



## **Testimony to the Public Campaign Financing Commission on Creating an Effective and Independent Campaign Finance Board**

**September 18, 2019**

Good morning members of the Public Campaign Financing Commission. My name is Tom Speaker, and I am a Policy Analyst for Reinvent Albany. Reinvent Albany is a government watchdog organization that advocates for open and accountable government, including a clean and strong democracy.

Reinvent Albany believes the Commission should establish a strong public financing system in New York State that can serve as a model for the nation.

A strong public financing system will:

1. Dramatically lower contributions limits and establish doing business restrictions.
2. Have high levels of participating candidates.
3. Increase political giving by everyday New Yorkers.
4. Have independent and fair enforcement.

Reinvent Albany has issued 18 comprehensive recommendations for establishing a strong public financing system.<sup>1</sup> Today I will provide more specific details on our two previously provided recommendations related to independent enforcement. A public financing system cannot function properly without a campaign finance agency overseen by an independent board that is separate from the Board of Elections, securely funded, and able to credibly enforce the program.

- ***Create an Independent Campaign Finance Board Outside of the Board of Elections*** (Recommendation #1 in our Comprehensive Recommendations)

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<sup>1</sup> Reinvent Albany. *18 Policy Recommendations for a Strong Public Financing Program*. August 2019. Available at: <https://reinventalbany.org/wp-content/uploads/2019/08/Reinvent-Albany-Policy-Recommendations-to-NYS-Public-Campaign-Financing-and-Election-Commission-Members.pdf>

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- ***Provide an Enforcement Agency Budget That is a Fixed Percentage of the Division of Budget's Funding*** (Recommendation #4 in our *Comprehensive Recommendations*)

## ***Create an Independent Campaign Finance Board Outside of the Board of Elections***

### *Board Structure and Composition*

Reinvent Albany believes that the Commission should establish a Campaign Finance Board completely outside of and independent from the Board of Elections, with a process for nominating board members that ensures the Board remains independent.

New York City and all five states with a public financing option for legislative candidates – Arizona, Connecticut, Hawaii, Maine, and Minnesota – have a separate campaign finance board and agency. It would be unprecedented and bad policy for New York State to place the campaign finance system under the Board of Elections.

We recommend that the board have five members with no more than two board members from the same political party, as in NYC and four of the five states with public financing (Minnesota's board has six members). We also strongly recommend that the Board chair and vice chair be chosen by the members to ensure greater independence, as in all of the aforementioned states.

All board members should meet the following requirements:

- Each member is a resident of New York State.
- No board member may have run for or served in elected office, or been appointed as an officer of a political party during the past five years.
- No board member may simultaneously serve on the State Board of Elections or local board of elections.
- No board members may be a registered lobbyist or an employee of a registered lobbyist, have lobbied or worked as a paid staffer on a candidate's campaign committee or as a political consultant within the past two years.
- Board members should be prohibited from making political contributions to any state candidate or state committee while serving, and for one year prior to or after serving.

- When deciding nominations, the commission should consider general campaign experience or election law expertise in New York State.

To encourage independence from the elected officials the board will oversee, Reinvent Albany suggests that ten board potential members be nominated by an entity separate from the legislative and executive branches of government, such as the Commission on Judicial Conduct or even a nongovernmental entity such as the New York State Bar Association, both of which are highly regarded and independent from the public finance system.<sup>2</sup> That entity could receive and review applications for Board positions, evaluate candidates, then submit its nominations to the Governor, who could pick five that would be subject to approval by both houses of the legislature. We think this approach strikes the right balance and achieves independence by involving elected officials who report to the public. It also prevents conflicts by enabling members chosen by those outside the public financing program to screen candidates.

What we suggest is similar to the process used by the Hawaii Campaign Spending Commission. We recommend the Public Finance Reform Commission take a close look at what Hawaii has done to foster more independent campaign finance enforcement.

In Hawaii, the state's Judicial Council takes applications from the public and submits ten nominees to the Governor, who picks five (not subject to legislative confirmation). The Judicial Council is chaired by Hawaii's chief justice, consists of up to 15 members nominated by the Hawaii Supreme Court, and is required to include "laypersons as well as judges and lawyers" as members.<sup>3 4</sup>

### *Streamlined Process for Addressing Campaign Finance Violations.*

Beyond the structure and composition of an independent campaign finance agency, it is essential that the Commission codify a streamlined process for addressing campaign finance violations.

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<sup>2</sup> The Commission on Judicial Conduct investigates allegations of misconduct against New York state judges and can censure or remove from offices judges found to have acted illegally or unethically. The Commission on Judicial Conduct has eleven members, with four nominated by the Governor, three by the Chief Judge of New York state, and one each by the leaders of the State Senate and Assembly. <http://www.scjc.state.ny.us/General.Information/Gen.Info.Pages/members.htm>

<sup>3</sup> Justia. 2013 Hawaii Revised Statutes Title 32, 601-4. <https://law.justia.com/codes/hawaii/2013/title-32/chapter-601/section-601-4/>

<sup>4</sup> The Hawaii Supreme Court, in turn, is chosen by the Governor from nominations by the Judicial Selection Commission, a nine-member commission that is nominated by various legislators and legal staff. [https://www.courts.state.hi.us/courts/judicial\\_selection\\_commission](https://www.courts.state.hi.us/courts/judicial_selection_commission)

Previously, Reinvent Albany called on the Commission to create a penalty schedule in law laying out fines for different types of infractions, including: 1) repeat and one-time offenses; 2) cured and uncured infractions; and 3) willful and unwillful infractions.

Reinvent Albany thinks the New York City Bar Association's testimony to the Commission in New York City on September 10, 2019 and their associated report is very good and recommend the Commission heed it.<sup>5</sup>

Previously, we recommended that the new campaign finance agency enforcement officials should have discretion to assess routine civil penalties for violations of campaign finance law. Larger penalties or those totaling more than \$1,000 should be reviewed by the Board in a public meeting at which the accused can contest the violations. Alleged violators would also have the ability to contest those penalties in a judicial proceeding pursuant to Article 79 of the Civil Practice Law and Rules.

Reinvent Albany believes the Board of Elections's current two-step process requiring the Chief Enforcement Counsel to hold an administrative hearing to determine if violations occurred, followed by a subsequent court proceeding to impose civil penalties, is unwieldy, bureaucratic and discourages timely and consistent enforcement. This atypical approach is not done by other agencies, such as the Joint Commission on Public Ethics, for minor violations of lobbying laws.

Furthermore, we believe the current enforcement system is backwards. Under the current campaign finance system, the Board must prove to a hearing officer that a violation took place. This obstacle makes no sense for addressing routine violations like late, missing, erroneous or incomplete campaign finance filings. A motorist receiving a traffic ticket must pay a fine or contest that ticket in a hearing – but it is the responsibility of the motorist to contest the ticket. Similarly, election enforcement staff should be able to issue fines for routine violations, just as police do.

Furthermore, a complaint can be dismissed by a hearing officer because it is a de minimis violation. This standard is unacceptable, and deters the Chief Enforcement Counsel of the Board of Elections from commencing more administrative hearings for these types of violations.

***Provide an Enforcement Agency Budget That is a Fixed Percentage of the Division of Budget's Funding***

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<sup>5</sup> The New York City Bar Association. "Safeguarding New York's Election: The Unfinished Business of the Moreland Commission to Investigate Public Corruption," September 10, 2019. Available at: <https://s3.amazonaws.com/documents.nycbar.org/files/2019557-MorelandAssessmenElectionLaw.pdf>

Reinvent Albany believes that to function effectively, the Campaign Finance Board must have a consistent source of funding, and that the best way would be to tie the Board's funding to that of the Division of Budget.

In every state with a campaign finance board that regulates legislative candidates, there have been attempts to nullify the board. Last year in Maine, a typo in legislation left the State's Commission on Governmental Ethics and Election Practices unable to channel public funds.<sup>6</sup> Some legislators had noticed the typo and deliberately avoided addressing it in order to damage the Commission.<sup>7</sup> When a bill fixing the typo was introduced, many legislators said they would refuse to pass it without cuts to the Commission's funding.

Similarly, when a bill was passed establishing a public financing system in Hawaii County, provisions in the legislation allowed for the program to be shuttered if there was a depletion of funds. Hawaii County's program ended up only lasting two election cycles, and shut down in 2014.<sup>8 9</sup>

To avoid such blunders, the Board should make its funding a percentage of the Division of Budget. One model would be New York City's Independent Budget Office (IBO) in New York City, whose 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.

So that the program can continue to function, the Commission should also follow Connecticut and make sure that backup funding is provided in periods of fiscal hardship or when there are more candidates eligible for funds than the budget can cover. Under Connecticut law, if there are insufficient funds, the Citizens' Election Fund is entitled to

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<sup>6</sup>Bangor Daily News. "Don't like clean elections? Try to change the law, don't hold funding hostage." July 17, 2018.

<https://bangordailynews.com/2018/07/17/opinion/editorials/dont-like-clean-elections-try-to-change-the-law-dont-hold-funding-hostage/>

<sup>7</sup>Bangor Daily News. "Tardy Maine lawmakers finally passed a school aid bill, but 53 skipped out before they did." June 27, 2018.

[http://stateandcapitol.bangordailynews.com/2018/06/27/tardy-maine-lawmakers-finally-passed-a-school-aid-bill-but-53-skipped-out-before-they-did/?\\_ga=2.247404228.1916376696.1567521212-4563443.1567521212](http://stateandcapitol.bangordailynews.com/2018/06/27/tardy-maine-lawmakers-finally-passed-a-school-aid-bill-but-53-skipped-out-before-they-did/?_ga=2.247404228.1916376696.1567521212-4563443.1567521212)

<sup>8</sup> Campaign Spending Law, Hawaii Revised Statutes. July 2019.

<http://ags.hawaii.gov/campaign/files/2019/07/HRS.pdf>

<sup>9</sup> Hawaii Campaign Spending Commission. Retrieved Sept. 16, 2019. <http://ags.hawaii.gov/campaign/cc/public-funding-programs/hawaii-county-council-comprehensive-public-funding/>

receive some portion of state tax revenues.<sup>10</sup> Attempts to diminish a public financing system are inevitable, but these provisions help the system continue to thrive.

Thank you for the opportunity to testify today and at past hearings. I welcome any questions you may have.

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<sup>10</sup> LawServer. Connecticut Revised Statutes 9-750. Current as of 2018. [https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut\\_statutes\\_9-750](https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_9-750)