establishes a \$25,000 contribution limit on donations to party and constituted committees, including housekeeping accounts, which is far lower than the current individual limit of \$117,300. Reinvent Albany believes the contribution limit to parties should be lower than \$25,000, and recommends it be twice the limit of individual contribution limits to candidates for Governor. This recognizes parties make campaign expenditures on behalf of a slate of nominated candidates while balancing the need to limit undue influence and the corruption risk created by large contributions.

We support lower contribution limits for individuals doing business with the city. A starting point for doing business restrictions is to restrict campaign contributions by vendors to the Governor during the restricted period when bidding on a contract, and for one year after winning a contract, as proposed by Governor Cuomo. [A.113 \(Buchwald\)/S.3167 \(Myrie\)](#) strengthens the Governor's proposal, which Reinvent Albany supports. Ideally, New York State would establish comprehensive doing-business restrictions like New York City's. New York City's doing-business restrictions 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.¹⁸

Recommendation #14: Limit Party Transfers Except for Small Individual Donations

Reinvent Albany supports Governor Cuomo's proposal in his Executive Budget bill to limit party transfers to \$5,000 except the sum of small contributions of \$500 or less could be transferred in unlimited amounts.

The Governor's proposal will encourage party and constituted committees to raise money from small donors, something they rarely do, and is important because party committees are not eligible for public financing for any public financing program we are aware of.

Recommendation #15: Limit War Chests

¹⁸ New York City Campaign Finance Board. Doing Business FAQs. Available at: <https://www.nycctfb.info/candidate-services/doing-business-faqs/>

Reinvent Albany supports limiting campaign war chests for candidates to use in subsequent elections.

Governor Cuomo's Executive Budget proposal requires candidates who want to receive public matching funds to return the portion of past contributions above the contribution limits for public financing to the donors or give it to the state's public financing fund. If candidates have already made campaign expenditures from contributions larger than the allowable limits under a public financing program, they can sign an affidavit pledging to make an equivalent payment to the public financing fund up to 30 days before the general election and still receive public financing.

A stronger alternative is a New York City bill introduced this year by Councilmember Ben Kallos. Int. 1601 requires candidates to receive written permission from donors before transferring old donations to the committee associated with the participating campaign. It also requires participating candidates to terminate any committees not related to the office being sought and submit any remaining contributions not transferred to the candidate's principal committee to the New York City campaign finance fund.¹⁹

We think these measures are good ideas for limiting campaign war chests and encouraging candidates to participate in the public financing system.

Recommendation #16: Ban Corporate Campaign Contributions

Reinvent Albany supports banning corporate contributions altogether.

Twenty-two states ban corporate contributions. New York State permits corporations to give \$5,000 annually. Limited Liability Companies (LLCs) can also make \$5,000 donations annually. Governor Cuomo proposed banning corporate and LLC contributions in [Part F of his FY2019-2020 Good Government and Ethics Executive Budget bill](#).²⁰ Corporate and LLC contributions are completely banned in New York City and partially banned at the federal level (LLCs that are partnerships or single-member LLCs and have not chosen corporate tax treatment can make contributions to federal candidates).

¹⁹ Introduction No. 1601-2019. New York City Council. Available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3983116&GUID=0D5AA707-F056-4E4A-ADB3-0C01B57E4263&Options=ID|Text|&Search=termination+of+authorized+committees>

²⁰ Governor Cuomo FY2019-2020 Executive Budget. Good Government and Ethics Reform Article VII Legislation, Part F, pgs 82-84.

Real estate companies can have dozens and sometimes hundreds of LLCs because typically each property they own or develop is its own LLC. Even companies like Amazon, which is a publicly traded C corporation, has LLCs in numerous states to avoid tax liability and to segment operations and functions within its company. We believe the law passed by the legislature and Governor in January 2019 allows each LLC to contribute \$5,000 annually. In other words, a person controlling 20 LLCs could make \$100,000 in annual contributions (20 x \$5,000 annual contributions). [Creating an LLC in New York is easy to do and involves completion of a few short forms with the Department of State and providing notification of its creation in two local newspapers.](#)²¹

The recently passed law requires the direct and indirect disclosure of members of the contributing LLC. However, we are concerned that this requirement will, in some cases, fail to disclose the person controlling the LLC or their beneficial owners. It is common for real estate industry LLCs to be controlled by other LLCs, or controlled by layers of LLCs that are “stacked” or “nested” to obscure what persons control and fund them.

We point out that the Moreland Commission on Public Corruption convened by Governor Cuomo, which had subpoena power and included some of the state's top prosecutors, could not determine who was behind the front group Common Sense Principles LLC. That entity funded a 501(c)(4) organization called Common Sense Principles that ran ads against Democratic state Senate candidates.²²

Banning corporate and LLC contributions does not mean corporations cannot participate in political giving. Corporations can still make contributions through their separate political action committees, which many of them do in lieu of direct contributions.

Inform the Public About Candidates and Campaigns

Recommendation #17: Require the Campaign Finance Board to Utilize Technology to Optimize Candidate Services and Make Campaign Finance Filings More Transparent

²¹ New York State Limited Liability(Domestic) Articles of Organization (DOS 1336) Form. Available at: https://www.businessexpress.ny.gov/app/answers/cms/a_id/2443/kw/domestic%20LLC

²² “So who pays for Common Sense’s political spending in New York? Despite issuing a number of subpoenas and conducting several interviews, the Commission still cannot say,” The Commission to Investigate Public Corruption, Preliminary Report, pgs 39-41. December 2, 2013. Available at: <https://publiccorruption.moreland.ny.gov/press-release/moreland-commission-investigate-public-corruption-releases-report.html>

Reinvent Albany supports the new Campaign Finance Board being required in law to issue a Request For Information (RFI) and Request For Qualifications (RFQ) for employing software/technology to make campaign finance disclosure user-friendly and transparent.

Campaign finance databases administered by the State Board of Elections are outdated. Investments need to be made to make the interface candidate friendly for compliance and usability, and to make campaign finance filings more transparent to the public. For example, the campaign finance reports filed with the New York City Campaign Finance Board are more accessible to the public because they can be downloaded as a CSV (Comma Separated Values) file while the filings with the State Board of Elections are only available in ASCII (American Standard Code for Information Interchange) format, which does not allow for third party analysis in more commonly used programs like Microsoft Excel or Google Spreadsheets.

Recommendation #18: Provide More Candidate Information to Voters

Reinvent Albany supports the public financing program including the issuance of a digital Voter Guide and the administration of debates to inform voters.

The newly established Campaign Finance Board should be required to publish online a digital voter guide to all registered voters with an opt-in provision for voters to receive a mail copy of the guide. An opt-in provision will limit costs of the expensive printing and mailing costs associated with a paper Voter Guide, which the New York City Campaign Finance Board spends millions of dollars on in a major election year.

In addition to mandatory participation in at least one debate per election, the Board should also establish clear criteria for debate participation. For example, the New York City Campaign Finance Board allows candidates to take part in the debates after they've reached certain thresholds regarding public funds (raising and spending 3.75% of the expenditure limit of the office, for example). Another option, as in the Democratic presidential debates, would be to use polling as a standard, admitting candidates who have at least 1% support in surveys.²³ A combination of criteria could also be used to determine eligibility for debates.

C. Rationale for a Strong Public Financing System

²³ New York City Campaign Finance Board. Candidate Debates. Available at: <https://www.nycffb.info/nyc-votes/debates/>

The overhaul of the state’s public financing system is long overdue. It is widely recognized that state campaigns are overwhelmingly funded by wealthy donors and special interests with business before the state. These individuals and entities make enormous contributions that increase the risk of corruption, influence policy priorities, and result in greater access to public officials. Most ordinary New Yorkers do not participate in funding campaigns – less than 1 percent of New Yorkers give any campaign contributions at all. A public financing system will encourage candidates to engage their constituents and raise money from a more diverse group of New Yorkers, ensuring that every voice has more of an opportunity to be heard in Albany.

Big Money Skews Policy and Is a Corruption Risk

Governor Cuomo and state lawmakers established the Public Campaign Financing and Election Commission in the Fiscal Year 2019-2020 budget as recognition of the state’s current system being broken and long overdue for reform. The Commission is charged with designing a public financing program in furtherance of the goals of “incentivizing candidates to solicit small contributions, reducing the pressure on candidates to spend inordinate amounts of time raising large contributions for their campaigns, and encouraging qualified candidates to run for office.”²⁴

The public financing system the Commission is charged with creating is a much needed reform decades in the making. [In 2013, the Moreland Commission to Investigate Public Corruption, appointed by Governor Andrew Cuomo, recommended establishing a public financing proposal](#) as crucial for reducing government corruption and conflicts of interest.²⁵ In 1991 – 28 years ago – the [New York State Commission on Public Integrity, convened by Governor Mario Cuomo, recommended a public financing system](#), declaring, “The campaign finance law of the State is a disgrace and an embarrassment.”

²⁶

It is widely acknowledged that political giving in New York State is dominated by wealthy donors and special interests with business before the government. Campaign funding from a select few skews policy outcomes because it diminishes the voices of the state’s diverse residents. The 100 top donors contributed more to state candidates in 2018 than all 137,000 estimated small donors combined, according to the Brennan

²⁴ Part XXX of Chapter 59 of the Laws of 2019.

²⁵ The Commission to Investigate Public Corruption, Preliminary Report. December 2, 2013. Available at: <https://publiccorruption.moreland.ny.gov/press-release/moreland-commission-investigate-public-corruption-releases-report.html>

²⁶ New York State Commission on Public Integrity. *Integrity and Ethical Standards in New York State Government: Final Report to the Governor*, 18 Fordham Urb. L.J. 251 (1991), p. 253. Available at: <https://ir.lawnet.fordham.edu/ulj/vol18/iss2/4/>

Center for Justice. In 2014, just one-half of one percent of New York’s adult population gave any money at all to a state legislative or gubernatorial candidate.²⁷

State lawmakers raise far more of their campaign contributions from large donors and those with business before the state than they do small donors. The Moreland Commission to Investigate Public Corruption reported that candidates between 2009 and 2012 received 79% of their campaign funds (over \$180 million) from donors who gave more than \$500; 65% of funds from donors who gave \$1,000 or more; and only 3% of funding came from donations of under \$100.²⁸ The problem is even more acute when looking at legislative committees. The Moreland Commission reported the Assembly Health and Senate Committee Chairs in 2011-2012 received about three quarters of their campaign contributions from lobbyists or the healthcare and insurance industries.²⁹

Reinvent Albany’s recent analyses show Senate and Assembly leadership during the 2018 election cycle raised few campaign donations from the very people they are elected to represent. [Just 16 percent of contributions raised by Assembly leadership came from their constituents.](#)³⁰ [Nineteen Senate leaders raised only 23 percent of their contributions from district residents.](#)³¹ Both the Senate and Assembly raise much higher percentages of their money from special interests. The Senate leadership raised 39 percent, and Assembly leadership 48 percent, of their contributions from special interests – corporations, associations, and unions – most with business before the state. [The top donors to Speaker of the Assembly Carl Heastie](#)³² and [Senate Temporary President and Majority Leader Andrea Stewart-Cousins](#)³³ are mostly doing business entities making contributions larger than those allowable for candidates for the Presidency of the United States.

²⁷ Michael Malbin and Brendan Glavin, “Small-Donor Matching Funds for New York State Elections:A Policy Analysis of the Potential Impact and Cost*”, p 12. The Campaign Finance Institute. February 2019.

²⁸ The Commission to Investigate Public Corruption, Preliminary Report, pgs 30-31. December 2, 2013. Available at: https://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf

²⁹ Ibid, p. 31.

³⁰ Reinvent Albany, “Report: Assembly Leaders Get Few Contributions From People in Their Districts,” May 23, 2019. Available at: <https://reinventalbany.org/2019/05/only-16-of-campaign-donations-assembly-leadership-receives-are-from-people-in-their-districts/>

³¹ Reinvent Albany, “Less Than 1 in 4 Campaign Donations to 19 NYS Senate Democratic Leaders Are From People in Their Districts,” July 1, 2019. Available at: <https://reinventalbany.org/2019/07/less-than-1-in-4-campaign-donations-to-19-nys-senate-democratic-leaders-are-from-people-in-their-districts/>

³² Campaign Contributions to Assembly Speaker Carl Heastie, 2017-2018 Election Cycle.

³³ Campaign Contributions to Senate President Andrea Stewart-Cousins, 2017-2018 Election Cycle.

Large contributions by the wealthy and those doing business with the state increases the risk of corruption and creates a pay-to-play culture that too often has resulted in criminality in Albany. According to the Moreland Commission to Investigate Public Corruption, between 1999 and 2013, 1 of every 11 lawmakers left office “under the cloud of ethical or criminal violations.”³⁴ That was before the convictions of both the previous Assembly Speaker Sheldon Silver and Senate President Dean Skelos.

A strong public financing system limits undue influence and the risk of corruption. In New York City, where public financing of elections has worked well for 30 years, voters are able to choose from candidates running for office in more contested and competitive elections.³⁵ A 2012 Citizens Union report found 21 percent of state legislative contests in New York City were uncontested while only 9 percent of Council races were, and Council primaries average 4 candidates while state legislative races mostly have just 2 candidates.

Candidates also come from more diverse backgrounds under a public campaign finance system, including more candidates who are people of color, women, and from different socioeconomic backgrounds. Lawmakers have more latitude to make decisions that are in the best interest of New York State and their constituents because their dependence on any single large donor is diminished.

D. Truths about the Public Financing of Elections

There is, unfortunately, no shortage of myths and misinformation about the public financing of elections. Below are findings that address common misperceptions about public financing.

Public Financing Has Had Little Impact on the Re-Election of NYC Incumbents

Lawmakers privately express concerns that public financing could cause them to lose re-election. The facts do not bear this out. The re-election rate for incumbent Councilmembers from 2005-2013 in New York City under a public matching system was 94.1 percent, while for state lawmakers from New York City it was 96.5 percent,

³⁴ Ibid, p. 11.

³⁵ Citizens Union, “[Fair Elections for New York State: How Public Matching Creates Greater Voter Choice and Competition](https://citizensunion.org/portfolio-item/citizens-union-report-finds-city-council-elections-are-more-competitive-than-state-races/),” November 19, 2012. Available at: <https://citizensunion.org/portfolio-item/citizens-union-report-finds-city-council-elections-are-more-competitive-than-state-races/>

according to a Citizens Union report.³⁶ In 2017, only a single Councilmember of 41 incumbents lost a race for re-election. In the State Senate, 11 incumbents lost in the primary or general elections during the 2018 election without a public matching system.³⁷ A New York City Independent Budget Office (IBO) analysis revealed that during the 2017 elections, New York City incumbents were more likely to qualify for public funds, and received more public funding than challengers.³⁸ While the City Council has term limits, which may cause challengers to wait for open seats, there is little evidence to suggest incumbents lose seats in significant numbers as a result of public financing.

Public Financing Will Cost \$3 a Year Per New Yorker and May Save Money

Public financing elections is a very small cost – especially given the magnitude of its impact on our democracy. According to the Campaign Finance Institute, publicly financing New York State elections will cost about \$60 million annually. This includes \$20 million in increased administrative costs to run the program.³⁹ Public financing would be less than 1/2 of 1/1,000th of New York’s \$175 billion state budget. Put another way, it costs about \$3 a year per New Yorker, the price of a cup of coffee, to ensure greater integrity of New York State government.

Some have said the State can’t afford public financing. The reality is public financing could very well save taxpayers enormous amounts of money by curbing budget giveaways to wealthy donors. Consider just one high profile example cited by the Moreland Commission on Public Corruption: in 2013, five otherwise ineligible luxury properties on Billionaire’s Row in Manhattan received 421-a tax benefits costing New York City tens of millions of dollars in foregone revenue.⁴⁰ The owners of those buildings had given hundreds of thousands in campaign contributions to state elected officials.

Public Financing Has Little Impact on Independent Expenditures

³⁶ Citizens Union, “Fair Elections For New York State, March 2014 Update: How Public Matching Creates Greater Voter Choice and Competition,” November 2012, p. 3. Available at: http://rebranding.citizensunion.org/wp-content/uploads/2015/04/CUCompetitivenessReport_March20141.pdf

³⁷ https://ballotpedia.org/New_York_State_Senate_elections,_2018

³⁸ New York City Independent Budget Office, “NYC By The Numbers: Did Incumbents or Their Challengers Benefit More From the City’s Campaign Finance System?,” October 29, 2018. Available at: <https://ibo.nyc.ny.us/cgi-park2/2018/10/did-incumbents-or-their-challengers-benefit-more-from-the-citys-campaign-finance-system-in-2017/>

³⁹ http://www.cfinst.org/pdf/State/NY/Policy-Analysis_Public-Financing-in-NY-State_Feb2019_wAppendix.pdf

⁴⁰ The Commission to Investigate Public Corruption, Preliminary Report. December 2, 2013, p. 34. Available at: https://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf

Speaker Carl Heastie has raised concerns that a public matching system would make candidates more vulnerable to independent expenditures. Independent expenditures are campaign spending by third party groups and individuals that are legally barred from coordinating with candidates. Independent expenditures are constitutionally permissible and will occur regardless of whether a public matching system exists.

A public matching system has little impact on independent expenditures for better or for worse. If anything, public financing enables a candidate to get their message out to compete against independent expenditures. During the 2017 election cycle in New York City, only \$1.5 million was spent by independent spenders on all races, down precipitously from \$16 million during the 2013 election cycle, likely because in 2017 there were fewer open seats, more incumbents running, and fewer races perceived to be competitive.⁴¹ \$1.2 of the \$1.5 million spent was in support of candidates, with only two candidates facing independent expenditures in opposition to their candidacy.⁴² The 2017 election cycle, with few open seats, is more likely to resemble state races because the state legislature does not have term limits. Independent expenditures were hardly impactful during the 2017 city elections.

If candidates believe for some reason that they will be harmed by a public matching system, they can simply opt out, as the system is voluntary for all candidates.

Public Financing Is Little Affected by Minor Party Lines

Governor Cuomo and Speaker Heastie have said the minor parties and candidates running on multiple party lines complicates a public matching system. Reinvent Albany disputes this and has not found any evidence supporting this assertion, nor has it been an issue for New York City's public matching system. In Governor Cuomo's bill, public match funds are distributed to candidates based on reaching eligibility thresholds and how much money they raise from small donors. Public money is tied to candidates, not party lines. Transfers by party or constituted committees are not matchable for major or minor parties in Governor Cuomo's Executive Budget proposal. In the Governor's bill, candidates must have an opponent on the ballot to receive public funds except if they run uncontested in a primary election, and there is also a Democratic or Republican primary for the same office. Minor party lines would only substantially impact public financing, as proposed by the Governor, if: 1) a third party primary occurs in which at least one candidate actually qualified for public matching funds, and a major party also

⁴¹ New York City Campaign Finance Board, "Keeping Democracy Strong: New York City's Campaign Finance Program in the 2017 Citywide Elections," p. 83. Available at: <https://www.nycfb.info/program/2017-post-election-report/>

⁴² Ibid, pgs. 86-89.

had a primary for the same office; or 2) a candidate only has a minor party line in a contested general election and qualifies to receive matching funds. We believe both these scenarios are rare.

NYC CFB Enforcement Can Be More Customer-Service Friendly But its Overzealousness is Exaggerated

There is a perception that the New York City Campaign Finance Board is overzealous in its enforcement of campaign finance law.

Here are the facts: a majority of city candidates during the 2013 elections received no penalties (46.3%) or less than \$1,000 in penalties (57%).⁴³ Eighty-one percent of candidates are fined between \$0 and \$5,000.⁴⁴ The most common violation in New York City was accepting corporate contributions, which are banned in New York City but not New York State. This would not be a violation in New York State unless contributions were more than \$5,000 annually from one corporation.⁴⁵

Reinvent Albany recognizes the CFB can make improvements to its campaign finance administration. Audits take too long. Candidates feel it is challenging to navigate the system without being penalized and fined. The Board needs to use technology – especially TurboTax-like online tools – to make compliance easier for candidates. The Board needs a more customer-friendly approach with sufficient candidate liaison staff dedicated to particular races and districts.

The good news is, these are all issues the Commission can address. The Commission can create a more customer-service friendly enforcement unit in the public financing legislation in the budget. Campaign Finance Board enforcement should not be an excuse for failing to create a strong, independent enforcement agency outside of the State Board of Elections.

⁴³ New York City Campaign Finance Board, “Keeping Democracy Strong: New York City’s Campaign Finance Program in the 2017 Citywide Elections,” p. 133. Available at: <https://www.nycffb.info/program/2017-post-election-report/>

⁴⁴ Ibid, p. 134.

⁴⁵ Ibid, p. 136.