



Reinvent Albany Calls on Commission to Move Campaign Finance Administration and Enforcement to Separate Agency Outside of NYS Board of Elections

Agrees With SBOE Testimony on Some Compliance Unit Reforms

Responding to testimony from the Board of Elections on October 22nd, Reinvent Albany sent a letter to the Public Financing and Elections Commission today asking that campaign finance enforcement be conducted by an independent campaign finance board and agency outside of the State BOE – as is done in all five states that provide public financing for legislative candidates.

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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

October 31, 2019

VIA EMAIL

Dear Commissioners:

Thank you for holding your October 22nd hearing in Suffolk County. We write to respond to and support some of the proposals made by the State Board of Elections (SBOE).

We join national experts like the Brennan Center in again urging you to establish a campaign finance enforcement entity outside of the State Board of Elections. All five states that provide public financing for legislative candidates – Arizona, Connecticut,

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Hawaii, Maine, and Minnesota – have an outside entity that administers the public financing program and enforces campaign finance law.

We oppose SBOE’s proposal to create a new enforcement unit or “panel” within the SBOE dedicated to enforcing public financing rules, which we believe would be redundant, bureaucratic and reduce public accountability. If the Board is sufficiently independent to enforce campaign finance law, then there is no need to create another panel within the Board.

This said, we support the SBOE’s request to the Commission to enact some reforms that will help SBOE enforce campaign finance rules, irrespective of a public matching system. Specifically, we join with SBOE and ask the Commission to do the following:

Give SBOE the authority to issue a schedule of fines for routine violations

A penalty schedule will ensure that the fines assessed for violations are fair and consistent. A schedule of fines and penalties should distinguish between repeat and first-time offenders, willful and unwillful violations, and cured and uncured violations. Reinvent Albany recommended a penalty schedule in the [18 recommendations that we sent to the Commission earlier this year \(Recommendation #3\)](#).

Give SBOE compliance staff authority to assess fines for minor violations

Minor campaign violations should be treated like traffic tickets, not major crimes. The board has sensibly proposed allowing compliance staff to issue fines for minor violations directly without having to go through the enforcement counsel. This will also simplify the process for addressing minor violations, which have been largely ignored and are subject to needless layers of bureaucracy. Candidates could contest the fines through administrative appeal to the State Board. This would free up the enforcement counsel to pursue the major cases that should be a greater priority.

However, we believe that the Commission should go further in streamlining the process and removing other layers of administration that prevent effective enforcement. To this end, the Commission should:

Remove hearing officers from the enforcement process

The enforcement counsel should not have to go before a hearing officer to prove that wrongdoing occurred. This step in the process creates unnecessary bureaucracy and should be eliminated altogether. If the accused wishes to contest the counsel’s determination, they should be able to do so before the SBOE board members or through a judicial proceeding.

Limit the authority to waive de minimis violations

Hearing officers can currently waive de minimis violations, discouraging the enforcement counsel from commencing enforcement actions. We think hearing officers should be eliminated, and the SBOE board members should have the authority to dismiss a violation as “de minimis,” but not without cause. This places too much burden on the counsel to prove wrongdoing and enforce campaign finance laws.

The adoption of the Board’s compliance unit reforms would be an improvement over the current enforcement process. But more broadly, we are concerned that ongoing issues with enforcement at the Board would complicate the implementation of a public financing program. Efficiency would be the purpose of placing the public financing system under the Board of Elections, but it’s unclear how efficiency could be achieved by grafting public financing onto an inefficient system.

We believe that the best remedy for these issues would be to create an independent board and agency outside of the Board of Elections, with a new appointment process to ensure that board members have a greater degree of independence from the elected officials they’ll be overseeing. This would be consistent with tested public financing programs for state legislative offices and provide the campaign finance system with the independence it needs.

Regards,

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