

MORELAND COMMISSION

PUBLIC HEARING
PUBLIC CORRUPTION

Tuesday, September 24, 2013
Meeting Room 6
Empire State Plaza
Albany, New York

Co-chair KATHLEEN RICE
Co-chair WILLIAM FITZPATRICK
Co-chair MILTON WILLIAMS, JR.

REGINA CALCATERRA
Executive Director

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2 (The public hearing commenced at
3 6:00 p.m.)

4 MR. WILLIAMS: My name is Milt
5 Williams and, along with my two fellow co-chairs,
6 Kathleen Rice and William Fitzpatrick and the other
7 commissioners, we'd like to welcome you to the second
8 Moreland Commission Public Hearing. We are very
9 grateful to the great capital of the State of New
10 York, Albany, for hosting us. We're excited to be
11 here and we're going to get started right away.

12 I would call on our Executive
13 Director, Regina Calcaterra to introduce the first
14 speaker. Thank you, Regina.

15 MS. CALCATERRA: First, thank you.
16 The order of the speakers, I am going to announce the
17 first four speakers so you are ready to go and since
18 you have been -- we put you on the advisory and you
19 were invited to speak, you know who you are and you
20 are well prepared, but our first speaker will be
21 Brian Paul from the Common Cause, thereafter Bill
22 Mahoney from NYPIRG, thereafter Karen Scharff and
23 Jessica Wisneski from Citizen Action, and thereafter
24 Dick Dadey and Rachael Fauss from Citizen Union.

25 We welcome to the podium or the

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2 panel or the table, Brain Paul. Thank you.

3 MR. PAUL: Good evening. Thank you
4 for the opportunity to speak today. My name is Brain
5 Paul and I am the research and policy manager for
6 Common Cause, New York, a nonpartisan citizens lobby
7 and a leading force in the battle for open, honest,
8 and accountable government.

9 Common Cause is a longstanding
10 advocate for innovative campaign finance and ethics
11 laws in New York, as well as throughout the country.
12 We've been involved in crafting virtually all of the
13 public funding of election systems currently
14 functioning at the state and national level, as well
15 as numerous municipal systems including New York
16 City's.

17 We, New Yorkers, tend to think of
18 us -- ourselves as leaders setting the example for
19 the rest of the nation to follow. That's certainly
20 the case for New York City's Campaign Finance System,
21 which, this year, celebrated its twenty-fifth
22 anniversary of helping empower small donors through
23 public matching funds.

24 Unfortunately, when it comes to our
25 campaign finance laws at the state level, the case is

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2 quite the opposite. With individuals able to give
3 over sixty thousand a year to a statewide candidate,
4 New York has some of the highest campaign
5 contribution limits of any state in the country. It
6 only gets worse from there. Two glaring loopholes,
7 the L.L.C. loophole and the partisan's slush funds
8 known as soft money or housekeeping accounts,
9 essentially allow any enterprising donor to pump
10 unlimited sums of money into the political system.

11 In practice, New York belongs with
12 the small group of states with no campaign finance
13 limits whatsoever. Such lax campaign finance laws
14 create an environment in which influence and access
15 can be sold by representatives and bought by wealthy
16 and powerful individuals and organizations. It has
17 become standard practice for any special interest
18 affected by state policy to flood Albany with piles
19 of cash and direct the largest prizes to those in
20 positions of power, creating an ever-escalating and
21 self-perpetuating money race.

22 In my testimony today, I will
23 narrow the focus to these two worse loopholes in the
24 system and illustrate how they help to create a
25 show-me-the-money culture of legalized corruption in

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2 Albany.

3 First the L.L.C. loophole. Under
4 New York State Campaign Finance Law, L.L.C.s are
5 treated as individuals subject to a
6 hundred-and-fifty-thousand-dollar limit, rather than
7 the five-thousand-dollar limit for corporate donors.
8 This essential corporate personhood status is the
9 result of an advisory opinion issued by the State
10 Board in 1996. The Federal Elections Commission
11 issued similar decisions in the mid '90s, but
12 reversed its position in 1999, choosing to treat
13 L.L.C.s as corporations or partnerships, rather than
14 individuals.

15 Our New York Board of Elections,
16 controlled by the parties that benefit from these
17 supersized L.L.C. campaign contributions, never
18 followed the F.E.C.'s lead in reclassifying them. In
19 New York L.L.C.s are used by wide variety of
20 industries to circumvent the five-thousand-dollar
21 corporate limit. Interests that take advantage of
22 this loophole range from big telecom providers like
23 Cablevision and Time Warner, gambling interests like
24 Genting and Saratoga Gaming, political consultants
25 like the Parkside Group, big sports franchises like

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2 the New York Yankees and the parent company of
3 Ultimate Fighting, and most commonly, the real estate
4 industry.

5 Since 2005, corporate entities with
6 L.L.C. in their name have given nearly twenty-four
7 hundred campaign contributions over the
8 five-thousand-dollar limit, amounting to a total of
9 nearly forty million dollars. Most L.L.C. money goes
10 to candidates and party accounts, but the loophole's
11 also exploited by corporations to supercharge their
12 own political action committees. In most states and
13 at the federal level, corporate PACs typically raise
14 money through small donations from their employees,
15 but in New York, corporations can use this loophole
16 to flood a PAC with unlimited sums of cash.

17 For example, since 2008, the law
18 firm and lobbyist, Hinman Straub, has given six
19 hundred and seventy-five thousand dollars to its
20 State Street Associate PAC through an L.L.C.
21 Similarly, gambling interests use L.L.C.s to give
22 over a quarter million dollars to the New York Gaming
23 Association PAC in 2012-2013. And telecom providers,
24 Cablevision and Time Warner, supercharge their
25 corporate PACs with huge L.L.C. contributions.

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2 In the wake of Citizens United,
3 this loophole is also exploited to fundraise for
4 multimillion dollar independent expenditure
5 campaigns.

6 This election season in New York City, the Real
7 Estate Board of New York established a PAC called
8 Jobs for New York and raised nearly over seven
9 million dollars from just twenty-five member
10 companies that used a hundred and twenty-one
11 different L.L.C.s to circumvent New York State Law
12 and donate an average of two hundred and
13 seventy-seven thousand dollars each.

14 Real Estate Developers are the most
15 egregious abusers of this loophole. One developer,
16 Glenwood Management, has contributed over ten million
17 dollars since 2005 with the help of over forty
18 L.L.C.s. The Durst Organization has contributed
19 nearly three million and the related companies nearly
20 two point five million through L.L.C.s. These are
21 just the few examples of a practice that is endemic
22 to this industry.

23 In addition to allowing
24 corporations to evade the limit, L.L.C.s often veil
25 the identity of the donor, making it difficult, if

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2 not impossible, for the public to hold the donors and
3 their representatives accountable. The evidence is
4 clear this loophole completely undercuts New York
5 State's campaign contribution limits and allows
6 special interest free reign to use their financial
7 power to influence our government. Follow the money
8 trail of any of the top L.L.C. donors and you are
9 likely to find this trail of special policy favors
10 one and bills unfavorable to the donor mysteriously
11 stalled in the Legislature.

12 The second loophole is the soft
13 money housekeeping slush funds. The core purpose of
14 campaign finance contribution limits is to prevent
15 corruption by ensuring that our lawmakers are not
16 beholden to wealthy special interests. In New York,
17 this is already undermined by the L.L.C. loophole,
18 but the soft money loophole is perhaps even more
19 distressing in rendering a campaign contribution
20 limits completely meaningless. Any corporation,
21 individual union, or other interest wishing to evade
22 limits need only give to a type of party committee
23 supposedly reserved for administrative tasks and
24 party building purposes.

25 These accounts commonly referred to

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2 as soft money can accept unlimited sums of cash. At
3 the federal level, soft money was banned more than a
4 decade ago with the Bipartisan Campaign Reform Act of
5 2002. And this ban was upheld by the Supreme Court
6 the next year. As with the L.L.C. loophole, New York
7 has embarrassingly failed to keep pace with the best
8 practices in campaign finance.

9 Since 2006, the soft money loophole
10 has grown in significance and abuse. Soft money
11 contributions to state parties and the state
12 Legislature grew by twenty-four percent when
13 comparing the seven-year periods of '99 to '05 and
14 '06 to '12. Since 2006, the parties have taken
15 nearly one hundred million dollars in soft money
16 contributions. The vast majority of soft money flows
17 to just a top handful of committees that are best
18 positioned to influence policy and the outcome of
19 elections, the majority in the state Legislature, the
20 statewide parties, and the key county-level political
21 machines.

22 Just the top twenty soft money
23 recipient committees -- and this list is at the back
24 of my testimony -- together account for over ninety
25 percent of soft money raised. It all floats to the

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2 top. Our view of soft money shows that this
3 five-thousand-dollar limit on corporations is
4 completely meaningless. More than sixty-five percent
5 of soft money is raised through checks of ten
6 thousand dollars or higher.

7 Overall from since 2006, fifty-nine
8 top donors have given in excess of two hundred
9 thousand dollars to the soft money accounts,
10 accounting for nearly half of all of the soft money
11 raised during this period. This list of top soft
12 money donors attached to the end of this testimony is
13 dominated by special interests that are highly
14 regulated and subsidized by state government. Real
15 estate firms, healthcare and pharmaceutical
16 interests, labor unions, the telecom companies, the
17 beverage and alcohol industries, big tobacco, and
18 gambling interests, most of these donors give annual
19 soft money contributions to both parties in power,
20 regardless of ideology.

21 The housekeeping accounts are
22 supposed to be reserved for administrative expenses
23 and not for the express purpose of promoting the
24 candidacy of specific candidates. But in our view of
25 soft money expenditures, we found that the state's

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2 records are riddled with inaccuracies and
3 misreporting. With no auditing or enforcement, it is
4 impossible to rely on accurate self-reporting by the
5 parties.

6 The single largest purpose code of
7 soft money expenditures is other, at almost half the
8 total. An additional three point eight million have
9 no purpose code or purpose code that doesn't match
10 with the Board of Elections. Many more expenses are
11 identified with purpose codes that clearly blur
12 across the line into campaign expenditures, such as
13 polling costs, fund raising expenses, political
14 consultants, campaign literature, or advertising.
15 Moreover, our analysis clearly reveals that
16 housekeeping expenditures spike each election season,
17 has monies go to higher high priced political
18 consultants, and pay for campaign related
19 advertising. And you can see these spikes in every
20 election year and every election season on the charts
21 on page seven and eight in my testimony.

22 Our analysis shows that during the
23 height of election season, money is often expended
24 out of soft money accounts on or near the same day
25 that hard money committees expend money to the same

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2 vendors. From the current state of the campaign
3 finance records, it is impossible to know if the
4 consultants receiving housekeeping funds are working
5 on campaigns or not.

6 In recent years, it has also become
7 disturbingly commonplace for the parties to use
8 housekeeping funds to pay for political advertising
9 during election season. The Senate Republicans,
10 Senate Democrats, New York State Republicans, New
11 York State Conservatives, and New York Independence
12 Party have all used housekeeping money for political
13 advertising during election season, as have numerous
14 accounting level parties on a smaller scale.

15 Just the most blatant examples of
16 housekeeping accounts used to fund election season in
17 advertising include the Conservative Party's 2010
18 Ground Zero Mosque Campaign in support of
19 gubernatorial candidate Rick Lazio and the 2012
20 attack ads just this past season on Democratic Senate
21 candidate George Latimer and Terry Gipson that were
22 paid for by Independence Party housekeeping funds via
23 a transfer from Senate Republicans' housekeeping
24 account. Both of these advertising campaigns were
25 paid for by housekeeping money and itemized with the

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2 purpose code, other.

3 The stated purpose of these
4 accounts is to fund non-campaign related
5 administrative expenses. And this is pure fiction.
6 Any defense of the soft money system is disingenuous.
7 There is nothing that a soft money housekeeping
8 account can do that a regular hard money account
9 can't do, except raise completely unlimited sums of
10 giant donations. Part of the mission of this
11 Moreland Commission is to investigate the
12 effectiveness of existing campaign's finance laws.
13 The purpose of campaign contribution limits and
14 campaign finance regulation at large is to ensure
15 that our democracy is not captured by wealthy special
16 interests.

17 This summary of Common Cause New
18 York's research demonstrates that the L.L.C. and soft
19 money loopholes together render our contribution
20 limits completely meaningless, making New York a de
21 facto unlimited contributions state.

22 As New Yorkers, we should be
23 embarrassed that more than a decade after the
24 Bipartisan Campaign Reform Act banned soft money in
25 Washington and more than fourteen years since the

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2 F.E.C. closed the L.L.C. loophole, our state campaign
3 finance laws remain retrogressively rigged to empower
4 special interests at the expense of ordinary
5 citizens. We urge the Commission to investigate
6 specific instances we have detailed in our more than
7 Monday reports.

8 Our state's campaign finance system
9 clearly advantages large dollar donors and calls into
10 question the role of money in influencing public
11 policy. Any reform of our laws should seek to reduce
12 this influence and reduce the dependency of the
13 politicians and parties on big checks from special
14 interests. We believe that a fair election system of
15 public matching funds at the state level is an
16 essential aspect of any such reform. We look forward
17 to discussing New York City's experience with its
18 small donor matching fund system and how such a
19 system is an impressive bulwark against large
20 independent expenditures at a future hearing.

21 Thank you.

22 MR. WILLIAMS: Thank you. Are
23 there are any questions from the Commissioners?

24 MR. BRIFFAULT: On the housekeeping
25 accounts, do you recommend a tighter definition of

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2 what accounts is housekeeping or do you recommend
3 abolishing them all together?

4 MR. PAUL: Well we would recommend
5 abolishing them all together, as is the case in
6 Washington. But right now there is not even any
7 enforcement going on to tell whether these accounts
8 are being used for administrative or for campaign
9 purposes.

10 MR. BRIFFAULT: And if I could just
11 follow up on the L.L.C.s, is the -- and that -- is it
12 more than -- is it easy enough to solve that by
13 simply defining an L.L.C. as a corporation, is that
14 all it takes to close that loophole?

15 MR. PAUL: The Board of Elections
16 could solve it with a legal memo, as far as --.

17 MR. BRIFFAULT: Right, but that
18 would be-- the one-sentence solution would be
19 defining an L.L.C. as a corporation?

20 MR. PAUL: In D.C., it's a
21 corporation or a partnership depending on how they
22 file the taxes.

23 MR. BRIFFAULT: But what I'm
24 getting at is it's a one-sentence --

25 MR. PAUL: Yes.

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2 MR. BRIFFAULT: -- that needs to
3 be --?

4 MR. PAUL: That's right. Okay.

5 MR. WILLIMAS: Any other questions?

6 MR. FITZPATRICK: I have a
7 question. Brian, just to follow up on that last
8 question from the professor, does that have to be
9 done by the Board of Elections or could sixty-two
10 D.A.s in the State of New York send out their opinion
11 that there is no L.L.C. loophole?

12 MR. PAUL: Well, I'm not an
13 attorney but as far as --.

14 MR. FITZPATRICK: Don't apologize
15 for that, Brian. That's a good thing.

16 MR. PAUL: That opinion would
17 certainly be welcome. I don't know.

18 MR. FITZPATRICK: I just -- because
19 I -- you know, I understand that to -- for us to
20 prosecute cases, we have to go through the B.O.E. and
21 I am just wondering if that's -- and in fact, it may
22 be similar later speakers could opine on that, I'd be
23 interested.

24 Thanks, Brian.

25 MR. WILLIMAS: Any other questions?

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2 Thank you very much.

3 MR. PAUL: Thank you.

4 MS. CALCATERRA: Thank you.

5 Our next speaker is Bill Mahoney of
6 NYPIRG.

7 MR. MAHONEY: All right. Thank you
8 for presenting NYPIRG with the opportunity to testify
9 today. Similar to Brian, I will be focusing
10 primarily on one source of public corruption that is
11 perhaps the most important to address and that's
12 campaign finance.

13 So many of the abuses in the other
14 areas that the Commission is examining are due to the
15 laxness of the state's campaign finance law. Take
16 member items, for example. In the last years they
17 were awarded before Governor Patterson abolished
18 them, one thousand fifteen member items, totaling
19 fifteen million dollars, went to groups that had
20 donated to legislators. They claim they needed the
21 money, but they had enough to donate. And in many
22 cases, these were 501(c)(3)s who were not even
23 legally allowed to write checks.

24 Even more basic forms of corruption
25 can be linked back to New York State's broken

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2 campaign finance system. There will always be
3 politicians who take bribes but the fact that we've
4 seen such a massive number of them in a state with
5 the highest contribution limits of any state in the
6 country that imposes contribution limits is hardly
7 coincidental. When legislators -- when elected
8 officials get comfortable asking for money from
9 people who expect something in return, the line
10 between legal and illegal is very thin.

11 I would like to start off just by
12 giving some very brief background on our campaign
13 finance system. You will find more of that in our
14 written testimony. But in a typical four-period,
15 candidates for state level office raise about three
16 hundred million dollars if you include the two
17 election cycles for the Legislature and the election
18 cycles for the four-years offices. Most of this
19 money comes from individuals and organizations with
20 some sort of business before the state. Our best
21 estimate is that about two-thirds of it comes from
22 either lobbyists or lobby clients or the people who
23 work as their principals.

24 Businesses give the plurality of
25 it, accounting for about thirty-six percent of all

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2 receipts recorded by legislators in the past election
3 cycle. And among businesses, real estate gives the
4 most. Individual people do not give a lot. They
5 account for about twenty-three percent of all money
6 raised. And most of this comes from very large
7 donors. Those giving more than ten thousand dollars
8 in a typical two-year period, for example, account
9 for about twenty-nine percent of all donations from
10 individuals, nearly three times as much as that comes
11 from those who give less than two hundred fifty
12 dollars.

13 Most New Yorkers do not give. And
14 with the state's absurd contribution limits, why
15 would candidates bother actually reaching out to
16 somebody who can only afford to write them a
17 fifty-dollar check. In the last legislative election
18 cycle, only forty thousand three hundred and
19 eighty-one people who live in the State of New York
20 donated. By comparison, that is about fifteen
21 thousand fewer than the number that are currently in
22 state prisons. When a person is more likely to be
23 behind bars than participate in a campaign, that's a
24 sure sign that our government is broken.

25 I can go on and list more problems

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2 in the current system, but I think those have been
3 made clear by Brian and some of the other speakers
4 who will go on tonight, so I would like to focus
5 primarily on some solutions. And the best place to
6 start looking for solutions is with your predecessors
7 in the PIRA Commission. They had a lot of great
8 ideas and, had more of them been implemented, Albany
9 wouldn't have earned its reputation as a
10 dysfunctional morass.

11 One of things they argued for is a
12 new independent adequately funded campaign finance
13 enforcement agency with powers to both to enforce the
14 law and regulate it. I plan to speak extensively on
15 this topic alone in a later hearing, but I just want
16 to highlight that this is probably the most important
17 change because without it any other changes to the
18 law will be rendered moot.

19 The PIRA Commission's
20 recommendations also included a drastic reduction in
21 contribution limits. And as we have seen in the past
22 contribution limits in New York effectively don't
23 exist so that is something that should be looked at
24 both in the strict sense how much you can donate
25 directly to the candidate and in terms of the

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2 loopholes that exist to let you give even more if you
3 wanted to.

4 They recommended cap of only one
5 committee per candidate. Right now if a voter goes
6 to the Board of Elections website, they should be
7 able to find donations to their elected officials
8 simply by typing in their names and seeing what comes
9 up. Unfortunately, a lot of elected officials have
10 second committees that are in no way obviously linked
11 to their campaigns and are difficult to find. If you
12 want to know how much legislators receive, for
13 example, you will need to know to look up committees
14 with the names like the Manhattan Connection, the
15 Empire Leadership Council, and the Pink Tide Project,
16 none of which are obvious unless you are somebody who
17 keeps abreast of the Legislature twenty-four-seven.
18 Most voters would never know that these actually
19 exist.

20 The one recommendation of the PIRA
21 Commission that eventually led to any significant
22 legislative action was a call to make disclosure
23 reports more transparent and accessible to the
24 public. We saw that a little bit. Forms are not
25 posted online for people to view. But unfortunately,

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2 their usefulness has deteriorated over the years.
3 The Board of Elections first put the state online in
4 the late '90s. And it seems like it's optimized for
5 the cutting edge of consumer technology and most
6 people were accessing the internet through A.O.L.
7 dial up.

8 Furthermore, the sloppiness of the
9 filings and the Board's unwillingness to implement
10 any automated system that can alert filers to obvious
11 errors makes it impossible to determine the true
12 intent of what many people are actually trying to
13 report. Thus, it could be argued that none of the
14 recommendations of your predecessors was successfully
15 implemented and their report should serve as a good
16 starting point for looking at legislative changes
17 going forward.

18 We believe, however, that there is
19 the potential for significant change without reliance
20 on the Legislature. We still encourage you to
21 introduce the full package that would address all the
22 problems in the system. But there are things that
23 you probably can address without having to pass -- to
24 get a bill passed. If your legal referrals include
25 charges focused on few keys issues, they have the

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2 potential to lead to change.

3 The first area to consider is
4 housekeeping, which Brain just spoke to you a little
5 bit. The Election Law, as he mentioned, provides
6 that this money must be kept to things like
7 maintaining a permanent headquarters and staff and
8 carrying on ordinary activities which are not for the
9 express purpose of promoting a candidate -- of
10 promoting a candidate. But in recent years, as he
11 illustrated, they have been extended well beyond
12 this. We see surges of spending right before
13 elections. He mentioned the ads by the Independence
14 Party in 2012, which admitted to using ads to attack
15 specific candidates near days before an election.
16 And no reasonable individual could interpret the law
17 to say that that was an acceptable use of
18 housekeeping funds.

19 Further, the money that they spent
20 on these ads three hundred -- over three hundred
21 thousand dollars of it came from the Senate
22 Republicans' housekeeping account. And transfers
23 through another political party hardly seem like
24 ordinary party billing expenses that are permissible.
25 And it seems clear that this is being abused, this

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2 system, and referral to your Commission to a relevant
3 enforcement entity could lead to greater compliance
4 if precedent is set that it is not okay to use
5 housekeeping money in this way.

6 The second of three areas that fall
7 into this category is personal use. Campaign
8 accounts for individual legislators are routinely
9 spent on purchases that appear to be simply for the
10 candidate's personal benefit. Under the state's gift
11 ban, a lobbyist cannot give a legislator plane
12 tickets for a trip to Palm Beach, buy them a new car,
13 or take them out for a lavish dinner. These
14 provisions are undermined, however, by the
15 non-existent enforcement of the personal use
16 provision of the Campaign Finance Law.

17 Election Law says that campaign
18 funds cannot be spent on personal use, but the Board
19 of Elections says come out and said that unless you,
20 quote, out and out stick it in your pocket and walk
21 away, everything is legal. And this has really led
22 to a system where everything is legal.
23 It is okay for a lobbyist to give to a legislator and
24 have them turn around and spend that money on a trip
25 to a Palm Beach, a night out golfing, or fancy dinner

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2 or a new car. Most notoriously, Senator Bruno bought
3 a retractable pool cover for his backyard and that
4 was okay under the way the Board of Elections has
5 interpreted the personal use restrictions.

6 It's difficult to determine the
7 full extent of this practice since the reporting
8 requirements created by the Board obfuscate the
9 problem a little bit and it is not always clear what
10 a legislator is actually spending money on, but there
11 are a lot of them. In a typical year, there is about
12 five hundred thousand dollars in campaign funds spent
13 on golf, two hundred thousand dollars on new cars,
14 seventy thousand dollars on flowers, and thousands of
15 dollars spent on cigars.

16 Since 2004, politicians have even
17 spent seven million dollars hiring lawyers to defend
18 themselves from criminal charges and to the best of
19 our knowledge the legitimacy of these expenditures
20 has never been challenged. But it does seem clear
21 like many of them do fall under the personal use
22 prohibition. Even the I.R.S. has come forward and
23 said that the spending is so clearly for personal use
24 purposes, that some of it needs be reported on their
25 income taxes.

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2 It seems pretty obvious the law is
3 being violated. And once again, through actions that
4 you take through referrals that might lead to
5 precedent that would make it more difficult for
6 legislators to abuse this going forward.

7 Finally, I am going back to L.L.C.s
8 and address a question that Chairman Fitzpatrick
9 asked. And I do think this is an area that could be
10 addressed through recommendations by the various
11 district attorneys. As you heard earlier, L.L.C.s
12 are treated as individuals for the purpose of
13 determining contribution limits and this is routinely
14 abused. One individual alone, Leonard Litwin, has
15 exploited this loophole to give Governor Cuomo six
16 hundred twenty-five thousand dollars this election
17 cycle alone, more than ten times the contribution
18 limit for an ordinary individual because he is able
19 to give through each of his L.L.C.s.
20 For the first six months of this year, he donated
21 over a million dollars to political committees which
22 is seven times the legal limit for how much a donor
23 can give in the aggregate for an entire calendar
24 year. And this loophole is not in the law. It was
25 created by the Board of Elections which base their

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2 reasoning on a F.E.C. decision that was quickly
3 reversed.

4 Now there are two ways to view an
5 L.L.C. Since they are very similar to most
6 businesses, they could be treated as corporations for
7 the purpose of calculating their contribution limits
8 and are capped at a strict five thousand dollars per
9 calendar year. Other municipalities have found that,
10 since they're often wholly owned by one individual,
11 they can be seen as an extension of that individual
12 and count against their personal one hundred fifty
13 thousand dollar per year aggregate limit.

14 The Board wind up creating a
15 completely illogical mix of these two and found that
16 since they are wholly owned by one person in many
17 cases that it should be counted as individual, but
18 ignore the reality that they're extensions of these
19 people and let each of them give at the one hundred
20 and fifty thousand dollar limit, which makes about as
21 much sense as saying that each savings account
22 controlled by a person should be treated as a unique
23 individual for the purpose of calculating
24 contribution limits.

25 And this probably would be trickier

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2 to address through referral than the other issues I
3 mentioned since the donors are simply following
4 faulty regulations issued by the Board of Elections.
5 But it is a clear example of action that violates any
6 reasonable interpretation of Election Law. And we
7 think it's something that's worth pursuing.

8 To be -- just to be clear, to wrap
9 this up, none of these suggestions would take the
10 place of a comprehensive campaign finance reform
11 proposal that addresses this -- addresses these
12 legislatively and handles other things like public
13 financing. Lowering -- putting a higher threshold on
14 what housekeeping committees can legitimately spend
15 money on is great and we would fully support that,
16 but that's not as good as completely annihilating
17 them and doing away with this massive loophole in the
18 law which would probably require a legislation. But
19 the Legislature has shown an unwillingness to act and
20 victories in the courts could amount -- could both
21 amount to small but significant improvements and
22 perhaps reduce resistance in the Legislature for
23 passing these broader reforms.

24 Thank you for the opportunity to
25 testify. And let me know if you have any questions.

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2 MR. WILLIMAS: Any questions here?

3 MR. ZIMROTH: One of the things
4 that the Commission has to determine is sifting
5 through all of these problems that -- and you've
6 mentioned them and there are many more even that you
7 haven't mentioned, and the solutions as well,
8 prioritizing what we do and what we want to
9 recommend. And I heard you say early -- in very
10 early in your testimony and also at the end that in
11 your view -- I guess NYPIRG's view, the most
12 important change in the law would be a campaign
13 financing system. I take it you mean a small donor
14 matching system, like the New York City system. And
15 I would -- I would like to hear from you why is it
16 that you think that that's the most important?

17 MR. MAHONEY: I would actually
18 argue that the most important change overall is an
19 independent enforcement and regulatory entity. We
20 wholeheartedly support public financing, but any
21 changes in the law without this would probably be
22 rendered moot. It would be difficult to really
23 imagine them working. As with the L.L.C. example,
24 there was law in place but when the Board of
25 Elections has put in charge of administering it, they

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2 found ways to weaken it. Personal use, the law
3 itself seems very clear that you cannot spend
4 campaign funds on some things. But since they said
5 it's okay to spend campaign funds on anything, that
6 part of the law means absolutely nothing for all
7 practical purposes.

8 So I would think that having an
9 independent agency similar to what we see in the
10 Campaign Finance Board in New York City that has the
11 power to both enforce violations and create the
12 regulations for the new system, that is the most
13 important change.

14 MR. ZIMROTH: And so when you're
15 talking about independent, I think you need to think
16 about, maybe you have some suggestions about, who
17 appoints, right? What kind of enforcement authority
18 do they have? For an example, do they have the
19 authority to enforce on their own? Can they go to
20 court on their own to enforce? And budget, do you
21 have any thoughts about this?

22 MR. MAHONEY: Yes. In your hearing
23 last week, we were unable to make it to the New York
24 City hearing, but I submitted a written testimony.
25 And we have a few pages in the back, outlining

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2 exactly what we think the Commission should be and
3 where they -- how they should act, where they should
4 get their money from.

5 MR. ZIMROTH: This is your chance.

6 MR. MAHONEY: It -- it was several
7 pages, but the independence part of it is there is
8 different ways. The most important thing is having
9 an odd number of members. Right now, it's two
10 Democrats and two Republicans. That seems to be the
11 greatest cause of their perpetual gridlock. Tossing
12 in a fifth member through the governor, for example,
13 that could be one -- so you have the governor and the
14 four legislative leaders each appoint one. I don't
15 know if that's the ideal, but that's a way that would
16 balance it out and make sure they could potentially
17 get an odd number of votes to follow through with --
18 with an investigation.

19 There -- there is different levels
20 of violations. In some case -- we spell this out a
21 little bit, but for some of the more minor violations
22 they should have the power to just automatically send
23 out speeding tickets if the candidate files something
24 incorrectly. We don't think that should be over the
25 top, but there should be additional levels of

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2 enforcement where if it's a more serious violation,
3 like somebody giving above the legal limit and
4 refusing to stop doing so, then that should -- should
5 be referred to the Attorney General or a district
6 attorney.

7 MR. WILLIMAS: Anything, Barbara?

8 MS. BARTOLETTI: Yes. Bill, to
9 follow up on that answer, if you were king for a day,
10 would you want funding stream in the budget or would
11 you want some other? What would be your ideal
12 funding stream to fund an independent entity for the
13 Board of Elections?

14 MR. MAHONEY: Well, there is no
15 perfect solution because in most cases I imagine
16 we're not going to do a constitutional amendment that
17 deals with their funding stream. And no matter what
18 law is passed, that could be tinkered with as we've
19 seen in so many other issues in Albany. But it
20 should be laid out right once the law is passed what
21 their funding will look like in the future. I think
22 a good way to do it would be to index it, maybe to
23 the cost of elections. So that way if we see that a
24 typical legislative election right now costs a
25 hundred million dollars so we come to a conclusion

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2 about how much a good enforcement entity would cost
3 to deal with that, then that should go up. The
4 percentage of their funding should go up each year,
5 based off of how much the previous election cost and
6 what we see in the rising costs of elections because
7 presumably that translates to more work that they
8 have to do.

9 MS. BARTOLETTI: Thank you.

10 MR. WILLIMAS: Any other questions?
11 Go ahead, Professor.

12 MR. BRIFFAULT: I am picking up on
13 the money point. Would you say the problem is with
14 the current Board of Elections or due to the lack of
15 funds or lack of will?

16 MR. MAHONEY: It's definitely a
17 lack of will. They've been offered the funds in the
18 past. Just to give you one example among many, in
19 2007, Governor Spitzer gave them the money to hire a
20 number of new enforcement staff.

21 I believe it was eighteen, Barbara?

22 MS. BARTOLETTI: It was -- at that
23 point, it was eleven --

24 MR. MAHONEY: Eleven.

25 MS. BARTOLETTI: -- F.T.E.s -- full

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2 F.T.E.s.

3 MR. MAHONEY: Okay. They were
4 offered the money for eleven full-time equivalents.
5 And then two years later, that was eventually swept
6 back because they hadn't spent it. And the excuses
7 I've heard is that in the middle of the great
8 recession, they couldn't find anybody interested in a
9 well-paying state government job. We never saw any
10 evidence that they put out any advertisements to let
11 people know they were actually hiring, but after two
12 years, there was no evidence that they actually
13 tried. And they didn't even want this staff, it
14 seemed.

15 MR. WILLIMAS: Anything else?

16 MR. FITZPATRICK: Just one
17 question. Bill, I'm sorry; I'm just fascinated by
18 this Board of Elections 1996 opinion that there is a
19 loophole to the L.L.C. Now, you're -- you're
20 testifying that they could reverse that tomorrow?

21 MR. MAHONEY: When L.L.C.s were a
22 new creature beyond when some parts of the Election
23 Law were written and when they had to deal with this,
24 in 1996 at the beginning of the year, I believe, the
25 F.E.C. came out with the determination that they were

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2 wholly individuals and should each be treated as
3 their own individual. And the Board of Elections
4 basically copied that word for word.

5 A couple of months later, the
6 F.E.C. said, wait this is crazy, this makes no sense
7 at all, we're going to completely undo this. And
8 they created a new system, or depending on the
9 L.L.C., as Brian mentioned, it could be viewed as
10 either a partnership or as a corporation. And the
11 Board of Elections just sat on it and never reversed
12 that. We sent them a letter a few years ago, asking
13 them to review their decision. And they wrote back
14 and said they never had the legislative authority to
15 interpret this issue at all. It was just what it was
16 and they refused to go back and look at it again.

17 MR. FITZPATRICK: Okay. And what's
18 the recourse? I mean --

19 MR. MAHONEY: Well, I think --.

20 MR. FITZPATRICK: -- if D.A.s can't
21 prosecute these cases unless they are referred by the
22 Board of Elections?

23 MR. MAHONEY: In the case of the
24 L.L.C.s, I am not a lawyer. Once again, I don't -- I
25 don't know the details of how this worked. But if

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2 you look at the law and then look at what L.L.C.s
3 are, it seems like there's only one or two clear ways
4 to interpret what they could be viewed at in terms of
5 election -- Election Law and how much they can give.
6 And they don't -- what the Board reached was neither
7 of those. They recreated a third way, which is a
8 complete monstrosity that lets them give millions of
9 dollars a year if they want to.

10 They account for about fourteen
11 percent of all the money that legislators raised in
12 the state because of this. And what -- what I can
13 see is that this doesn't match what the law says.
14 The law says that donations should be capped at a
15 certain level. And that's not what they are being
16 kept at right now. I don't know the best way to go
17 to address this and to make sure the law is actually
18 being followed as it should be, but it seems pretty
19 clear to me that there is something on the books
20 which is not what's being effectuated -- which is not
21 what's being practiced.

22 MR. FITZPATRICK: Let's see if we
23 can't do something about it. Thanks.

24 MR. MAHONEY: Great. Thank you.

25 MR. MOLLEN: I have a question.

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2 No, go ahead, Dave.

3 MR. SOARES: Back to the issue of
4 the -- the independent regulatory agency that you're
5 proposing, and when you're asked earlier about how
6 you would constitute this body, you recommended maybe
7 the governor appointing one, the -- the majority
8 leader of the Senate or the Senate opposing
9 appointing personnel. And it seems like if we were
10 to do that or make that recommendation, we would be
11 right back to where -- to where we are in terms of
12 some of the gridlock and some of the criticisms that
13 I -- I hear from good government groups about other
14 agencies. All right? Would you support a separately
15 elected independent regulatory agency and -- and
16 separately elected, with perhaps, you know, campaign
17 finance reform?

18 MR. MAHONEY: That would be
19 something worth exploring. I imagine that would be a
20 lot more complicated to create than an outside board.
21 And I agree that no board would be perfect. We have
22 seen some like the New York City Campaign Finance
23 Board, which has worked great and has received rave
24 reviews from the vast majority of the people who
25 participated in the system.

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2 One of the key things is just
3 making sure that it's not this perfectly split
4 gridlock system where there is two Democrats and two
5 Republicans and nothing could ever get done because
6 they need three votes. Having that odd number of
7 members and having them come from a variety of
8 sources, not all of our problems might be solved, but
9 it would really -- it would go a long way towards
10 making sure that there is actually some activity.

11 There is ways to address this, such
12 as making sure there is more open meetings. Some of
13 the criticisms we've seen with other agencies where
14 the fact that they are politically appointed, with
15 JACO, for example, they are often criticized for not
16 being -- for not acting on everything they could
17 potentially because they are appointed by the
18 officials who they are investigating. But one way to
19 address this with the potential campaign finance
20 board would be to make sure that their handlings are
21 more transparent, they're clearly addressing what
22 they are dealing with, and the public can then
23 determine whether or not they are actually taking --
24 taking the actions that they should on the cases that
25 they are investigating.

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2 MR. SOARES: Would -- would your
3 organization be open to, let's say, the New York
4 State Comptroller and the New York State Attorney
5 General having appointments to such a board?

6 MR. MAHONEY: We have supported
7 proposals like that in the past, yes.

8 MR. MOLLEN: As a follow-up to
9 Chairperson Fitzpatrick's question, is I understood
10 your answer NYPIRG received a letter from the Board
11 of Elections, stating they did not have the power to
12 reinterpret the regulation or opinion on L.L.C.s.?

13 MR. MAHONEY: Yes. It's been -- I
14 think it was 2007 or 2008. I can try to dig that up
15 and send that to the Commission.

16 MR. MOLLEN: Well, that's my
17 question. If you could provide a copy of that
18 correspondence --

19 MR. MAHONEY: Sure.

20 MR. MOLLEN: -- to the Commission,
21 that would be great. Thank you.

22 MR. WILLIMAS: Any other questions?
23 Thank you very much.

24 MS. CALCATERRA: Our next speakers
25 are Karen Scharff and Jessica Wisneski from Citizen

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2 Action.

3 MS. SCHARFF: Good evening. My
4 name is Karen Scharff. I am the Executive Director
5 of Citizen Action of New York. And joining me is
6 Jessica Wisneski, our Campaigns and Legislative
7 Director. Thank you for the opportunity to speak
8 tonight. And I thank you for committing your
9 personal time and energy to bringing an end to
10 corruption in our state government. The people of
11 New York desperately need your help to restore our
12 democracy.

13 Citizen Action is a statewide
14 organization that involves grassroots New Yorkers and
15 speaking out on local state and federal issues. Our
16 mission is to empower ordinary New Yorkers to have a
17 voice in public policy and to help them shape those
18 policies to improve their communities and their
19 quality of life. Over the past thirty years, our
20 members have fought for quality affordable
21 healthcare, quality public schools, fair tax
22 policies, consumer protection, environmental
23 protection, and other issues of social, racial, and
24 economic justice.

25 Year after year, we get thousands

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2 of people who have never before been activists to
3 write letter to their legislators, come to community
4 meetings, travel to Albany for lobby days, and take
5 other actions to make their voices heard. Citizen
6 Action decided to make comprehensive campaign finance
7 reform with public funding of elections at its core
8 our top priority because we have watched, year after
9 year, as the big money contributions drown out the
10 voices of those ordinary New Yorkers that we bring up
11 here to have a voice. And we've watched those
12 contributions to feed our efforts to win public
13 policy decisions that are in the best interest of the
14 public.

15 More and more, when we reach out to
16 people and ask them to make their voices heard, they
17 tell us it won't make a difference because the
18 lawmakers will do what the wealthy special interests
19 tell them to do. We tell people that the people they
20 elect have to listen to them and that by joining
21 together with their neighbors, they have a voice.
22 But honestly, they no longer believe us.

23 After personally, myself, leading
24 these efforts at Citizen Action for the past thirty
25 years and spending my whole adult life as an

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2 organizer convincing people that they are involved
3 and can make a difference, I am sad to have to tell
4 you today that New Yorkers, unfortunately, have good
5 reason to give up. Their lack of trust in our
6 government and their belief that people like us who
7 are not wealthy contributors will be ignored is
8 becoming more and more true every single year in
9 Albany.

10 While we have been successful over
11 the years on many crucial issues, nothing is more
12 discouraging to our members and to the average member
13 of the public than seeing the growing impact of money
14 on our electoral and legislative system.

15 Here is how it really works. As
16 some of you know from your own experience, when you
17 decide to run for office, the very first thing you
18 have to do is raise money. And as campaigns have
19 gotten more and more expensive, you have to raise a
20 lot of money. You can only raise a lot of money by
21 going to people who have a lot of money. So this --
22 you know, it's just a basic fact of life in campaigns
23 and it creates that show-me-the-money culture
24 referred to by U.S. Attorney Preet Bharara.

25 That culture is created from day

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2 one of a candidate's campaign. No matter how good a
3 person they are, no matter what their greatest
4 intentions are, as soon as they start to run for
5 office they are put into this system. And
6 unfortunately or just, you know, in reality, very few
7 of these large donors are writing big checks to any
8 politician out of the goodness of their heart. They
9 donate with the expectation they will get something
10 in return.

11 What is that something? Well, at a
12 minimum, it's access to an elected official. People
13 believe that their contribution entitles them to a
14 meeting with the official and his or her staff. They
15 believe the more they give, the more access they'll
16 have and they believe if they give enough they might
17 be able to influence important policy decisions. And
18 in far too many cases, they're right. Their
19 contributions enable them to shape public policy so
20 that it -- so that it benefits their self-interest at
21 the expense of ordinary taxpayers or consumers.

22 This Commission has been examining
23 special tax rates given to real estate developers
24 that provided large campaign contributions. That's
25 one set of examples of contributors winning out over

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2 taxpayers. Common Cause just issued a report
3 yesterday, the telecom industry donations and
4 identified multiple pieces of legislation where
5 industry interests won out over taxpayers and
6 consumer interest. I have a couple of those in my
7 written testimony. There is many other examples of
8 the same kind of pattern of sort of public interest
9 versus private interest.

10 We looked at a few of them. For
11 example, a bill that would ban the use of Tris, a
12 highly toxic material, from certain child-care
13 products like car seats and baby products, had
14 bipartisan support in both houses, very necessary
15 health bill, never passed the Senate. We found six
16 hundred and sixty-seven thousand two hundred and
17 twenty-five dollars in donations by those who lobbied
18 against it.

19 A bill that would address the
20 problem of mercury containing thermostats by
21 requiring collection and recycling of these
22 out-of-service thermostats, rather than letting them
23 be discarded and lead to mercury poisoning, we found
24 one point two million in total donations by those who
25 successfully lobbied against it and killed the bill.

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2 A bill to allow the D.E.C. to
3 regulate freshwater wetlands of one acre or more,
4 three point nine million in total donations by
5 opponents. The bill never made it into law. There
6 is example after example like this. This is the
7 game, and sadly, everybody knows how it's played.
8 It's a game that leads straight to abuse, excess, and
9 corruption, not for every politician but for many.

10 But to us, even worse than that,
11 when people follow the rules and do nothing illegal,
12 it still corrupts our policymaking process. The
13 influence of money is so deeply embedded in our
14 system, that only deep systemic reforms can restore
15 our democratic process and restore New Yorker's faith
16 in our government. That's why it's so crucial that
17 you focus on systemic reforms, not just the bad
18 apples.

19 In fact, you know, despite
20 everything I have said, most candidates first run for
21 office for all the right reasons. They want to
22 represent their community and they want to serve the
23 public. And that's actually why most candidates
24 would prefer an alternative to the current campaign
25 finance system. Nobody wants to be stuck -- or very

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2 few people want to be stuck in this system.

3 So, what's the solution? While
4 there is a full package of reforms that would improve
5 the system and some of my colleagues have spoken to
6 some of them and we support comprehensive reform on
7 all those areas, we at Citizen Action believe that
8 only public funding of elections will fundamentally
9 change the culture and restore our democracy.

10 Public funding of elections, a
11 small donor matching system, provides candidates with
12 a real and viable alternative way to run for office.
13 And that's what we need is an alternative, a way to
14 run with only small donations from voters. By
15 providing that public match for small donations,
16 public funding of elections makes those donations add
17 up to enough to run a campaign and have a shot at
18 winning. I know you've all heard a fair amount about
19 New York City's public funding system. And at your
20 hearing last week I heard Councilmember Kevin Orrick
21 speak and he provided very compelling explanation of
22 why the City system is so much better than the
23 State's. It allowed him to run for office with
24 donations from his constituents, rather than spending
25 his time raising funds for wealthy special interests,

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2 as he had to do when he ran for State Senate.

3 I think if you look at the outcomes
4 of this year's New York City primaries that just
5 happened in September, it provides further evidence
6 of the positive impact of public funding in leveling
7 the plain field. Joe Lhota won the Republican
8 Primary for mayor using public funds, which allowed
9 him to beat a wealthy self-financed opponent. Scott
10 Stringer won the Democratic Primary for comptroller,
11 using public funds against another wealthy
12 self-financed opponent. And in the Democratic
13 Primary for mayor, where everybody was in a public
14 funding system, the system enabled a large field of
15 candidates to run and compete on the basis of their
16 ideas, rather than running on who could raise the
17 most money.

18 Similarly, you will be less
19 familiar with that Connecticut has a statewide public
20 funding system for their state races. Demos did an
21 in-depth study of the impact of public funding on
22 lawmaking in Connecticut in the multiple years since
23 it's been in effect. I strongly recommend their
24 report and I would urge you to have them in at the
25 October hearing in New York City to speak about

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2 Connecticut and to bring some Connecticut lawmakers
3 in to speak about their experience in Connecticut.
4 We had them up here earlier this year and it's --
5 it's quite compelling evidence.

6 They found, for example, just a
7 couple quick highlights, that public financing allows
8 legislators to spend more time with their
9 constituents. They found that lobbyist influence
10 declines as public funding takes effect. They found
11 that public financing allows for a much more
12 substantive issue-focused legislative process, more
13 bipartisan votes. And they found that policies
14 adopted after public financing was implemented in
15 Connecticut were more aligned with the public's
16 preferences and the needs of the people of
17 Connecticut.

18 As Demos concluded in their report,
19 Connecticut's experience shows that public financing
20 is a fundamental part of a stronger democracy. It is
21 responsive to constituents, rather than big donor and
22 special interests. Public funding of elections,
23 along with the other needed campaign finance reforms,
24 would change the nature of campaigns. And as a
25 result, we would see a very different culture in our

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2 Legislature.

3 A complete fair elections package
4 must include public campaign financing, enhance
5 transparency and enforcement, and lower limits on the
6 size of political donations. A very broad coalition
7 of New Yorkers supports fair elections. Over the
8 past year, nine major newspapers editorialized in
9 support of it. Over a hundred organizations endorsed
10 fair elections. The governor made it a priority in
11 his State of the State and his anti-corruption
12 package. Eighty-eight of a hundred and fifty
13 Assembly members voted for it. And we were only one
14 vote short of support from majority of senators.

15 Those in support ranged from major
16 successful business leaders to former members of
17 Congress of both parties to average New Yorkers who
18 have never made a campaign contribution in their
19 life. And in a moment, Jessica, you can say a little
20 bit more about that public support.

21 Just to wrap up, we believe that
22 it's possible for the Moreland Commission to find
23 unlimited examples of the pernicious influence of
24 money in politics. As you look at those instances,
25 we hope the Commission will focus on the overall

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2 system and the systemic reforms that are needed. As
3 long as there is no alternative, candidates for
4 legislative and statewide offices will continue to
5 have to raise money from special -- wealthy special
6 interests, whether they like it or not.

7 Only public funding of elections
8 provides a practical alternative and that's why
9 creating a publicly funded campaign finance system
10 must be one of the Commission's top priority
11 recommendations if we're truly going to address
12 this -- the culture of corruption in Albany.
13 Ultimately, we hope that the work of this Commission
14 will strengthen both the rationale for sweeping
15 change and the resolve of state officials to act on
16 badly needed reforms. Thank you.

17 Jessica?

18 MR. WILLIMAS: Thank you.

19 MS. WISNESKI: I just want to take
20 one more minute of your time to talk a little bit
21 about the point in time right now, politically,
22 because of course for our organization in the Fair
23 Elections for New York Campaign, we do want to change
24 the laws in New York State through the legislative
25 process.

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2 So, you know, Governor Cuomo came
3 into office three years ago on mantle of reform, even
4 back then. It's a constant need for a reform here in
5 the capital. And over time, you know, proposed his
6 three point reform agenda to clean up Albany. First,
7 it was ethics reform, then redistricting reform, and
8 this past year we hoped campaign finance reform.

9 And so Karen talked a little bit
10 about the outcomes of our campaign, but it was a real
11 groundswell across the state of voters came out
12 incredibly strong for a reform even before state
13 senators started getting indicted in Albany. Major
14 editorials, calls to senators' offices, more
15 organizations, it was indeed, you know, campaign
16 finance reform, the most boring, everybody -- nobody
17 cares about this issue, actually rose to the top,
18 top, top of the legislative agenda in Albany this
19 past year.

20 So you know, the New Yorkers
21 overwhelmingly supported, as Karen mentioned. The
22 Rochester Democrat and Chronicles Editorial Board
23 noted in May, simply put, the pay-to-play culture
24 must be jettisoned. New Yorkers clearly get it. In
25 a poll released last week on behalf of New York

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2 Friends of Democracy, ninety seven percent of
3 respondents said state leaders must address reducing
4 the influence of money in politics and ending
5 corruption. That same poll discovered that
6 eighty-two percent of New Yorkers place the blame for
7 the State Legislature's poor performance on
8 corruption and the influence of money in politics.

9 Fair Elections Campaign Finance
10 Reform transcends party affiliation. Eighty percent
11 of independents, seventy-five percent of Democrats,
12 and sixty-eight percent of Republicans support Fair
13 Elections for New York's proposal to provide public
14 matching funds for small donations, lower
15 contribution limits, disclose the spending of outside
16 groups, and more strictly, enforce all campaign
17 finance laws.

18 So, I just -- I guess I wanted to
19 let you know that, you know, we hope you will be bold
20 in your approach and in your recommendations come
21 December 1st in the reports that you put out, and
22 know that that there is a resourced strategic
23 bipartisan, energized campaign of grassroots and
24 community leaders, who are ready and -- and already
25 working to work -- to push these recommendations into

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2 law. And I think that's a real difference between
3 the last Commission and you all, is that the public
4 is so squarely with you.

5 So as Karen said and in conclusion,
6 our ability to truly fix the system from a systematic
7 point of view, to truly end corruption and the
8 corrupting influence of money, what many of -- what
9 many people think as legalized bribery, it depends on
10 how far you are willing to go and how bold you are
11 willing to be. If you get caught in the weeds and
12 only suggest narrow fixes and -- and to meet narrow
13 problems, we won't actually see much change. But if
14 you are not only willing to suggest fundamental
15 change, but lead with the recommendation, make that
16 very clear statement to Legislature and the Governor
17 about the alternative system, the need for that, a
18 whole new system, a whole new way of doing things,
19 that will truly change the culture. And we will be
20 here to work very hard to make it happen. Thank you
21 very much.

22 MR. WILLIMAS: Thank you. 2.

23 MR. WILLIMAS: Are there any
24 questions? Okay.

25 MS. RICE: I have a question.

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2 Jess, do you think it's more important to impose
3 limits on campaign spending or to impose limits on
4 campaign donations or do you think it's a combination
5 of the two?

6 MS. WISNESKI: On campaign spending,
7 you know, actually I don't think any of us are
8 calling for limits on campaign spending necessarily.

9 MR. WILLIMAS: It is part of the
10 public finance system.

11 MS. WISNESKI: Not in -- not in its
12 newest version, actually. And that's one thing that
13 I think we're united, the groups, around changing
14 about New York City system. We actually think
15 because of the loss -- I mean Ian from The Brennan
16 Center can talk more about how the -- kind of the
17 original matching fund system allowed candidates, if
18 they were being outspent, to get triggered additional
19 funds to stay competitive against a privately
20 financed opponent.

21 That can no longer happen. And so
22 we actually -- there should be a limit on the
23 amount -- ultimate amount of public funds you can
24 receive. I don't think we should put spending limits
25 on candidates because it really does tie their hands

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2 if their opponent is privately financed in that -- in
3 that system and can keep going. So we should limit
4 the public funds, but give enough to be competitive
5 in the system.

6 MR. SOARES: Well, doesn't that
7 then raise the -- doesn't that just create more of an
8 incentive to go public -- to go private, as opposed
9 to public?

10 MS. WISNESKI: Because you can
11 spend more?

12 MR. SOARES: If there are
13 limitations on the public matching side, if there is
14 going to be limitations, doesn't that create an
15 incentive for the politician or the person to go
16 private?

17 MS. SCHARFF: So it's a really
18 important point because we have to have a balance in
19 the rules of -- on the private side and the public
20 side so that the incentives are good for public
21 participation in the public system. And that -- and
22 it's part of why, since the Supreme Court ruled
23 against these kind of trigger mechanisms where if
24 you're being outspent, you get more money that Jess
25 spoke about, since we can't do that anymore, that's

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2 why we don't want to limit the spending even for
3 participating candidates in a public system because
4 they may have too much of a disincentive. They have
5 to worry about that outside spending.

6 But -- so we think that the
7 publicly financed candidate should be allowed to
8 spend as much as they want, as much as they can
9 raise, but we have to -- we do feel like we have to
10 limit the public funds because otherwise the system
11 could become too expensive.

12 So that's just a basic sort of core
13 realities of public funds is you can't keep matching
14 forever. At some point, there has to be a cap. But
15 if someone can keep raising once they've hit their
16 public -- once they've maximized their public
17 matching funds, they can still keep raising private
18 donations to make -- to be able to continue spending
19 if their opponent's spending. We do find that -- but
20 in smaller amounts.

21 We do find that in the public
22 financing systems around the country, candidates do
23 choose to participate. I mean Connecticut, even in
24 its first cycle, over eighty percent of candidates
25 were participating because even though outside the

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2 system they could have spent more, people really
3 don't want to be caught in this kind of pay-to-play
4 system. They really prefer a publicly financed
5 system or small donors.

6 MS. WISNESKI: I would just add
7 that, you know, like Karen said, most of the time,
8 when you have a successful system, both candidates or
9 all candidates are in it, so they are all playing by
10 the same rules. And even when you're not, and you
11 even look at New York City, when Mayor Bloomberg was
12 running for mayor and using his own money, his
13 competitors would have never had a chance to beat him
14 without a public financing system. So even though
15 it's possible that -- you know, and of course we know
16 even if you have all the money in the world, you
17 know, Tom Golisano wasn't our governor, you can't
18 spend millions -- you know, hundreds of millions of
19 dollars and still not win, but it's -- it's a about
20 giving a publicly financed candidate, your average
21 person, the ability to have enough to get their voice
22 out. That's what we are looking for.

23 MS. SCHARFF: And that, enough, is
24 important and that's why we advocate for six to one
25 match like New York City because you want -- what the

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2 research has shown is that you don't have to be the
3 biggest spender to win, but you have to be able to
4 spend enough that the voters know who you are. And
5 so being able to create an adequate fund is the key
6 thing in structuring a public funding system to have
7 the incentives to participate.

8 MR. WILLIMAS: If there's nothing
9 else, thank you very much.

10 MR. FITZPATRICK: I'm sorry, Milt.

11 Karen and Jessica, thank you very
12 much. And Karen, thank you for being so gracious to
13 come to Syracuse with Joan Mandle and speaking with
14 me.

15 It -- bringing up the New York City
16 Primary recently, the two previous speakers talked
17 about an L.L.C. loophole. Is there an independent
18 expenditure loophole in that, in that some of the
19 unions funneled millions of dollars to at least one
20 candidate?

21 MS. SCHARFF: So because of the
22 Supreme Court decisions, we can't limit independent
23 expenditures. I certainly wish we could, but we
24 can't. So we're stuck with the fact that there is
25 going to be independent expenditures. People are

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2 going to put money into them from all sides and they
3 are going to be a large, like that's just not going away
4 is the reality we're facing. And that's part of why
5 we feel so strongly about having a public funding
6 system because what we have seen in the New York City
7 situation on both sides is that despite the
8 independent expenditures, they didn't necessarily
9 determine the outcome of the elections because the
10 candidates, because of the public funding match, had
11 enough money to run and get their voices heard.

12 So you see, like, for example, in
13 the situation where the jobs for New York, which had
14 both real estate and labor money in it was spent,
15 they didn't have a great track record of winning
16 because the candidates said they -- whether they
17 supported or opposed the candidates, the candidates
18 had their own money, ran on their own money, had
19 their own message, and it made the independent
20 expenditures have much less influence on the outcome
21 of those elections than they would have in our state
22 races where people don't have those public funds. So
23 we can't do anything to stop the independent
24 expenditures, but we can make them have less impact
25 by making sure the candidates have their own money to

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2 spend and have their own message.

3 MR. FITZPATRICK: Okay.

4 MS. WISNESKI: And I would just add
5 that don't forget the alternative that if those New
6 York City Council candidates, like our State Assembly
7 candidates, didn't -- you know, if they didn't have
8 the public funds to help, you know, get the word out,
9 they would be out there dialing for dollars for a
10 large private donations. Right? That's what you
11 would need to go for to compete with that outside
12 campaign cash would be large sums of money. And
13 that's what our candidates for State Senate and
14 Assembly are doing now and that's where -- that's
15 where the corrupting influence comes in because with
16 those large private donations become expectations.
17 If you replace that with public funds, the
18 expectations are shared, broad, public, people's
19 business replaced with the private interest who are
20 currently writing those campaign checks. And that is
21 fundamentally what we are looking for.

22 MR. BRIFFAULT: Just a really --
23 this is clarifying what you have been saying is it's
24 the idea here is not to completely replace private
25 money, which is impossible, but the model is really

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2 kind of a seed money or lowering barriers to entry or
3 providing alternative source of funds, the
4 independent spending is going to be there. But that
5 this --

6 MS. WISNESKI: Thanks to Citizens
7 United.

8 MR. BRIFFAULT: -- this is not --
9 in some ways public funding has evolved over time in
10 response to these external conditions as recognition
11 that you can't fully control the environment, but
12 that this is a way of providing an alternative. Is
13 that fair?

14 MS. WISNESKI: Fair.

15 MR. WILLIMAS: Anything else?
16 Seeing none, thank you very much.

17 MS. WISNESKI: Thank you.

18 MS. SCHARFF: Thank you.

19 MS. CALCATERRA: Next speakers are
20 Dick Dadey and Rachael Fauss from Citizen Union.

21 MR. DADEY: Good evening and
22 welcome to Co-chairs Rice, Fitzpatrick, and Williams,
23 and other members of the Moreland Commission. My
24 name is Dick Dadey and I am the Executive Director of
25 Citizens Union, the good government group in New York

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2 City, fighting to make democracy work for all New
3 Yorkers. I am joined by my colleague, Rachael Fauss,
4 who is our policy and research manager. We thank you
5 for inviting us to testify this evening to you in
6 this on the need for greater transparency in the
7 state's budget process as it relates to discretionary
8 funding.

9 Earlier today, Citizens Union
10 released a comprehensive report authored by Rachael,
11 called Spending in the Shadows, Discretionary
12 Spending in the New York State Budget. It found over
13 three billion dollars in funding authorized to be
14 spent this year through lump sum pots of money that
15 allow budgetary decisions to be made after budget
16 bills are passed. The lack of specificity hands over
17 to our elected officials too much discretion to
18 decide in the shadows how the money is spent without
19 sufficient transparency and greater public oversight.

20 Our report looked at two different
21 types of discretionary funds, lump sum funds and
22 community project funds, otherwise known as member
23 items. The vast majority of this funding is
24 distributed through memorandums of understanding and
25 other agreements that are determined by our elected

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2 officials behind closed doors after the state budget
3 is passed.

4 These total the following. With
5 lump sum funds, there were seventy-one pots of funds,
6 totaling three point three billion dollars in
7 re-appropriations set aside to be spent this year
8 without being itemized in the fiscal 2013-2014 budget
9 out of a total of nine billion dollars that has been
10 authorized over the lifetime of these funds.

11 And then second, these community
12 project funds are, otherwise known as member items,
13 three hundred and seventy-eight million dollars in
14 funding authorized for this fiscal year through
15 re-appropriations of which three hundred and
16 forty-three billion -- excuse me -- million was not
17 itemized in the state budget. And these are in forty
18 five separate unallocated pots.

19 While not a new budgetary tool,
20 lump sum appropriations appear to be used much like
21 member items to allow makers -- to allow lawmakers,
22 particularly those in leadership positions, to direct
23 funding to local projects after these budget bills
24 are passed and without needed disclosure and public
25 oversight. Our attention was directed to these pots

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2 of funds after Senator Malcolm Smith attempted to
3 steer multimodal transportation funds to a developer
4 for road project and a scheme to gain access to the
5 Republican ballot line for mayor of New York City.
6 Smith himself said the following, quote, multimodal
7 money is outside of the budget and it's always
8 around.

9 Smith is not alone in his attempt
10 to inappropriately steer member items and other pots
11 of state funds, many of which have been used as grab
12 bags for members to fund discretionary projects,
13 including pet projects in their local districts.
14 Former Senator Shirley Huntley provided member items
15 to a fake organization and that funded her own
16 personal shopping sprees. Assembly member William
17 Boyland used member items to promote his candidacy
18 for office through falsification of records. Former
19 Assembly member Vito Lopez funded his affiliated
20 non-profit, The Ridgewood Bushwick Senior Center,
21 which has come under repeated criticism, including
22 findings by the City's Department of Investigation,
23 that the organization falsified documents double
24 billed the state and increased his girlfriend's
25 salary to six hundred and fifty-nine thousand dollars

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2 from two hundred and thirty-five thousand.

3 Given the potential for
4 inappropriate use of these funds that give the
5 opportunity for corruption, we believe that it's past
6 time that there be greater transparency and public
7 oversight of these allocations.

8 What also gives us concern is in
9 recent days is the refusal of the Legislature to
10 provide the Moreland Commission greater information
11 regarding outside income of legislators. Though its
12 position may be legally defensible, it is difficult
13 to understand whether legislators may have business
14 interests related to the use and recipients of the
15 discretionary funds without being able to examine the
16 outside income of legislators.

17 While we do not accuse the Legislature of any
18 wrongdoing, we would be relieved of this concern if
19 more data was made available to the public and less
20 activity was conducted behind closed doors.

21 Before turning to our
22 recommendations, I will -- we will have Rachael now
23 provide our specific findings on the lump sum funds
24 and community project items.

25 MS. FAUSS: Lump sum funds are

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2 discretionary pots of money that are not itemized, as
3 we stated, which allow details and recipients to be
4 spelled out later. They're provided through plans,
5 resolutions, and memorandums of understanding or
6 M.O.U.s, which are legal agreements that detail
7 administrative decisions by elected leaders, the
8 details of which are worked out after the budget
9 bills are passed. Yet, unlike budget bills, these
10 agreements are not routinely or easily made available
11 to the public.

12 In some instances, these items are
13 passed via resolutions by the Legislature allowing
14 rank and file members the opportunity to vote.
15 However, they are not required to age three days and
16 they are very difficult to track down with the
17 legislative search tools available by each house
18 online. These pots are sprinkled through the aid to
19 localities in capital budget bills, which makes it
20 difficult to get a sense of the total amount of funds
21 that are distributed in this manner.

22 While some of these funds are less
23 problematic, for example, when they're provided to
24 public institutions like the SUNY and CUNY schools,
25 given internal controls, these funds are also

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2 provided to local non-profits, school districts,
3 local governments, or for specific capital projects
4 funded through agencies that are handled by private
5 contractors that's the Malcolm Smith situation.
6 For the mass majority of these funds, agreements that
7 determine how they're spent are not made available
8 online for the public to see and these agreements do
9 not appear to detail which lawmakers requested the
10 specific funds.

11 Budget bills provide little detail
12 of the intended purposes of these seventy-one pots of
13 funds. Just a couple examples in the local
14 assistance account, the exact language in the budget
15 was for additional grants and aid to certain school
16 districts, public libraries, and non-profit
17 institutions. There was another item that said for
18 various senate labor majority initiatives. And that
19 was it. And another for various Assembly majority of
20 labor initiatives. Other grants provide more
21 detailed descriptions for the purposes, but they
22 still leave the discretion over specific projects to
23 be funded later.

24 It should be noted, however, that
25 some funds are provided through competitive formulas,

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2 for example, the SUNY Twenty Twenty challenge grant
3 program, it was included in our tally but because a
4 certain portion of that was still able to be
5 distributed through elected officials.

6 Even where state agencies direct the spending of
7 these funds, there can be problems related to the
8 discretion that has afforded lawmakers. Other than
9 multimodal funds, perhaps the best known lump sum pot
10 in this category is bullet aid, which has been used
11 for aid to local school districts and totaled nearly
12 thirty million this year. Bullet aid has been
13 criticized as a way of funding items outside of
14 established funding formulas. The education budget
15 has very established funding formulas and it allows
16 political dynamics to take over instead. The ability
17 for decisions regarding large amounts of sums to be
18 decided in the shadows through M.O.U.s provides an
19 unfortunate incentive for lawmakers to promise these
20 funds for political favors.

21 On the community projects fund,
22 these are funded through Section 99 D of the State
23 Finance Law. It's the most commonly known set of
24 member items. Though there haven't been new member
25 items funded in the budget since 2009, some items

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2 remain as they have been re-appropriated year after
3 year in the aid to localities budget bill.
4 Governor Patterson vetoed all of these funds in 2010.
5 Governor Cuomo has not vetoed them. However he has
6 only -- he has made a requirement that they go to the
7 original organization they are earmarked for -- for,
8 rather than be transferred to another group. However
9 the Governor has vetoed other sets of funds that were
10 more than seven years old, stating in general seven
11 years is more than enough time to fund and implement
12 services. So this is a welcomed improvement, but
13 seven years may still be too long in our opinion.
14 Citizens Union's analysis of the state budget bills
15 found nearly three hundred seventy-eight million in
16 re-appropriated community projects fund items. And
17 only thirty-four of those -- thirty-four million of
18 those were itemized. As we said, there are
19 forty-five of these pots there are unallocated. They
20 also have very broad language, for example, for
21 services and expenses or for contracts with certain
22 municipalities, corporations and/or non-profit
23 agencies.

24 Budget Reforms Act, enacted in
25 2007, required legislative additions which includes

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2 member items to the executive budget must be
3 itemized, but in the event they are not, a plan with
4 the individual items must be developed and passed via
5 resolution by a majority member -- of members in each
6 house, though when -- even when the projects are
7 itemized and those resolutions -- the sponsoring
8 legislator's name is not included.

9 The Assembly has provided some disclosure of member
10 items through these legislative initiative request
11 forms to firms used by Assembly members to designate
12 funding to particular organizations. The Assembly's
13 website has P.D.F. documents that, in total, are over
14 twenty-two thousand pages with one member item per
15 page, split into over fifty documents, became
16 incredibly difficult for the public to navigate these
17 funds and makes them essentially useless for the
18 general public.

19 There are also online databases of
20 member items, such as the Attorney General's New York
21 Open Government website, which is formally Project
22 Sunlight. And there is also SeeThrough New York
23 which is run by the Empire Center for New York State
24 policy. However these have stopped being updated
25 since member items have no longer been newly funded,

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2 though they keep getting appropriated every year. So
3 other than the analysis Citizen Union's done, there's
4 no listing of the member items that currently are
5 funded in the budget.

6 And tellingly, the Division of the
7 Budget's website notes the following in its list of
8 member items. A recipient's name appearing on this
9 list does not confirm either that the entity has been
10 paid the grant amount or has even begun the process
11 of applying for the funds through the agency that
12 oversees the contract. So Dick is going to speak to
13 some of our recommendations to address this.

14 MR. DADEY: So, you know, in light
15 of our findings, we call upon the Moreland Commission
16 to follow the money as it investigates these lump sum
17 appropriations, member items, and other discretionary
18 monies found in the state budget. Specifically, we
19 ask the Commission to recommend policy changes
20 regarding the approval of budget items to ensure
21 needed itemization and disclosure to provide required
22 transparency and public accountability in deciding
23 which entities receive state funds.

24 We also ask you to fully analyze the lump sum
25 appropriations and remaining member items in the

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2 state budget, including their recipients and sponsors
3 to determine whether further investigative action is
4 required.

5 In order to improve the
6 transparency and accountability of these
7 appropriations, there should be increased disclosure
8 and itemization of lump sum appropriations.
9 Specifically, we believe that they should be
10 disclosed in the state budget the detailed purposes
11 and criteria set forth for their distribution.
12 Two, we believe that more specific information about
13 lump sum appropriation should be made available
14 online in user friendly formats, specifically
15 including all M.O.U.s, plans, resolutions, also a
16 plan for how they are to be distributed and the
17 recipients and any remaining funds that are unspent.
18 Third, there should be a time limit for the
19 re-appropriations of these lump sums in order to
20 decrease slush funds and the use of these funds as
21 one-shot budget gap fillers. Governor Cuomo has
22 faithfully decided to veto many of these items in
23 this year's state budget.
24 Legislators' names, as the fourth point, should be
25 listed with the itemized member items and any other

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2 projects they sponsor in the budget appropriations
3 before they are passed.

4 Fifth, resolutions passed providing
5 details related to these expenditures of lump sum
6 appropriations in the budget should be required to
7 age three days, as do budget bills, before being
8 voted on and made easily available online.

9 In providing the Commission with this analysis,
10 instead of recommendations, we've met with the staff.
11 We also have made available with this report today
12 two hundred pages of back-up materials detailing all
13 of these lump sum appropriations, all of these member
14 items, in two thousand separate entries. So, you
15 know, read it to your heart's content.

16 We have no evidence to allege
17 further specific corruption beyond what has been
18 discovered by the prosecutors. However we believe
19 that where there is smoke, there is fire. Rather,
20 with this information we are bringing out from the
21 shadows spending decisions that need to be
22 investigated and a flawed budget process that needs
23 to be reformed.

24 All of the data is available on our
25 website and I would urge you to think about the

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2 interest of the taxpayers who will be startled today
3 that Albany has a three point three billion dollar
4 grab bag of state funds that is spent in the shadows
5 as it sees fit. We don't know how and where this
6 money is spent. And that is wrong. And it is up to
7 you and your job to bring this out from the shadows.
8 Thank you.

9 MR. WILLIMAS: Thank you. Are
10 there any questions?

11 MR. FITZPATRICK: I have -- I have
12 a question. Your testimony falls into the category
13 that Kathleen Rice has created for this Commission,
14 which is you can't -- you have got to be kidding me
15 that this is legal. So if we have the ability to
16 write a report, we are mandated to do that by the
17 Governor. But we also are a hybrid. We are also
18 Deputy Attorneys General. If you had the subpoena
19 power that we have, which for a lot of people would
20 probably think Dick would be a dangerous thing, where
21 would you focus? What would you do? And why don't
22 we stay in what I like to talk about is -- it these
23 not-for-profits which seem to have no oversight,
24 don't perform anything for anybody in their
25 communities that they purport to represent, other

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2 than employ the unemployable relatives of a
3 particular legislator. Where would you exercise your
4 discretion with that subpoena power?

5 MR. DADEY: You know, I would
6 follow the money. You know, I would look at these
7 detailed listing -- the detailed listing of these
8 appropriations and member items. I would look at the
9 memorandum of understanding that have been written
10 for each of these lump sum appropriations. I would
11 then track down which legislator was involved in the
12 decision making process, which is not known to the
13 public. It may be known to the legislative leaders,
14 but it is not -- certainly not made known to us. I
15 would then start to connect the dots to see who were
16 the contributors to these legislators who have made
17 these decisions about how to spend these public
18 dollars.

19 You know, there all these silos of
20 information that exist out there, you know, whether
21 it's campaign contributions, whether it's campaign
22 spending, whether it's these lump sum appropriations,
23 they all, you know, are interconnected but they stand
24 alone. And no one has ever taken on the ability to
25 bring all of these together and connect the dots.

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2 And that's what I would urge you to do. I don't know
3 if Rachael has anything to add to that.

4 MS. FAUSS: And I think we've seen
5 the ability to do that to some extent. The Project
6 Sunlight, now New York Open Government website looks
7 that camping contributions, member items, non-profit
8 registrations, but we don't have any of that for the
9 lump sum funds with the memorandums of understanding.
10 You don't have any of that. Even just the public
11 having a database like that that detail more of the
12 discretionary funds, the public journalists, so many
13 others could dig into that as well.

14 MR. JAVDAN: Just a question to the
15 comment, you know, you got to be kidding me is that
16 legal, are we sure they are legal? We had something
17 on the federal side called silent earmarks for many
18 years where earmarks would put forward -- they
19 weren't actually put into legislation but they were
20 covered either in conference language or something
21 else. And for years, those were honored. And then
22 O.M.B. came out with a directive saying no, if it's
23 not actually passing to law, you, Agency, are
24 violating the law if you are honoring that earmark
25 and violating procurement rules. Is there anything

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2 that has come out to say that these are clearly
3 legal?

4 MR. DADEY: They -- they are legal.
5 They follow the laws governing the review and
6 approval and adoption of our state budget which
7 provides for these memorandums of understanding to be
8 decided after the budget. I mean that's the shame of
9 all this, is that so much of what is unbelievable in
10 New York is legally permissible.

11 You heard from Bill Mahoney about
12 the porous campaign finance laws that allows, you
13 know, elected officials to use campaign dollars for
14 legal defense funds for pool covers, you know, for
15 personal items. This is all legal. And it -- you
16 know, we don't know what is wrong and what's -- you
17 know, how this money is being spent because it's not
18 being revealed to the public. So it is legal.
19 Should it be changed? Should we have greater
20 transparency? Should they be itemized before they
21 are passed by the budget as opposed to these pots of
22 money that total two hundred million dollars that are
23 decided behind closed doors and in the shadows by
24 legislative leaders and others in the legislature
25 seeking influence? By all means, but it's legal.

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2 MR. SOARES: I have a question.

3 The seventy-one pots as you -- as you articulated
4 them in the three point three one billion dollars,
5 while they may not be made public and there is no
6 transparency for us to determine where to go, but in
7 keeping with Mr. Fitzpatrick's question, it has got
8 to be managed internally. Someone within that house
9 has to be managing these pots. And do you know who
10 that is or which department that is or which agency?

11 MS. FAUSS: Sure. In our full
12 report, which we did send to the staff of the
13 Commission, we looked at the different agencies that
14 manage these funds. So for example, the community
15 project funds, I think there are some eighteen
16 agencies that manage those. In many cases, the
17 Division of the Budget signs off on the memorandum of
18 understanding so, you know, I think Division of the
19 Budget likely has most of these.

20 MR. SOARES: Okay.

21 MS. FAUSS: But the agency should
22 as well. So -- and I in the -- also in the detailed
23 spreadsheet that we sent, which is the, you know,
24 over two thousand lines of these, including the old
25 members items that are still in the budget, we

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2 provided to you exact detail what the fund of the --
3 that's being used as, whether it's community projects
4 or multimodal, and we provided the section of law,
5 anything we could take -- track down from the budget
6 in order to be able to trace these funds.

7 MR. SOARES: Okay. Thank you for
8 that. Just one more question. Is the office of the
9 State Comptroller required to approve any of these
10 memorandums prior to their disbursements?

11 MS. FAUSS: In the budget bill
12 language, the comptroller's office doesn't have a
13 role. I mean I know they are involved in disbursing
14 funds. You know, they did -- there was an article
15 earlier this year that mentioned a disbursement sheet
16 that they had about what was left in the community
17 projects fund. So they definitely know how much has
18 been spent out of these funds. I don't think they
19 have a role in determining which organizations get
20 the funds.

21 MR. DADEY: I mean and there are
22 obviously internal controls within our state
23 government to ensure that these funds, you know, are
24 spent properly. But there are choices about how that
25 money gets spent and for whom, and on what. And it's

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2 that ability to influence those choices that we're
3 concerned about. The money -- you know, I mean
4 Malcolm Smith boasted about having the ability to
5 direct money to a favorite contractor that was
6 going -- going to be able to help him get on the
7 ballot. That's, you know -- that's pretty
8 significant.

9 MR. SOARES: Would you recommend
10 greater and more transparent oversight by the State
11 Comptroller with these pots of monies?

12 MR. DADEY: That would be a great
13 place to start.

14 MR. ROMANO: At last -- last, at
15 our last public hearing, Loretta Lynch, the United
16 States Attorney for the Eastern District of New York,
17 was reflecting on some of her recent prosecutions.
18 And in a sort of lessons learned, at least, shared
19 with us her concern that that there was no locus of
20 responsibility so that these member items when
21 approved by the legislator, the legislator has no
22 legal responsibility for ensuring that the funds are
23 actually spent for their intended purpose.

24 And further than that, she looked
25 at some of the non-profits that receive these funds

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2 and there was apparently no requirement that those
3 funds be audited independently so that there are
4 assurances from the recipient side that these funds
5 were being disbursed as intended.

6 I don't -- I haven't read your report yet. I am
7 looking forward to it. But I wonder if your report
8 or if you have a view on how, I think as a prosecutor
9 Ms. Lynch was legitimately looking for holding people
10 responsible for the diversion of these funds, which
11 is really what her cases were about.

12 MR. DADEY: You may recall that we
13 had a slush funds scandal in the City of New York, in
14 which there was very loose oversight and lax
15 enforcement of how member items were spent by the
16 City Council. Out of that scandal rose a very
17 rigorous process that required much more due
18 diligence by the City Council and the Office of the
19 Mayor in reviewing applications, in ensuring that the
20 organizations are legitimate, in requiring that the
21 City Council members disclose any kind of conflicts
22 of interest that may exist in the relationships to
23 the non-profits. The -- the reforms that have come
24 out of that process are -- are, you know, commendable
25 and should be looked at by this Commission and how

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2 maybe the state should address member items.

3 The -- you know, the -- some of the
4 remaining member items scandals that exist in New
5 York really date back before the reforms. You know,
6 Councilmember Dan Halloran boasted too about being
7 able to direct member items to a non-profit. He
8 boasted not knowing that the process that would
9 prevent him from doing so. But the City of New York
10 and the City Council and the Office of Mayor have a
11 very good system in place now that Citizens Union
12 actually help bring about. So I would urge you to
13 take a look at that as a set of recommendations for
14 how you might see that the state handle this matter.

15 MR. WILLIMAS: Go ahead.

16 MS. BARTOLETTI: Dick, I haven't
17 read your report either. I am looking forward to
18 doing it soon. Did you see a pattern of the members
19 of the Legislature who did receive a lot of these
20 M.O.U.s or these lump sum pots? Did we see senior --
21 seniority factor in toward or conference -- often I
22 think there is a feeling here in Albany that that
23 member items are way for the legislative leaders to
24 keep their members in line, keep them in favor of the
25 leadership. Did you see any pattern of who was

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2 receiving these member items lump sum?

3 MR. FAUSS: Sure. So in -- in
4 looking at these, the legislators who actually
5 request funds, we don't know that. We simply don't
6 know who has requested these funds and that's a big
7 part of the problem. But what we do know is that in
8 distributing the money, it's the legislative leaders
9 who are able to do so. How they work with their
10 colleagues, we don't know. So I think we need
11 greater itemization. We need to tie back and find as
12 much as we can. I think if legislators knew what
13 some members were able to achieve through their
14 relationships and others, I think, just that kind of
15 disclosure in itself would call for a change.

16 MR. DADEY: Let me just add that --
17 you know, that the problem really lies with the
18 legislature on this because these are local projects
19 that are being funded and, you know, these M.O.U.s
20 are largely drafted and written by the legislative
21 leaders with their colleagues. And, you know, the
22 executive branch does sign off on it but it's -- you
23 know, it's local initiatives that are being funded
24 and determined by the Legislature.

25 MS. RICE: Dick, I have a question.

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2 It might be a silly question, but is there are
3 thought to just doing away with the member items
4 system or re-approps or lump sum whatever you want to
5 call that, and really forcing funding to go through
6 a -- an expenditure-specific review and approval
7 process. I mean it seems such -- like such common
8 sense. Why has that not happened?

9 MR. DADEY: Well I think that the
10 solution on the re-appropriations is for them to get
11 two things, one it to be much more specific in the
12 itemization of what this money has been spent on
13 during the budget approval and passage, and not allow
14 for such broadly defined categories of, you know, the
15 two hundred million dollars for aid to localities.
16 And then, if there are still some vagueness and
17 loosely defined projects, then memos of understanding
18 that are adopted -- because she can't decide on
19 everything that's going to be spent in a budget
20 that's over a hundred thirty billion dollars in New
21 York. But those decisions that are made after the
22 budget is passed in these memos of understanding
23 should be released to the public. We should be able
24 to have that kind of scrutiny. And we don't. And so
25 we can't evaluate whether this money has been well

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2 spent or not.

3 In terms of the other matter, the
4 member items, I mean the member items do go to worthy
5 not-for-profits to rely upon them to provide
6 important services to the communities that they exist
7 in.

8 Citizen Union's position is that,
9 you know, member items do allow an important role for
10 legislators to help those in their district where
11 they feel the need is greatest. And that's all fine
12 and good from a public interest prospective. But
13 let's -- you know, let's be much more transparent.
14 Let's be much more rigorous about how that money is
15 spent because the lack of transparency and the lack
16 of accountability breeds the kind of corruption that
17 we have seen here in Albany.

18 MS. RICE: Great.

19 MR. WILLIMAS: Go ahead.

20 MR. BRIFFAULT: Just on the
21 M.O.U.s -- just tell us again who is on these
22 M.O.U.s? I mean in theory and like civics one O one,
23 you pass a bill one house, the other house, the
24 Governor. It sounds like they pass a budget bill one
25 house, the other house, the Governor, and then

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2 sometimes afterwards some people, not two houses and
3 a Governor, are making an agreement how to spend the
4 public's money without going through the proper
5 process. So who exactly is on any particular member
6 item? Who would be the players on an M.O.U.?

7 MS. FAUSS: It varies. In some
8 cases, it's all three branches, again, like the
9 regular budget process, but it's always the
10 majorities in each house, sometimes the speaker, the
11 temporary president of the senate, in some just a
12 couple of cases --.

13 MR. BRIFFAULT: As individuals?

14 MR. FAUSS: Yes, as individuals or
15 the secretary of the finance committee or ways and
16 means committee, which is basically the leadership of
17 the houses. And there is a couple rare instances
18 where there is the senate task force on high speed
19 rail that gets to decide some high speed rail funds.
20 But for the most part, it's, you know, the Governor,
21 the legislative leaders.

22 MR. WILLIMAS: Thank you.

23 MR. DADEY: Thank you. Good luck.

24 MR. WILLIMAS: Thanks.

25 MS. CALCATERA: Thank you. This

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2 begins the public portion of our test -- of our
3 hearing this evening. We have a nice healthy list of
4 speakers who are going to come up and speak -- to
5 speak on the topic issues, which we asked people to
6 submit testimony on, which includes campaign finance,
7 outside income of state elected officials, and
8 political party housekeeping accounts. Those are
9 three areas that we're focusing on. So this evening,
10 I'm going to call the speakers and I will give you
11 three, so you know in advance when you are ready to
12 speak. But first I'm going to invite up Laura Abel.
13 Thereafter, is going to be Susan Weber and then Joan
14 Mandle. Thank you.

15 MS. ABEL: Hi, good evening.

16 MR. WILLIMAS: Good evening.

17 MS. ABEL: I respectfully submit
18 this testimony on behalf of Lawyers -- excuse me --
19 Lawyers Alliance for New York. Public corruption
20 demands improvements to the state's laws regarding
21 lobbying and the disclosure of independent spending.
22 At the same time, disclosure laws should not chill
23 speech by the small grassroots organizations. We
24 need to participate in our democracy.

25 Lawyers Alliance is the leading

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2 provider of business and transactional legal services
3 to non-profits that improve the quality of life in
4 New York City neighborhoods. We represent smaller
5 and community-based organizations that work in low
6 income neighborhoods and lack the resources to pay
7 counsel -- to pay in-house counsel.

8 Disclosure laws affect non-profits
9 that engage in legislative advocacy, apply for
10 government funding, send out newsletters mentioning
11 local officials, and do a million other things
12 unrelated to partisan elections. But that can be
13 swept up by overly broad reporting requirements.
14 At last Tuesday's hearing, a speaker talked about the
15 pizza restaurant owner who is not a major campaign
16 contributor. I am talking about the youth
17 organization that sends out a newsletter reporting
18 that Councilmember Smith stopped by its block party
19 last Saturday to play with the kids.

20 These groups struggle to comply
21 with the present requirements to report election
22 related activity to the New York City Campaign
23 Finance Board, the Attorney General's Charities
24 Bureau, and the Board of Elections, and to report
25 lobbying both to JCOPE and to local authorities.

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2 Each of these agencies has different definitions and
3 deadlines. Some even require reporting if an
4 organization merely mentions a candidate in a mass
5 communication before an election. This is a trap for
6 the unwary that serves no useful purpose.

7 Most of my non-lawyer clients find
8 the disclosure rules virtually impossible to
9 understand and they lack the resources to keep
10 different sets of records and file different reports
11 for each agency. Human Services Council, the
12 N.Y.C.L.U., and the Center for Popular Democracy are
13 submitting testimony identifying similar issues.
14 Any additional disclosure requirements should follow
15 five simple principles. First, Section 501(c)(3)
16 non-profits should be exempt from election related
17 disclosure requirements because federal tax law
18 already bars them from engaging in that activity.
19 Second, the definition of electioneering or
20 independent spending should be narrow so that it does
21 not capture communications that are not intended to
22 influence elections. Communications should be
23 covered only if a reasonable person would think they
24 are intended to influence an election, only if there
25 are truly mass communications to the public. We need

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2 to be very careful about covering electronic
3 communications so that we don't sweep in routine
4 newsletters and LISTSERVs and the like. And
5 communications to an organization's own members
6 should be exempt.

7 Third, the spending threshold for
8 lobbying reporting should be raised to ten thousand
9 dollars as the commission on public integrity
10 recommended.

11 Fourth, disclosures that could cause harassment of
12 covered organizations or their contributors should be
13 exempt.

14 And finally, organizations required to disclose
15 election related or lobbying activity should be able
16 to disclose it to a single government agency which
17 should share information with any other agencies that
18 need it.

19 Each agency should use the same
20 definitions, reporting deadlines, and forms. This
21 would also increase the transparency of the
22 information, so that we don't have the silos of
23 information that Dick Dadey mentioned.

24 Thank you for your hard work on
25 these issues. I would be happy to answer any

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2 questions you might have either now or as your work
3 continues.

4 MR. WILLIMAS: Thank you very much.

5 MS. CALCATERRA: Ms. Abel, you
6 submitted comprehensive testimony. Please know that
7 all the commissioners on this Commission received it
8 in advance and had the opportunity to read your
9 comprehensive testimony. Thank you.

10 MS. ABEL: Thank you.

11 MR. WILLIMAS: Thank you, Laura.

12 MS. CALCATERRA: Next -- our next
13 speaker will be Susan Weber and then Joan Mandle and
14 then Diane Secfik. And I forgot to mention earlier,
15 which I know everyone is aware of, that we also have
16 a three-minute limit that we ask for our public
17 portion, which I am sure everyone is aware of. And
18 at -- when I get close to three minutes, a few
19 seconds before that I will just remind everyone to
20 wrap up. That's it. It didn't start yet. Thank
21 you. Susan?

22 MS. WEBER: All right. Thank you
23 very much. My name is Susan Weber. I am resident of
24 Albany County and I am a regional organizer volunteer
25 for MoveOn dot org, among other things. And I wanted

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2 to come here today to tell you MoveOn, locally, was
3 very, very involved in the Fair Elections effort to
4 pay us public financing comprehensive campaign
5 finance reform during the last legislative session.
6 And as part of that effort, we -- we and several
7 other organizations conducted online petitions. And
8 I have them here for you today because we didn't get
9 around to giving them to the Governor and the
10 Legislature at the end of the session.

11 Let -- let me just read you the
12 petition background that people were signing. New
13 York -- this is the background then I will read the
14 petition itself. It's very short. New York is in
15 the grip of a political crime wave. In the last
16 seven years, thirty-two New York State elected
17 officials have been arrested, indicted, convicted,
18 jailed, censured, or forced to resign in disgrace.
19 New York's legislators are more likely to lose their
20 seat through arrest than at the polls. Regardless of
21 party or ideology, these wrongdoers share one thing.
22 They abuse their positions of public trust and
23 perverted our democracy to pursue personal gain.
24 We must change this culture of corruption by changing
25 the system. This requires public financed fair

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2 elections to attract candidates who will not be
3 beholden to special interests, but will work for the
4 public good and will have a chance of actually
5 winning.

6 Maine, Connecticut, Arizona, and
7 New York City have public financing systems. The
8 cost for New York State would be just two dollars per
9 voter per year. Less than a cup of coffee. In
10 Connecticut, seventy-five percent of candidates have
11 chosen to run with public financing only. This has
12 made an amazing difference in the integrity of
13 politics in that state and in the policies enacted by
14 the Legislature.

15 We, the undersigned, demand that
16 New York's Legislature and Governor enact meaningful,
17 transparent, enforceable public financing of
18 elections now, including limits on and disclosure of
19 campaign contributions. We must ensure that the
20 pay-to-play culture in Albany is eliminated.
21 And the petition language states we call upon you --
22 well, it's the same sort of thing I just read. We
23 call upon you to enact comprehensive campaign finance
24 reform, including public financing of legislative and
25 statewide races, lower limits on and full disclosure

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2 of campaign contributions and strong enforcement.
3 New Yorkers deserve better than the current
4 pay-to-play culture. To change the culture you need
5 to change the system.

6 And here are the petition
7 signatures from MoveOn. There are ten thousand five
8 hundred from MoveOn. There are over fifteen thousand
9 from the Fair Elections Coalition. And there is
10 another three thousand or so -- I had lost my little
11 tags so I can't tell you for sure -- from Credo
12 (phonetic spelling).

13 MS. CALCATERRA: Thank you.

14 MS. WEBER: So, here they are.

15 MS. CALCATERRA: Thank you. And I
16 would ask, because we do have some Moreland team
17 members right behind you, and if you could pass the
18 petitions right off to them to make sure it goes in
19 our hand -- gets in our hands right away. Thank you.

20 MS. WEBER: I will.

21 MS. CALCATERRA: Thank you.

22 MS. WEBER: And I thank you all for
23 your time and we are so hopeful for your outcome here
24 in your report. We are looking really forward to it.
25 We know you can do something really bold.

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2 MS. CALCATERRA: And thank you for
3 taking the time to gather the petition and
4 signatures.

5 MS. WEBER: Thank you all.

6 MR. WILLIMAS: Thank you, Susan.

7 MS. CALCATERRA: Ms. Mandle, Diane
8 Secfik -- Secfik, and then Rob Werner. Thank you.

9 MS. MANDLE: Good evening.

10 MR. WILLIMAS: Good evening.

11 MS. MANDLE: I am Joan Mandle and I
12 live near Syracuse in Hamilton, the dead center of
13 New York State. I am a professor of sociology --
14 pardon me -- at Colgate University and I am the Chair
15 of the Board of Directors of Public Campaign and I am
16 the Executive Director of Democracy Matters.
17 My research as a sociologist has focused on policies
18 that increase the inclusion of all Americans in the
19 decisions that affect their lives. As a chair of
20 Public Campaign, I have been involved for the last
21 ten years in national and state efforts to pass
22 public financing of election campaigns. And as
23 Executive Director of Democracy Matters, I have
24 worked for the last thirteen years with college and
25 high school students in New York State and throughout

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2 the country who are committed to, and I quote,
3 getting big money out of politics and people back in.
4 All of these experiences inform my brief testimony
5 here tonight. I urge the Moreland Commission to
6 recommend that the New York State Legislature enact
7 comprehensive campaign finance reform, including
8 public campaign financing based on the model in New
9 York City.

10 Young people, like those here
11 today, often tell me that their peers have given up
12 on government and certainly given up on politics.
13 They roll their eyes when you talk about the
14 political system. This reflects the growing cynicism
15 that I think exists throughout the society and
16 certainly New York, in terms of the hostility and
17 upset about politicians, politics and government.
18 New York citizens know that they cannot compete with
19 the big donors who exercise outside influence on the
20 Legislature. This leads many too many, including
21 students, to simply opt out of the political process,
22 a problem that goes to the heart of our democracy.
23 But it can be different in New York. We can restore
24 trust in government and one that is truly of, by, and
25 for the American people, not one bought and paid for

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2 by lobbyists and their employers. We need campaign
3 finance rules that encourage, not discourage, New
4 Yorkers to be active political actors. This includes
5 voting, of course, but it is also includes,
6 importantly, that individuals who are not wealthy and
7 not connected to wealth can run for office with a
8 real chance of winning.

9 Public financing of campaigns has
10 worked well in other states, as many people have
11 attested to this evening. It has contributed to more
12 competitive elections, more diverse candidates,
13 including young people, and, yes, to ideas becoming
14 important and winning races, rather than simply being
15 decided by whoever spends the most money.

16 I have personally heard Janet
17 Napolitano, the former Governor of Arizona, talk
18 enthusiastically about how exciting it was for her to
19 run for office and win as a publically financed
20 candidate.

21 MS. CALCATERRA: Three minutes.

22 MS. MANDLE: She has specially
23 noted two differences from when she had run for
24 office in what she called the traditional way before
25 public financing. First, she said campaigning --

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2 campaigning, sorry, as a publicly financed candidate
3 gave her much more time to spend talking with her own
4 constituents, because she was not spending hours on
5 the phone with potential funders or flying to New
6 York and Los Angeles to raise money. And she
7 particularly emphasized her ability to personally
8 reach out to groups like Native Americans in Arizona,
9 many of whom had never had a gubernatorial candidate
10 campaign in their communities.

11 And second, she said, once elected,
12 she was not beholden to the many lobbyists who flock
13 to the Governor's office. Quote, they had to get in
14 line like every other Arizona citizen, she said, and
15 plead their cases on the merits.

16 New York State needs to pass
17 fundamental campaign finance reform and give our
18 government back to young people and to all New
19 Yorkers. Thank you very much.

20 MR. WILLIMAS: Thank you.

21 MR. FITZPATRICK: Thank you, Joan.

22 MS. CALCATERRA: Thank you so much,
23 Ms. Mandle.

24 MS. MANDLE: Does anyone have
25 questions?

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2 MR. FITZPATRICK: Joan,
3 Connecticut, Arizona, Maine, New York City --

4 MS. MANDLE: Okay.

5 MR. FITZPATRICK: -- you believe
6 the best model is New York City?

7 MS. MANDLE: I do, for a couple of
8 reasons. You know, one is that we know it's what
9 very, very well. We know that many of the
10 legislators in state office now have run and won with
11 the public financing system. They're familiar with
12 it. Public financing is a difficult thing for
13 legislators to vote for it. It runs, from their
14 point of view, against their best interests. They're
15 empowering people to run against them.

16 And I think that in New York, in
17 particular, the model of New York and how successful
18 it has been is a very important selling point, if you
19 will, with the Legislature.

20 The other reason I think is that
21 New York is specifically -- a specific state. It's
22 different from Connecticut. It's different from
23 Arizona. And I think that the model from New York
24 City is the way to go for New York.

25 MS. CALCATERA: Right. Thank you

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2 so much for your time.

3 MS. MANDLE: Thanks a lot.

4 MS. CALCATERRA: Our next speaker
5 will be Diane Secfik, thereafter Rob Werner, and then
6 we'll be joined by two members of the Interfaith
7 Impact of New York State. That will be Robb Smith
8 and Richard Gilbert.

9 And for the two of you, when --
10 when you come, please come up together. But first,
11 Diane Secfik.

12 Is Ms. Secfik here? Well, she
13 submitted testimony that's relevant and on point.
14 And all the Commissioners have received a copy of it
15 beforehand, so let's now move on to Mr. Werner -- Rob
16 Werner, and then after that, like I said, Robb Smith
17 and Richard Gilbert, and then thereafter, we'll be
18 joined as a collective team with Jaron Benjamin and
19 Michael McKee. Thank you.

20 MR. WERNER: Okay. Thank you,
21 Commissioners, for the opportunity to testify. My
22 name is Rob Werner. I am the National Field Director
23 for an organization called Americans for Campaign
24 Reform. We have offices in Washington D.C. and
25 Concord, New Hampshire. We are chaired by former

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2 U.S. Senators Bill Bradley, Bob Kerrey, and Alan
3 Simpson. And we also have the bipartisan support of
4 one hundred and seventy-five former members of
5 Congress, including New Yorkers such as Scott Murphy
6 and Mike Arcuri, Amo Houghton, and Sherwood Boehlert.
7 I am here to maybe emphasize a couple of points in
8 terms of what really makes a public funding system
9 work. I would emphasize also that this is not
10 theory. As you've heard before, it works well in New
11 York City. It works well in the states.

12 I personally like the matching
13 system the best, as it operates in New York City and
14 has been included in several congressional bills
15 because a matching system really rewards work. I
16 think you need to have a situation where candidates
17 are proving support in their constituency and their
18 districts. The harder they work, the better they are
19 rewarded. And I think this is a very good and strong
20 value to enshrine any kind of public funding system.

21 The other aspect is the enough
22 principal that's been noted before. I will submit
23 some detailed academic work that we sponsored that I
24 think really goes into detail about that. It's very
25 important that candidates have enough money to run

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2 viable and competitive campaigns. It makes no sense
3 to do otherwise. I also think that you need to pay
4 attention in your recommendations to the kind of
5 enforcement. Try to communicate, not only the
6 importance of enforcement, but the way that such an
7 entity and agency operates in the political system.
8 I think it should be very consumer oriented. It
9 should help candidates negotiate this new system. I
10 think Connecticut is a good model of that. I would
11 recommend that to you.

12 So those are the main points that I
13 wanted to make. If you have any questions, I would
14 be happy to answer them.

15 MR. WILLIMAS: Thank you.

16 MR. ZIMROTH: Excuse me. What is
17 just -- what is the research that you were going to
18 supply for us?

19 MR. WERNER: A couple of years ago,
20 we had sponsored some academic peer research --
21 peer-reviewed research on this enough principal
22 because it's sort of counterintuitive.

23 MR. ZIMROTH: I am sorry; under
24 what principal?

25 MR. WERNER: The enough principal.

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2 It's somewhat counterintuitive to some to say that
3 the people that always had spent the most money win
4 the election. Well, we know that is not true. We
5 see that in New York. We see it across the country.
6 Because it really is important to realize that
7 candidates need enough money. They don't need the
8 most money. So this research that I'm going to
9 provide to you goes into quite a lot of depth about
10 that and provides a lot of statistical models that --
11 that are very supportive of that.

12 MR. ZIMROTH: Does the research --
13 when you say statistical models, statistical models
14 for determining how much is enough?

15 MR. WERNER: Yes. It's really
16 concentrating more on congressional races over a
17 ten -- twelve-year period. But it will really make
18 the argument that candidates do not -- are not
19 successful because they do not have enough resources.
20 They need a threshold of resources to be successful
21 and this kind of research will bolster that.

22 MR. ZIMROTH: If we were to
23 recommend public financing system, a matching fund
24 system of some -- if -- if that would happen, how
25 would you -- how would you suggest that we determine

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2 how much is enough for senate races or assembly
3 races, for example?

4 MR. WERNER: Well, I think you need
5 to look at history. You can't be ignorant of the
6 fact that, you know, a reasonable amount of money is
7 necessary to run competitive campaigns. There are
8 some methodologies that are suggested in this report,
9 but, for example, with the congressional bills, it
10 uses a mean average of what spending is in a
11 congressional race. You know, it costs about one
12 point three -- one point four million dollars, on
13 average, to win a congressional race. You need to
14 get to that threshold.

15 Candidates who raise half a million
16 dollars, six hundred thousand dollars, particularly
17 challengers, are in the position where in that -- in
18 that world, just is not enough money. So you have to
19 be cognizant of the reality of the political process.
20 And I think this -- that principal covers that. And
21 this report will expand on it.

22 MR. WILLIMAS: Go ahead.

23 MS. HOGAN: Rob, you indicated that you thought
24 Connecticut had the best enforcement model. Why do
25 you like that and how does it differ from New York

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2 City, and why do you like it over New York City's
3 enforcement law?

4 MR. WERNER: Well I am not so
5 sure -- I guess I have talked to people there. I've
6 talked to other people there. I talked to candidates
7 who are of the opinion that they feel, when they
8 interact with that body, that they are not presumed
9 to be doing something wrong. On the other hand, if
10 candidates are violating laws, they need to come
11 down -- they need to come down on them very hard
12 because that sends a message. We don't want public
13 funds misused. And that needs to be tough but fair.
14 But what I hear about the Connecticut system, and
15 again, talking to legislators, is sort of the
16 consumer oriented model of how that works, that they
17 feel that they get the information they need, and if
18 they have questions they can go back to them. And
19 there's really -- the attitude of the folks in that
20 particular Commissioner are we're here to help you
21 negotiate the system. I think that's a very
22 important attitude.

23 MS. HOGAN: It's a tone.

24 MR. WERNER: It's a tone. That's
25 what I understand.

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2 MR. BRIFFAULT: Could you say two
3 more sentences about the design of that Commission,
4 how big is it, who appoints them, how -- what their
5 terms are?

6 MR. WERNER: In Connecticut?

7 MR. BRIFFAULT: Yeah.

8 MR. WERNER: I am sorry. I would
9 have to go back and look at that detail, but I can
10 provide that.

11 MR. WILLIMAS: All right. Thank
12 You.

13 MS. CALCATERRA: Thank you very
14 much. Our next speakers will be Robb Smith and
15 Richard Gilbert.

16 MR. SMITH: Good evening. I am
17 sorry that Richard Gilbert -- or Reverend Dr. Richard
18 Gilbert is not able to be here this evening. He's
19 out in Rochester and he couldn't make it. I am sorry
20 because he has some very interesting theological
21 reflections on the issue of individual power versus
22 money and power.

23 However, we also have a very
24 unofficial Interfaith Impact position, Interfaith
25 Impact is an organization of Protestants, Reformed

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2 Jews, Unitarian Universalist, and a bunch of other
3 folks from different faith traditions, who look at
4 public policy from a progressive religious point of
5 view. And we work for the common good from that
6 point of view.

7 MS. CALCATERRA: And are you Mr.
8 Smith? We want to make sure for the record.

9 MR. SMITH: I am Robb Smith. I am
10 an Executive Director of Interfaith Impact of New
11 York State. And my -- our -- our interest here is
12 that inequitable campaign finance system in New York
13 has the potential to corrupt public policy and has
14 very detrimental effect on democracy, which is a
15 fundamental issue for religious people in this
16 country. The Legislature has failed to pass campaign
17 finance reform year after year. Individual citizens
18 are now in serious danger of losing their power to
19 participate in democratic government.

20 I recall Reverend Martin Luther
21 King saying that freedom is participation in power.
22 And it's worth remembering that because it has a lot
23 to do with what we are as a democratic people. Until
24 we've reformed the money-driven political process, we
25 are going to find democracy, slowly but surely,

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2 slipping from our grasp as money oligarchy
3 increasingly takes control of the political system,
4 it does -- it becomes worse every year, as the
5 current round of corruption shows.

6 And this not only corrupts public
7 policy, it widens the already gaping disparities
8 between the rich and poor. It also denies the
9 inherent dignity of the individual. And that -- that
10 is as much a religious as it is a political question.
11 This Commission has an incredible opportunity to look
12 deeply into the effects of this inequality of access
13 and what that means to ethical government and to
14 consider whether large campaign donations may not be
15 the moral, if not the legal, equivalent of bribery.
16 That's been brought up before, before this
17 Commission.

18 Interfaith Impact supports a public
19 financing program that will provide matching funds to
20 qualified candidates for public office who are on the
21 same page with Citizen Action and many other groups
22 that had spoken here tonight on that issue. And we
23 are not here to provide technical recommendations.
24 We leave that up to the wisdom of the committee and
25 the people who really have expertise in it.

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2 We also support lowering New York's extremely high
3 contribution limits which ensure the dominance of
4 wealthy contributors. A combination of reasonable
5 contribution limits and matching small contributions
6 with public funds to increase their impact can help
7 level the playing field for all campaign
8 contributors.

9 We want to emphasize that money is
10 not speech. Money is power. And we urge the
11 Commission to look into the power of special interest
12 money and how public campaign financing could dilute
13 that excessive power that is being aggregated to a
14 few, while the many become less and less represented.

15 We need to increase the opportunity
16 for contributors of modest means to have a genuine
17 impact to be heard during campaigns. I know we can
18 walk into the offices of legislators and say hi, but
19 it doesn't mean we're going to get much of a hearing.
20 And we know that we are going to be heard if small
21 contributors can be -- small contributions can be
22 leveraged. And when those can be leveraged, then we
23 get heard. Until then, it's not going to happen.
24 And we also need lower campaign limits to
25 contributions because as long as the contribution

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2 limits are as high as they are, very few people
3 really can begin to match that influence.
4 What we want is to provide voters with a wider choice
5 of candidates, reduce the amount of time candidates
6 and elected officials need to spend raising money
7 from a handful of wealthy donors, and provide more
8 opportunity for more people to participate in the
9 electoral process. That's our position.

10 MS. CALCATERRA: Thank you. I also
11 will note for -- that all of our commissioners did
12 receive the testimony of Reverend Gilbert, as well,
13 and they have had a chance to review before the
14 hearing. So even though he is not here, they do have
15 it available to them. So thank you.

16 MR. SMITH: Yeah, just -- just as a
17 comment on Dick's -- Dick's testimony, which did go
18 into the -- some of the theological background of
19 this. He -- he looked at Isaiah from the Hebrew
20 Scriptures. He looked at the Christian Scriptures.
21 He looked at Joseph Campbell in The Power of Myth.
22 It -- it was fairly comprehensive. And again and
23 again, the -- the emphasis -- the theological
24 emphasis is on the poor and not allowing the wealthy
25 to -- to, to simply dominate the process.

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2 In Isaiah, it was an issue of land
3 and the accumulation of land and the squeezing out of
4 the peasants and of selling the peasant for a sandal
5 or a shekel. And in the Christian Scriptures, we
6 know about the emphasis on the poor and we know
7 that -- we know that the individual is really key
8 in -- in many religious traditions, not all but in
9 many religious traditions the individual is key, and
10 certainly in those religious traditions that founded
11 the United States. And we need to remember that as
12 we -- as we work through government processes that we
13 don't allow the playing field to become too badly
14 tilted.

15 MS. CALCATERRA: Thank you.

16 MR. SMITH: Thank you.

17 MR. WILLIMAS: Thanks, Robb.

18 MS. CALCATERRA: Thank you. Our
19 next speakers, we're going to bring up jointly
20 because they are talking about the same issue. So we
21 thought if the commissioners actually had questions,
22 you could ask them at the same time, but you both
23 have separate three minutes. It's not collective
24 three minutes. I just wanted to let you know. Jaron
25 Benjamin and -- and Michael McKee. Thereafter, we'll

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2 welcome up Robert Perry and thereafter Ian
3 Vandewalker. Thank you.

4 MR. BENJAMIN: All right. Thank
5 you. My name is Jaron Benjamin. I am the Executive
6 Director at the Metropolitan Council on Housing. And
7 we are an organization that's worked to ensure
8 safe -- sorry -- safe, stable, and affordable housing
9 for New Yorkers since 1958. And we're based out of
10 New York City.

11 And I am here today because the
12 influence of big money interferes with my
13 organization's mission. In January of this year, the
14 State Legislature quietly passed a multi-million
15 dollar giveaway in the form of a tax subsidy for five
16 Manhattan luxury towers. Governor Cuomo approved the
17 tax break as part of a larger Housing Bill, which he
18 signed on January 30th. The tax breaks are part of
19 the 421-a program which is a New York City program
20 originally intended to spur development and later
21 revised to encourage affordable housing construction,
22 as well.

23 Although this program only affects
24 New York City, changes to the program require state
25 approval. Specifically the Legislature had to allow

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2 the five developments located at 99 Church Street,
3 520 Fifth Avenue, 157 West 57th Street, 109 Nassau
4 Street, and 78-86 Trinity Place, to get 421-a tax
5 breaks even though the buildings would not normally
6 be entitled to them.

7 New construction in midtown
8 Manhattan is ineligible for 421-a tax subsidies
9 unless the development includes onsite affordable
10 units which all five towers lack. But the five
11 developers wanted the tax breaks anyway. And these
12 five luxury developments were -- were allowed into
13 this program because they wanted it, and expected it,
14 the developers did, after using campaign finance
15 loopholes to contribute heavily to the campaign
16 chests of state legislators, party committees, and
17 the Governor himself.

18 So, in our report, the Met Council
19 on Housing, which I -- I've got forty copies of here,
20 we -- we reviewed the luxury real estate developers,
21 the money that they spent, and what they received in
22 return. And we found that the companies gave more
23 than one point five million dollars to state elected
24 officials, political parties, real estate PACs
25 between 2008 and 2012, including at least

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2 forty-four -- I'm sorry -- four hundred and forty
3 thousand dollars to PACs, state offices, and
4 political parties in 2012 alone. And Governor Cuomo,
5 who had to sign the legislation, received a hundred
6 and fifty thousand dollars from four of the
7 developers in 2012. And he was, by far, the biggest
8 cash recipient from the developers last year.
9 Now, a handful of real estate developers winning --
10 winning such a huge tax giveaway at a time where
11 there are more homeless people in New York City than
12 ever before, an unsettling number of families that
13 are severely rent burdened, which is to say they are
14 paycheck away from being homeless, excuse me, is a
15 reflection of real estate's outside influence -- I'm
16 sorry -- outsized influence and just how broken the
17 campaign finance system is.

18 Even legislators who have a long
19 history of favoring --

20 MS. CALCATERRA: Three minutes.

21 MR. BENJAMIN: -- the expansion of
22 affordable housing voted for the bill since it
23 contained items they favored. In fact, twelve
24 Democratic State Senators, including Adriano
25 Espaillat and Liz Krueger, have even called for the

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2 repeal of the tax breaks because the 421-a tax breaks
3 went beyond the typical horse-trading that normally
4 goes on in the Legislature. For example, 157, which
5 is also known as the Billionaire's Tower, is a luxury
6 high-rise near Carnegie Hall. The two penthouses
7 sold for ninety million dollars each, but thanks to
8 the 421-a tax breaks, each one of the two penthouse
9 owners will save more than one million dollars in
10 city taxes over ten years, which is two point four
11 million dollars combined.

12 It's important to note that there
13 are also nearly a hundred and thirty more apartments
14 in that building that will also get similar tax
15 breaks.

16 MS. CALCATERRA: Please wrap up.

17 MR. BENJAMIN: And this -- this
18 comes at a time when New York City is facing its
19 worst housing crisis. These tax breaks represent
20 millions of dollars that the City has lost. The
21 money could have been used for real affordable
22 housing needs, like rent subsidies for the more than
23 fifty thousand people sleeping in homeless shelters
24 or for the repair of dilapidated apartment buildings.
25 And this program costs the City seven hundred and

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2 fifty-five million dollars in 2010 in lost property
3 tax revenue, according to the Pratt Center for
4 Community Development.

5 So in closing, New York City -- I'm
6 sorry -- New York State needs an election system that
7 reduces the political influence of real estate and
8 the amount of money that developers can spend on
9 candidates and campaigns. We urge Albany to close
10 the L.L.C. loopholes that allow real estate to send
11 endless amounts of cash to campaigns. And a better
12 reform system would ensure that our elected officials
13 are accountable to regular voters, amplifying the
14 voices above those of the mega developers.
15 Greater transparency, lower contribution limits,
16 repeal the L.L.C. loophole, and public matching funds
17 would help achieve the kind of accountability New
18 Yorkers need and deserve. And we are really hoping
19 that you guys make those recommendations.

20 MS. CALCATERRA: Thank you, Mr.
21 Benjamin.

22 MR. MCKEE: Good evening, Members
23 of the Commission. My name is Michael McKee. I am a
24 board member and the treasurer of the Tenants
25 Political Action Committee, an all-volunteer

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2 organization that engages in direct electoral
3 activity to support pro-tenant candidates, mainly for
4 State Legislature. I am also a board member of
5 Jaron's organization, the Met Council on Housing, the
6 city-wide tenants' union.

7 Tenants PAC is a very small
8 operation if you look at our budget. In our best
9 year, we were able to raise enough money from tenants
10 and tenant supporters to give fifty-seven thousand
11 dollars in contributions to our endorsed candidates.
12 So we'll never match the real estate lobby in terms
13 of money and we don't intend to. But we bring
14 something to the table that the real estate industry
15 does not have and that's volunteers. We can recruit
16 people to do door knocking, phone banking, all the
17 grunt work that is needed to win an election. And
18 we've had some success with that and we're not
19 finished.

20 Rather than read my testimony,
21 which you have, I -- I would like to make an appeal
22 to you, as New Yorkers and civic-minded citizens, we
23 need your help. We need your help to get big money
24 out of our elections.

25 I think this is the most important

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2 thing you can focus on. We need, obviously, public
3 matching funds. We need lower contribution limits.
4 We need elimination, ideally, or at least capping of
5 contributions to these housekeeping accounts. And as
6 Brother Mahoney said earlier, we need a new
7 enforcement agency. You will never -- he is right.
8 You will never have any change with the current Board
9 of Elections. It's a joke and everyone in state
10 government and around state -- state government knows
11 that.

12 But from the point of view of
13 tenant organizations, we really need you to also
14 focus on closing the limited liability companies
15 loophole. This is really ridiculous that a man like
16 Leonard Litwin of Glenwood Management -- and if you
17 look at the New York Times, every week there is
18 another ad which says, come home to Glenwood, another
19 luxury housing development that they are putting up.
20 And he has an L.L.C. for each of his properties and
21 there are about seventy-five of them. That he can
22 give ten million dollars in -- in campaign
23 contributions, I mean it's just -- it's obscene.
24 So, we are asking you to do two things. As Jess said
25 earlier, think bold. Don't give us, you know, a

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2 Mickey Mouse watered down proposal. But I -- I think
3 more importantly and --- and fundamentally is that we
4 need you, even after the Commission disbands, which I
5 assume at some point it will, to use your influence.
6 Many of you are independently elected officials and
7 you have political power. If the D.A.s of this state
8 or if a critical mass of D.A.s of this state get
9 together and make this an issue, you will have the
10 ear of the public.

11 And people are fed up. I mean, I
12 talk to people all the time about getting involved in
13 election --

14 MS. CALCATERRA: Three minutes.

15 MR. MCKEE: -- campaigns. Thank
16 you. And people are so cynical and they are cynical
17 because, you know, they know all this whole system is
18 fixed. So we don't -- we know there is going to be
19 huge resistance on the part of the legislative
20 leaders and the Legislature in general. They don't
21 want to change the status quo. And you saw -- you've
22 seen what happened to your predecessor Commission. I
23 mean those recommendations just were not acted on at
24 all.

25 But I think there is a serious

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2 question as to whether Governor Cuomo wants this kind
3 of reform. He's already failed one major test which
4 was redistricting. After promising repeatedly that
5 he would veto lines that were drawn in a partisan
6 manner, he signed off on what everyone agrees were
7 the most hyper-partisan lines in return for a
8 legislative deal, a deal that, by the way, I don't
9 think was so great. We need you as citizens as
10 district attorneys --

11 MS. CALCATERRA: Wrap it up.

12 MR. MCKEE: -- to keep this fight
13 going even after the Commission is disbanded. Thank
14 you very much.

15 MR. WILLIMAS: Thank you.

16 Question?

17 MR. JAVDAN: I -- I just had a
18 quick question for -- for both of you. We heard
19 earlier from a pro bono attorney who had done some
20 work, who said that -- that some of the rules made it
21 harder for something like grassroots organizations to
22 make communications. Now I know you've actually, you
23 know, organized a political action committee and all
24 that, but have you seen some trouble with your
25 community groups or felt -- felt that those

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2 restrictions were impacting you?

3 MR. MCKEE: Well, first of all, she
4 is absolutely right. These laws are complicated. If
5 you are a small community-based organization and you
6 don't have a lot of resources and you may be having
7 serious trouble keeping your storefront open, making
8 payroll -- and there are all sorts of laws that one
9 must comply with. These laws are -- these campaign
10 finance laws and election laws and -- and other kind
11 of reportings that people have to do. We're a PAC.
12 So it's pretty simple for us. But I have to do all
13 the reports myself. And I can tell you it's not --
14 you know, it's a good deal of work.

15 But for small community-based
16 organizations, I -- I think the witness from the
17 Lawyers Alliance is absolutely correct. You need to
18 think in terms of people should have the ability to
19 express an opinion and -- and to influence public
20 debate and -- and to, you know, make these laws more
21 complicated. And, you know, the New York City
22 Campaign Finance Board, for example attempted,
23 fortunately without success, to require
24 member-to-member organization-to-member
25 communications to be reported. I think that was

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2 really asking for trouble and opening a can of worms.
3 But I think you need to think about the small
4 community-based organization.

5 MR. WILLIMAS: Thank you.

6 MR. FITZPATRICK: This Commission
7 is bifurcated in the sense that one of our
8 responsibilities is to make policy recommendations.
9 Another is to conduct investigations. And Jaron, I
10 didn't want you to think that our lack of questioning
11 about the issue that you brought up reflected lack of
12 interest. On the contrary, we are kind of precluded
13 from asking you a lot of questions about that because
14 that's already on our radar screen. But what you've
15 done tonight is what often happens to me as a
16 prosecutor. I read a file. It has a certain impact
17 on me and then when I see people that are actually
18 affected by that, it makes a much deeper impression.
19 So I thank both of you very, very much.

20 MR. BENJAMIN: Thanks. And just to
21 respond to that, you know, I'm -- I'm pretty open
22 about this. But as a child, I was homeless because
23 of the government shutdown. Both my parents worked
24 for the I.R.S. at the time that we had a fire.
25 That's -- that was very, very uncomfortable. But

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2 every day at Met Council on Housing, I get calls from
3 people who are homeless because a program was shut
4 down, because the Advantage program was shut down.
5 And the legislator's excuse is always, there is no
6 money.

7 The fact of the matter is they made
8 choices. The choices were made here to give tax
9 breaks to billionaires, instead of keeping families
10 in homes. And I can't imagine the heartbreak that
11 happens on the other end of the phone and that --
12 I've been doing this job for a bit, but it -- it
13 never ceases to amaze me whenever I have to explain
14 to somebody this is the reason why there is -- there
15 is no money.

16 MS. CALCATERRA: Thank you.

17 MR. WILLIMAS: Thank you so much.

18 MS. CALCATERRA: Thank you for your
19 testimony. Our next speaker -- our next speaker is
20 Robert Perry, thereafter Ian Vandewalker, thereafter
21 Mark Sacha. Is Mr. Perry in the room?

22 MR. WILLIMAS: I think he is coming
23 up.

24 MS. CALCATERRA: You have submitted
25 quite comprehensive testimony this evening. Thank

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2 you. Everyone did receive a copy; I do want to let
3 you know.

4 MR. PERRY: Thank you. My name is
5 Robert Perry. I am the Legislative Director with the
6 New York Civil Liberties Union, the state affiliate
7 of A.C.L.U. Thank you for allowing me to speak
8 before the Commission on behalf of the N.Y.C.L.U.

9 The mandate of the Commission is a
10 fundamentally important one, to ensure the integrity
11 of the electoral process through rigorous
12 accountability and transparency. The N.Y.C.L.U.
13 shares that mission. It's central to our mission.
14 We have long been outspoken advocates for
15 transparency and accountability in all aspects of
16 governance. However, in my comments tonight, I'm
17 going to ask you to consider a competing principle of
18 law and policy that comes into play particularly when
19 the government seeks to regulate advocacy that is not
20 electioneering, not elect -- not related to electoral
21 campaigns, but that is pure issue advocacy related to
22 important public policy issues.

23 I'll address, just briefly, a
24 couple of regulatory issues that -- enactments that
25 had been adopted recently that illustrate this

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2 problem. They were intended to create -- create or
3 open this in transparency, but in our view, will have
4 the unintended consequence of compromising an equally
5 important government interest, which is robust speech
6 and expression on issues of important public policy.

7 What I'm going to do is provide a
8 little bit of context for some of the recommendations
9 that Laura Abel made. She referred to my testimony
10 and we share some of the same recommendations we're
11 making to the Commission.

12 The first of the initiatives I will
13 address involves the regulation of issue oriented
14 communication, as I said, that's unrelated to
15 electoral campaigns. Recently, the office of the
16 Attorney General adopted a regulation that requires
17 not-for-profit organizations, non-501(c)(3)s to file
18 disclosures on a broad range of expressive activity,
19 now again, with the intention of creating
20 accountability and transparency, I mean a sound
21 intention.

22 However, the regulation not only
23 captures express election advocacy, that is advocacy
24 which calls, for example, for a vote to elect or to
25 oppose a candidate or an issue before the voters on a

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2 ballot. It also includes what is defined as election
3 target issue advocacy, that is communication that may
4 simply depict a likeness of a candidate or merely
5 refer to a political party or an issue submitted to
6 the voters.

7 By the way, the Fair Elections Act
8 has a similar electioneering communication
9 regulation. We oppose -- we support public campaign
10 finance. It's also an important priority for the
11 N.Y.C.L.U., but we do not support the electioneering
12 speech provision in that. For almost forty years,
13 the Supreme Court has consistently held that the
14 government's regulatory reach in this electoral arena
15 cannot extend beyond express election advocacy.

16 MS. CALCATERRA: Three minutes.

17 MR. PERRY: I'm sorry?

18 MS. CALCATERRA: No; I said three
19 minutes.

20 MR. PERRY: Yes. Am I up?

21 MS. CALCATERRA: Yes, but you can
22 continue just to wrap up.

23 MR. PERRY: That was a fast three
24 minutes. I'm sorry.

25 MS. CALCATERRA: It was a very

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2 substantive three minutes.

3 MR. PERRY: The Supreme Court has
4 said that the regulatory reach of the government
5 cannot express -- cannot exceed express election
6 advocacy, meaning when you venture into the
7 regulation of pure issue advocacy, you're really in
8 uncharted constitutional territory here. And that's
9 what we want to alert the Commission to.

10 If I have another minute, I can
11 give one more example of this regulatory overreach in
12 the area of issue advocacy. And that has to do with
13 the consequence of the other regulation I just
14 mentioned. As a consequence of this disclosure
15 provision in that A.G. reg also in the recently
16 adopted regulation enacted by the Joint Commission on
17 public ethics, the source of funding regulation,
18 non-profit advocacy organizations are required to
19 disclose extensive amounts of personal information
20 about their donors. Triggered again by pure issue
21 advocacy not express election advocacy. The
22 principle here that's at stake is the right to
23 petition the government, a fundamentally important
24 First Amendment interest.

25 The Courts have said these types of

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2 regulations, meaning when you are going to require
3 disclosure of donors, that the regulation must be
4 framed in a way that bears a substantial relation to
5 the government interest, meaning transparency and
6 accountability. What's more, it must be narrowly
7 tailored. In both instances, the Attorney General's
8 regulation, the JCOPE reg, we believe are not nearly
9 tailored, capture information that should not rightly
10 be captured in an expressive speech context.

11 So, we would urge the Commission to
12 look at these provisions in the context of regulating
13 the electoral arena and recognize there are
14 fundamentally important First Amendment issues at
15 stake. The Court has observed that --

16 MS. CALCATERRA: Please wrap up.

17 MR. PERRY: This is my concluding
18 observation on this regulatory scheme -- that when
19 mandating disclosure of personal information of
20 persons who are supporting non-profit advocacy
21 organizations that are in the public arena, talking
22 about the issues of public import, the consequence of
23 that is folks will be likely to contribute less to
24 organizations advocating on their behalf or not
25 contribute at all.

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2 That's the suppression or the
3 intrusion upon speech and expression which we are
4 urging the Commission to be mindful of as you look at
5 these type of regulatory enactments. I have gone
6 over time, so I will leave it there. Thank you.

7 MS. CALCATERRA: Questions? I
8 believe you are going to have many questions.

9 MR. BRIFFAULT: There is one -- I
10 just want to disagree with you on one point. I
11 believe on Citizens United, the Supreme Court said
12 actually that disclosure could be required well
13 beyond express advocacy, indeed, and upheld
14 disclosure requirement in which there was not express
15 advocacy. The Court has clamped down on
16 regulation -- limited regulation express advocacy in
17 the context of limiting speech, but the Court has
18 said that disclosure can go well beyond express
19 advocacy and has more than twice upheld it. So, I
20 think that you are mistaken in your narrow definition
21 of how far disclosure can go.

22 MR. PERRY: With all due respect, I
23 think you are mischaracterizing our analysis and the
24 ruling of Citizens United. What that case was
25 looking at was a function equivalent of --.

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2 MR. BRIFFAULT: No. The Court said
3 it wasn't -- didn't have to be. They -- basically,
4 they said if you are talking about a candidate during
5 a pre-election period, the public has an interest in
6 knowing who is talking about that.

7 MR. PERRY: I'll leave it to the
8 Commission to read our analysis. What the case
9 really refers to is the functional equivalent. It
10 did not reach the issue of advocacy.

11 MR. BRIFFAULT: I guess --.

12 MR. PERRY: It is -- in its
13 substantive ruling.

14 MR. BRIFFAULT: I disagree, but
15 we -- and the Court, in other cases, have upheld the
16 extension of disclosure requirements beyond express
17 advocacy.

18 MR. PERRY: In fact, in the
19 Wisconsin Right to Life case, preceding Citizens
20 United --.

21 MR. BRIFFAULT: Which was a
22 spending limits case, not a disclosure case.

23 MR. PERRY: -- the Court explicitly
24 said we have never authorized the regulatory reach to
25 require disclosure related to issue advocacy.

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2 MR. BRIFFAULT: That was not the
3 issue in the case. That was a -- that was a spending
4 limits case.

5 MR. WILLIMAS: Any other questions?
6 Go ahead.

7 MR. JAVDAN: Just to echo that the
8 focus on small business, say, for a moment and the
9 smaller person. So, from what you have seen, would
10 you also agree with some the earlier comments that a
11 lot of the rules right now are burdensome on
12 community activists or other groups wishing to
13 express their First Amendment rights?

14 MR. PERRY: We hear from many small
15 non-profit organizations that the regulatory scheme
16 is enormously complex. We file, for example, the
17 N.Y.C.L.U., a half-dozen filings before New York
18 City, another half-dozen before the state. There are
19 registration filings that are required. It's
20 enormously complex when you then add the Board of
21 Elections and the Campaign Finance Board.

22 MR. WILLIMAS: Thank you. Go
23 ahead.

24 MR. MOLLEN: I have to ask you, as
25 you're expressing constitutional views here, do you

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2 see any constitutional obstacles to asking
3 legislators to disclose what work they are allegedly
4 being paid to do when they are getting money from
5 outside employers or organizations or corporations?

6 MR. PERRY: I have not read the
7 Legislature's papers on this or their comments and I
8 have not analyzed the issue. Clearly, when you get
9 into issues of client disclosure, there may be some
10 constitutional concerns. But I have not briefed the
11 issue, nor have we, N.Y.C.L.U.

12 MR. WILLIMAS: Okay. Thank you.

13 MS. CALCATERRA: Ian Vandewalker?

14 MR. VANDEWALKER: Thank you for the
15 opportunity to testify today on behalf of The Brennan
16 Center for Justice at N.Y.U. School of Law. You have
17 heard a lot about problems that New York faces.

18 The problems are systematic and the
19 solution has to be comprehensive. Piecemeal limited
20 measures will not lead to the cultural change that we
21 desperately need here in Albany. Meaningful change
22 will only occur if we enact sweeping campaign finance
23 reform, including a small donor matching system,
24 robust, independent, and bipartisan enforcement,
25 lower contribution limits, and meaningful

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2 transparency.

3 The package of reform that The
4 Brennan Center and others recommend is not merely a
5 laundry list of discrete policies. It's an
6 interlocking set of reforms with public financing as
7 the keystone. New York's current system makes
8 policymakers dependent on a tiny slice of the
9 population and that skews legislative priorities in
10 favor of what those donors want.

11 In 2012, state legislative
12 candidates raised seventy-four percent of their funds
13 from donors of a thousand dollars or more or special
14 interests. They raised only eight percent of their
15 funds from small donors of two hundred and fifty
16 dollars or less. Who are they trying to keep up
17 happy in their legislative activity?

18 In contrast, candidates
19 participating in the New City public financing system
20 gathered thirty-seven percent of their private
21 contributions from small donors of two hundred and
22 fifty dollars or less.

23 When the public matching funds are
24 added, those small donations take on even greater
25 importance, constituting sixty-four percent of those

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2 candidates' campaign cash, as compared to twenty-four
3 percent from big donors of a thousand dollars or more
4 in special interests. So they are able to depend on
5 small donors constituents in their district and not
6 those special interests.

7 We need reasonable contribution
8 limits in an adequately funded agency to enforce
9 those limits and the rest of the campaign finance
10 laws, which will, among other things, help reduce
11 corruption by rooting it out and preventing it. But
12 even with all those reforms, improved transparency,
13 lower contribution limits, and robust enforcement,
14 candidates could still be drowned out by independent
15 spending that's constitutionally protected under the
16 Court -- the Supreme Court's Citizen United decision.

17 In 2012, in New York, just three
18 outside groups spent five million dollars on
19 elections. A small donor match is needed to amplify
20 grassroot support and allow the candidates who don't
21 get that big money, who depend on small donors, to
22 effectively respond to messages of independent
23 spending that might swoop in into their elections.
24 They can get their message out, they can say what
25 they stand for, and they can respond to negative ads

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2 with the public donors match -- the public funding
3 match matching their small donations.

4 Generally, public financing has the
5 power to improve our democracy by reducing
6 corruption, making elections more competitive,
7 allowing candidates to spend less time fundraising
8 and more time engaging with constituents, and by
9 substantially increasing the number and diversity of
10 people who donate to campaigns.

11 Anything less than comprehensive
12 reform with public financing at its core will fail to
13 change the culture of Albany and cannot be called
14 real reform. Thank you. And I am happy to answer
15 any questions about this or The Brennan Center's
16 previous testimony.

17 MR. WILLIMAS: Any questions?
18 Thank you.

19 MR. VANDEWALKER: Thank you.

20 MS. CALCATERRA: Thank you very
21 much. Mark Sacha?

22 MR. SACHA: Chairpersons
23 Fitzpatrick, Rice, and Williams, members of the
24 Moreland Commission, and members of the public, I
25 appreciate the opportunity to be here today. My name

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2 is Mark A. Sacha and for twenty-three years, under
3 four district attorneys, I was an assistant district
4 attorney in Erie County, New York, Buffalo. For
5 almost ten years, I was a deputy district attorney
6 who was in charge of prosecuting public corruption
7 cases. I speak today as an informed citizen.

8 I am here to advise the public and
9 the voting citizens of New York of the elephant in
10 this room, the hypocrisy which has not yet been
11 addressed before this Commission. Election fraud and
12 public corruption are not prosecuted properly, in my
13 opinion, not because of the lack of laws in this
14 state, but because of a lack of will.

15 The sad reality is that district
16 attorneys are political. Many have horrible
17 conflicts of interest which affect their ability to
18 act. In order to reach their position, they make
19 alliances. They accept political money and they cut
20 political deals with other politicians. They reach
21 their goals through these people. The public has a
22 right to know the truth based on my own personal
23 experience.

24 In 2008, I conducted an
25 investigation that uncovered widespread criminal law

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2 violations of actually both the Penal Law and the
3 Election Law by a number of individuals, including
4 Stephen Pigeon, a person with close political ties to
5 Pedro Espada, Governor Cuomo, former Erie County
6 District Attorney Frank Clark, and the present
7 District Attorney Frank Sedita, who is also a member
8 of this panel. And I have to make note of the fact
9 he is not here today.

10 I personally handed Mr. Sedita a
11 fifty-three-page memo, outlining the -- my
12 investigation back in 2008, which he asked for. And
13 when I say widespread violations of the Election Law,
14 I am talking about conspiracies to exceed the
15 spending finance limits, concealing donors, making
16 false filings.

17 I will give this panel a specific
18 example. Mr. Pigeon appeared for one of the targets
19 of the investigation as if he was the attorney. I
20 was present at that meeting. During that meeting, he
21 told us that there was no coordination between a
22 supposed independent entity committee and the
23 official committee. We later found out that there --
24 the committee -- that there was a meeting at Mr.
25 Pigeon's mother's house, and this was all by signed

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2 statements, in which it was arranged that cash would
3 be given from a donor that had maxed out their
4 contribution limit, to pay for a telephone bank which
5 was needed for the campaign.

6 Ladies and gentleman, as a result
7 of my attempt to do the right thing, to do my job as
8 a prosecutor, and hold Mr. Pigeon accountable, I was
9 retaliated against by his friend, Frank Sedita. And
10 let me tell you Mr. Sedita asked for this
11 fifty-three-page memo. He has testified that he --
12 even though he asked for it, he never read it, but he
13 did have the time to meet with Mr. Pigeon, which he
14 has sworn to in a deposition. He has -- that he met
15 with Mr. Pigeon in order to get the endorsements that
16 he needed to become the D.A.

17 Those are the kinds of conflicts
18 that are inherent because we have D.A.s that the
19 political. And I am not looking down on the D.A.s.
20 I respect them, but the public should know of the
21 conflicts that exist.

22 MS. CALCATERRA: Please wrap up.
23 Thank you.

24 MR. SACHA: Now -- and when I
25 informed the public of Mr. Sedita's hypocrisy and

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2 misconduct, I was fired. Now, four years later, the
3 same pattern of -- of misconduct is occurring in Erie
4 County as we sit here today. Two days ago, there was
5 a long article in the Buffalo News, entitled New
6 Effort Seeks probe of Pigeon Committee Accused of
7 Illegally Funding Campaigns.

8 It is my understanding that in this
9 September 22nd, 2013 article, it detailed new
10 allegations of illegal conduct by Mr. Pigeon.
11 Current election campaigns are allegedly wrought with
12 allegations of false filings, straw donors, and
13 donations which exceed contribution limits.

14 The Commission, as I understand it,
15 has received a complaint about Mr. Pigeon. These
16 allegations of corruption in Erie County have gone on
17 for years.

18 Ladies and gentlemen, prosecuting
19 the powerless is easy. The real test and when -- is
20 when you are asked to prosecute or to investigate the
21 powerful -- the powerful. The truth is that Election
22 Law cases are not pursued because few elected
23 district attorneys will prosecute their political
24 friends and political family. District attorneys
25 have subpoena power. They've had it forever. They

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2 choose not to use it. They treat these cases
3 differently, at least in my experience. They have
4 the power, the means, but they lack the will. This
5 is the sad truth.

6 Mr. Sedita has made public
7 statements, making it clear that he will not
8 investigate election crimes. Yet, he sits on this
9 panel. In this article from two days ago, Mr. Sedita
10 says I do not investigate murder cases, I do not
11 investigate sex crimes, and I damn sure do not
12 investigate election cases.

13 Yet, he is on this panel.

14 MS. CALCATERRA: Please wrap up.

15 Thank you.

16 MR. SACHA: This is wrong and an
17 abdication of sworn duties. I commend Preet Bharara
18 for breaking the mold and for changing this dynamic
19 that has plagued our state. Mr. Bharara has had the
20 courage to expose the culture of corruption that has
21 been allowed to exist in Albany and in New York
22 State. His ongoing efforts have forced the creation
23 of this panel.

24 In closing, I say to the voting
25 public free and fair elections are your right.

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2 Demand that your elected district attorneys protect
3 that right. Demand that your elected district
4 attorneys act in the public and their interest, not
5 their own.

6 I am happy to hear that you have
7 investigative power. I would ask that this
8 Commission take a look at this recent complaint that
9 was made, which I believe contains the same type of
10 allegations that I investigated back in 2008. With
11 that, I thank the Commission for letting me talk and
12 I hope the change is going to come.

13 MR. WILLIMAS: Thank you.

14 MS. CALCATERRA: Mr. Sacha, you
15 conclude our testimony this evening on points related
16 to campaign finance, political party housekeeping
17 accounts, and outside income of state elected
18 officials, which was the focus of this hearing. This
19 hearing is now over. Thank you.

20 MR. WILLIMAS: Thank you.

21 (The proceeding concluded)

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STATE OF NEW YORK
I, Hannah Allen, do hereby certify that the foregoing
was reported by me, in the cause, at the time and place,
as stated in the caption hereto, at Page 1 hereof; that
the foregoing typewritten transcription consisting of
pages 1 through 141, is a true record of all proceedings
had at the hearing.

IN WITNESS WHEREOF, I have hereunto
subscribed my name, this the 9th of October, 2013.

Hannah Allen, Reporter

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