PRESERVING OUR DEMOCRACY:

The Case for Campaign Finance Reform for New York State

A Briefing Paper Prepared by the League of Women Voters of New York State Education Foundation and the League of Women Voters of New York State

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Preface

Public awareness about the corruptive influence of money in politics has mushroomed in light of the decision of the United States Supreme Court in the *Citizens United* case. The public looks to campaign finance laws to protect our system of democracy. This background paper and the accompanying PowerPoint presentation examine how the present New York State system of campaign finance regulation falls short and offers suggestions for its improvement. While much has been written about the importance of campaign finance reform in restoring public trust in our political system, the public is not well aware of New York's specific shortcomings relating to sky-high contribution limits, loopholes and weak enforcement. Further, the paper proposes the adoption of a public finance system as a mechanism for increasing voter participation in elections, empowering small contributors to have significant impacts on campaigns, opening the doors to a more diverse pool of potential candidates for electoral office and blunting the power of wealthy contributors to affect our elections and influence our elected officials.

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Introduction

Criticisms of New York State's campaign finance laws are plentiful and harsh. The contribution limits are far too high, enforcement is too lax, loopholes abound, and the influence of special interest groups and large donors is unfettered. But many believe the real problem with New York's campaign finance system is in the consequences of those laws. When most of the money spent on politics comes from a small number of people who can afford to contribute large amounts, the result is unequal political power.[1] Over one-third of the money that New York State candidates and political parties raised last year came from a group of just 127 large donors. [2]

In other words, the people lose. We lose when money unduly influences our elections. We lose when our elected officials spend inordinate amounts of time raising money for their reelection rather than attending to the business of government. We lose when people interested in running for office do not do so because of their inability to finance campaigns against entrenched incumbents. We lose when our elected officials depend on special interests to fill their election coffers, and when that dependence may influence the judgment of our legislators with respect to the laws that they vote upon.

The League of Women Voters of New York State believes that strong, well-enforced campaign finance restrictions, along with "matching grants" that multiply the impact of small donations, are a pathway to increasing voter participation, enabling candidates to compete more equitably for public office, and lessening the impact of special interests on governmental processes. Interest in reforming New York State campaign finance laws and public financing was heightened by their inclusion in Governor Cuomo's agenda last January, and his continuing expressed interest in enacting reforms.

We believe the time for campaign finance reform is now.

How do campaign finance laws work?

In order to understand how New York's campaign finance laws need to be remade, some basic facts about campaign finance law need to be clarified. Just as the governments of the United States are divided into federal and state jurisdictions, the laws governing the manner in which political campaigns are financed and run are divided among the federal laws, which govern the races for federal office (President, Senators, Representatives) and state laws, which apply to statewide government offices (Governor, State Senate, State Assembly, Attorney General and Comptroller). In addition, localities can, and often do, enact laws that govern the conduct of their campaigns for citywide or countywide office. Most notably, for purposes of the discussion of New York State law, New York City has enacted the New York City Campaign Finance Law that includes a system of public financing of elections through matching grants, thought by many to be a model worthy of emulation. See Appendix A for an explanation of how the federal and New York City campaign finance laws work.

What can be regulated by campaign finance law?[3]

Election campaigns depend on communication and communication costs money. Campaign finance laws are intended to reduce the potential for corruption or even the appearance of corruption as candidates seek funds to run campaigns. Many believe that when voters see huge amounts of money being contributed by wealthy donors, corporations, unions and other entities to influence elections, the electorate becomes disenchanted with the electoral process and

withdraws from it. Therefore, campaign finance reforms have the potential to help re-engage the voters in the electoral process.

There are three primary methods for regulating campaign finance: disclosure, contribution limits, and public financing.[4] Not all campaign finance regulatory systems contain all three components. New York State, at the present time, regulates disclosure and contribution limits but provides no public financing.

Disclosure

Disclosure is the most basic form of campaign finance regulation. All states require some level of disclosure from candidates, committees, and political parties of the amount and source of contributions and expenditures; they vary in the detail required to be disclosed and in the frequency of reporting.

Many states now generally require electronic disclosure. Candidates are required to file their reports electronically and the information is then posted on a public Web site. Electronic filing is favored because it is quick, accurate, and inexpensive and avoids a time-consuming, error-prone and expensive data entry process.

Contribution Limits

Limiting the amount and source of campaign contributions is one of the most common tactics for regulating money in politics. States commonly place limits on contributions to candidates from various sources, and also on contributions to political action committees (PACs) and political parties. Just four states – Missouri, Oregon, Utah and Virginia – place no limits on contributions at all. Another seven states – Alabama, Indiana, Iowa, Mississippi, North Dakota, Pennsylvania, and Texas – have minimal contribution limits. These states limit or prohibit contributions by corporations and unions to candidates, but leave contributions from all other sources unlimited. In the remaining 39 states, contributions to candidates from individuals, political parties, PACs, corporations and unions are typically limited or, in the case of corporations and unions, prohibited outright.

Public Financing of Campaigns

A number of states and localities have programs that give grants of public funds to candidates and/or political parties for their campaigns. The grants are small in some cases, while in others a public grant may cover nearly the entire cost of a candidate's campaign. In all cases, participation in public financing programs is voluntary. Candidates who choose to participate are required to (1) adhere to spending limits, and (2) limit or cease raising private contributions. Public campaign financing systems generally fall into one of two models: (1) matching funds systems (also known as “partial public funding” or “Fair Elections”), and (2) full public financing systems (also referred to as “Clean Elections”). In a matching funds system,

candidates raise private money throughout the campaign and are given public dollars that "match" (usually on a multiple basis) private contributions up to a capped amount. The New York City system, described in Appendix A, is an extensive matching system that has functioned well for over 20 years.

In a full public financing system a candidate qualifies by raising a certain number of small contributions at the beginning of the campaign, and is then eligible for a public grant sufficient to run a campaign. In a full public financing system, once the candidate has qualified for and decided to accept the public grant, the candidate may no longer raise private funds and must abide by strict spending limits. "Clean elections" programs have been operating in Arizona, Maine and Vermont since 2000 for gubernatorial candidates. In Arizona and Maine, public funding is also provided for legislative candidates. In Connecticut, a Clean Elections program began operating in 2008. In other states, the public funding program is less extensive: New Mexico and North Carolina offer full public financing for judicial candidates and candidates for selected statewide offices[5].

Regulation of Political Expenditures by Entities Other Than Campaigns, So-called "Independent Expenditures"

Traditionally, if a person wanted to support a political candidate, a check was written to the candidate directly. More recently, new ways have evolved to support or advocate defeat of a candidate that do not involve the direct donation of money to that candidate. Regulation of these types of political expenditures is more complicated than direct campaign donations because of the many types of entities involved, and the many ways in which money can be spent.

Money can be given to a political party, which can turn that money over to a candidate or use that money to help elect the candidate through advertisements, voter turn-out campaigns, mailings or other activity designed to assist the candidate's election. Money can also be donated to a PAC (political action committee). [6] The rules governing PACs are often dependent upon whether the PAC gives money directly to candidates, or uses the money in other ways to influence the political process, such as for independent expenditures.

Independent expenditures are not given directly to particular candidates but are spent in an effort to affect the outcome of elections. These expenditures are termed as "independent" because they are not supposed to be coordinated with the candidate's campaign operations, although the money may be spent in an attempt to have a particular candidate elected or defeated. Individuals, political parties, PACs and Super PACs can make independent expenditures. Campaign finance laws can regulate disclosure of the source of funding of entities making political expenditures, and require attribution of the source of funding on the political communication itself. See Appendix B for a chart of the types of political fundraising organizations and their disclosure requirements.

Disclosure also falls into the purview of federal tax laws since the tax code requires disclosure of donors if the organization meets certain qualifications. Social welfare organizations organized under Section 501(c)(4) of the Internal Revenue Code are permitted to engage in political activity so long as participation in political campaigns is not the "primary activity" of the group. Organizations created under Section501(c)(4) as well as unions and trade associations, are not required by Federal tax law to disclose their donors, although under Federal and state campaign finance laws, disclosure of donors may be required.[7]

Organizations organized under Section 527 of the Internal Revenue Code ("527's") are organized and operated primarily for the purpose of influencing or attempting to influence election to public office. There are no limits on the extent of their political activity under the Internal Revenue Code but they are required to disclose their contributors and expenditures. If the 527 qualifies as a political committee such as candidate committees, political parties and PACs it comes under the jurisdiction of Federal campaign finance laws, and thereby subject to more exacting disclosure requirements. Under Federal law, a 527 becomes a political committee if it accepts contributions or makes expenditures of over $1000 and it has, as its major purpose, the nomination or election of one or more Federal candidates. Super PACs are a species of 527; they are registered Federal political committees that make only independent expenditures (i.e., a political organization which is not connected to a campaign, does not give money directly to, or coordinate it's activity with, a particular campaign). They are subject to Federal political committee disclosure requirements that require disclosure of all receipts and disbursements, which information is available to the public.

Citizens United and subsequent cases

Although the Supreme Court's decision in the *Citizens United* case energized many to pay attention to the influx of money into political campaigns, that decision was part of a line of cases constraining Federal and state laws regulating the way money is collected and spent in political elections. Supreme Court decisions going back over thirty years have addressed campaign finance law questions relating to contribution limits, spending limits, restrictions on contributions and independent expenditures and provisions which attempted to "level the playing field" by providing for enhanced public funding monies for those candidates facing wealthy or well-funded opponents. See Appendix C for a discussion of how Federal constitutional law acts as a constraint on campaign finance laws.

Citizens United did not change laws that ban corporations from contributing directly to campaigns. Instead, it invalidated restrictions on corporations and unions spending funds from their general treasury on independent expenditures (i.e., communications that expressly advocate for the election or defeat of a candidate not coordinated with a candidate's campaign), and electioneering communications (communications that refer to a clearly defined candidate within certain time limits before an election or primary).

Although corporations are using the opportunity after *Citizens United* to enter the political arena, their spending has not, thus far, overwhelmed election campaigns. A recent analysis by the Center for Public Integrity found *Citizens United* had not led to a tsunami of contributions flowing from the treasuries of Fortune 500 corporations. Instead *Citizens United* and subsequent rulings have made household names out of a group of previously relatively unknown, very wealthy donors. Of the top that 10 donors to super PACs as of April, 2012 seven are individuals — not corporations — and four of those individuals are billionaires. (The other three are two labor unions and a physicians' medical malpractice insurance group).[8]

To say that *Citizens United* alone did not result in a sea change in political spending does not mean that a sea change has not occurred. The change is more correctly attributed to the increased use of types of political organizations outside of the candidate's campaign and the political parties to produce ads aimed at the election of or defeat of a candidate. This includes the rise in use of the 501(c)(4) organizations, which can avoid the disclosure of donors, and the Super PAC described above.

New York State's Deeply Flawed Campaign Finance Laws

There has been much written about New York State's campaign finance law, and little of it has been complimentary. Even though there are constitutional limits on the scope and extent of permissible campaign finance regulation, the laws of New York, last significantly changed in 1975, are so deeply flawed that they can be materially improved while staying within those boundaries. For more than 20 years the League has lobbied extensively for both comprehensive campaign finance reform and instituting a system of public financing. Despite the publicly announced commitments of Governors Pataki and Spitzer for comprehensive campaign finance reform, and many legislative proposals over the years, nothing has been achieved. The closest point to actual reform was in 2007 when there was a three-way agreement in Albany between the then Governor, the Assembly Speaker, and the Senate Majority Leader but no legislation was passed. Similarly, with public financing there have been decades worth of legislative proposals but no achievements. The most recent discussions on campaign finance reform have emphasized public financing as an integral part of reform, given the new influx of money in politics post-*Citizens United.*

High Contribution Limits

State election law contains provisions that establish the maximum amount of money a candidate can accept from a contributor. These limits vary depending upon the nature of the contributor (e.g., individual or corporation), the office for which the candidate is running, and the nature of the race (e.g., primary or general election). There are also aggregate limits that apply to certain categories of contributors. See Appendix D for the 2012 campaign contribution limits. The candidate and his or her spouse are subject to separate rules, as are other family members of the

candidate. Money spent by the candidate or his or her spouse is not considered to be a contribution.

The first step to ascertaining the limit on campaign contributions is to determine the category into which the contributor fits, i.e., an individual, a corporation, another candidate's political committee, an unincorporated union or trade organization, a PAC or any other entity such as a league or association. A limited liability company ("LLC"), which is similar to a partnership and is a structure used by many businesses as well as professionals, is treated as an individual.

The current limits on campaign contributions have been termed "sky-high,"[9] creating conflicts for those raising funds from donors often interested in government access and outcomes and resulting in the perception that money exerts too much influence on New York State elections**.** The limits are much higher than Federal limits and average limits in other states. For example, an individual can contribute $41,100 to a candidate for Governor in the general election, but can only contribute $2,500 to a Presidential candidate. This election cycle gubernatorial limit of $60,800 is the highest in the country and seven times higher than the national average of $8,579 for gubernatorial elections. The $16,800 limit applicable to candidates for the New York State Senate is four times greater than the national average of $4,003 for comparable office and the New York State Assembly limit of $8,200 is more than twice as high as the national average of $3,632.[10]

Unlike in many states, even some that do not limit individual contributions to candidates, corporations are allowed to make contributions up to $5,000 to candidates or political parties. An individual can also give up to $102,300 to a political party. Political parties include County and State committees and legislative committees, such as the Republican Senate campaign committee. There are no limits on contributions for ballot issues, nor are there any limits on contributions to political parties for what are called "housekeeping expenses", a type of contribution sometimes referred to as soft money.[11] There are no limits on contributions to a PAC, other than the aggregate individual and corporate limits, and there are no limits on the amount of money political parties can give to candidates. Since transfers between parties and legislative committees and single candidate committees are not considered contributions, they are unregulated as to frequency or amount, although they have to be disclosed.

Loopholes

In addition to the high limits, there are many loopholes in the law that allow contributors to give contributions far in excess of those limits. For example, although the putative limit of corporate giving is $5,000, each subsidiary or affiliated corporation is considered to be a separate entity, with the result that an umbrella corporate entity can effectively contribute many times that amount. For example, records filed with the New York State Board of Elections show that on February 22, 2011 nine separate corporations affiliated with or a subsidiary of MetLife

contributed $5,000 to a MetLife PAC, for a total of $45,000 of corporate money that is then available for contributions.

Monetary limits are also avoided by sending money through limited liability companies ("LLC's"), which the state Board of Elections has ruled have the same higher limits as individuals. Recently an Albany Times Union [12]article analyzed New York State Board of Elections filings and found that a property developer gave $26,000 to a candidate for State Senate by writing a personal check for $6,500, the legal maximum for a State Senate primary, and sent the same amount from three businesses he owns, each of which was a separate LLC controlled by the same individual. These contributions amounted to almost a quarter of the primary campaign money raised by the candidate at that time.

Pay to Play

New York State has no separate rules relating to contributions by lobbyists or state contractors who contribute generously to state campaigns. A recent study of "pay to play" in New York State by NYPIRG showed that lobby firms, their PACs and their employees donated nearly $2 million to state level candidates and party committees in 2011. Money from lobbyists thus amounted to 4% of all money raised during that time, leading NYPIRG to conclude, ". . .lobbyists working for retained firms donated nearly 70,000 times as much money *per capita* as other state residents."[13]

Eighteen states place complete bans on donations from lobbyists or place stronger limits on their donations than on those made by other persons.[14] New York City's campaign finance law has strict limits on the amounts of money that can be contributed to campaigns by lobbyists and persons doing business with the government. Connecticut campaign finance law contains an outright ban on contributions from state contractors, which was upheld by the U.S. Court of Appeals for the Second Circuit, although a similar ban on contributions by lobbyists was struck down.[15] Similarly, New York City's limit on campaign contributions from persons that have business dealings with the City has survived a First Amendment challenge.[16]

Housekeeping Accounts

The fact that unlimited contributions are made to so-called "housekeeping accounts" is an area generally acknowledged to be subject to abuse. Housekeeping accounts allow a party or constituted committee to receive contributions of any size to be used to maintain permanent headquarters and staff, and to carry on ordinary activities that are not for the express purpose of promoting or opposing specific candidates. As an example, Time Warner Cable was able to contribute $162,662.52 to the NYS Senate Republican Campaign Committee – Housekeeping account[17], a far cry from the putative $5,000 yearly limit on hard contributions from a corporation. Mayor Bloomberg, who, as an individual, is limited to a maximum annual contribution total of $150,000 for all candidates whom he might want to support, gave $1.2 million to the New York State Independence Party, which had given the Mayor its 2009 ballot

line. More recently, he gave $1 million to the state Senate Republicans, the largest single donation ever given to the legislative conference. The mayor had already given more than $2 million to the conference since 2006.

In theory, housekeeping funds are to be used to maintain the committee office, fund "Get Out the Vote" campaigns, pay for polling and the like. In addition to payment for items clearly contemplated by the statute such as rent, the money also goes, in large sums, into fundraising events, which raise even more money that can be used for campaigns.

The New York Times has editorialized that the reporting requirements are so vague that it is almost impossible to figure out how the housekeeping money is actually spent.[18] Most importantly, the housekeeping loophole allows individuals, corporations and political committees that have "maxed out" on contributions that can be used to support or oppose candidates to continue to curry favor with candidates and parties.

Personal Use

Current law purportedly prohibits the personal use of campaign funds, through a provision that states:

"[c]ontributions received by a candidate or a political committee may be expended for any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position. "[19]

Unfortunately the state Board of Election has construed this language to permit the use of campaign funds for virtually any purpose advanced as a justification. In 2006, the Brennan Center noted that candidates had interpreted this provision to allow their use of campaign monies for a variety of purchases, including country club memberships, leased cars, and other purchases that are not directly related to campaigning or governing.[20] In 2012, the situation has not changed. The Staten Island Advance recently reported that one of two State Senators representing the island spent $9,147 on a 2010 Lincoln MKX Crossover from campaign funds and $3,830 to pay for cigars given out at his annual golf-outing fundraiser. The other State Senator reported that she had spent $3,836.73 on 16 funeral flower displays.[21] Recently, a representative of the Board of Elections stated that the use of campaign funds to pay for a babysitter during a campaign would be allowable since the candidate asserted that the presence of her spouse at the event "related to the campaign."

Disclosure

In addition to contribution limits, the Election Law regulates the disclosure of contributions and campaigns expenditures. The statute contemplates the broadest disclosure: The law states that "[i]t is the obligation of the candidate to disclose ALL of the receipts and expenditures of his/her campaign, including their own money."[22] The amount of information required about the

contributors and the frequency of filing that information is, however, quite limited. The only information about the contributor that must be disclosed is his or her name and address. No information about the donor's profession or employer is required, nor does the person who acted as an intermediary to facilitate or deliver the contribution need to be disclosed.

There are two separate types of filings: election and periodic. Candidates or their committees need only file finance disclosure statements three times in connection with a particular election, twice before an election and once after the election has been held. Large contributions or loans of over $1,000 received after the cut-off date for the last pre-election filing must be reported within 24 hours of receipt, and in the post-election report.

In addition to any required election reports, all candidates and committees who are obligated to file campaign financial disclosure reports must also submit periodic reports twice a year—in January and July.[23] The law requires that filings must be done electronically, unless exemption is authorized, and the information is available to the public on the day it is received.

Enforcement

There are penalties for violations of the campaign finance law, which were recently modestly increased by the state Legislature. The prohibited acts include making, accepting or soliciting an improper contribution, as well as failure to comply with filing requirements. Penalties include return of improper contributions, civil fines and both misdemeanor and felony punishments, depending on the nature of the violation, the culpable intent and repetitive behavior.

Enforcement is by action of the New York State Board of Elections either through administrative action or by initiation of civil court proceedings, or through criminal prosecution. However, there are no periodic or random audits to ensure compliance; instead violations are uncovered from outside inquiries, and enforcement by the four-member bipartisan NYS Board of Elections is lax. Votes often end in a stalemate along party lines, with the result that appropriate action is not taken. Review of the annual reports of the NYS Board of Elections demonstrates that high rate of attrition between complaint and action. For 2008, the Board of Elections reported that it had received 108 complaints of violations of the Election Law; 70 were processed, three referred by the Board for investigation and one final determination was made. In contrast, good government groups reviewed the campaign filings for 2008 and promulgated a list of nearly 350 apparent violations of corporate campaign contribution limits alone.[24]

Any inference that the lack of enforcement actions is the result of full compliance by candidates, committees and PACs is belied by a recent analysis of filings completed by NYPIRG that found the following[25]:

- Every year, hundreds of donors give more money than is allowed by state law that has the highest limits of any state capping donation size;

- scores of candidates fail to disclose large contributions received in the run-up to Election Day;
- thousands of filings obfuscate the identity of donors or the purpose of expenditures through the inclusion of incomplete or incorrect information;
- dozens of incumbent lawmakers spend campaign funds for what reasonable people would consider to be non-campaign reasons;
- enforcement of late filings – the one violation for which the Board has played an active enforcement role – reveals that there is still significant room for improvement:
    - The fines the Board issues for this type of violation, usually between $100 and $1,000, clearly are not enough to deter candidates who appear to have no interest in filing on time or, in some cases, ever.
    - A full month after the latest filing deadline, 2,328 active committees with over $31 million in the bank based on previous filings had still not disclosed any transactions. These included 622 non-filing committees with over $12 million in the bank who have not filed, often for years, and, candidates who have filed recently, but have filed nothing but "no activity reports" for the past few reporting periods, authorized only when a committee has had no transactions over the course of a six month period. Many of the committees that have filed no-activity reports have bank accounts totaling tens of thousands of dollars or more; it is unlikely that each of them truly have not received as much as a dime in interest or paid a dollar in bank fees over the course of several years.

Critically Needed Reforms to the System

The League has long studied and advocated for campaign finance reform. We believe that it is necessary to establish a system of public financing of political campaigns in order to "ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and allow maximum citizen participation in the political process." LWVUS, *Impact on Issues, 2010-1012.*

In addition to the need to institute a system of public financing as described more fully below, our position is that the following reforms to New York State's campaign finance system are critical.

Contribution Limits and Loopholes

- Reduction of all contribution limits to levels more consistent with Federal limits, including limiting party transfers to candidates
- Special limit on contributions by lobbyists and contractors doing business with the state
- Close loopholes and place appropriate limits on corporations and unions
- Close the LLC and subsidiary loopholes

Restrictions on Housekeeping Accounts

- Ban or significantly limit party housekeeping accounts

Restrictions on Personal Use

- Clarify ban on personal use of campaign funds by candidates, including a ban on use of contributions to pay expenses related to holding office, fines and attorney fees

Improved Disclosure

- Significantly improve disclosure of political expenditures independent of the candidate's campaign
- Increased and more timely reporting of contributions and expenditures, especially immediately prior to an election
- New reporting requirements for bundlers of contributions as well as reporting of contributor's occupation and employer
- Immediate internet disclosure of alleged violations of campaign finance laws and dispositions

Enforcement

The League supports the following characteristics in an enforcement body, whether it is a new entity or a separate entity within the Board of Elections.

- Independent and nonpartisan
- Adequately financed
- Power and obligation to conduct independent audits
- Subpoena power
- Penalties should be substantially increased to further deter noncompliance
- Automatic enforcement and collection of civil penalties by administrative action, as opposed to court action

The Case for Public Financing

There is clear evidence that a well-regulated system of campaign finance laws containing public financing of campaigns has positive effects. Connecticut Secretary of the State Merrill recently issued a report evidencing the positive effects on the electoral process of that state's adoption of public financing system. Citing the fact that the lack of contested elections has been identified as a contributing factor to the public's disinterest in voting, she reported that

> "In 1996, 41 Connecticut General Assembly candidates ran unopposed. In both 2000 and 2004 at least one of the major parties failed to field a candidate in nearly 40% of Connecticut's legislative races. Residents are not motivated to vote in uncontested elections. By 2010, only 29% of Connecticut's legislative races (or 30 legislative seats) did not have a candidate from both major parties. Primary challenges have also increased under the CEP. The success of this program opens the door for increased civic engagement and political involvement". [26]

Connecticut's Common Cause has observed that since the passage of the Connecticut public financing law, and its attendant diversification of candidates elected to the Connecticut General Assembly, that body has passed many bills that never would have seen the light of day before clean elections came to Connecticut – bills including the ban on junk food and soda in public schools; an expanded bottle deposit law, which included deposits on water bottles; paid sick days, and a ban on Bisphenol A usage for infant formula and baby food cans. [27]

The New York City public financing system is specifically designed to empower small donors. It does so by "rewarding" the ability of a candidate to obtain numerous small contributions by matching each eligible contribution (up to $175) at a rate of 6 to 1. Thus, twenty contributions of $50, totaling $1,000, will result in public funding in the amount of $6,000, whereas one contribution of $1,000 will result in public funding of $1,050. Only contributions from individuals who are New York City residents are eligible. There is strong evidence that New York City's system results in participation of greater numbers of individuals in making contributions to political campaigns.

The Brennan Center for Justice concluded in 2010 that the New York City system had produced the following positive results:

- The program enjoyed robust participation by serious, credible candidates.
- Since the enactment of the multiple match, the number of overall contributors and the number of small donors increased.
- Participants relied on a greater number of smaller donors than do nonparticipants.
- The program encouraged candidates to combine fundraising and voter outreach efforts.
- The system promoted voter choice by enabling a diverse pool of candidates with substantial grassroots support but little access to large donors to run competitive campaigns.
- Finally, especially in open-seat elections, the system boosted competition by enabling greater spending parity between candidates.[28]

A more recent Brennan Center reported that New York City matching system for small donations incentivized candidates to seek donations from a wider range, more diverse contribution base.[29] Candidates who participated in both New York City and New York State elections reported to the Brennan Center that the New York City system gave them impetus to reach out to their own

constituents rather than focusing all their attention on wealthy out-of-district donors, a markedly different approach than that usually pursued during campaigns at the state level. These claims suggested to the Brennan Center that the City's public financing system contributed to a fundamental change in the relationship between candidates and their donors in New York City. The Brennan Center studied the issue and found that in fact small donors to 2009 City Council candidates came from a much broader array of City neighborhoods than did the City's small donors to 2010 State Assembly candidates.

Conclusion

New York State campaign finance law is deeply flawed, poorly enforced and lacking public financing. At this time, while the interest of our elected officials and the electorate in campaign finance reform is at its height, the League of Women Voters of the State of New York and others should make every effort to educate the public about possibilities for reform, and encourage our elected representatives to act.

[1] Michael J. Malbin and Peter W. Brusoe, "Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States"*Election Law Journal*, Volume 11, Number 1, 2012. Available at http://www.cfinst.org.
[2] New York Public Interest Research Group, "Analysis: 127 Donors Each Gave $50,000 or More to State Committees Over Past Year," February 3, 2012, available at http:/www.scribd.com/doc/80379931/NYPIRG-Largest-Donors-of-Past-Year.
[3] Much of the information in this section has been adapted from the website of the National Conference of State Legislatures, http://www.ncsl.org/legislatures-elections/elections/campaign-finance-an-overview.aspx.
[4] The Supreme Court of the United States has held that an additional method of regulating campaign finance, spending limits, are not constitutional outside of voluntary public financing systems.
[5] http://www.ncsl.org/legislatures-elections/elections/public-financing-of-campaigns-overview.aspx. This information is verified as of October, 2011; there may have been changes since then.
[6] Federal law provides for several species of PACs, including connected PACs, that can receive money only from a particular class of donors, such as the members of a particular union; non-connected PACs, that can receive money from anyone; and leadership PACs, that can be established by elected officials and political parties.
[7] However, disclosure requirements can be avoided if the organization sticks to "issue advocacy" which does not mention a particular candidate by name or constitute electioneering communications. Non-profits affiliated with Super PACS can also make contributions to the Super PACS effectively shielding the original source of the funds since the Super PAC will list the name of the non-profit as the donor.
[8] http://www.publicintegrity.org/2012/04/26/8753/top-10-donors-make-third-donations-super-pacs.
[9] http://articles.nydailynews.com/2012-04-16/news/31351333_1_campaign-finance-lobbyist-contributions-financing-of-state-elections.
[10] http://www.ncsl.org/legislatures-elections/elections/contributions-to-candidates-2008.aspx.
[11] Housekeeping accounts are defined as receipts and expenditures of a party or constituted committee used to maintain permanent headquarters and staff, and to carry on ordinary activities that are not for the express purpose of promoting the candidacy of specific candidates.
[12] Vielkind, Jimmy "Campaign funds flow from within, without**"** Albany Times Union, Wednesday, July 18, 2012: http://www.timesunion.com/local/article/Campaign-funds-flow-from-within-without-3718164.php#ixzz216NmrcpS.
[13] New York Public Interest Research Group ,"NYPIRG Analyzes Albany's "Pay to Play Culture" Lobby Firms Pump in $1.8 Million in Campaign Contributions Over Past Year," June 11, 2012, available at http://www.scribd.com/doc/96700111/NYPIRG-Pay-to-Play-Analysis.
[14] New York Public Interest Research Group, "NYPIRG Analyzes Albany's "Pay to Play Culture" Lobby Firms Pump in $1.8 Million in Campaign Contributions Over Past Year."
[15] Green Party of Conn. v. Garfield, 616 F.3d 189 (2010).
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[22]. New York State Board of Elections, Campaign Finance Handbook 2012, 5. EL 14-104 (1).
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[25] New York Public Interest Research Group, "NPIRG's closer Look: Campaign Finance Laws Routinely Flouted; Over $30 Million in Candidate Funds Missing in Action," August 22, 2012, available at http://www.scribd.com/doc/103584423/NYPIRG-31M-in-Campaign-Funds-Missing-in-Action.
[26] http://www.ct.gov/sots/lib/sots/releases/2012/3.2.12_election_performance_report.pdf.
[27] http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/IMPACT%20OF%20CEP%20ON%202012%20RACES%20FROM%20WEBSITE.PDF.
[28] Angela Migally, Susan Liss, Frederick A.O. Schwarz, "Small Donor Matching Funds: The NYC Election Experience," Brennan Center 2010.
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Appendix A

Examples of Campaign Finance Laws

FECA (Federal Election Campaign Act)[1]

Review of the federal campaign finance law is provided since its provisions govern the election of the President and members of Congress. Beginning in 1905, President Theodore Roosevelt advocated for campaign finance reform legislation to ban corporate contributions for political purposes. In response, Congress enacted several statutes between 1907 and 1966 designed to limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections regulate spending in campaigns and mandating public disclosure of campaign finances. Through amendments and review by the Supreme Court the federal campaign regulatory scheme has evolved into the following.

a. Disclosure. Candidate committees, party committees and PACs must disclose the money they raise and spend over $200 in an election cycle.

b. Contributions to Candidates FECA places limits on contributions by individuals and groups to candidates, party committees and PACs. Corporations, labor organizations, federal government contractors, and foreign nationals are prohibited from making contributions or expenditures to candidates. Furthermore, nominee contributions are banned, as are cash contributions over $100.[2]

c. Independent Expenditures Under federal election law, an individual or group (such as a PAC) may make unlimited "independent expenditures" in connection with federal elections.

d. Corporate and Union Activity although corporations and labor organizations may not make contributions or expenditures in connection with federal elections, they may establish PACs. Corporate and labor PACs raise voluntary contributions from a restricted class of individuals and use those funds to support federal candidates and political committees.

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[1] Material from this section was extrapolated from the Federal Election Commission publication: The FEC and the Federal Campaign Finance Law, Published in February 2004 (updated February 2011)

[2] Media reports are replete with stories about presidential fundraisers carrying price tags of thousands of dollars. Insight into how these fundraisers are sculpted to comply with FECA, with its $5000 maximum individual contribution limit is found in the fine print of the Obama Victory Fund contribution form.

" The first $5,000 of a contribution to OVF 2012 will be allocated to Obama for America (with the first $2,500 designated for the primary election, and the next $2,500 for the general election). The next $30,800 of a contribution will be allocated to the Democratic National Committee. Any additional amounts from a contributor will be divided among the State Democratic Party Committees as follows, up to $10,000 per committee and subject to the biennial aggregate limits: FL (17%); OH (16%); PA (13); CO (11%); NC (11%); VA (11%); NV (6%); WI (6%); IA (5%); and NH (4%). A contributor may designate his or her contribution for a particular participant. The allocation formula above may change if following it would result in an excessive contribution. Contributions will be used in connection with a Federal election. Contributions to OVF 2012 may be spent on any activities of the participant committees as each committee determines in its sole discretion and will not be earmarked for any particular candidate."

Mitt Romney's Victory Fund contains similar information.

e. Political Party Activity State, national and local political parties who engage in federal campaign activities must register with and disclose their federal activities to the FEC (subject to threshold limits). They can contribute to candidates and make limited coordinated expenditures but they may make unlimited "independent expenditures".[3]

f. Regulation and Enforcement

The Federal Election Commission has six voting members who serve staggered six-year terms. The Commissioners are appointed by the President with the advice and consent of the U.S. Senate. No more than three Commissioners may belong to the same political party.[4]

The FEC administers the public funding provisions, and, after the elections, the FEC audits each publicly funded committee. Disclosure reports are available to the public within 48 hours of receipt at the FEC Office and electronically. FEC staff is charged with review each report filed by federal candidates and committees.

The Commission has exclusive jurisdiction over the civil enforcement of the federal campaign finance law. Enforcement actions may be generated by FEC staff, by referral from other government agencies or by public complaint. Investigations require the concurrence of four of the six Commissioners. Upon a finding that the law has been violated, attempt is made to reach a conciliation agreement. . If an agreement cannot be reached, however, the Commission may file suit against the appropriate persons in a U.S. District Court. An Administrative Fine Program streamlines the enforcement process for violations involving the failure to file disclosure reports on time or at all pursuant to which published schedules of penalties are imposed that take into account the number of days a report is late, the election sensitivity of the report, the amount of activity disclosed on the report and the number of past violations (if any) by the filer.

[3] Other rules pertaining to political parties include: National party committees, however, may not solicit, receive, direct, transfer, or spend nonfederal funds. Finally, while state and local party committees may spend unlimited amounts on certain grassroots activities specified in the law without affecting their other contribution and expenditure limits (for example, voter drives by volunteers in support of the party's Presidential nominees and the production of campaign materials for volunteer distribution), they must use only federal funds or "Levin funds" when they finance certain "Federal election activity."

[4] Other rules pertaining to political parties include: National party committees, however, may not solicit, receive, direct, transfer, or spend nonfederal funds. Finally, while state and local party committees may spend unlimited amounts on certain grassroots activities specified in the law without affecting their other contribution and expenditure limits (for example, voter drives by volunteers in support of the party's Presidential nominees and the production of campaign materials for volunteer distribution), they must use only federal funds or "Levin funds" when they finance certain "Federal election activity."

New York City:[5]

The New York City Law Campaign Finance Law provides a good basis for study of campaign finance laws because it has been in effect since 1988, thus providing a good measure of effectiveness, and it has been lauded as effective, functional and well enforced. Over time, the NYC Campaign Finance Board has provided feedback to the City Council on the workings of the law and suggestions for improvements which have been enacted by the Council, resulting in a system which has been "tweeked" to reflect actual implementation, observation and problems with performance. Given the fact that about 42% [6] per cent of New York State's population resides within the City of New York, the NYC law provides a familiar framework in which to carve out reforms to the New York State Law.

There are three classes of candidates subject to the NYC campaign finance law: participants, who receive public funding, non-participants, who do not, and limited participants who chose to forgo public funding but, nonetheless, agree to abide by most of the laws applicable to participants.

a. Disclosure

New York City's disclosure laws are broad and comprehensive. All candidates, be they participants, non-participants or limited participants must comply with disclosure requirements which apply to all contributions, and must contain the name, occupation and employer of the contributor, amount of contribution, whether or not it was collected by an intermediary, and how the campaign spent its contributions Likewise, campaign expenditures must be disclosed. All candidates must make regular filings throughout the campaign, and must file daily reports of large contributions, loans, or expenditures that occur in the final two weeks of the election Disclosure information is accessible through a searchable database.

b. Permitted Contributions and Contribution Limits

Individual contribution limits are low. For the 2009 City elections, the limit for an individual contribution for office of Mayor, Public Advocate or Comptroller was $4,950. Contributions from entities doing business with the city are sharply limited and contributions from nominees are prohibited. Contributions from corporations, LLCs, LLPs are prohibited. By contrast, candidates may accept contributions up to the same contribution limits as apply to individuals from unincorporated organizations such as community groups, employee organizations/unions, and associations.

Candidates may accept contributions (subject to the same limits as individuals) from party committees or PACs.

c. Regulation and Enforcement

The New York City Campaign Finance Board is noted for being independent, nonpartisan and effective. Appointments are made by the Mayor and the City Council Speaker, each of whom appoint two people

[5] Much of the material for this section has been extrapolated from the 2005 and 2009 Campaign Handbooks published by the NYC Campaign Finance Board.

[6] quickfacts.census.gov/qfd/states/36/3651000.html (visited 7/28/2012)

of different parties to the Board, with the fifth person appointed by the Mayor in consultation with the Speaker. Regular audits are conducted by the CFB. New York City's CFB has the power to audit and subpoena campaigns before or after the election and can withhold public funds from candidates the Board believes are not in compliance. The Board cannot levy fines directly; it can make civil penalty assessments and then must go court to enforce them. Penalties are significant, ranging as high as $10,000 per violation—or even higher when participants exceed spending caps—and the Board can require campaign committees and candidates themselves to repay public funds.

Eligible participating candidates receive six dollars for each one dollar of a $175 or below contribution to use on qualified campaign expenditures. The Program limits how much money participants can spend on their campaigns, including limiting the candidate's own contributions to the campaign. Other provisions of the New York City law require participating candidates to participate in at least one debate and provide for publication of Voters Guides to help educate the voter about the candidate.

Appendix B Chart of Political Organizations

(IRC section)	Tax Treatment?	Lobbying permitted under Internal Revenue Code (IRC)?*	Political Campaign Activity permitted under Internal Revenue Code (IRC)?*	Disclosure under Internal Revenue Code (IRC)?*	Disclosure under Federal Election Campaign Act (FECA)?**
501(c)(3) Public charities and private foundations	Tax exempt. Contributions are tax-deductible and generally are not subject to the gift tax.	Permitted to engage in lobbying, so long as it constitutes "no substantial part" of the organization's activities.	Prohibited from "participating in, or intervening in … any political campaign on behalf of (or in opposition to) any candidate for public office."	Must file an annual information return with the IRS using the Form 990 series disclosing all funds raised and spent. Contributor information is not made public, except in case of private foundations.	Because a 501(c)(3) is not permitted to engage in political campaign activity under the IRC, it typically would not have any political campaign spending to report under FECA.
501(c)(4) Social welfare organizations (*E.g.*, NRA, Sierra Club, Crossroads GPS)	Tax exempt; but if the group engages in political campaign activities (*i.e*. 527 "exempt function activities"), its investment income (if any) is subject to tax. Contributions are not tax-deductible. Certain contributions may be subject to the gift tax.	Permitted to lobby without limitation provided that all lobbying is consistent with the group's tax-exempt purpose.	These groups cannot have as their "primary activity" participation in "political campaigns on behalf of or in opposition to any candidate for public office." The IRS uses a "facts and circumstances" test to determine when a group sponsoring ads is participating in political campaign activity. Factors include: (1) Whether an ad identifies a candidate for public office; (2) Whether the timing of the ad coincides with an electoral campaign; and (3) Whether the ad targets voters in a particular election.	Must file an annual information return with the IRS using the Form 990 series disclosing all funds raised and spent. Contributor information is not made public, even if the group engages in political campaign activity.	All persons and groups must file "ad specific" disclosure reports with the FEC if they purchase two types of ads: (1) Ads that expressly advocate the election or defeat of a federal candidate (*e.g.* "vote for," "vote against"). (2) "Electioneering communications," *i.e*. TV or radio ads that mention a federal candidate, are targeted to the relevant electorate, and run within 30 days preceding a primary and 60 days preceding a general election. These reports must disclose: the identity of the person or group funding the ad ("ad sponsor"); the recipients of disbursements for the ad; and contributors to the ad sponsor whose contributions were made for the purpose of furthering the express advocacy or electioneering communications.

501(c)(6) Trade associations (*E.g.*, U.S. Chamber of Commerce)					
527 Political organization that is not registered as a federal political committee	Tax exempt; but may be subject to tax if the group engages in activities that do not relate to political campaign activities, *e.g.* lobbying, or if the group does not disclose all of its donors. Contributions are not tax-deductible. Contributions are not subject to the gift tax.	Permitted to lobby subject to certain restrictions and only if it is not the group's "primary activity."	Tax law does not limit political campaign activity by 527s. A 527 is a group "organized and operated primarily" for the purpose of "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors...." Not all 527s are required to register as federal political committees, only those 527s that meet the definition of a political committee, described *below*.	Must notify the IRS of their existence within 24 hours of formation. 527s are required to file with the IRS an annual information return, and periodic reports disclosing all contributions and expenditures for which the group seeks tax exemption. 527 reports are publicly available on the IRS' Web site. Contributor information is thus public. If a 527 does not disclose a contribution, it must pay tax on that contribution.	527s are subject to the "ad specific" reporting requirements under FECA described *above*

Organization (IRC section)	Tax Treatment?	Lobbying permitted under Internal Revenue Code (IRC)?*	Political Campaign Activity permitted under Internal Revenue Code (IRC)?*	Disclosure under Internal Revenue Code (IRC)?*	Disclosure under Federal Election Campaign Act (FECA)?**
527 Political organization that is registered as a federal political committee (*E.g.*, federal candidate committees, national political parties, political action committees (PACs))		A group must register with the FEC as a federal "political committee" if: (1) It accepts "contributions," or makes "expenditures," as defined by FECA, of over $1000 in a calendar year, and (2) Has as its "major purpose" the "nomination or election" of one or more federal candidates. Tax law does not limit political campaign activity by 527s registered as political committees. Under FECA, however, committees are subject not only to disclosure requirements, but also to contribution limits and source restrictions.	527s that register and report to the FEC as political committees are relieved of many of their IRS reporting obligations.		Federal political committees are subject to extensive reporting and organizational requirements under FECA, including: (1) Registration; (2) Designation of a treasurer and committee bank account(s); (3) Filing periodic disclosure reports with the FEC disclosing all receipts and disbursements (contributor information is thus public); (4) Maintaining records for receipts and disbursements from the beginning of the committee's operations. Subject to certain exceptions, federal political committees do not have to file the "ad specific" reports described *above*, because they are already required to disclose all receipts and disbursements to the FEC in their periodic reports.

"Super-PACS" are registered federal political committees that make only independent expenditures and do not contribute to candidates or parties. Due to *Citizens United* and other judicial decisions, these "Super PACs" are now exempted from the federal contribution limits and from the restrictions on corporate and union contributions. Super-PACs remain subject to the federal political committee disclosure requirements, however.

Adapted From Campaign Legal Center www.campaignlegalcenter.org

Appendix C

Limitations on Campaign Finance Restrictions under the United States Constitution

Neither the states nor the federal government have free reign to enact laws to regulate campaign finances. Such laws must withstand scrutiny under the First Amendment to the Constitution which protects the rights of free speech and of association because donations of money to candidates and political parties is engagement in political speech and therefore spending money on elections is viewed as an exercise of the rights of free speech and association. Campaign finance laws which place limits on contributions and expenditures restrict the freedom to express political speech and to affiliate with political allies.

The First Amendment is not absolute; governments have the right to restrict the exercise of First Amendment rights when the government can show that the restriction is necessary to protect an interest of the government which is important enough to justify the restriction. The most common example of this would be laws against shouting "Fire" in a crowded theatre. The public interest involved: preventing panic and injury to the patrons, is sufficiently important to support a law banning conduct which is an exercise of the right of free speech.

It has been found that many aspects of campaign finance laws restrict free speech: those include laws limiting contributions, laws limiting expenditures, laws requiring disclosure of information about contributions and expenditures, and laws requiring recordkeeping. That does not end the matter, for it must then be determined whether the campaign finance laws under consideration, despite the fact that they limit the freedoms of speech and association, are nonetheless constitutional.

In determining whether a law that infringes on First Amendment rights passes constitutional muster, the following factors are weighed

- What is the important public interest which the restriction is designed to protect,
- Does the burden on the free exercise of speech and association actually protect that interest,
- Is the burden imposed unduly onerous in relation to the public interest sought to be protected,
- Is the law carefully constructed so as to not unduly impose more of a burden than is necessary to protect the interest.

In applying these factors, a court first determines the extent of the burden imposed by the law. That is to say, does the law impact on the First Amendment rights in a minor way, or is the infringement more substantial. It then looks at the public interest sought to be protected, and determines just how important that interest is. If the burden is great, then the public interest which justifies that burden must be compelling. If the burden is less onerous, the public interest need only be found to be "important". Finally, the court looks at whether the provisions of the law are narrowly and carefully drawn so that they actually address the harm sought to be prevented. If the burden is great, the law must be narrowly drawn

to impact on the protected rights in the least intrusive manner. If the burden is less onerous, the law need only be crafted to avoid unnecessary abridgment of the right.

The Supreme Court has held limitations on contributions, limitations on expenditures and disclosure and recordkeeping requirements all implicate the First Amendment in different ways, requiring application of different criteria to determine constitutionality.

As they affect protected speech, the Supreme Court has held:

--limitations on campaign expenditures constitute more substantial restraints political speech because virtually every means of communicating idea's in today's society requires the expenditure of money;

--limits on contributions were seen as more symbolic expressions of support which are not translated into political debate until spent.

As they affect the right of association, the Supreme Court has held:

--limits on campaign expenditures impose more significant restrictions on the right to associate than do limits on campaign contributions because the limits on expenditures inhibit the ability of candidate organizations and PACs to amplify the voices of their adherents,

-- limits on contributions, while limiting an important means of association, do not prevent contributors from aggregating large sums of money or prevent other means of association.

--compelled disclosure can infringe on the aspect of the First Amendment that insures the privacy of one's association and beliefs.

The application of these principles to the particular statutory provisions in the consideration of campaign finance laws by the Supreme Court resulted in the following:

Limitations on Contributions

Contributions by individuals to candidates: limits on the amount of money an individual can contribute to a candidate are constitutional. (the impact on the right of speech was symbolic and the impact on the right of association was not absolute, so that the government interest in preventing corruption and the appearance of corruption was sufficiently important to justify the intrusion on First Amendment rights, and the statute drawn sufficiently narrowly to avoid unnecessary intrusion on those rights).

How much of a limit is permitted. Initially, the court held that a $1000 limit contributions to federal candidates was constitutional. [1] In 2000, the Supreme Court, in addressing a $1075 limit on contributions to statewide candidates in Missouri, reaffirmed the constitutionality of campaign contribution limits and established the following standard for determining the minimum permissible monetary threshold: a limit is not too low unless it rendered political association ineffective, or drove the "sound of a candidate's

[1] *Buckley v. Valeo,* 424 U.S. 1 (1976). The Court also upheld a $5,000 limitation on contributions to candidates by certain PACs, limitations on volunteer's incidental expenses and a $25,000 limit on total contributions from any one individual to all candidates per calendar year.

voice below the level of notice" rendering contributions pointless[2]. Thus far, the only time the Supreme Court has struck down an individual contribution limit was in holding a $100 Vermont limit unconstitutional.[3]

Corporate contributions to candidates: Corporations have been, and, as of this date, continue to be banned from contributing to federal candidates.

Contributions to political parties:. Federal law attempted to regulate donations to the national political parties, as contrasted to donations directly to candidates and their campaigns, known as "soft money" because they were unregulated. The McCain-Feingold Act contained provisions which limited the amount individuals could give to national political parties, prohibited corporations and labor unions from making such contributions, prohibited political parties from soliciting receiving, directing or spending any soft money, and contained provisions designed to prevent the national political parties from using state and local political parties to evade the strictures of the federal law. All these provisions have been upheld, the Supreme Court finding that the interested in combating real and apparent corruption justified them.[4]

Limitations on Expenditures

Expenditures fall broadly into one of several categories: spending by a candidate or his/her campaign committee, spending by a political party in support of a candidate, and spending by individuals and entities in an effort of have a particular candidate elected or defeated. Limits on expenditures have not fared well under constitutional challenge.

The provisions which have been struck down include:

-limitations on candidates spending of their own or their families' money It was held that people are not corrupted by spending their own money and the equalization of candidates' resources was not a sufficient reason to override free speech. Further, trying to equal the playing field in races where one candidate has spent great amounts of his own money by raising the contribution limit for his opponent has been stricken.[5]

-restrictions on spending by a candidate's campaign committee[6].

-limits on independent expenditures by political parties.[7]

- Restriction on independent expenditures (not coordinated with a candidate's campaign) Federal law provisions prohibited any person from spending more than $1000 relative to a clearly identified

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[2] *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 397 (2000).
[3] *R*andall *v. Sorrell, 548 U.S. 230 (2006).*
[4] *McConnell v. FEC*, 540 U.S. 93 (2003).
[5] *Davis v. FEC*, 128 S. Ct 2759 (2008).
[6] *Buckley v. Valeo*, supra. This case also defined the distinction between "issue advocacy" and "express advocacy". "Express advocacy" is that which advocates for the election or defeat of a clearly identified candidate; "issue advocacy" discusses issues or candidates, without expressly advocating the election or defeat of particular person.
[7] *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996).

candidate. In *Buckley*, the Court found that, to avoid "void for vagueness" issues, the expenditure limits could only be applied to expenditures used for communications which expressly advocated for the election or defeat of a candidate, as opposed to those that discuss issues or candidates without expressly advocating for the election or defeat of particular candidates. It then found that this limit was unconstitutional, the court rejecting the two state interests offered as the justification for the restrictions: avoidance of corruption being found to be unrelated to the restriction and equalization of the relative ability of people and groups to affect the outcome of elections being deemed an insufficient interest upon which to rest the restriction of first amendment rights.

-corporations and unions cannot be restricted from spending treasury funds on either independent expenditures or electioneering communications.[8]

Limitations on Disclosure of information about contributions and expenditures

Reporting and disclosure requirements have been, in large part, upheld. The Court has held that

-compelled recordkeeping disclosure by PAC's and candidates was constitutional. Although such disclosure can infringe on privacy of association and belief, the interests of providing the electorate with information of where the money came from and how it was spent; the deterrence of corruption and appearance of corruption and gathering the data necessary to enforce contribution limits were all accepted as sufficient to outweigh the infringement.

--reporting by individuals and groups (other than PAC's) who exceeded threshold contributions or "express advocacy" independent expenditures to entities other than candidates or PACs was constitutional. It was found that, although mandatory reporting might deter some contributions, compulsory reporting was the least restrictive means of curbing campaign ignorance and corruption.

--disclosure can be compelled of the sources of funding for and amount spent on electioneering communications by individuals, PACs and other associations.

There have also been challenges to the federal laws providing for the federal "check-off" system to fund presidential campaigns. Against challenges that the system was beyond the scope of Congress' legislative power and that the system abridged free speech, the Supreme Court held that the public funding system promoted the general welfare by reducing the deleterious effects of large contributions, facilitating communication between candidates and the electorate and freeing candidates from the rigors of fundraising, as well as facilitating and enlarging public discussion and participation in the electoral process.

After the Citizens United case, the Supreme Court addresses a challenge to an Arizona law relating to public funding of campaigns.[9] The extra matching funds were triggered when privately funded candidates or independent groups reached certain spending caps. The Supreme Court found that the

[8] *Citizens United v. FEC*, 130 S. Ct. Electioneering communications are a hybrid between "express advocacy" (calling for the election or defeat of a particular person" and "issue advocacy" (communications which take positions on issues). They are defined as communications that refer to a clearly defined candidate within certain time limits before an election or primary.
879 (2010).

[9] *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, 2011)*

trigger provisions violated the First Amendment rights of independent expenditure groups because their support of one candidate could trigger extra funds being made available to the opposition candidate. The Court held that "The group can either opt to change its message from one addressing the merits of the candidates to one addressing the merits of an issue, or refrain from speaking altogether," he added. "Presenting independent expenditure groups with such a choice makes the matching funds provision particularly burdensome to those groups. And forcing that choice -- trigger matching funds, change your message, or do not speak -- certainly contravenes 'the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.' "

Although the case struck down this provision, it did not affect the underlying principle that public funding of campaigns is viable. As the Brennan Center for Justice Executive Director stated: "one key fact is clear. Public financing remains constitutionally strong. The Court recognized public funding can 'further significant governmental interest[s], such as the state interest in preventing corruption.' These voluntary systems strengthen democracy."[10]

[10] http://www.acslaw.org/acsblog/all/arizona-free-enterprise-club's-freedom-club-pac-v.-bennett

Appendix D
New York State Contribution Limits 2012

Limit	To Candidates for House	To Candidates for Senate	To Candidates for Governor	To PACs, - To Political Parties,	To Party Housekeeping Accounts
From Individuals,	$4,100 (Primary) $4,100 (General) $8,200 (Total)	$ 6,500 (Primary) $10,300 (General) $16,800 (Total)	$19,700 (Primary) $41,100 (General) $60,800 (Total)	$150,000 (Year) - $102,300 (Year)	Unlimited
From Unions,	$4,100 (Primary) $4,100 (General) $8,200 (Total)	$ 6,500 (Primary) $10,300 (General) $16,800 (Total)	$19,700 (Primary) $41,100 (General) $60,800 (Total)	$150,000 (Year) - $102,300 (Year)	Unlimited
From Corporations	$5,000 aggregate, (Year)	$5,000 aggregate, (Year);	$5,000 aggregate (Year),	$5,000 aggregate (Year), - $5,000 aggregate (Year),	Unlimited
From PACs	$4,100 (Primary) $4,100 General) $8,200 (Total)	$ 6,500 (Primary) $10,300 (General) $16,800 (Total)	$19,700 (Primary) $41,100 (General) $60,800 (Total)	$150,000 (Year) - $102,300 (Year),	Unlimited
From Political Parties	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

Adapted from Torres-Spelliscy and Ari, Weisbard, **WHAT ALBANY COULD LEARN FROM NEW YORK CITY: A MODEL OF MEANINGFUL CAMPAIGN FINANCE REFORM IN ACTION,** Albany Law Review, 2008