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ILLINOIS REFORM COMMISSION  
Campaign Finance Deliberation Session  
March 13, 2009

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Campaign Finance Subgroup Recommendations

**I. Background:**

Currently, campaign finance regulation in Illinois is limited to laws requiring disclosure of campaign contributions, and recently-enacted limitations banning so-called “pay-to-play” contributions to identified public officers. The State currently imposes no general limits on campaign contributions from any source – individuals, corporations, labor unions or out-of-state residents.

On February 23<sup>rd</sup> and March 5<sup>th</sup>, 2009 the Commission considered testimony and materials offered by twelve individuals with knowledge of aspects of the Illinois campaign finance system, the federal system and the regimes adopted by other states. Certain members of the Commission also participated in three town hall meetings during this period during which campaign finance was a primary topic of discussion. The Commission received testimony and information regarding the effect of the campaign finance on:

- candidates running for public office;
- individuals and organizations interacting with government; and
- the public at-large.

Following the two Commission hearings on the topic of campaign finance, the Campaign Finance Subgroup met on March 9, 2009 to discuss the broad range of opinions and proposals for campaign finance regulation in Illinois. These ranged from a “hands off” approach to a full, integrated system of enhanced disclosure rules, contribution limits, and public financing. The Subgroup analyzed the key provisions of the federal program, campaign regulations in effect in other states, and the various legislative proposals presently pending in the Illinois House and Senate.

As discussed below, the Subgroup proposes, for discussion purposes today, a series of recommendations in three areas – disclosure, contribution limits and public financing. The Subgroup believes that adopting a holistic series of reforms will have the best chance of addressing the myriad of problems that occurred under the current system. It is also critically important that any reforms begin to address the wide spread perception that money has an undue influence in our state government.

Finally, the Subgroup acknowledges that no proposed regulatory scheme will eliminate the improper influence of money and politics. However, given Illinois’ experience under the current system, the Subgroup believes that

thoughtful and substantive regulations will improve the current environment and begin to restore some of the public's faith in its government.

## **II. General Principles**

The Subgroup's review of the testimony and submitted materials resulted in the identification of certain key principles that inform the debate over campaign finance reform:

- A.** Those advocating for increased regulation of campaign finance generally cite to the following goals in favor of their approach:
  - 1.** Reduce influence of large contributors who have a financial stake in legislation or other governmental actions, such as contracts.
  - 2.** Improve the widespread public perception of the undue influence of money in politics and restore key elements of democracy.
  - 3.** Increase accountability of legislators to broader range of issues, rather than narrow interests.
  - 4.** Reduce impact of organizations whose political influence is out of proportion to the size of the population supporting their mission.
  - 5.** Reduce pay-to-play, in which government contracts are let based not on merit, but on contributions to the governmental decision-makers.
  - 6.** Increase competition for elected positions and encourage public-spirited individuals to seek state office.
  - 7.** Encourage access and input into legislative system from broader range of participants.
  
- B.** Those opposed to increased regulation typically make the following arguments in advocating for a less aggressive approach to changes in the campaign finance laws:
  - 1.** Regulation of spending on political campaigns inevitably diminishes speech and association rights protected under the First Amendment.
  - 2.** Money will always find its way into the system. Limits on contributions will open up "trapped doors" that may not be publicly disclosed.
  - 3.** Existing bribery and extortion statutes, if vigorously enforced, are sufficient to punish, and deter, corruption.

4. Experts disagree on whether contribution limits and clean election schemes are statistically associated with reduced corruption, or in better-run, more accountable, governments.
5. Concerns are often raised that limits on contributions create unintended consequences. For example, challengers with small, unsophisticated campaign staffs, may find compliance with complex regulations a barrier to entering a campaign. Further, challengers often rely on seed money from a few large contributors which may be prohibited under contribution limits.
6. The costs of public financing may be unacceptable in the present economic environment.

### III. Disclosure Recommendations

- A. **No Changes Option.** A minority of commentators cautioned against making significant changes in Illinois' current disclosure-based regulation of campaigns, which disclosure system is generally highly regarded. Concern was voiced over the possibility that tightening disclosure requirements could deter challengers without substantial campaign staffs with the capability to understand and comply with new regulations. The Subgroup found this resistance to significant change unjustified when considered against the current environment. It therefore recommended against perpetuating the current system.
- B. **Expediting the Reporting Requirements.** The current reporting system has been effective in requiring reporting of all campaign contributions of \$150 and above, using the Illinois State Board of Elections' electronic filing system. However, the Subgroup concluded that this system permits a critical delay in the disclosure of significant contributions, unless they occur within 10 days of an election.

***Recommendation 1: Require submissions, year-round of A-1 forms to the Illinois State Board of Elections electronically within two business days after receipt of any contribution of \$1000 or more.***

The Subgroup considered the increased costs of this additional reporting requirement, and it discussed the issue with representatives of the ISBE on March 10, 2009. ISBE representatives stated that the current electronic filing system likely could handle the year-round filing system with minimal increased costs.

They also indicated that the ISBE would likely require additional resources in the areas of staff review and enforcement activities from this enhanced reporting. The Subgroup concluded that the need to address the

easy evasion of the reporting requirements through the timing of contributions outweighed the burden of these increased costs.

- C. Enhancing Enforcement Tools.** The Subgroup also believes that the current enforcement regime for policing violations of the existing reporting requirements is not sufficiently robust to address the violators of the disclosure system. For example, ISBE representatives indicated that the Board seldom utilized its authority to issue subpoenas. Further, the Subgroup obtained information that the ISBE frequently did not impose statutory fines for violations. The Subgroup needs to obtain additional information before proposing specific reforms in this area.

***Recommendation 2: Encourage the imposition of existing penalties for knowing or willful violations, and a more consistent use of existing enforcement tools such as subpoena power to discover violations.***

- D. Requiring Disclosure of the Coordinated Efforts Before Elections.** Finally, the Subgroup reviewed evidence and testimony concerning the potential absence of disclosure of campaign contributions received through “bundlers” and so-called “independent” expenditures. Bundlers are organizations or individuals that solicit contributions from numerous individual contributors and PACs at or below the appropriate legal limit. The individual contributor makes the contribution on his/her/its own, but at the direction of the bundler. This activity can conceal the role of the bundler from the public, while the candidate knows (and often has enlisted) the role of the bundler. Federal campaign law addresses the activities of bundlers by requiring disclosure of registered lobbyists who forward more than the “covered amount” (currently \$16,000 or more, but indexed for inflation). These disclosure requirements cover checks and electronic contributions where the recipient “credits” the bundler for raising the funds.

The Subgroup concluded that bundling presents a significant loophole for the disclosure rules. It therefore recommends that the disclosure rules be extended to such bundling practices.

Relatedly, the presence of large “independent” expenditures often play significant roles in funding campaigns, particularly in the waning days of an election. While the Supreme Court has determined that independent expenditures are protected speech, it is appropriate that the source of those independent expenditures be disclosed to the public. Further review of independent expenditures is necessary before specific recommendations can be made.

***Recommendation 3: Adopt legislation requiring the disclosure of bundled contributions of \$16,000 or more with this amount adjusted for inflation. The disclosure is triggered by the keeping of records by the campaign crediting bundlers which should identify the bundler and all persons making contributions credited to that bundler. Relatedly, after further review, consider adopting legislation that requires the disclosure of the source of substantial independent expenditures.***

#### **IV. Regulation of Campaign Contributions**

- A. Limits on Campaign Contributions.** The Subgroup concluded that the foregoing recommendations should be implemented irrespective of any further recommended legislation on restricting campaign contributions, public financing and other more far-reaching changes. However, the Subgroup determined that these three recommendations would not be sufficient to make the headway the public demands for the reform of Illinois' system. The Subgroup concluded that a system without limits on contributions would not achieve the goal of fair, competitive elections, and would not engender public confidence that decisions of office-holders are merit-based and are not influenced by the size of campaign contributions to the person making the decision.

Abundant evidence exists that campaign contributions from large campaign contribution from a variety of interest influence decisions made by state officials. Well-known recent examples include the record-breaking contributions received by former Governor Blagojevich from large contributors. Other indications of this phenomenon are the lack of reform legislation in areas in which commercial interests have made consistent and substantial contributions to office-holders. Similarly, contributions to legislators from districts with no connection to a particular industry have been associated with favorable legislative decisions (or inaction) from those legislators. A disclosure-only system – even a robust one like the current system with the added changes recommended here – will not remedy these problems.

In addition to these factors, the Subgroup took note of the general efficacy and satisfactory performance of regulations that include campaign limits. The federal system, currently in place since the 1970's, has generally passed constitutional muster and has not been the object of broad public distaste or criticism. Further, 46 states have enacted some form of contribution limits, including Illinois' sister states of Wisconsin, Minnesota, Michigan, Indiana and Ohio. Accordingly, the Subgroup makes the following recommendation on campaign limits.

***Recommendation 4: Support a modified version of pending HB 3935 (the Lincoln Act) which includes the following limits:***

**Contributor**

<b>Recipient</b>		<i>from natural person</i>	<i>From State party committee *</i>	<i>from legislative caucus committee</i>	<i>from any other political committee</i>	<i>from corporation, labor org, association **</i>
	<i>to candidate for statewide office</i>	<b>\$2,400</b>	<b>\$125,000</b> <i>(gen'l election)</i>		<b>\$5,000</b>	<b>\$5,000</b>
	<i>to candidate for legislative office</i>	<b>\$2,400</b>	<b>\$30,000</b>	<b>\$30,000</b>	<b>\$5,000</b>	<b>\$5,000</b>
	<i>to cand. for other state office</i>	<b>\$2,400</b>	<b>\$10,000</b>		<b>\$5,000</b>	<b>\$5,000</b>
	<i>to candidate for local office</i>	<b>\$2,400</b>	<b>\$10,000</b>		<b>\$5,000</b>	<b>\$5,000</b>
	<i>to State party committee *</i>	<b>\$2,400</b>			<b>\$5,000</b>	<b>\$5,000</b>
	<i>to leg. caucus committee</i>	<b>\$2,400</b>			<b>\$5,000</b>	<b>\$5,000</b>
	<i>to any other committee</i>	<b>\$2,400</b> <i>(each 2 years)</i>			<b>\$5,000</b>	<b>\$5,000</b>

In addition to the foregoing limits, HB3935 imposes, and the Subgroup recommended, an \$80,000 aggregate limit on all contributions in any one calendar year from any contributor to any political committee. Other features of this legislation, and proposals pending before the Illinois legislature, are summarized in the attached Summary of Pending Legislation (Tab 1 hereto).

The Subgroup also believes that more stringent measures, including outright bans on contributions from labor unions, lobbyists and corporations, as well as more restrictive limits on PACs, should be considered. The Supreme Court has upheld bans on corporate and union contribution, and there may be legislative schemes limiting contributions from PACs that would pass constitutional scrutiny.

The Commission heard testimony from individuals whose elections to State office were overwhelmed by enormous infusions of PAC money from out-of-state. There is a mixed record in court in sustaining or overturning legislation banning contributions from out-of-state contributors. The Subgroup believes that there is a justifiable place for out-of-state contributions, and therefore does not recommend a complete

ban. Of course, any legislation limiting contributions will also cover contributors from out-of-state.

- B. Pay-to-Play and Regulated Industries.** Illinois has been plagued by well-publicized scandals involving favorable treatment extended to large contributors. These incidents lead to a public sense of inevitability that government contracts automatically go to the most influential contributors. Any campaign finance proposal should include provisions that address this history that has been associated with Illinois politics for so long.

The Subgroup considered the limitations in HB3935 and other recommendations set out above and determined that a more restrictive approach should apply to contributions from contractors vying for state business and for regulated industries. Illinois' pay-to-play law currently applies to constitutional office holders with authority over the specific contract. The Subgroup believes this approach is too narrow, and it therefore recommends the extension of the law to cover contributions to any office holder.

***Recommendation 5: Ban contractors seeking State contracts of more than \$50,000 from contributing to public officials with voting involvement or oversight in decisions concerning the letting of the contracts. Additionally, ban companies engaged in regulated practices from contributing to public officials with voting involvement in decisions relating to their industries.***

- C. Timing of Primary.** Currently primary elections in Illinois are held in February, with the general election in November. The timing of primaries in the middle of the coldest months of the year creates an inhospitable environment for challengers to mount credible campaigns. In addition, the extended period from the primary to the general election further favors the incumbent who generally is better able to outspend a challenger over this long period. Finally, with such a long period between the primary and general, the need for campaign fundraising continues unabated. There seems to be no valid reason for this lengthy schedule.

***Recommendation 6: Amend the Election Code to hold primary elections on the third Tuesday in June or later.***

- D. Spend-down Measures.** The Subgroup reviewed data about the amassing of substantial "war chests" by legislative committees that are able to provide funds to candidates in elections well after the date of the contributions that went into the account. This system promotes the undue influence of incumbents and party leaders. The ability to use money raised in prior elections gives these individuals long "tails" of influence that were not necessarily envisioned by the contributors and are not in the interests of fair elections.

***Recommendation 7: Amend the Election Code to require political committees to remit to the State (or an appropriate fund), any contributions, above a certain threshold amount, by the end of the election cycle in which the funds were contributed.***

**V. Public Financing of Elections**

- A. Background.** Public funding directly promotes participation and competition in elections by giving funding to serious candidates who may not have access to large contributions from private sources. It also diminishes the sense of that the public has disenfranchised due to the role of large contributions in the political process.

Approximately, half of the States in the country have adopted some form of public financing of elections. States may provide funds directly to individual candidates or political parties, give tax incentives to citizens who make political contributions, or some combination of these approaches.

One paramount question that arises in considering public financing schemes is the source of funding. Public check-off systems have not been highly successful in generating the necessary funds, and in fact, the revenue from such sources has been declining. Systems involving tax deductions for contributions to the public financing fund have also been instituted. The State of Arizona generates revenues from a mandatory 10% surcharge on all civil and criminal penalties paid within the state. Other states generate funds from taxes on various products – gasoline, cigarettes and the like.

The funding question arises at a time when states are experiencing significant shortfalls in revenue. The State of Illinois is not alone in having substantial problems paying its share of Medicaid, support for public schools and other popular programs.

- B. Public Financing in the Current Economic Environment in Illinois.** The Subgroup was mindful of the potential for a public financing proposal to be rejected because it required additional State funds. The Subgroup is open to considering a pilot program of public finance which would apply to a subset of judicial or a subset of legislative and/or constitutional positions. It is also open to a more comprehensive proposal, as a pilot project maybe too readily discarded after the current public sentiment for campaign finance reform has diminished.

Even in the current economic environment, the Subgroup believes that, given the history of corruption and incumbent protection in Illinois, serious consideration must be given to public financing of all judicial, legislative and constitutional elections.

***Recommendation 8: Adopt some of the key public financing provisions of HB 3935. Additional review of threshold amounts, grant amounts and funding sources is necessary.***

## **VI. Conclusion and Summary of Recommendations**

The Campaign Finance Subgroup recommends the following proposals for modifications to the regulation of State campaigns in Illinois:

***Recommendation 1: Require submissions, year-round of A-1 forms to the Illinois State Board of Elections electronically within two business days after receipt of any contribution of \$1000 or more.***

***Recommendation 2: Encourage the imposition of existing penalties for knowing or willful violations, and a more consistent use of existing enforcement tools such as subpoena power to discover violations.***

***Recommendation 3: Adopt legislation requiring the disclosure of bundled contributions of \$16,000 or more with this amount adjusted for inflation. The disclosure is triggered by the keeping of records by the campaign crediting bundlers which should identify the bundler and all persons making contributions credited to that bundler. Relatedly, after further review, consider adopting legislation that requires the disclosure of the source of substantial independent expenditures.***

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***Recommendation 7: Amend the Election Code to require political committees to remit to the State (or an appropriate fund), any contributions, above a certain threshold amount, by the end of the election cycle in which the funds were contributed.***

***Recommendation 8: Adopt some of the key public financing provisions of HB 3935. Additional review of threshold amounts, grant amounts and funding sources is necessary.***