



THE URGENT NEED TO REFORM CAMPAIGN FINANCE OVERSIGHT

The undersigned groups call on the New York State Legislature to reform campaign finance oversight in New York State. Currently, a Public Campaign Finance Board (“PCFB”) enforces the state’s public campaign finance law and a Chief Enforcement Counsel (“CEC”) of the State Board of Elections (“SBOE”) enforces all other provisions of the Election Law, including campaign finance provisions that apply to candidates and committees that are not participating in the public campaign finance program. While the PCFB enforcement framework promotes efficiency and recognizes the board’s expertise in and knowledge of the field in which it regulates, the CEC enforcement framework promotes inaction.

The Legislature should establish a single campaign finance board to administer all campaign finance laws and further empower the board to enforce the laws in a manner similar to what currently exists for the PCFB. Alternatively, the Legislature should reform the CEC framework to facilitate more meaningful oversight. Such reforms are particularly appropriate now as the State works to improve ethics oversight.¹ After all, ethics and campaign finance enforcement are but two sides of the same conflicts-of-interest coin.

In 2014, the Legislature established the CEC position to enforce the Election Law following a report issued by the Moreland Commission to Investigate Public Corruption that found that SBOE’s enforcement policies were designed for inaction. However, as explained in a 2019 report by the New York City Bar Association (“City Bar Report”), the CEC position was likewise designed for inaction.² The CEC must follow a cumbersome two-step process to impose civil penalties: an administrative hearing to assess whether a violation has occurred, followed by a court proceeding to review anew the hearing officer’s determination and, if sustained, to impose a monetary penalty.³ This process, unique among state and local agencies, is required regardless of the complexity of the violation or the amount of the penalty being sought by the CEC. Additionally, the civil penalties in the Election Law do not cover much of the conduct that the CEC is authorized to address, including filing false disclosure reports and improperly converting campaign contributions to personal use.⁴

This statutory framework prevents the CEC from meaningfully enforcing the law against the more than 15,000 candidates and committees at the state and local level that the CEC regulates. In fact, there has been no reported enforcement activity for more than two years now. But we do not mistake a lack of enforcement activity with broad compliance with the law. Indeed, the City Bar Report noted that hundreds of candidates and committees file their disclosure reports, if at all, months after reporting deadlines with impunity.⁵ And a recent report identified numerous candidates who fail to comply with a 2019 law requiring disclosure of the identities of individual owners of limited liability companies that contribute to their campaigns.⁶

Unlike the CEC, the PCFB, which was created in 2020 to administer and enforce the state's new public campaign finance law, is empowered to establish a schedule of fines for public campaign finance violations and impose those fines – by itself, and without the need for a court order.⁷ There is no reasonable basis for these different procedures. As noted above, the PCFB framework promotes efficiency and recognizes the board's expertise in and knowledge of the field in which it regulates. The CEC framework for all non-public financing enforcement of the state's campaign finance rules consists of empty hurdles.

We do not believe that two state authorities – the CEC and the PCFB – should be charged with enforcing the state's campaign finance laws. The Legislature should establish a single campaign finance board to enforce all campaign finance laws and further empower the board to enforce the laws in a manner similar to what currently exists for PCFB. Such reforms would ensure a consistent application of the laws and foreclose the concern that a candidate or committee could face enforcement actions on two fronts. Otherwise, we recommend the following changes to the CEC enforcement framework:

- 1. Revise the administrative hearing process.** In lieu of the two-step process for imposing penalties, the Legislature should empower administrative hearing officers or, upon the hearing officers' recommendations, SBOE, to make a final determination as to the violation and proper penalty, subject to CPLR Article 78 review.⁸ This approach is consistent with other agency adjudications in New York, including by the New York City Campaign Finance Board, and also provides a fair and efficient process to all parties.
- 2. Establish streamlined procedures for enforcing routine violations.** The Legislature should adopt a streamlined process for enforcing more routine violations, similar to the Federal Election Commission's Administrative Fines Program.⁹ As noted by the Brennan Center, the process for this FEC program helps ensure that “violations carry predictable and relatively swift consequences without consuming a disproportionate amount of [] time and resources.”¹⁰
- 3. Establish comprehensive civil penalties.** The Legislature should expand on the limited number of civil penalties in the Election Law, so that there are meaningful consequences for failing to comply with the law. It should further require that SBOE establish schedule of penalties for common infractions to promote consistency and fairness in enforcement.¹¹
- 4. Require more transparency of enforcement activities.** SBOE should publicly report determinations of campaign finance violations and further establish clear standards that can be consistently applied for when and how such reporting should happen. Regular

reporting of these violations can serve as a check on the CEC’s exercise of enforcement authority, but also as a tool to deter unlawful activity. The efficacy of monetary penalties, alone, to deter campaign finance violations has been questioned, as fines can simply be “internalized [by campaigns] as the ‘cost of doing business.’”¹² Thus, public reporting may play an important role in bringing about compliance.

We believe that these recommendations can bring a greater measure of integrity and public trust to the electoral process and encourage the Legislature to act now.

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¹ Chris Bragg, *Hochul Outlines Plan to Create Independent Ethics Watchdog*, Albany Times-Union (Jan. 5, 2022), <https://www.timesunion.com/state/article/Hochul-outlines-plan-to-create-independent-ethics-16751521.php>. (All websites last visited Feb. 24, 2022.)

² New York City Bar Association, *Safeguarding New York's Elections: The Unfinished Business of the Moreland Commission to Investigate Public Corruption* (Sept. 2019), <https://s3.amazonaws.com/documents.nycbar.org/files/2019557-MorelandAssessmenElectionLaw.pdf>.

³ See Election Law § 3-104.

⁴ See Election Law § 14-126.

⁵ City Bar Report, *supra*, at 8-9.

⁶ Sam Mellins, *Hochul Leads Pack of Candidates Who Fail to Disclose Sources of Corporate Cash*, The City (Feb. 9, 2022), <https://www.thecity.nyc/2022/2/9/22924530/hochul-llc-law-campaign-cash>.

⁷ Election Law § 14-209.

⁸ We note that the party-based structure of SBOE has also resulted in stalemate and inaction. To address this structural problem here, the hearing officer recommendation could become final in the event SBOE fails to come to an agreement on the recommendation within a specified number of days.

⁹ FEC Administrative Fines, <https://www.fec.gov/legal-resources/enforcement/administrative-fines/>.

¹⁰ Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Center for Justice (April 2019), at 9 https://www.brennancenter.org/sites/default/files/publications/2019_04_FECV_Final.pdf. California also has streamlined procedures. See 2 CCR § 18360.1.

¹¹ See, e.g., Election Law § 14-209(1).

¹² Todd Lochner and Bruce E. Cain, *The Enforcement Blues: Formal and Informal Sanctions for Campaign Finance Violations*, at 650-651 (2000), <https://www.jstor.org/stable/40711878> (request PDF); https://www.researchgate.net/publication/296015990_The_enforcement_blues_Formal_and_informal_sanctions_for_campaign_finance_violations (request PDF).