

## **THE SIMON REVIEW**

### **LESSONS LEARNED:**

**What the successes and failures of recent reform efforts tell us about the prospects for political reform in Illinois**

**By: Cynthia Canary and Kent Redfield**

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### A note about the authors

Cynthia Canary is currently the chair of Mayor Rahm Emanuel's Task Force on Ethics. She served as the director of the Illinois Campaign for Political Reform (ICPR) from 1997 to 2011, was a member of the Simon-Stratton Commission, and is a past executive director of the Illinois League of Women Voters. As director of ICPR she was directly involved the efforts to pass the 1998 gift ban law, the 2003 ethics law, the 2008 pay-to-pay law, and the 2009 campaign finance reform law.

Kent Redfield is a professor emeritus of political science at the University of Illinois Springfield (UIS). He provided research and analysis for the Simon-Stratton Commission and served in a staff capacity for the working group that developed the 1998 gift ban law. From 1997 to 2009 he directed the Sunshine Project at UIS, building campaign finance database and providing research and analysis for ICPR. In that capacity he was directly involved with the effort to pass the 2009 campaign finance law.

## **Lessons Learned:**

### **What the successes and failures of recent reform efforts tell us about the prospects for political reform in Illinois**

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#### **Section 1-The Need for Reform in Illinois**

In 1972 a group of Illinois legislators and a lobbyist were indicted for taking bribes from Material Services Corporation to insure the passage of a bill that would help the company transport heavy materials on Illinois roads. In what became known as the “Cement Bribery Trial” four legislators, including a former Speaker of the House, and a lobbyist were convicted in October of 1976. Two legislators and Lester Crown, the chief executive of Material Services, testified against the defendants.<sup>1</sup> The company executive was granted immunity and not indicted, while the two legislators were sentenced under plea agreements. Twenty other members of the General Assembly were linked to the bribery scheme by testimony at the trial, but were not indicted.

The trial and its immediate aftermath provided a window into the political culture in Springfield. It was not a pretty sight. Testimony presented by the prosecution linked the free flow of money in the legislature explicitly and implicitly to the passage of specific bills. Much of the defense testimony focused on the ambiguity of the meaning of money given by private interests to elected public officials. When is a “campaign contribution” simply a campaign contribution and when it is much more? When one of the legislators in the case had his conviction set aside he was welcomed back by his colleagues with open arms. The only significant legislative response to the evidence of wide spread corruption in Springfield was to adopt a prohibition against state contracts going to individuals or corporations who had admitted in open court to bribing public officials, regardless of whether or not they had been indicted or convicted for the act. Call it “Lester Crown’s Law.” No effort was mounted after the convictions to enact campaign finance reform or ethics laws or to establish ethics rules or ethics committees within the legislature.

Fast forward 40 years and Illinois still continues to struggle to effectively stem corruption. Three Illinois Governors - Kerner (1973), Ryan (2006) and Blagojevich (2011) - were convicted of charges related to public corruption and sentenced to prison. An Illinois attorney general, the state’s chief law enforcement officer, was convicted and sentenced to prison on charges related to public corruption in 1991. More than a dozen

sitting or former state legislators have been indicted on charges related to public corruption with 10 convictions. In addition, two members of Congress from Illinois were convicted of public corruption charges during that time.<sup>ii</sup>

Corruption has not been the province of elected officials alone. A scheme to bribe agency officials to fix a state contract resulted in the conviction in 1998 of two company officials and two officials in the Department of Public Aid. The 2006 conviction of Governor George Ryan grew out of an investigation of the Secretary of State's Office which revealed the systematic selling of commercial driver's licenses, the conversion of bribe money into campaign contributions, and a massive diversion of employees and resources from the operation of the Secretary of State's office to the 1998 Ryan campaign for Governor. Named "Operation Safe Roads" by the US Attorney's office, the investigation resulted in 75 convictions or guilty pleas in addition to the conviction of the Governor. The Blagojevich indictment grew out of "Operation Board Games", an investigation by the US Attorney's office into corruption in state pension boards and state hiring. In addition to the conviction of the former Governor, the investigation also resulted in a number of convictions, including Democratic Chicago insider and fixer Tony Rezko and William Cellini, a legendary Republican power broker from Springfield.

It is the same story at the local level. In the past 40 years, thirty Chicago Aldermen have been convicted of public corruption. Scandals within Chicago and Cook County have been so numerous that you need a scorecard to keep track: Operation Graylord (corruption in Cook County Courts, 1980-1992), Operation Incubator (parking ticket and water bill collection, 1984-1989), Operation Gambat (organized crime connection to 1<sup>st</sup> Ward political organizations, 1986-1997), Operation Silver Shovel (landfill permit, 1992- 2001), Operation Haunted Hall (ghost payrolling, 1993-1999), Operation Family Secrets (organized crime and law enforcement, 2000-2009), Operation Hired Truck (contracts for private hauling, 2004-2009), and Operation Crooked Code (bribery for zoning permits, 2006-2009).<sup>iii</sup>

What those outside Illinois refer to as the "Chicago way" or Chicago-style politics is really a way of thinking about and practicing politics that is the essence of the dominant political culture in Illinois. Following Illinois Secretary of State Paul Powell's death in 1970 almost \$900,000 in cash was found in his hotel room in Springfield, some of it in shoe boxes in a closet. The money in the shoe boxes has become one of the most enduring symbols of corruption in Illinois politics. Powell, the gray fox of Vienna, learned his politics in deep southern Illinois, about as far away as you can get from the Chicago loop and still be in Illinois.<sup>iv</sup> George Ryan was a product of Kankakee County where the politics differed from Chicago machine politics only in its location.<sup>v</sup> Recent history of political corruption in suburban Illinois tells a similar tale. For example, in 2001 the mayor of Calumet City was convicted of taking bribes and misappropriation of public funds. In 2002, the mayor of Cicero was convicted of public corruption in a mob related

theft of \$12 million dollars from the city's insurance fund. The pattern is as familiar as it is disheartening.<sup>vi</sup>

In 2012, Illinois political corruption made national news, again. First, Derrick Smith, an Illinois legislator from Chicago, was indicted in March after being caught on tape accepting a bribe. What elevated the story above run-of-the-mill political corruption was the fact that Smith won the Democratic primary election shortly after being indicted. When Smith refused calls for him to withdraw from the ballot, the Illinois House of Representatives formed a special committee and initiated an investigation. That process culminated in Smith being expelled from the legislature in mid-August. In spite of being thrown out of office for the current term, only a felony conviction would keep him off the ballot in the fall. A trial before November is not likely. He could win his seat back, but to do so he will have to beat the independent candidate recruited by the Democratic Party to run against him. There is no Republican candidate on the ballot. While some have joked that the ethical standard one must meet to run for public office in Illinois is "not currently under indictment," it appears even that may be setting the bar too high.

The second incident of Illinois political corruption to make the national news in 2012 occurred in the boyhood home of former President Ronald Reagan, Dixon Illinois. In April federal agents arrested the city treasurer for embezzling city funds. Not a unique story, in Illinois or elsewhere. Except for one fact, the fact that the treasurer stands accused of stealing over \$53 million over 21 years. That figure represents almost one-third of the receipts of the city's general fund during the period.

Looking back over 40 years it appears that if ever a state had a flat learning curve when it comes to preventing political corruption, that state is Illinois. By any quantitative or qualitative measure, the magnitude and persistence of political corruption in Illinois is stunning. It has become an essential part of Illinois' identity, defining our state and our politics. And it takes a terrible toll on the lives of our citizens.

### Why is Illinois so corrupt?<sup>vii</sup>

Political corruption falls into three broad areas of illegal or unethical activities. First, there is corruption that directly subverts the political process. Buying votes or trying to intimidate specific groups to keep them from voting are examples. Second, there is corruption that results in public resources being used for political purposes. Examples are putting an unqualified political supporter on the public payroll or requiring public employees to perform campaign work while on public time. Finally, there is corruption that results in using public authority for private gain. Public officials extorting money or taking bribes from private firms seeking government contracts is an example of this type of corruption.

On all levels, Illinois has a long history of public corruption. The question is why. Why is politics in Illinois so corrupt? Do we just have a lot of bad people? Do we have a political system that corrupts many of the people who get involved with politics? Or is it something in the water? The answer is all of the above. The basic political culture that every Illinoisan grows up with and experiences firsthand contributes to a climate of political corruption. Our political culture does little to attract good people to politics and even less to restrain the bad people who get into politics. The political system we have developed in Illinois reflects and reinforces the corruption of our political culture.

Commonly shared attitudes and beliefs shape what we expect from politics and politicians. Illinois has a political culture that emphasizes power, winning, control, and jobs over public interest or good public policy. Illinoisans tend to think of politics as primarily a business, a vocation people take up in order to pursue personal interests. Not only are we taught at our dinner tables, in our classrooms and churches, and through the news media that politics is a business, we also learn that it is a dirty business. We expect that politicians will cut corners in order to win and that they will place the interests of themselves and those who supported them above the interests of the general public. For those inside the process, politics is regarded as the province of professional politicians rather than concerned citizens. These attitudes translate into low expectations about politics, along with a tolerance for corruption, a lack of incentives for citizens to participate in the process, rules governing elections which favor entrenched interests and incumbent office holders, and an acceptance of patronage as a fact of life in hiring for government jobs. Political scientists call this type of political culture “individualistic.” Illinois has long been the poster child for individualistic politics.<sup>viii</sup> Our expectations and our standards for politics are very low and our politicians live up to them.

The political structures that have developed and the types of politicians that have dominated Illinois since statehood tend to favor the interests of the politicians and private interests over the interests of the general public. Illinois election laws discourage easy access and widespread participation in the process. Access to public documents, while greatly enhanced by recent changes in the law, is still too limited and often discouraged by those who have the responsibility to administer the law. Public disclosure of the official actions and private interests of public officials is limited in both content and access.

Before 2011, there were no limits on how much a person, association, company or union could contribute directly to a political candidate. There are still no limits on the direct contributions made by political parties or legislative leaders in a general election. There are no prohibitions against campaign contributions from business and professional interests that are regulated by the state. Direct contributions from corporate entities are prohibited by federal law and by a majority of the states, but not in Illinois.

The elections of judges from the State Supreme Court on down takes place under rules of the general campaign finance system which allows corporations, unions and interest groups to contribute directly to judicial candidates.

Prohibitions against economic relationships between public officials and private interests that might compromise public actions exist only in the broadest sense. Illinois has long had freedom of information and open meeting laws that promote transparency in government, but enforcing them and making them meaningful is a constant battle. In spite of laws and court rulings to the contrary, political patronage still influences hiring by state agencies and local governments.

Illinois' political culture and political processes do not encourage talented, public service-oriented people to get involved with politics or to make state government a career. If anything, it discourages those people. At the same time, the unscrupulous and the ambitious use the political system to pursue their individual goals while the weak are easily corrupted by the excesses.

#### What are the costs of political corruption?

There are costs to widespread public corruption in Illinois that go beyond the money spent on criminal investigations and trials. The first is the loss of the legitimacy of the political process for the citizens of the state. Real corruption destroys public support for the political system. But the appearance of corruption can be just as corrosive to the legitimacy of the political system as actual corruption. If everyone believes Illinois politics is corrupt, there is no reason for the general public to accept the policies or programs of government as having authority or to assume they have value. If everyone believes that all Illinois politicians are corrupt, or become corrupt soon after they take office, then there is no reason to support attempts by political leaders to promote individual responsibility or collective obligations to solve the state's social and economic problems or provide care for those in need.

The second cost of political corruption is a loss of participation. Participation in politics is part of a civic culture that develops and ennobles both individuals and society. Individuals and society are both better when people participate in the political process. When citizens share in the decision-making and have a vested interest in the outcomes, the foundations of the political system are strong. A corrupt political system does not encourage participation, nor does one where politics is reserved for the professional politician. When there is a widespread perception that politics is corrupt and someone else's business, the pool of citizens that participate in elections and seeks to influence policy grows smaller and creates a void that entrenched interests are all too happy to fill. Both the state and individual citizens lose when a corrupt political system limits political participation.

The third cost is a weakened talent pool of public officials and those who work for government. A corrupt political system does not encourage young people to engage in politics or make government a career. If there is a widespread perception that patronage hires and political interference make it difficult for talented people without political connections to get state jobs or to do a professional job of delivering services, then people will not become involved in government. As a result, the pool of those who want to get involved with government as a career keeps shrinking in quantity and quality.

The final cost to political corruption is the deterioration of the quality of the public services provided by state and local government. Do-nothing state jobs, make-work jobs, and inflated no-bid contracts take resources away from doing the real job of state and local government. A lack of highly qualified people and the diversion of public resources to political or private ends make meeting the basic obligations of government in the areas of education, health and welfare increasingly more difficult. Because our political culture is status quo oriented and risk adverse, it discourages the kinds of policy innovations and risk taking that leads to improved ways of addressing the state's needs and obligations.

#### What needs to be done?

Unlike most states, Illinois implemented little reform in the post-Watergate era. However by the late 1990's, Illinois propensity for scandal became so exaggerated that simply blaming corruption on bad actors was no longer viable.

In response in part to a political corruption scandal during Governor Edgar's second term, Illinois passed a new ethics and campaign finance disclosure law in 1998. Five years later in response to separate scandals that brought down Governor Ryan, and ultimately sent House GOP Chief of Staff Mike Tristano to jail, Illinois passed a new ethics law under the leadership of Governor Blagojevich. The new law established ethics commissions for the executive and legislative branches and inspectors general to investigate complaints, required ethics training for all state employees, tightened gift-giving to public officials, prohibited state employees involved in negotiating large state contracts from taking jobs with those companies, and provided increased access to lobbyist registration and economic interest statements. In 2008 in response to the political corruption scandal rapidly escalating around Governor Blagojevich, the Illinois legislature passed over the Governor's veto a law prohibiting pay-to-play actions in state government. In 2009 in response to the indictment and subsequent impeachment of Governor Blagojevich, Illinois passed a series of new laws that placed new regulations on state purchasing and contracts, reformed the Freedom of Information Act, and placed limits on most campaign contributions while expanding disclosure requirements and strengthening enforcement.

In light of recent legislative success, do we really need more laws? And even more fundamentally, do laws really matter? Won't bad people do bad things in spite of the law? On one level, the solution lies in identifying the bad people and enforcing existing laws. Stealing public funds, engaging in fraud, taking bribes, and using public office to extort money has always been illegal in Illinois and everywhere else in the country.

Having said that, the fact remains that laws do matter and new laws can make a difference. Laws define what is legal and illegal. They set the tone for what society considers acceptable behavior and allow us to draw a line in the sand. However, there can be a lot of gray area around that line with far too many viewing the law as a ceiling rather than a floor on acceptable behavior. For example, look at way the gift ban law was constructed in 1998. In general a gift ban prohibits people who could benefit from the actions of a public official from giving anything of value to those officials. These kinds of exchanges invite both real corruption (bribery and extortion) and the appearance of corruption (by creating conflicts of interest). Rather than police these exchanges on a case by case basis, a gift ban prohibits them. The original gift ban law had a blanket exemption for "food and beverages consumed on the premises." In plain language, lobbyists could spend an unlimited amount of money on "wining and dining" legislators. A limit of \$75 per day was added by the 2003 changes in the law. But the fact remains that a lobbyist can legally buy \$75 worth of food and beverages for a legislator in a restaurant, but the lobbyist cannot legally buy the same food and beverages at a grocery store and drop it off at the legislator's home. The message the law sends to participants and to the general public about political ethics is far from clear.

In Wisconsin, a lobbyist cannot buy as much as a cup of coffee for a legislator. There is a bright-line, zero-tolerance policy. The assumption is that, just as there is no such thing as being a little bit pregnant, there is no such thing as being a little bit corrupt. Unlike Illinois, the ethical message of the Wisconsin law is clear.

There are actions beyond throwing the bad people in jail that would result in major improvements to the ethical climate in Illinois politics. Key changes in the laws that govern Illinois politics would significantly reduce both actual corruption and the appearance of corruption. In general, these involve hardening the target, making governmental actions and information more transparent, regulating and limiting the roles that money plays in elections and policy making, and raising the ethical standards and expectations of public officials and the general public in Illinois. Hardening the target means making it more difficult and more risky for individuals to engage in political corruption. Transparency means making political actions and processes and information about government and political actors more open and accessible and corruption more visible. Regulating and limiting the role of money in elections and policy making means enacting better disclosure, prohibitions on contributions from corporate entities,

comprehensive limits on contributions, and public finance and small donor systems. Raising expectations means convincing the public and politicians that standards of ethics need to be higher in politics and government than in any other sphere of human activity because politics and government, ultimately, are the public's business.

### How to get there

While the general goals of reform are widely accepted, the same consensus does not exist as to the specific policy changes and actions needed to achieve those goals. Even when there is agreement about what needs to change, change is often elusive. This is particularly true in Illinois, since the road to change often goes through the Legislative leaders and the Governor. Passing laws aimed at political reform and fighting corruption means challenging the status quo and changing the rules of the game. People who hold political power in Illinois achieved success under the existing ethics, public official and lobbyist disclosure, campaign finance, election code, and transparency laws. They have learned how to use their resources to win or to reduce their losses playing a familiar and often predictable game. A new set of rules at a minimum means relearning how to be successful. New rules often provide temporary, new partisan advantages and disadvantages and alter the value of existing resources. New rules can produce unintended consequences that further increase the uncertainty of political actions. For all of these reasons, the status quo is a political system's default position when it comes to efforts to enact political reform, even in a political culture which is disposed toward a public interest, common good framework for the process of politics. Because Illinois' political culture is not so disposed, the task of enacting reform is exceptionally difficult.

But change does happen in Illinois. Reform measures do get enacted into law. Why? Why do some reform efforts succeed and some fail? With the need so great and the hurdles so high, understanding how to maximize the effectiveness of efforts to enact political reform and communicating that knowledge is critical to the continued success of those efforts. Answering the question of what works and why requires unpacking and articulating the strategies and techniques that constitute best practices for establishing a public agenda for reform and then translating that agenda into public policy. In "Section 2 – Different roads to reform" we will examine in broad terms, the different approaches that have been used in Illinois to promote or enact political reform. In "Section 3 - The struggle for reform" we will construct a time line of successful reform measures over the past three decades and present four case studies of successful reform efforts: the 1998 gift ban law, the 2003 ethics law, the 2007 pay-to-play law and the 2009 campaign finance law. These lay the foundation for the next section. In "Section 4-Lessons learned" we will draw on those case studies to set out the factors, strategies, and techniques that define the parameters of reform efforts and constitute best practices for those seeking to enact reform in Illinois. In the final section, "Section 5 – Fighting the

next war,” we turn our attention to the future by examining how the traditional reform agenda can be shaped to reflect the limitations and opportunities that we see for achieving lasting political reform in Illinois politics.

## **Section 2 - Different Roads to Reform in Illinois**

The history of Illinois politics and government is not a history of political reform. However, in spite of the overall picture, purposeful, conscious changes have been accomplished in the way we practice and think about politics and the proper functioning of government. Political reform does occur in Illinois from time to time. The specific roads taken to reform have been as diverse as they have been numerous. Some of these changes have come through litigation, some through citizen movements, some through the efforts of watchdog groups and the news media, some through lobbying efforts that have led to change in Illinois laws, and some through the filtering down of cultural and social changes in society. Some reforms have emerged not for public policy reasons, but to punish political opponents or capture a partisan or a political advantage. Given that creating legislation can be like sausage making, it often is not easy to untangle the strands of a bill that advances the public’s interest from those designed to advance narrow political interests.

### Litigation

Illinois has a long and well-deserved reputation as a patronage or “job” state. “Boss” Daley, as Chicago’s mayor from 1955-1976 was known, and his patronage army are an enduring symbol of Illinois politics. Former Governor Rod Blagojevich learned his politics from his father-in-law, Dick Mell, who is a Chicago Alderman and Ward Committeeman. While the national news media makes reference to Chicago-style politics when discussing Illinois’ political and financial problems, patronage is not just a Chicago phenomenon. In state government, since statehood, patronage politics has flourished under Democratic and Republican Governors alike.<sup>ix</sup> Downstate politics produced former Governor George Ryan from Kankakee County and the legendary Paul Powell from Vienna. Those familiar with the state’s history know that patronage politics has been a staple of Illinois politics regardless of region, party, or the level of government.

While the death of patronage in Illinois state and local government has been greatly exaggerated, it does not dominate government employment processes the way it once did. The US Supreme Court is responsible for much of that change. Two of the most important court decisions prohibiting the use of political affiliation as the sole criteria for employment decisions made by governmental bodies originated in Illinois. The Elrod decision (*Elrod v. Burns* 1976) held that governmental employees could not

be fired because they supported a political party different from the person who had the power to hire and fire public employees. Richard Elrod was an elected Cook County Sheriff who fired people who had been hired by his Republican predecessor. The Court held that such actions violated the individual's right of speech and association. The US Supreme Court applied the same logic in the *Rutan* decision (*Rutan v. Republican Party of IL* 1990), when it held unconstitutional the use of political considerations by the administration of Illinois Governor Jim Thompson in making employment decisions involving hiring, promotions, and transfers.

These court decisions have had an impact, but they are not the only factors at work responsible for shrinking Illinois' patronage system. For example, there is some degree of irony that public employee collective bargaining, which is widely blamed in some media and policy circles for much of the fiscal problems of local and state governments, has been a major factor in decreasing patronage in Illinois. Given the opportunity, many public employees have formed or joined bargaining units, seeking protection from patronage and the capriciousness of Illinois politics and budget problems.

Overall the situation has improved, but the residual impact of the political culture is still present. Hiring by the City of Chicago and Cook County are still regulated by 1972 and 1983 federal consent decrees and a federal monitor appointed in 2005. The "Shakman decrees" and monitor are the result of a federal law suit filed by Michael Shakman challenging patronage hiring practices. This is not unlike how some southern states and other areas in 2012 still operate under restrictions from Section 5 of the federal Voting Rights Act of 1965, which requires preclearance before implementing changes to voting practices.

The Illinois Campaign for Political Reform has been involved with a number of law suits, both as a plaintiff against the Illinois State Board of Elections seeking enforcement of Illinois law and through amicus briefs in state and federal cases litigating Illinois campaign finance laws. The best source of information and support in writing and litigating campaign finance law at the state level is the Brennan Center for Justice at New York University School of Law. They publish a number of very useful materials in this area.<sup>x</sup>

Litigation as a strategy for achieving political reform is most effective when the actions in question violate the Federal or state constitutions or violate a state or federal statute. Litigation is rarely a viable option when faced with bad policy or the absence of policy to address corruption and unethical behavior in government. Nor is litigation a strategy which can be entered into without substantial resources or a significant pro bono commitment from attorneys.

## Citizen Initiatives

Citizen initiatives have been a well-travel road to reform in states whose constitutions allow them. The most recent Illinois State Constitution adopted in 1970 provided only a limited opportunity for citizen initiatives. Specifically, Article 14, Section 3 provides only for citizen initiatives limited to the structural and procedural subjects contained in legislative article of the constitution. Citizen initiatives on matters of public policy are not allowed.<sup>xi</sup>

In 1975, current Illinois Governor Patrick Quinn and the Coalition for Political Honesty mounted a petition drive to place an initiative on the 1976 general election ballot that would ban legislative double-dipping (holding more than one government job), prohibit conflict of interest voting by legislators, and bar legislators from receiving their annual salary in advance. The Illinois Supreme Court upheld a challenge to the initiative on the grounds that the subject matter was outside the narrow criteria set out in the state constitution. In 1979 The Coalition organized a new petition drive to amend the state constitution. This initiative, which was initiated after wide spread public outrage over a post-election legislative pay raise, was titled the Cutback Amendment. It reduced by one third the size of the House in the General Assembly and eliminated the system of cumulative voting that was used to select those Representatives. The initiative withstood legal challenges and was place on the 1980 general election ballot. It passed with 69 percent of the vote.

Three subsequent efforts to use the initiative process in the Illinois State Constitution to enact substantive or procedural reforms were unsuccessful. All three were ordered off the ballot after legal challenges. Given very narrow way the Illinois Supreme Court has interpreted the initiative language in the Illinois Constitution, most consider this road to reform largely a dead end, although one exception may be the legislative redistricting process.

## Criminal Prosecutions

Political corruption often involves clearly illegal acts. Bribery, extortion, theft, and fraud are already illegal. When evidence of political corruption results in investigations and criminal indictments, the public process of identifying bad actors and bringing them to justice is another road to reform. The list of convictions of state and local public officials and private citizens for political corruption in recent history is truly impressive - both in terms of quantity and quality. Getting rid of bad apples does stop specific acts of corruption. Seeing people go to jail can make others think twice about violating the law. But how effective legal action is against political corruption in the long run depends on whether the bad apples are aberrations in a basically sound political system or

symptomatic of problems and pressures that can't be resolved by periodic high profile criminal prosecutions.

If stopping political corruption was primarily a matter of providing sufficient disincentives, you would think that having a former Governor arrested and sent to jail for political corruption would make it less likely that the next Governor would get arrested and sent to jail for political corruption. But that was not the case. You would think that having a Governor caught on tape discussing payoffs would make it less likely that a state legislator would get caught on tape taking a bribe. But that was not the case either. The situation at the local level is no different from that at the state level. The never-ending parade of local government officials from Chicago and other areas of the state going off to jail has not resulted in a moratorium on political corruption at the local level. Aggressive prosecution of political corruption is a necessary but not sufficient road to reform.

### The News Media and Watchdog and Public Interest Groups

Not all unethical political behavior rises to the level of illegal acts. Even when it does, the chance of a successful prosecution may be slight. Conflicts between the interests of the supporters of political officials and the interests of constituents or the general public can result in corruption or the appearance of corruption. Investigative reporting and research by news organizations and public interest groups can bring political favors, sweetheart contracts, political pressure, nepotism, and patronage to the attention of the general public and force public officials to address the questions they raise. In addition to illuminating public problems and political scandals, these groups make a critical contribution by aggregating public data and then systematically analyzing that data. Accurate, objective data on public actions - contracts, jobs, campaign contributions and expenditures, expenditures of public funds, lobbyist registration, etc. – provides a foundation for policy discussions by establishing a baseline grounded in facts. Illinois has a long and rich history of watchdog groups such as the Better Government Association (BGA) and Common Cause who play an essential role in bring scandal and corruption to light and promoting changes that will make corruption less likely or easier to detect. Illinois also has long history of muck raking investigative reporting that exposes and publicizes political corruption. This is true for all types of news media in all regions of the state.

A vigilant press and effective public interest and watchdog groups can lessen both corruption and the appearance of corruption. Public officials and those who seek to influence government will modify current and future behavior to avoid the embarrassment of negative news stories, editorials, and reports. These reports also document the magnitude and the scope of the problems. One fixed contract is a story of individual greed and weakness. Scores of stories about fixed contracts throughout the

state suggest a larger problem of the absence of proper procedures and oversight or an ethical weakness in our expectations for political behavior. While they play a critical role in fighting public corruption, these groups can destroy their credibility or contribute to an exaggerated level of public cynicism through over-hyped or inaccurate news stories or investigative reports. And, as with criminal prosecutions, the activities of the news media and watchdog and public interest groups cannot reform a political system with systemic weaknesses or reshape a political culture by themselves. They are necessary for creating a climate that is receptive to political reform and necessary to sustain political reform, but they are not sufficient to achieve it in isolation.

### Enacting New Laws

The most direct way to reform the political system is by changing the formal rules of the game. Enacting new laws to prohibit or modify behaviors is a critical road to reform. It is also often the most difficult. A strong foundation of aggressive law enforcement, tenacious news reporting and editorial opinion and engaged, effective watchdog and public interest groups greatly facilitates efforts to enact new laws to address deficiencies in the system.

News stories and reports uncovering political corruption, revealing the resistance of those in government to granting unfettered access to public documents, and exposing the corrupting influence of money on elections and policy making only gets you so far. Even prosecutions and convictions for bribes, shake-downs and influence peddling cannot make up for the absence of the regulation, limitations, oversight and transparency necessary to reduce political corruption or overcome attitudes of cynicism and disengagement among members of the public. Real reform requires a new set of rules and a new narrative about the standards and obligations of public officials and citizens.

Enacting political reform through legislation is difficult because those who have power and benefit from the status quo must relent and change the basic rules of the game. Political reform always carries risks for those with power. It can upset a stable equilibrium and cause unforeseen consequences. It creates an uncertain future where the benefits of reform may or may not occur. It challenges the assumption that problems and short comings within the political system come from the actions of bad individuals and the failure of institutional structures to work properly. Assertions that our political culture and the design of our political institutions attracts bad people to politics and corrupts good people are not received warmly by those who have achieved power and success under status quo. Neither are assertions that bad behavior and bad policy are not the result of the system breaking down, but are the result of the political system working the way it was designed.

## Changing the Political Culture

Culture is learned behavior. We learn values, attitudes, and beliefs about how the world works, what the rules are, what is acceptable and what is not, and what is important, fair, and just from our parents, friends, schools, religious institutions, news media, and life experiences. Cultural values are a very powerful force in human society. How do you reduce bank robberies? You certainly make robbing banks a crime. You also install security systems and hire guards. You make every effort to apprehend and convict bank robbers and send them to prison. All of this will reduce bank robberies. But most people do not rob banks because it is hard or because you could get caught. Most people do not rob banks because they believe it is wrong. Honesty is a basic cultural value. That does not mean that people will not rob banks or that we should not take every measure to keep them from doing so. But the best protection against bank robbery is a shared value of honesty.

The ultimate goal of political reform from a cultural standpoint is to create a way of thinking about and behaving in politics which reflects ethical values and a commitment to democratic self-government. We need to insure that our citizens and public officials internalize values of honesty and ethical behavior on behalf of the public good. This requires a number of factors. Investment in civic education and building a civic culture which promote citizen engagement are critical. Bringing attention to corruption and conflicts of interest, prosecuting illegal behavior, and enacting new laws all work to modify political culture if the lessons are about the nature and values of the political system rather than just about bad people and institutional failures. Changes in political culture in turn facilitate efforts to draw attention to the need for political reform and stimulate efforts to enact new laws. The change can be cumulative in a positive direction in contrast to a downward spiral of public disengagement fed by corruption and cynicism.

There are alternative futures. After former Governor George Ryan was convicted on public corruption charges, a number of observers commented that his biggest mistake was that he was an old style politician who had not changed with the times. His failure to change resulted in him going to jail for behavior that used to be acceptable (or at least not prosecuted), but now was no longer tolerated by society. There is some truth in this. Attitudes toward corruption and the willingness to prosecute corruption had changed. And the laws that were passed in response to this political scandal further changed the political culture. The road to political reform begins and ends with political culture.

While the forces for change can operate in isolation, they are not mutually exclusive. Often they reinforce each other. Watchdog groups and the news media shine the light of public scrutiny on public problems and political scandals. At other times political corruption is exposed through criminal indictments. Public interest groups provide the data and analysis necessary to document and frame these problems and scandals as systemic weaknesses rather than isolated aberrations. Once in the public arena and on the public agenda, resolution can come from criminal convictions, litigation or enacting new laws. Successful resolution leads to changes in the way public officials and citizens think about and practice politics. One step does not always lead to another. These are different spheres of activity that interact and intersect.

### **Section 3 - The Struggle for Reform in Illinois: Changing Laws and Culture**

#### **Part A) A Time Line of Reform**

The history of political reform in Illinois suggests that changes in the status quo have been neither linear nor cumulative. Change takes place sporadically. It has been driven by a variety of factors: traumatic national events, political scandals, the resolve and leadership of an elected official, social movement, and the news media. However it happens, it rarely comes quickly or easily. Reform is not in the state's political DNA.

Open meetings and access to public records are keys to transparency in government. Illinois' open meetings law was passed in 1957. It was one of the first and one of the most comprehensive of such laws to be adopted at the state level. In contrast, Illinois was the last state in the nation to adopt a comprehensive law granting public access to public records when the Freedom of Information Act (FOIA) became law in 1984.<sup>xii</sup> Why a 27-year hiatus in the movement toward transparency and accountability in government? The most likely explanation is that the slowness to embrace FOIA is what you would expect from a risk-adverse, status quo oriented, individualistic political culture. All of this makes the adoption of an open meeting law in 1957 in the face of the politics of the time a tribute to the values, determination, and political skills of its author, the late US Senator Paul Simon.

The failure of the Illinois legislature to redistrict the House prior to the 1964 election led to a court ordered at-large election for the 177 members of the House. The result was a huge Democratic majority reflecting the landslide election result at the national level. There was also a major turnover in the members of the House. Among those new representatives was a group of progressive, reform-minded legislators who would not have been elected but for the at-large election. The next six years saw a number of significant reforms, most notably the passage of the State Governmental Ethics Act in 1967 and the establishment of the Commission on the Operation of the

General Assembly (COGA) in 1965<sup>xiii</sup>. The Commission's report led to the adoption of significant procedural reforms that modernized the legislature and provided transparency and access for the general public.

A new state constitution was adopted in 1970. That document mandated for the first time the filing of statements of economic interest – or information about their own personal interests – by public officials under procedures created by state law. The requirements and procedures for filing these statements were added to the State Governmental Ethics Act. The 1970 State Constitution also created the Office of Auditor General and mandated the auditing of state public funds. The Auditor General is elected for a ten-year term by a 3/5 vote of each chamber and may be removed only for cause by the same vote. The result was the institutionalization of strong, independent office which provides transparency and accountability in state government.

The national scandal leading to President Richard Nixon's resignation ushered in the post-Watergate era of the mid-1970s. During this period new campaign finance reform and ethics laws were enacted at the federal level and in almost every state. Many of those laws severely regulated campaign contributions and campaign expenditures. Most of those laws had to be rewritten after 1976 when the US Supreme Court in *Buckley v. Valeo* nullified restrictions on campaign expenditures.

The campaign finance law that Illinois adopted in 1974 did not have to be rewritten. The Illinois General Assembly had grudgingly passed a law requiring the reporting and disclosure of campaign contributions. No restrictions of any kind were placed on contributions or expenditures. The law would remain essentially unchanged until 1990 when candidates and political committees were required to file reports of contributions and expenditure every six months rather than once a year.<sup>xiv</sup>

Illinois also adopted a new lobbyist registration law in 1973. While it was not a very effective law, it remained largely unchanged for the next 20 years. In 1993 the law was significantly revised, providing much greater application and coverage. However, it still lacked effective enforcement mechanisms. This reform effort had an unlikely champion – Secretary of State George Ryan. Administering the lobbyist registration law was one of the duties of the Secretary of State. With an eye toward higher office, Ryan, who was generally seen as the quintessential insider and an old-style politician, was anxious to raise his visibility and improve his image among voters. Leading the effort to strengthen the lobbyist registration law was smart politics for Ryan. It was also very useful to those pushing reform to have the support of an insider who had credibility and clout with those directly affected by the change. The next significant change in the lobbyist registration law would come in 2003 in the wake of the political corruption scandal that drove Governor Ryan from office. It was part of an ethics proposal pushed

by another statewide elected official trying to establish his credentials as a reformer, newly elected Governor Rod Blagojevich.

The 1980s was a quiet decade for reform in Illinois. The legislature passed a bill that would have established a public finance system for state political campaigns in 1983, but Governor Jim Thompson killed it with a veto. Thompson did sign the Freedom of Information Law in 1984. Patronage also began to crumble in the 1980's. Following the 1976 *Elrod* decision, the US Supreme Court handed down the *Rutan* decision in 1990. As previously noted, *Rutan vs. Republican Party of Illinois* prohibited the kind of patronage practices that had long been an essential part of public employment in Illinois. After a quiet decade in the 1980's, the next two decades would rival the late 1960s and 1970s as a period of substantial political reform in Illinois.

In 1997 and 1998 significant campaign finance and ethics reform proposals were signed into law in Illinois. The impetus for change came from a growing body of data on the role of money in Illinois which was developed by academic and news media projects, a campaign finance task force headed by US Senator Paul Simon and former Governor William Stratton, and a bribery and influence buying scandal involving the administration of Governor Jim Edgar and the legislature. The push for campaign finance reform and ethics legislation had greater visibility and momentum than any time since 1974.

The first legislative response to the increased visibility of the troubling role of money in politics was largely a defensive reaction, particularly to proposals calling for the adoption of contribution limits. Focusing on disclosure as an alternative to contribution limits, the legislature passed a bill that provided for voluntary electronic filing of campaign committee reports with the State Board of Election. It required the Board to post all reports filed by political committees in a searchable data base accessible through the Internet. The bill also abolished the requirement that anyone who wanted to view a report from a campaign committee provide personal contact and biographical information that was then forwarded to the committee.

The following year, hoping to capitalize on the momentum for reform, Former US Senator Paul Simon, who had become the director of a public policy institute at Southern Illinois University Carbondale (SIU-C), initiated an effort to bring the legislative leaders together to find common ground on an ethics and campaign finance reform bill. A group of four legislators designated by the four legislative leaders met under the leadership of Mike Lawrence, the assistant director of the SIU-C policy institute and former senior advisor and press secretary to Governor Jim Edgar. The resulting bill passed the legislature by a wide margin and was signed into law by Governor Jim Edgar. The most important provisions of the 1998 reform law were to establish a ban on gifts to elected state officials, governmental employees and judges from individuals who

had an interest in decisions made those elected officials and government employees; require electronic filing of political committee reports which exceeded a dollar threshold of receipts or expenditures; prohibit candidates from taking campaign funds for personal use; ban fundraising events in Springfield on session days; prohibit soliciting or receiving campaign contributions on state property; and increase the fines the State Board of Elections could impose for violations of the campaign finance law.

George Ryan was elected Governor in 1998 following a campaign plagued by allegations of corruption in the Office of the Secretary of State during his tenure. A federal investigation, Operation Safe Roads, began producing indictments of employees of the Secretary of State's office in the fall of 1998. By the time Ryan announced in 2001 that he would not seek reelection, 39 employees from the Secretary of State office had already plead guilty or been convicted of criminal charges. In April of 2002, following an investigation by the US Attorney's office, Citizens for Ryan, George Ryan's campaign committee, and two top officials from the campaign (and former officials in the Secretary of State's office) were indicted on federal racketeering charges involving corruption in Ryan's 1998 campaign for governor. By the time Rod Blagojevich was sworn in as Illinois' new Governor in January 2003, the stories of public corruption – including government employees taking bribes and converting some of those funds into campaign contributions, state employees working on political campaigns while on the state payroll, misappropriation of public funds, and mail fraud – had been on the front pages of the state's daily newspapers for four years.

Against this backdrop, the legislature passed a comprehensive ethics bill in the spring of 2003. Governor Blagojevich used his amendatory veto to make changes in the legislation he contended would strengthen the bill. Following negotiation in the fall veto session a new bill was passed and signed into law. The State Officials and Employees Ethics Act strengthened ethics rules for state employees, tightened the gift ban restrictions, established an executive ethics commission and executive inspectors general for each constitutional office, and established a legislative ethics commission and a legislative inspector general. History would prove it ironic, but Governor Blagojevich was given major credit for producing a stronger bill than what had passed the legislature in the spring. Former Governor Ryan was indicted on federal charges of political corruption in December of 2003 and convicted in the spring of 2006.

Amid federal investigations, allegations of patronage hiring, and questions concerning campaign contributions, Governor Blagojevich's reputation as a political reformer quickly deteriorated. One of the most persistent and troubling patterns was the linkage between campaign contributors and their receipt of jobs, appointments and state contracts. This type of corruption goes by the name "pay-to-play" indicating a situation where only those who are willing to pay government officials will be granted jobs, appointments, or government contracts. In spite of federal indictments against two of his

appointees to state boards in 2005 and a major fundraiser in 2006 for pay-to-play schemes, Blagojevich was re-elected in 2006. After several years of percolation, the legislature took up a bill in 2007 that would have eliminated pay-to-play practices by prohibiting contributions from individuals with state contracts to the public official who awarded the contract. The bill passed the House unanimously and moved to the Senate. In spite of having 49 out of 59 State Senators as co-sponsors, the bill did not move out of the Senate Rules Committee. Senate President Emil Jones, Jr., an ally of Governor Blagojevich, blocked the bill from being called. Following another year of investigations and newspaper reports linking contributions to jobs, appointments, and contracts, a new bill was passed by both chambers in May of 2008. The Governor tried to block the bill with an amendatory veto. The House quickly overrode the Governor's veto and after some drama, the veto was overridden in the Senate and became law.

On December 9, 2008 Governor Blagojevich was arrested on federal corruption charges. He was impeached by the Illinois House on January 9, 2009 and removed from office following a trial and conviction by the Illinois Senate on January 30, 2009. In the wake of yet another major political corruption scandal, political reform was back on the public agenda in Illinois. Patrick Quinn, the new Governor, set up a blue-ribbon citizen's commission to make recommendations for political reforms. In response to the political scandal and to ensure that they, rather than an outside commission, controlled the agenda, the legislative leaders set up a joint House-Senate committee to consider legislative actions. In 2009 the legislature passed a series of reform measures. A constitutional amendment adding a recall provision for the Office of Governor was placed on the 2010 general election ballot. New laws were put in place in 2009 that strengthened state purchasing procedures, increased disclosure of lobbying activities, expanded the powers of state inspectors general, reformed procedures for appointment to state pension boards, and strengthened the Freedom of Information Act. One of the most significant and contentious reforms measures to become law that year was a campaign finance reform bill that placed limits on contributions for the first time in the state's history. The law also provided for a significant expansion of disclosure requirements and increased the enforcement powers of the State Board of Elections.

The 2009 changes in the state's campaign finance law predated the US Supreme Court's *Citizens United* decision in 2010, a Federal Appellate Court's *SpeechNow* decision in 2010, and US Supreme Court's *McComish* decision in 2011. Those decisions and the sharp increase in independent expenditures in the 2010 election (which were partially triggered by those decisions) created a new policy and political environment in Illinois and nationally. Early in 2012 an interest group was granted an injunction against the Illinois State Board of Elections prohibiting them from enforcing limits on contributions to groups who made only independent expenditures in Illinois campaigns. In May 2012 a law was enacted that waived the limits on contributions in

ances where independent expenditures exceed dollar thresholds specific to the office being contested. The application of contribution limits (with the waiver trigger) to state legislative elections for the first time in the 2012 general election cycle and statewide elections for the first time in 2014 combined with the likelihood of increased independent expenditures and an evolving policy environment creates an uncertain future for campaign finance reform in Illinois.

Appendix A provides a more detailed timeline of the most significant political reform laws enacted since 1990.

## **Part B Case Studies**

### **The 1998 State Gift Ban Act (PA 90-737)<sup>xv</sup>**

The only significant change in the Illinois campaign finance law between its adoption in 1974 and 1997 occurred in 1990. At that point political committees were required to file reports of receipts and expenditures on a semi-annual rather than an annual basis. The law remained only a disclosure law for more than 20 years. During that time the role of money in Illinois politics remained a low visibility issue for news media and the citizens of Illinois. That was about to change.

Working independently in the early 1990s, one of the authors of this paper, Professor Kent Redfield at the University of Illinois Springfield, and the news staff at the State Journal Register (SJR) began developing databases of state campaign contributions. Redfield published three articles in *Illinois Issues* magazine<sup>xvi</sup> and a 1995 book, *Cash Clout*,<sup>xvii</sup> which documented the flow of private money into Illinois elections and policy making. The SJR used its research to publish a series of articles in 1993-1994 exploring the links between campaign contributions and public policy decisions. Those articles were expanded into a book, *Illinois for Sale*,<sup>xviii</sup> which was published in 1997. Beginning in 1994 the State Board of Elections also began to construct a database of campaign contributions from the paper reports filed by political committees. In 1996 it began publishing summary reports from that data. The growing availability of data, analysis and commentary on the role of money in Illinois politics helped raise the visibility of the issue and move it onto the public agenda.

In 1994, the Institute for Public Affairs and *Illinois Issues*, both located at UIS, began the Illinois Campaign Finance Project under the leadership of Ed Wojcicki, the editor of *Illinois Issues*. The project received outside funding and leadership from the Joyce Foundation and its vice president, Larry Hansen. The goal of the project was to put campaign finance reform on the legislative agenda in Springfield. To give the project immediate standing and visibility, U.S. Senator Paul Simon and former Governor

William Stratton were recruited to chair a blue-ribbon, bi-partisan task force. The project produced eight regional reports and an overall picture of the role of money in Illinois politics based on research and analysis conducted by the project staff. Its results were presented in regional meetings throughout the state in 1995 and 1996. The steering committee produced a report in January 1997, entitled *Tainted Democracy*.<sup>xix</sup> The report, containing extensive analysis of campaign contributions and 19 specific recommendations, was sent to the legislature and Governor Jim Edgar. The report received strong news coverage and editorial support.

In spite of the momentum from the Simon-Stratton task force and its report, only two changes were made in the Illinois campaign finance law in 1997. First, the State Board of Elections was authorized to accept reports from political committees in electronic form. It was also mandated to make committee reports filed with State Board available to the public through a searchable online database. Second, the law was changed to eliminate the requirement that individuals examining committee reports provide extensive personal information to each committee examined and to certify that they would not use the data to solicit contributors. Those seeking to view the reports found this requirement intimidating and cumbersome. Keeping the requirement would also have made anonymously viewing reports on line illegal. While seemingly a minor change, as a practical matter, implementing the requirement for the creation of a searchable on-line database could not be accomplished without mandatory electronic filing. That change would come in 1998.

Seeking to institutionalize the work of the Illinois Campaign Finance Project, Joyce vice president Larry Hansen initiated an effort to create a non-for profit organization that would continue to build the case for political reform through research and advocacy for new laws in Springfield. The new organization, the Illinois Campaign for Political Reform (ICPR)<sup>xx</sup>, was created in 1997 with the Joyce Foundation contributing a significant portion of its funding. Former US Senator Paul Simon became the co-chair of the task force along with former Lieutenant Governor Bob Kustra. The other author of this paper, Cynthia Canary, became the director of ICPR. She had been the executive director of the League of Women Voters of Illinois and a member of the Simon-Stratton task force. The organization quickly became a source of research and information and a voice for change in the growing debate over political ethics and the role of money in Illinois.

The summer of 1997 also brought a federal trial where the owners of a private company and employees and supervisors from the Illinois Department of Public Aid were convicted for a bribery and influence peddling scheme to fix a state contract. The company was Management Services of Illinois (MSI) and the case and its political fallout became known as the MSI scandal. The indictments and convictions were limited to individuals from the company and the agency. But the news accounts of the trial and

the details of the indictments suggested a broader picture of widespread corruption with access and influence built through gifts and campaign contributions. Among those linked to the scandal by the indictments and testimony in the trial were legislative leaders, legislative staff, and officials within the Office of the Governor. Ultimately no one from the Governor Edgar's office was indicted and the prosecutions ended with the acquittal of a high-ranking official in Department of Public Aid in the spring of 1998.

It was within this context that an effort to pass a major ethics and campaign finance law in 1998 took place. Former Senator Paul Simon had become director of new public policy institute at SIU-C in 1997. He hired Mike Lawrence, a senior advisor and press secretary to Governor Jim Edgar, to become associate director. It had been Lawrence who first contacted federal prosecutors after hearing reports that criminal activity in the form of bribes and the fixing of contracts might be taking place at the Department of Public Aid. A longtime advocate of ethics and campaign finance reform, Simon felt that the momentum from the Simon-Stratton task force report and the MSI scandal presented an opportunity in 1998 to get a campaign finance reform bill passed in Springfield. Simon asked Lawrence to be the point person to work with the legislative leaders in Springfield to craft a bill that could pass the legislature and be signed into law. The Joyce Foundation through the efforts of its vice president, Larry Hansen, provided financial and intellectual support of the project.

Simon and Lawrence's plan was to get each of the four leaders to designate a member who could negotiate for their respective caucuses as part of a working group. The goal was to produce a bill that was agreeable to each caucus. In Lawrence's words, "The strategy that evolved was essentially this: Assemble a bipartisan group of legislators from the House and the Senate. Make experts on campaign finance available to them. Through a low-key, unofficial process, encourage and help them to reach consensus on significant reforms. Convert that consensus into legislation. Pass the legislation."<sup>xxi</sup>

Working with the legislative leaders, Lawrence got commitments that each would appoint one of their members to represent their legislative caucus in the working group. Governor Edgar also agreed to appoint a staff member to participate. Those appointed by the two Senate leaders were Republican Senator Kirk Dillard and Democratic Senator Barack Obama. The two House leaders appointed Democratic Representative Gary Hannig and Republican Representative Jack Kubik. The representative of the Governor's office was Andy Foster. Providing outside expertise and research to the group were Ron Michaelson, director of the State Board of Elections and Kent Redfield, a professor from UIS and one of the authors of this paper. Lawrence acted as convener and facilitator for the discussions.

The group met at a neutral site away from the Capitol - a conference room at a downtown Springfield hotel. At the onset, the group agreed to put everything on the table, to look for what would now be called low-hanging fruit first before considering more controversial proposals, and to essentially give each caucus veto power over any changes in the law that the group was considering. When a particular proposal had general support in the group, the members would take the concept back to their respective caucuses for discussion. The broad outline of a bill emerged in the late spring.

The arena then shifted to the legislature. Partisan legislative staff and bi-partisan bill drafting staff were given the task of turning concepts into specific language. This is always difficult because what seem clear in general terms may be difficult to write into legal terms and implement without triggering unintended consequences. Once in bill form, the legislation needed to be sold to those groups and individuals who are advocates for political reform. This was a role reversal for the advocate groups which were used to trying to convince legislators to accept a reform proposal. Having the imprimatur of Paul Simon, an icon for political reform, and Mike Lawrence, who had a reputation as a savvy, hard headed realist helped close the deal with the reform community. At the same time, individual legislators also needed reassurance that their concerns are being addressed and interests protected. The importance of the details of the changes to the rules of the game to the legislators was evident in the lengthy floor debate in the House prior to the bill's passage. In spite of some misgivings, the bill passed the legislature by wide margins on May 22. Governor Edgar signed the bill into law on August 12, 1998.

The new law, the Gift Ban Act of 1988 (PA 90-737), made three substantial changes in prohibiting gifts from interested parties to public officials, prohibiting certain campaign contributions and expenditures, and increasing campaign finance disclosure.

The gift ban prohibited gifts of monetary value to public officials, government employees, and judges from individuals and entities which had an interest in the outcome of any official actions that might be taken by the recipient. Bribery and extortion have been always been illegal under state and federal law. But proving that a gift to a public official is part of quid pro quo requires establishing intent with reasonable certainty. When is a gift more than a gift, particularly when a personal relationship already exists between the two parties? Certain actions may raise suspicions, but whether they are illegal can only be established in a court of law. At the same time, a correlation of gifts and favors between someone who receives a state contract and the person responsible for awarding the contract raises serious doubts about the fairness and honesty of the process regardless of the reality of the relationship. When the general public and the news media lose faith in the integrity of the public officials and

the process of government, the legitimacy upon which the whole system rests comes into question.

By making illegal the giving and accepting of gifts between public officials and those who have an interest in the official actions of those officials, both the reality and perception of corruption is eliminated. Transactions that would corrupt the process or appear to corrupt the process are prohibited by definition and the issue of intent never comes into play. The weakness of the 1998 gift ban was the 23 exceptions that were written into the law. While those have been significantly reduced since the original act was passed, the law continues to deal in shades of gray rather than in bright line, zero tolerance absolutes. As such, it is reflective of the resilience and default tendencies of Illinois political culture.

The new law prohibited the use of campaign funds for personal use effective January 1, 1999. The definition of "personal use" was narrow and limited to prohibiting only those expenditures that would provide a personal benefit to the candidate and/or office holder. Sitting members of the legislature were grandfathered in through a provision that allowed them upon retirement from public office to take campaign funds equal to the balance of their fund on June 30, 1999 as personal income. While this grandfather clause was not ideal from a public policy perspective, it was critical to sealing the deal politically. This change eliminated a very significant source of corruption and unethical behavior in the area of money in politics in Illinois. Previously, legislators had been known to use campaign funds to buy clothes, cars, and liquor to benefit themselves personally rather than their campaign organizations. Committee funds were used by candidates to finance homes, pay college tuition, cover nursing home costs for the care of spouses, and cover county club dues. In addition to the obvious ethical questions and questions of public perception, politicians who become dependent on their contributors to finance their life styles have divided loyalties between the interests of their contributors and the interests of their constituents.

The law also prohibited office holders and candidates from conducting fundraisers within 50 miles of the Capitol during the last 90 days of the spring session when the legislature was in session. This eliminated the spectacle of session day fundraising events where lobbyists would give campaign contributions at a fundraising breakfast to a committee chair who would then decide the fate of their bills later that day. Lobbyists often felt pressured to contribute, while some legislators felt uncomfortable with the appearance of a linkage between money and votes.

Although not initially apparent, probably the most significant provision of the new law was mandating the electronic filing of contribution and expenditure reports by political committees with the State Board of Elections. The law also increased the fines the Board could levy to insure compliance with the campaign finance law. Regardless of

where one comes down in the debate over how or even if the flow of money in politics should be regulated, most everyone, at least in principal, is in favor of timely, accurate, complete disclosure of campaign contributions and expenditures. For some transparency is the beginning of what needs to be done. For others, it is all that needs to be done. But almost everyone agrees that it should be done, although resistance to applying comprehensive disclosure and reporting requirement to those who fund the super PAC independent expenditure groups shows that in today's world the issue is not completely settled, thanks to the U. S. Supreme Court's decision in the *Citizens United* case.

Prior to 1997, information about campaign contributions and expenditures in Illinois was public information in only the absolute minimalist sense of the word "public." Committee reports were filed on paper. The State Board of Elections staff put them on microfiche. Anyone wanting to view a report had to come to the Board's Springfield or Chicago office and fill out a form prior to looking at the microfiche. The microfiche could also be purchased from the offices of the Board. Requiring reports to be filed electronically and putting reports on the State Board of Election's website meant that anyone with internet access could view reports as soon as they were posted on-line. The Web-accessible system became operational in 2000. Today the State Board of Elections' electronic disclosure and reporting system is a model for other states and the federal government.

The structure and process created by Paul Simon and Mike Lawrence to produce the Gift Ban Act was not unlike the agreed bill process that the legislature has used historically in particular policy areas. An agreed bill process is a closed process conducted in private where the opposing sides attempt to reach consensus on an issue. If successful, the work product is presented to the legislature for ratification as an unalterable agreement. An example would be the unemployment compensation legislation where agreements negotiated between the representatives of big business and big labor have been presented to the legislature for ratification with no floor amendment accepted. What was different in this case was the legislature, rather than being a facilitator between competing interests, was negotiating with itself about changes in the basic rules of the game for the political process.

An agreed to bill process contrasts sharply with the more commonplace process where those advocating for a policy change seek legislative allies and utilize outside pressure and coalition building in very public way to pass legislation. While some element of compromise is always a part of the legislative process, an agreed bill approach gives veto power to each of the participants on an equal basis as the proposal develops. The tradeoff of an increased chance of getting an agreement passed is a decreased chance the final agreement will push the boundaries of the policy debate.

The process utilized in 1998 shaped the final proposal in ways that might have been different if the negotiations had begun from the outside with a legislative proposal drafted by a reform group or initiated by a governor. The final version of the Gift Ban Act contained a grandfather clause that allowed sitting legislators to take a portion of their campaign funds with them for personal use when they retired. When Congress dealt with the issue of personal use in the 1980s, sitting members of Congress could choose to stay and discontinue the practice of personal use or retire and take part of their fund with them. By focusing narrowly on personal use, the discussions in Illinois never got to the general issue of campaign committees spending money for non-election purposes. It remains permissible in Illinois for a campaign committee to buy baseball team season tickets to be used by the committee's volunteers or staff or use campaign funds to buy Christmas gifts for the friends and supporters of the elected official.

Some of the changes were clearly about appearances, but were important nevertheless. Prior to 1998 it was not illegal for a lobbyist to stand outside an Illinois legislative chamber and hand envelopes with campaign contributions to members as they came off the chamber floor. This activity had actually been observed and reported by news reporters. The new law prohibited the acceptance or solicitation of campaign contributions on state property.

The new law prohibited lobbyists from giving gifts to public officials, but one of the exemptions was for "food and beverages consumed on the premises." In practical terms this meant lobbyists winning and dining legislators. Could a stricter law have gotten through the legislature by utilizing a different process? The consensus among the four legislators in the working groups was that completely eliminating the exemption for winning and dining would have been a deal-breaker for all four of the caucuses.

Ultimately, the process produced a bill that passed the legislature and was signed into law. Given the nature of politics in Illinois at the time, passing a law that made giving gifts to public officials illegal by definition and significant changes in the campaign finance law for the first time since its passage in 1974 was both historic and surprising.

Would a frontal assault from a reform group using media coverage and editorial support have produced a law that did not grandfather in the then-current members of the General Assembly on personal use and reigned in non-electoral expenditures? Possibly, though it is perhaps more likely that no law at all would have emerged from such a strategy. While the law might look modest from the perspective of 2012, it was significant and controversial to those impacted. Soon after its passage legislators tried unsuccessfully to revert from mandatory to optional electronic reporting. Senator Denny Jacobs (D Rock Island) sued in Will County to have the entire law struck down. Ultimately the law was upheld by the Illinois State Supreme Court.

## **2003 State Officers and Employees Ethics Act (PA95-615)<sup>xxii</sup>**

The roots of the ethics act passed in 2003 can be found in a tragedy that took place in 1994. An illegally licensed truck driver caused a horrific highway accident that killed six children. The death of the Willis children precipitated a decade long wake up call to the people of Illinois.

This tragedy painfully demonstrated that the price of political corruption is far greater than the few extra wasted pennies everyone suspected was tucked into appropriation bills each year. For decades Illinoisans ignored or discounted mounting evidence that a culture of corruption had overtaken their state capital. Over the years, the colorful shenanigans of Illinois politicians became the stuff of legend: shoeboxes stuffed with cash, insiders enjoying questionable tax breaks and political leaders packed off to jail. And if no one actually championed public corruption per se, some took perverse pride in the belief that the corrupt politics in our state were bigger, bolder and far more entertaining than anywhere else.

The Willis tragedy ultimately exposed a multi-tentacled conspiracy reaching into both the Secretary of State's Office and George Ryan's ultimately successful campaign for Governor. Over the next nine years the US Attorney's Operation Safe Roads investigation yielded 65 indictments and 58 federal convictions including then former Governor George Ryan.

The problems exposed by Operation Safe Roads illuminated many failures in Illinois government: political work conducted on the public payroll; powerful interests reaping profits from their associations in state government; contacts and favoritism trumping ability in hiring; shake downs for campaign cash; and disclosure laws that were too easily evaded. Amazingly, while the U.S. Attorney's Office in Northern Illinois conducted a vigorous stream of prosecutions, the political establishment failed to implement procedures to address the multitude of sins revealed by the investigation.

Reformers began to work on ethics in earnest in late 1999. Fearful that the courts might eviscerate the 1998 Gift Ban Act, a coalition including the Illinois Campaign for Political Reform (ICPR), Illinois PIRG, the League of Women Voters of Illinois, the Citizen Advocacy Center, Common Cause, Protestants for the Common Good and Citizen Action, began developing proposals to address core weaknesses in Illinois' governmental ethics. From the outset, reformers were insistent that the focus be both on rooting out corruption and, more importantly, on preventing future scandals.

The impact of this campaign for ethics reform was initially glacial - a modest piece of reform legislation banning regulators from soliciting campaign contributions from those they inspected or licensed was passed in the spring of 2002. However, years of scandal pushed Illinois residents to the breaking point and ethics reform suddenly began polling strongly during the 2002 campaigns. As a result, "changing business as usual" became the talk of the campaign trail, giving the issue explosive new momentum.

ICPR deployed a detailed inside/outside strategy to make governmental ethics a centerpiece legislative and election issue. A primary concern was holding the ground staked in the 1998 Gift Ban Act. To this end, reformers organized to make the case for ethics in meeting with editorial boards throughout the state, which resulted in nearly a dozen editorials decrying governmental corruption. At the request of key legislators, ICPR developed model ethics legislation and conducted extensive research on model ethics codes, commissions and enforcement.

In May 2002, the Illinois Supreme Court upheld the 1998 Gift Ban Act in its entirety finding that the petitioners did not have standing to bring suit. This development freed reform groups to push forward on the legislative front and look to expand the ethics provisions on the books.

In the waning days of the 2002 spring legislative session HB 4680 was introduced by Representative John Fritchey. The bill banned elected officials from accepting gifts valued in excess of \$100 per year from lobbyists and government contractors; banned all candidates for public office from receiving campaign contributions solicited by a public employee from a regulated business; prohibited nearly all state and local government employees who regulate businesses from soliciting those businesses for campaign contributions; and prohibited all state and local government employees from knowingly working in concert with those who regulate to solicit any regulated business.

Reformers undertook a vigorous offensive to force consideration of this proposal. Once introduced it passed easily and was widely lauded. HB4680 was the first major ethics reform measure to pass the legislature since Illinois enacted the Gift Ban Act in 1998. It also was the final bill signed into law by outgoing Governor George Ryan.

During the 2002 campaign, ICPR worked with candidates from both parties to encourage them to address ethics and campaign finance issues in their campaigns. ICPR met with representatives of all of the gubernatorial campaigns to provide background and analysis as they prepared their position papers on reform issues and surveyed all candidates on where they stood on those topics. In addition, ICPR conducted a concentrated media campaign on ethics by placing letters to the editor in papers throughout the state and generating newspaper editorials in support of ethics and campaign finance reform legislation. The goal was - to the extent possible - make ethics a centerpiece issue in the elections.

The results of the 2002 election showed that voters felt strongly about cleaning up government. Both gubernatorial candidate Rod Blagojevich (who would very soon begin to show tears in his own ethical fabric) and Attorney General candidate Lisa Madigan made state government reform a key campaign issue and continued to speak out once elected. Early in the 93rd General Assembly, House Minority Leader Tom Cross introduced a package of ethics legislation, staking his caucus's reputation on reform. A few legislators, most notably Senators Susan Garrett and Kirk Dillard, and Representatives John Fritchey and Beth Coulson worked for reform. Illinois' political

legends Dawn Clark Netsch and Abner Mikva also weighed in with their support.

In early 2003, the first of many meetings was held between representatives of reform groups, the four legislative caucuses, the Governor's office, and the Attorney General's office. Significantly, House Speaker Michael Madigan attended this first session and gave his personal assurances that the legislature would address comprehensive ethics reform. Because of Speaker Madigan's well-earned reputation for tenaciousness, it was a promise that would provide comfort when negotiations later became rocky.

Initially, the hope of reform groups was that the process would be modeled on the 1998 Gift Ban negotiations where representatives from each caucus formed a working group to refine a draft proposal. Instead, bipartisanship largely was cast aside and a Democratic working group composed of staff from the Speaker's, the Governor's and the Attorney General's offices used draft language written by ICPR and supported by the reform community as a starting point.

It was far from smooth sailing throughout the spring and summer of 2003. A comprehensive ethics bill passed the House late in the spring session. However, the Senate refused to call it for a vote, instead, insisting on a much weaker reform measure. With time running out on the spring session, the House relented and passed the Senate language. That measure, House Bill 3412, was sharply criticized by both Gov. Rod Blagojevich and good government groups, who argued that the bill lacked key enforcement measures.

The Governor's use of an amendatory veto to try to rewrite the House Bill 3412 inflamed an already a tense situation, virtually bringing communication between the legislative caucuses and the Governor's office to a halt. ICPR spent the summer of 2003 engaged in intense negotiations to bring the key players back to the table. Reformers also redoubled efforts to focus press attention on the ethics question.

Work began on what would become a series of amendments to the legislative vehicle for significant ethics reform, Senate Bill 702. The legislative negotiators narrowed the provisions from the reformers' ethics bill draft that would have applied FOIA and Open Meetings provisions to the work of the ethics commissions. In other areas they significantly broadened the impact of the bill by adding a ban on state officials appearing in public service announcements and a ban on lobbyists serving on important boards and commissions. Still other components including the reporting of ex parte communications in rule making emerged solely from within the political process.

The final language in the bill established Inspector Generals (IG's) and ethics commissions for both the executive and legislative branches. However, with so much focus on scandal from George Ryan's tenure as Secretary of State and Governor, reformers concentrated their efforts on getting teeth into the application and enforcement of the process in the executive branch. This resulted in the creation of a somewhat less functional structure to police the legislature. The bill which had started

based upon some relatively simple principles grew increasingly complex as negotiations unfolded against a backdrop of mistrust and hostility between the legislature and the Governor.

Some of these revisions to the original reform draft made solid sense from a policy perspective, while others seemed to be little more than a politically motivated game of chess. Nowhere was this more the case than in attempting to strike the balance between the investigative powers of the Inspector General and the adjudicative powers of the new ethics commission. In many ways the communication breakdowns and mistrust in the negotiation of this bill foreshadowed the dysfunctional relationship which would plague Blagojevich and the General Assembly during the rest of his tenure as Governor.

The 2003 ethics law contains several key safeguards to expose and prevent corruption. In part, the law is designed to help state employees and officials do the right thing by providing them with guidance and training. From the reform perspective, the Executive Ethics Commission, the Inspectors General and the required training were the key provisions in the bill. The Executive Ethics Commission was designed to become the public face of ethics, responsible for reporting to the public on how the integrity of government is being protected. It would prove to be some time before it actually was able to function that way.

As the 2003 Veto Session drew to a close, even veteran observers were stunned by the scope of Senate Bill 702, the renegotiated ethics bill sent to the Governor. While it was common knowledge that ethics was in play, few were willing to bet on the prospect that such a bold package would actually become law. But reformers were able to capitalize on a confluence of factors - new political leadership, an irate public, the fall-out over Illinois' license for bribes political scandal – enabling the unthinkable to happen. In a final twist, the legislature also overrode the Governor's veto of HB 3412 the day before they passed SB 702, allowing the provisions of HB 3421 to become law in concert with SB 702.

When signing SB 702 into law, Blagojevich said, "What we are seeing tonight is the best of democracy in action. Good government activists, legislative leaders, executive branch leaders, and political leaders from both sides of the aisle came together to create the most comprehensive, thorough and thoughtful ethics legislation of any state in the nation. On this historic night, we've started giving the citizens of Illinois a reason to believe in their government again."

It is stunning how quickly his words rang hollow.

Nevertheless, the legislation set new ethical standards and laid the foundation for a system of enforcement and education that Illinois has continued to refine over the past decade.

The main provisions of the 2003 Governmental Ethics Act are set out in Appendix B.

## **2008 Pay-to-Play Law (PA-95-0971)**

While Illinois' governmental leaders had enacted meaningful open government and ethics legislation in the years preceding the 2008 pay-to-play campaign contributions law, they had not yet addressed the central role of money in state politics outside of disclosure requirements. There were still no prohibitions on the source and size of a contribution any candidate or political committee could accept.

One thing that had changed, however, was the heightened media spotlight on the role of money in Illinois politics. In the years following the George Ryan licenses for bribes scandal, virtually no political story failed to include an accounting of the money behind the political actors. This was facilitated by increased campaign disclosure and groups such as the Sunshine Project and the Illinois Campaign for Political Reform which were dedicated to making campaign finance data easily available and understandable to reporters and the public. By the time Governor Rod Blagojevich was ensconced in the statehouse "follow the money" practically had become the state motto.

Polling conducted in 2006 and 2008 by Belden Russonello & Stewart for the Midwest Democracy Network revealed the public's sharply declining faith in the trustworthiness of elected officials. The poll reported that, "Residents of Illinois clearly express distrust in their state government. A large majority of residents (77% overall) trusts government to do what is right "only some of the time (...).Distrust of state government has increased since 2006 when 64% trusted state government "some of the time" or "almost never."xxiii In a 2006 poll conducted by Belden Russonello & Stewart for the Joyce Foundation the respondents reported believing that "unless we limit the influence of money in government, elected officials will not be able to keep their promises on issues that are important to people like me." One item on the menu of reform options the public was polled on in 2008 was particularly striking for the margin of support it received. "Not allow state contractors to make political contributions to elected officials who issue contracts" " (88% said doing so would make a difference, including 61% who said it would make a "big difference").xxiv

Despite increasing public concern about corruption in government and money in politics, voters had reelected Blagojevich and the Illinois General Assembly had demonstrated little interest in taking on the issue of campaign finance reform. Lawmakers continued to portray scandals as the acts of bad actors, and not the result of flaws in the political system. Illinois, with its highly centralized style of legislative leadership, appeared to work just fine from the perspective of those operating within the system. The legislative leaders' unwillingness to explore the issue changed as Blagojevich's highly public and completely shameless cash grabs became so unseemly that the role of unrestricted campaign contributions in Illinois politics could no longer be ignored even by those at the center of power.

Blagojevich, who ran on a reform platform, began conspiring to profit from his office even before being sworn in according to federal indictments. Cracks in his ethical facade began publicly appearing very early in his first term, including allegations of corruption and patronage hiring. In 2005, the indictments began to flow beginning with indictments of Stuart Levine and Joseph Cari for an extortion scheme involving pension fund investments. When Cari pleaded guilty on September 15, the plea agreement contained a reference to a public official "A" who was alleged to be part of the criminal conspiracy. Public official "A" was widely assumed to be Blagojevich.<sup>xxv</sup> This was confirmed in court proceedings in 2008. In his October 2006 announcement of a 24-count indictment against Tony Rezko, a major fundraiser for the Governor and one of his inner circle, US Attorney Patrick Fitzgerald described Illinois' system as an illegal "pay-to-play scheme on steroids."<sup>xxvi</sup>

Public corruption indictments were nothing new to Illinois residents. The George Ryan license for bribes scandal was still clear in the rearview mirror with the convictions of scores of people, including the former Governor and his chief of staff Scott Fawell. Ryan was an old school politician, a back slapper and a favor grantor. Blagojevich's story was a different one.

Rod Blagojevich marked a new model of greed and ambition in Illinois politics. A joint analysis conducted by the Sunshine Project and ICPR in 2009 found that over a six-year period George Ryan raised almost \$20 million, including 35 contributions of \$25,000 which constituted 8.2 percent of his total. By contrast, in the eight years that included Blagojevich's time as governor, he raised \$58.3 million, including 435 contributions of \$25,000 or more, which constituted 35.3 percent of his total.<sup>xxvii</sup> The audacity and the scale of the political corruption were revealed in the stories about Governor Blagojevich and his kitchen cabinet. Revelations that everything from jobs to contracts to political appointments seemed to have a price on them stunned even the most blasé Illinoisans. Was Illinois really for sale? The question, which had long been in the background, had now moved to the forefront and was impossible to ignore.

This was the question which in 2004 spurred state Comptroller Dan Hynes to quietly begin investigating the relationship between contracts and political contributions. What he found both alarmed him and spurred him to action. In February 2005, Hynes took a bold public stand against Illinois' contracts for cash culture. He became the first Illinois constitutional officer to issue an executive order saying he would not accept campaign contributions from people doing more than \$10,000 in business with his office. In doing so he indirectly challenged to his fellow constitutional officers to follow suit. With the exception of the Governor, the others quickly did so. The legislature, however, was slow to recognize the significance of this action or to embrace the issue.

With the Governor's failure to take the bait, Hynes reached out to the reform community and progressive legislators to fashion a bill to ban pay-to-play politics. Some members of the reform community felt that this didn't go far enough and that full public financing or at least across the board contribution limits were needed to contain the growing problem of money in Illinois politics. Despite the debate, it was widely recognized by the reform community that the ban on pay-to-play -- a very specific solution for a specific problem -- had a far greater chance to succeed than some of the more sweeping reforms they proposed. Hynes rounded out his package by also calling for public financing of campaigns for Supreme Court judges and enforcement of the lobbyist registration act, so that the proposals truly attempted to address multiple issues on multiple fronts. However, it was clear that the centerpiece of this campaign was the ban on pay-to-play.

By taking on a leadership position on this issue, Hynes stepped outside the typical parameters of his office. As Comptroller he was responsible for insuring the state's bills were paid, not policing its ethics. But his statewide office gave him something of a bully pulpit and he proved very adept at using it. Young, but a long time political actor from an important family in Democratic politics, Hynes seemed motivated by a true disgust of what he saw occurring in state government. Non-confrontational and understated by nature, Hynes fashioned his message around public policy rather than the behavior of specific individuals and sought to build pressure both inside and outside the Statehouse. In rolling out his proposal in 2005, neither he nor his allies in the reform community would imagine that this effort, which seemed so logical and straightforward, would consume them for the better part of three years.

In undertaking this fight, Hynes was not without political ambition. He would run for Governor against Patrick Quinn in the 2010 Democratic primary, but would lose by slightly more than 5,000 votes.

Hynes teamed up with the directors of the Illinois Campaign for Political Reform and the Better Government Association to meet with newspaper editorial boards in every corner of the state. The message was simple: would contracts be awarded to those who offered the best services at the best price? Or would they go to those willing to make the largest campaign contributions? It was an argument grounded in such fundamental principles of good government that it was virtually impossible to counter it. As a result, the newspaper editorials began to flow and they were effusive—this was a reform bandwagon that virtually everyone could climb aboard.

In undertaking this campaign, Hynes emerged as the leading advocate inside the statehouse for ending a pay-to-play culture in Illinois government. He helped identify sponsors, testified at legislative hearings and put the full muscle and profile of his office behind the effort for change. His importance as a leader under the Capitol dome cannot

be overstated. He could and did pick up the phone to nudge reluctant lawmakers or to broker discussion between the chambers. He had access to the media and he had the calm, consistent personality that was essential in what ended up being a protracted battle. Hynes brought legitimacy to the effort in a way that no outside reformer could have done.

At the same time Hynes was presenting the case within the legislature, the reform community was engaged in stirring popular sentiment and introducing righteous indignation into the debate. In effect, the close alliance between Hynes and the reformers allowed them to play the political equivalent of the good cop, bad cop routine.

Pay-to-play was pre-filed as legislation for the next General Assembly in December 2006, as HB 1 with Rep. John Fritchey as its chief sponsor. Republican Leader Tom Cross soon joined as a chief co-sponsor and an additional 43 co-sponsors from both parties signed on. The bill, containing the key reform measures pushed by Hynes and the reformers, was approved by legislative committees in the House early in the session. The bill sought to prohibit anyone with state contracts of more than \$25,000 (later raised to \$50,000) from making political contributions to the constitutional officer who awards the contracts. The bill passed the House unanimously.

The pay-to-play bill moved onto the Senate where it was sponsored by Senator Don Harmon. Despite eventually garnering 49 Senate co-sponsors, it was never released from the Senate Rule Committee, the committee through which all legislation is routed at the onset. Senate Republican Leader Christine Radogno attempted to dislodge the proposal through a procedural maneuver to no avail. Senate President Emil Jones, a Blagojevich ally, publicly and staunchly opposed allowing a vote on the bill.

Reformers were incredulous. How could a bill be sponsored by 49 of the 59 members of the Senate not be granted a vote in the chamber? Were the sponsors insincere? Were they unwilling to risk their political capital? Or was the control of President Emil Jones so absolute that their voices were rendered irrelevant? It seemed only Governor Rod Blagojevich and President Emil Jones stood publicly against the bill and yet no amount of public or private pressure could move it forward.

In frustration, Cynthia Canary, the director of ICPR and one of the authors of this paper, telephoned the Speaker of the House Michael Madigan seeking his help and guidance in pushing the bill through the Senate. Though the two were not typical working partners, Madigan assured her that he would continue to push the bill until it passed, suggesting it was only a matter of time before significant pressure forced the Senate's hand.

With HB 1 still firmly planted in the Senate Rules Committee, the House tried a second time in 2007 to pass the pay-to-play ban by amending it on to Senate Bill 1305, which originally amended the State Ethics Act to improve reporting on Statements of Financial Interest. This proposal again languished in the Senate Rules Committee. The Senate failed, or was not allowed, to take action.

Throughout this period, both President Emil Jones and Governor Rod Blagojevich publicly slammed the bill for either not going far enough, or at other times for being too focused on Blagojevich. The Governor's response was particularly calculated. He argued that the proposed ban on pay-to-play was simply an attempt by a do-nothing legislature to shut down his particular style of populist politics. His enmity was largely focused on the Speaker. From the beginning of his term Blagojevich had a combative relationship with the General Assembly that only got worse over time, but it was the most vitriolic with the long-time Speaker. The fact was that by this point the bill was focused on the current Governor. The other Constitutional officers had all established policies to limit or prohibit contributions from contractors. The Governor was the lone holdout. Effectively, he was responsible for putting the bull's-eye on his own back.

Many reformers and some legislators agreed with the claim that the bill did not go far enough in addressing the core problems of money in politics. Pay-to-play was a narrowly tailored bill, not the more comprehensive reforms that the good government groups sought. It was, however, progress. Neither Jones nor Blagojevich had the trust of the reform community. While the Governor issued press releases that set forth bullet point lists of reforms he would like to see enacted into law, he did not draft or introduce alternative legislation.

In October 2007, Hynes raised the bar when he launched Illinois Open Book, a website which allowed users to link contractors and campaign donations. This was noteworthy - for the information that it easily made available to the public, but also for the fact that Hynes used the resources and executive authority of his office to move the issue forward, while legislation languished in the statehouse.

In announcing the program, Hynes said, "In the absence of a statutory ban on contributions from those who have state contracts, what we can do is create more transparency, more awareness, better information for watchdog groups, the media, citizens, so that people know who's doing what and perhaps that information will create pressure to enact the right legislation that will prohibit it, or, as one of my colleagues said, shame people out of not awarding contracts to contributors or getting contributions from contractors." <sup>xxviii</sup>

In 2008 the effort to enact pay-to-play began anew. Another editorial board road trip was conducted, new sponsors were sought and additional heat was placed on those senators who had cast their sights on higher office. In April, the Chicago Tribune published a damning piece of investigative journalism headlined, "The governor's \$25,000 club; Big campaign donors to Blagojevich benefit from state."<sup>xxix</sup> Rod Blagojevich had raised more money into total and more money in single contributions of \$25,000 or more than any other candidate in the history of Illinois. The Tribune's investigation found 235 checks written for exactly \$25,000 and payable to the governor's campaign. The reporters found that three-fourths of them came from people or organizations that had received something favorable from the administration, including contracts, board appointments, favorable policy positions or regulatory actions. The Tribune noted that on numerous occasions, large donations to the governor's campaign fund came just weeks or days prior to the donor benefiting from a positive action by an agency under the governor's control.

In many ways the Tribune article, coupled with increasingly vigorous coverage across the state, tipped the balance. 2008 was an election year, with most legislative seats up for grabs, and candidates did not want to face the voters with this issue unresolved. In late May 2008, with editorials supporting reform action and coverage of the ever-growing scandal in the governor's office continuing to appear in newspapers, the pay-to-play bill passed unanimously through both chambers as HB 824.

The jubilation was, however, short lived. In August, Blagojevich amendatorily vetoed the pay-to-play legislation insisting he wanted more far reaching reforms. In addition he issued Executive Order 3 (2008) applying pay-to-play restrictions on all legislators and executive officers, not just the contract issuer. He then released the outline of new proposals to ban double dipping by legislators; require lobbyists provide fuller disclosure and require the legislature to affirmatively accept pay raises. While these proposals could have been developed in detail to have value and meaning, they were presented in typical Blagojevich style in a press release. Universally, the legislature, the news media, and the public interpreted the governor's actions for what they were, an insincere effort to derail the pay-to-play bill.

If the road to reform hadn't already had enough twists and turns, a new wrinkle emerged when the legislature took up the Governor's amendatory veto. After the House overrode the veto in September, a reading of the state Constitution suggested that the Senate must return to session and do likewise within 15 calendar days if the law was to stand. Once again President Emil Jones showed his obstinacy by refusing to reconvene the Senate and arguing that the package of ideas put forward by the Governor was a stronger alternative.

With options running out a miracle was needed. It came in the unlikely form of a phone call from presidential candidate and former state senator Barack Obama to President Jones, who was the Democratic nominee's former caucus leader and mentor. In a private call Obama encouraged Senate President Jones to reconvene the Senate to override the governor's veto. The urging was successful. In announcing he was calling the Senate back into session, Jones stated, "I plan to call the Senate back into session to deal with the issue of ethics, only at the request of my friend, Barack Obama."<sup>xxx</sup> On September 22, 2008, the Senate reconvened and overrode the veto. The pay-to-play bill was enacted with an effective date of January 1, 2009.

Almost unbelievably, Governor Blagojevich immediately established a bi-monthly ethics working group led by his General Counsel Bill Quinlan and Deputy Governor Bob Greenlee. The group included Cynthia Canary, Illinois PIRG Director Diane Brown, Representatives John Fritchey and Jay Hoffman and Senators Christie Radogno and Don Harmon and others. The stated purpose of the group was to discuss adoption of the Governor's ethics proposals. Under somewhat surreal circumstances the group met from October into December debating the Governor's proposals and whether they could be crafted into legislation that was fair, meaningful and practical. The double dipping prohibition was particularly problematic as it appeared to be aimed directly at the Chicago's statehouse delegation. The governor's proposal provided an exemption for someone who was a policeman or firefighter, but not a nurse or doctor at the County Hospital. It also raised, but did not attempt to address, other questions about conflicts of interests inherent in a part-time legislature, such as if an individual employed by the insurance industry should also serve on a committee that deals with insurance-related legislation?

The discussions in these meetings were often circular. There was a lack of clarity about the problems for which solutions were ostensibly being sought, beyond the administration's most base political goals. In sidebar conversations, the participants outside the administration seemed clear that the exercise was a sham. But recognizing that the office of Governor commanded respect, even if the Governor himself did not, they felt they had no choice but to participate. In a final act of the theater of the absurd, the group was scheduled to meet on the day the Governor was arrested on federal corruption charges.

Ironically, the Governor's December 9, 2008 arrest was partially a result of his efforts to get ahead of the imminent pay-to-play ban. A *Chicago Tribune* examination of the reports filed by his campaign committee indicated that in the 30 days after the legislature passed the ban his fundraising targeted those seeking state contracts, raising more than \$250,000. <sup>xxx</sup> And as all of America and much of the world now knows, with the election of Barack Obama as President, the Governor felt he had something of immense value to try to auction off—a U.S. Senate seat.

The campaign for pay-to-play reform in Illinois was unique due to the leadership that Dan Hynes brought to the effort. Working with the bill's House sponsor, John Fritchey, and its Senate sponsor Don Harmon, Hynes was able to confer internal consistency and legitimacy to the effort. This stands in stark contrast to the 2009 battle for contribution limits where the weight of public pressure was felt, but no internal actor stood up to champion significant campaign finance reform.

An overview of the provisions of the pay-to-play law is set out in Appendix C.

### **2009 Campaign Finance Reform Law (PA96-0832)**

There is an unwritten rule in Illinois' government reform world: once a substantive change, such as the pay-to-play legislation, is enacted, reformers are supposed to fade away for several years to let the legislature get on with business without any distracting nagging about the need for more reform. This timeout usually lasts until the next major political scandal. While this rule is not strictly applied, large changes usually occur on this schedule, with smaller tweaks and implementation work done in the interim.

The fight for limits was the exception that proved the rule. The pay-to-play ban had yet to reach its effective date when on December 9, 2008 Governor Rod Blagojevich was awakened from his sleep by FBI agents and placed under arrest for allegedly conditioning contracts on contributions and most shockingly attempting to sell the US Senate seat vacated by President-elect Barack Obama. A story of corruption and malfeasance that had been building virtually since the day he was first elected in 2003 reached a culmination with his arrest. In the rush to stem the damage that followed Blagojevich's arrest, business as usual for Illinois politics was turned on its head.

The Illinois House moved quickly to begin impeachment proceedings. On December 15 the House voted 113-0 to create a special investigative committee to study the allegations against Blagojevich and recommend whether he should be impeached. Concurrently, Attorney General Lisa Madigan filed a motion with the Illinois Supreme Court to have the Governor removed from office. The Court quickly rebuffed her effort. Blagojevich, on the other hand, defiantly announced that the charges were false and that he was the subject of a political witch-hunt. Despite the fervent hopes of many Illinois residents and members of his own party, he made it abundantly clear that he had no intention of stepping down from office.

Against this backdrop, the House Special Investigative Committee, led by Representative Barbara Flynn Currie, began hearings on December 17<sup>th</sup> of December 2008. Only eight days had passed since the Governor's arrest. In addition to the formal

charges against Blagojevich, Currie announced that the Committee would look into other wrongdoing, including his misuse of legal authority, failure to provide the General Assembly with information, improper purchase of a flu vaccine from Canada, violations of the Freedom of Information Act and failures to correct problems identified in state audits.

While Blagojevich did not appear at these hearings, he was represented by private counsel, Ed Genson. The hearings were conducted with a great deal of solemnity before a gallery packed with interested observers and press from throughout the country who provided nightly news viewers with political theatre at its finest. While the bipartisan committee and their counsel attempted to instill dignity into the process, the Governor's attorney proceeded as if in a court room at criminal trial, raising constant objections throughout the hearing.

On December 23<sup>rd</sup>, 2008, ICPR was invited to testify on the issue of Blagojevich's fundraising. House Counsel wanted to introduce the Governor's patterns of pay-to-play into the record, but could not get such testimony from news reporters who were conflicted in their role as journalists. ICPR, which had correlated much of the data used in the news reporting, was the next best source. Over the course of several hours, Cynthia Canary, the ICPR Director and one of the authors of this paper outlined in extensive detail patterns of large contributions followed by the awarding of contracts or appointments. ICPR explained the stunning growth in the size of contributions over the past three gubernatorial administrations. Questions fielded from the Committee were tough, but polite. Objections from Blagojevich's attorney were jarring. Nevertheless, a detailed story was put on the record, which highlighted patterns showing how the quest for campaign cash appeared to drive decisions made by the Governor. For an advocate who was used to an unfriendly reception in legislative committee hearings when she tried to argue that unregulated campaign finance is a problem Canary found it a new experience to be officially asked to document the patterns that she had criticized for so long.

Unashamed and acting as if immune from the fanfare surrounding the committee hearings, Governor Blagojevich named former state Attorney General Roland Burris on December 30<sup>th</sup> to replace president-elect Obama in the US Senate. The announcement was met with shock. The action made clear that Blagojevich would not go quietly and that he planned to use whatever power still remained in his grasp for as long as he could. After a huge public uproar, Burris was sworn into office on January 15, 2009. He served without distinction until the next election.

In reaction to Blagojevich's intransigence, Lt. Governor Patrick Quinn announced the formation of the Illinois Reform Commission on January 5<sup>th</sup>. The Commission became part of the Quinn Administration through Executive Order 1, issued January 30,

2009. Chaired by former Assistant U.S. Attorney Pat Collins, it included luminaries such as US Senator Paul Simon's daughter and law professor, Sheila Simon, Cook County State's Attorney Anita Alvarez and former Chicago Inspector General David Hoffman. Rev. Scott Willis, whose six children died as an indirect result of the license for bribes scandal during the Ryan administration, also served and was a poignant reminder of the very real costs of corruption. The Commission was charged with studying Illinois culture of corruption and returning with a report of detailed recommendations within 100 days.<sup>xxxii</sup>

On January 9, 2009, the House Committee unanimously recommended impeachment for Blagojevich. That action was followed the next day by a 114-1 vote of the full House to impeach Blagojevich, making him the first governor in the state's history to be impeached. Newly sworn-in House member Deborah Mell, the Governor's sister-in-law, cast the lone vote against impeachment.

The Illinois Senate opened the formal impeachment trial of the Governor on January 26<sup>th</sup>. It was presided over by Illinois Supreme Court Chief Justice Thomas Fitzgerald. Rather than call witnesses, as the House did, the Senate proceeding had various members of the chamber outlining the evidence that had been presented. Mr. Genson withdrew as the Governor's council several days before the hearing began. Governor Blagojevich did not attend the trial, choosing instead to fly to New York to participate in a series of national news and entertainment programs in an attempt to bring his case directly to the public.

Finally on January 30, 2009 less than two months since the FBI appeared at the Governor's doorstep, the Illinois Senate voted unanimously to remove Blagojevich from office. Lt. Gov. Patrick Quinn was sworn in as Governor. At this point, the work to restore public confidence in state government began in full with the General Assembly, the new Governor, his Reform Commission, other advocates and the media all pushing in slightly different directions.

The Illinois Reform Commission, also known as the Collins Commission, got off to a fast start. The group held their first public meeting on January 22<sup>nd</sup> and announced an ambitious agenda with the subject matter including transparency in government; procurement policies; campaign finance reform; redistricting; enforcement and inspiring better government. The 15-member commission divided into teams to address the broad agenda. The Commission, with strong support from Collin's law firm Perkins Coie, traveled the state hearing testimony and reviewing best practices in government. From the start their work was thoughtful, careful and comprehensive - perhaps, too comprehensive for the taste of the Illinois General Assembly.

Almost in direct response to the far-reaching agenda of the Collins Commission, the General Assembly established a Joint Committee on Government Reform, which was co-chaired by House Speaker Michael Madigan and Senate President John Cullerton, who had replaced Emil Jones, who had not sought reelection in 2008. The formation of this special committee appeared for all practical purposes an attempt to wrest the reform agenda from the Collins Commission. The announced agenda of the Joint Committee featured a laundry list of topics, including transparency in government; government waste; the Compensation Act; procurement and pension reform; and the role and effectiveness of the Inspectors General and ethics commissions. Notably absent from the list of topics it planned to address was the issue of campaign finance reform.

In a meeting with the editorial board of the *Daily Herald* on February 1, 2009 Senate President John Cullerton stated that he thought Illinois' wide-open campaign finance system was just fine repeating the mantra of lawmakers who have long refused contribution limits: disclosure, disclosure, disclosure. Cullerton also insisted that what former Gov. Rod Blagojevich was accused of doing -- and what ex-Gov. George Ryan was convicted of doing -- were aberrations of Illinois politics and not the norm or a process tempted by such a wide-open fundraising system." We don't do that," Cullerton said of lawmakers and corruption. "I don't do that. No one I know in government does that."<sup>xxxiii</sup>

Cullerton's publicly stated unwillingness to address what the Collins Commission and most other reform advocates believed was the most fundamental and systemic component of Illinois' problems galvanized the reform community. In the wake of a scandal the likes of which Illinois had never seen before and with a trial still on the horizon, it was an unprecedented time for action and for the first time there actually appeared to be a window of opportunity to advance the long shut down issue of money in Illinois politics.

While the Reform Commission and the Joint Committee proceeded with their efforts a new reform-focus advocacy group was coming together, eventually known as CHANGE Illinois. CHANGE stands for the Coalition for Honest and New Government Ethics. The principal architects of the new group held some initial exploratory meetings in January of 2009. The participants included traditional government reformers, business leaders, attorneys, and grassroots community leaders, people of faith and labor representatives. From the outset it was clear that this was a different configuration of leaders representing power, expertise and diverse constituencies who had never sat together at the reform table. Motivated by the ongoing spectacle of Blagojevich, the real and increasingly apparent fiscal costs of government mismanagement and the belief that putting Illinois back on track was tied to introducing a system of campaign contribution limits, these strange bedfellows formed the CHANGE

coalition.<sup>xxxiv</sup>

The CHANGE coalition was largely spearheaded by George Ranney Jr., President and CEO of Metropolis Strategies and senior counsel to the Chicago law firm of Mayer Brown LLP and Peter Bensinger, President and CEO of Bensinger Dupont. The late Larry Hansen of the Joyce Foundation provided behind-the-scenes guidance and motivation. It did not come together easily. There were some who initially shied from contribution limits on philosophical grounds and others who felt that it took the spotlight off problems related to Illinois' fundamental budgetary instability. Even when galvanized and unified by events like the Blagojevich scandal, coalitions are notoriously difficult to manage. And groups in competition for funding view each other warily even when the collaborative path appears the quickest way to a common goal. In the case of CHANGE, the bringing together of organizations and businesses from so many fields introduced certain sensibility clashes—how business is conducted and decisions are made in a major law firm differs greatly from that in a corporation, or a tiny non-profit. This “sensibility gap” was a hurdle that the coalition would find itself continually jumping. However, the outrage the group felt over the former Governor's transgressions enabled members to transcend this wariness.

The CHANGE coalition developed a call to action and platform centering on campaign finance reform. George Ranney Jr., Deborah Harrington (the Woods Fund of Chicago) and Peter Bensinger were named as co-chairs. Each had relations in the individual donor and foundation communities, so what had been an unfunded effort suddenly had resources. In addition, it had the ear of the press. CHANGE Illinois was a unique animal and thus newsworthy. With able assistance from former Statehouse reporter and Springfield communications expert Jim Bray, the coalition was able to generate editorial support and constant press coverage. For the most part CHANGE was an unstaffed coalition, so the bulk of the policy development fell to the Illinois Campaign for Political Reform. On occasion ICPR and CHANGE took slightly different positions on relatively nuanced points, but the public face was one of unity. Partner groups such as AARP and Target Area Development Corporation Illinois added large constituencies which had previously not been at the reform table.

The advocacy message of CHANGE largely mirrored those of established reform groups and the recommendations from the Illinois Reform Commission. The difference was that CHANGE had access to the organizational capacities and constituencies of its members that it could put to work in support of limits. For reasons that remain unclear, the General Assembly took offense to the Collins Commission. Though its recommendations were well-researched and represented best practices, they were unfairly branded as outsiders who didn't understand how government worked, thus making their suggestions unworthy of consideration. The General Assembly's view was because lawmakers had formed their own joint committee to address the issues raised

by the Blagojevich scandal, they had no need for an appointed commission of outsiders and newcomers to tell them how to conduct their business. Due to its makeup of groups and the leadership of individuals with a history of involvement in Springfield, CHANGE Illinois, while not any better liked than the Illinois Reform Commission, was treated with more respect and credibility.

With Pat Quinn moving into the governor's office one might have thought that his blue-ribbon Commission would assume a more prominent platform. However, perhaps due to the reality of governance or a desire to avoid confrontation Quinn subtly distanced himself from the Commission and its recommendations. Lawmakers disregarded or rejected the bulk of the Commission's recommendations, which enraged the press and the public. It seemed lawmakers were trying, once again, to frame the Blagojevich scandal as another bad egg in an otherwise decent system – their tried and true modus operandi to avoid altering the system they controlled. If the General Assembly truly believed that they could avoid tackling tough ethics and campaign finance issues in the wake of the removal of a sitting governor on extreme violations of the public trust, they were mistaken.

Such was the outcry that by March 2009, President Cullerton was forced to eat his words and add campaign finance to the Joint Committee's agenda. On March 16<sup>th</sup> and 17<sup>th</sup> 2009 the Joint Committee held hearings on campaign reform finance. National and Illinois experts testified and a multiplicity of views was presented.

CHANGE's three co-chairs represented the coalition and presented arguments on the need for campaign limits. Canary, who gave testimony similar to what she had presented in the Blagojevich hearings, represented ICPR as well. While her testimony had been embraced in the contest of the impeachment hearing, the message that a comprehensive system of contribution limits should be applied to all candidates and contributors in Illinois elections was met with scorn from lawmakers on the Committee, who would be affected by such a system. The dissimilarity between the treatment of the CHANGE co-chairs, established leaders new to the reform game, and Canary and other deep-rooted reformers, was evidenced by the tone taken by lawmakers in committee. Unwittingly, this paved the way for CHANGE to play good cop while the traditional reformers again took the role of bad cops – with both sides working in relative harmony to press for limits.

The Blagojevich scandal and public outrage, critical press of Illinois government's reputation again being sullied, the Illinois Reform Commission, and relentless advocacy from CHANGE and others were ultimately enough to do what reform advocates had been struggling to do for three decades—get campaign finance reform on the public agenda and make it seem viable. CHANGE Illinois played a big role in making this happen. The CHANGE coalition had both constituents and resources that far exceeded

what the traditional reformers had previously been able to muster. CHANGE held press conferences and a rally, took out advertising, effectively used social media, and established a toll free number to attract supporters and connect them with their lawmakers. The coalition fought on numerous fronts, but most successfully before the state's newspaper editorial boards. Traveling to all corners of the state to lay out the case for limits, the coalition racked up significant and forceful editorial support. This ensured the goal being pushed at the Capitol was also being forcefully made in the districts. Legislators may have at times felt that they were in an echo chamber.

There were several legislative vehicles for moving reform forward. Chicago Democratic Representative Harry Osterman had sponsored House Bill 24 in previous years and it was reintroduced. The bill was modeled on the system of federal limits, with additional disclosure and enforcements designed to address flaws that had become apparent in the federal system. For those in the reform community, HB 24 was close to model legislation. But it was also stuck in the House Rules Committee and unlikely to see the light of day.

The inside negotiation process began with numerous compromise drafts and numerous meetings. The Governor was directly prevailed upon to forcefully back limits and the public financing of judicial campaigns—planks that both the Reform Commission and the CHANGE coalition endorsed. Ultimately HB 7, an elections shell bill introduced in January and passed by the House without content, would be amended in the Senate with a campaign finance reform proposal written by the Democratic legislative leaders. While still in the Senate, House sponsorship of the bill was transferred to Speaker Madigan. Once this bill got moving, it moved very fast. An amendment written by the Democratic leaders was adopted by the Senate Executive Committee and passed by the Senate, all in one day - May 28<sup>th</sup>. The following day, the House Republicans attempted a parliamentary maneuver to free their preferred bill, HB 24, from the House Rules Committee and on to the House floor where it could be acted on. Although, an unprecedented 13 Democrats joined the 48 House Republicans in calling for its release, the supermajority of votes needed were not there to override the Speaker and bring the bill to the floor.

After this failure, HB 7 as amended was the only vehicle left on the table in the waning hours of the session. The bill was complex and contained myriad loopholes and exemptions to contribution limits that rendered the proposal meaningless for the purpose of reducing the appearance or opportunity for private campaign money to corrupt government. Reformers found themselves in the odd position of testifying against a limits bill after having fought so long and hard to get one on the floor. The amended proposal was practically as hollow as the empty shell that originally passed the House, to the disgust and disappointment of reformers hungry for substance, not sham. Reform groups were unanimous in their opposition to this legislation.

Representatives of ICPR, CHANGE, and even the Illinois Reform Commission, filed witness slips in opposition to HB 7. Governor Quinn appeared in person at the hearing to voice his support for HB 7.

In spite of the united front of opposition of reform groups, HB 7 passed the House on May 31 and was sent to the Governor. With the support of Quinn, who had jettisoned his own blue-ribbon commission by testifying in support of the plan during the rushed committee process, Illinois was set to put contribution limits into state law. The fear of the reform groups was that the system of contribution limits adopted by the General Assembly might in fact be worse than having no limits at all. The enactment of such window-dressing legislation seemed likely to give lawmakers political cover and terminate reformers' hope for meaningful campaign finance reform in the near future. ICPR and CHANGE asked the Campaign Legal Center, a national campaign finance group, and the Chicago law firm of Jenner and Block to analyze HB 7. The legal team identified a number of flaws in the legislation including several constitutionally suspect provisions.

Once the legislation was sent to Governor Quinn's desk, advocacy and public outreach efforts were redirected to his office. The Governor began feeling the weight of this pressure almost immediately. Upon the bill's passage, newspaper editorial boards across the state labeled the legislation phony reform and called on the Governor to use his veto pen. CHANGE and ICPR sent the governor an open letter asking him to issue a full or amendatory veto.

In response to these efforts, Quinn's office contacted ICPR to request model amendatory veto language, should the governor pursue that course of action. Language drawing heavily from HB 24, the gold standard campaign finance bill that had died in the House Rules Committee was provided.

Legislative leaders began feeling the pressure, too, so negotiation began on parallel tracks. Senate President Cullerton and Senator Don Harmon, the Senate sponsor of HB 7 requested a meeting with ICPR and CHANGE to discuss the legislation. Meetings were also held with Senate Republican Leader Christine Radogno and the Speaker's senior staff. These meetings resulted in the drafting of new campaign finance legislation, designed to serve as veto session trailer bills that would clean up and refine HB 7 if it were to be signed into law. While differences remained, options seemed to be opening up and things were moving in the right direction.

Those negotiations were ongoing when on Aug. 27 Gov. Quinn vetoed the HB 7, despite calling the proposal "landmark" legislation during a Senate committee just a few months earlier. Now everyone seemed to agree that the bill was severely flawed. Representatives of the reform community along with the four legislative leaders joined the governor in a public veto ceremony that had an almost celebratory feeling to it. Quinn said he decided to veto the legislation because of the objections from Illinois

residents and reformers. Democratic leaders Madigan and Cullerton said they requested Quinn veto the legislation because they felt they were making progress on creating a new bill, based on the input from ICPR and the CHANGE coalition. At the veto ceremony, Quinn told the public that he had secured a firm commitment from all four legislative leaders to work with all interested parties to create a new campaign finance bill in time for the October veto session.

Following the veto of HB 7, the reform coalition began meeting directly with President Cullerton and his reform point person, Senator Don Harmon, as well as members of the House Democratic staff. The coalition continued to face resistance from the legislative leaders on campaign contribution limits, especially in regards to restrictions for party leaders. By mid-September, frustrated by the failure to get a firm proposal from the Democratic legislative leaders or the Governor, CHANGE had submitted draft legislation to House and Senate leaders. To keep up momentum, CHANGE held a press conference reaffirming its call for reform, sent letters to state legislators, continued to meet with legislative leadership and began running Chicago-area newspaper ads.

As the fall veto session began, there was no acceptable proposal that emerged as a basis for final negotiations with all parties. The CHANGE coalition and their reform allies took up (sanctioned) residence in the now empty Lt. Governor's Office and used it as the base of their campaign. Having a war room in the Capitol was a huge logistical plus as the pace grew frenetic with an almost constant stream of meetings with the Governor, the legislative leaders, staff and other key players. Memos, proposals and counter proposals flew back and forth almost around the clock.

Democrats, who held majorities in both chambers, made it clear that the reformers' attempts to conduct bipartisan negotiations were a non-starter during the veto session. This effectively cut the Republicans out of the loop. In addition, while the Governor's Office had its Chief of Staff, Jerry Stermer, at the table during negotiations, Governor Quinn did not play an active role. As a result, there was no internal champion for campaign finance reform at the table. Canary and Ranney represented the reform commission in the negotiations. Both Speaker Madigan and President Cullerton participated in direct negotiating sessions, along with House Majority Leader Barbara Flynn Currie and Senator Dan Harmon. They were joined in the room by a host of legislative legal staff. The negotiations were bare-knuckled and pragmatic. For differing reasons, the players all knew that they had to emerge with something, but the gulf between them remained large.

At this point, the pressure of the ticking clock was felt. The veto session consisted of six official session days during a two-week period. Failure to act before the end of the veto session meant no action would be taken before January, a two month delay when public pressure and interest might have dissolved. In addition, the specter of a major Supreme Court decision in the *Citizens United* case was looming. Reformers, and almost certainly the legislative leaders, were quietly aware of the direction the Court was expected to go in *Citizens United*. The reformers believed that if

the court moved in the direction it was signaling - unlimited independent expenditure funded by unlimited contributions from corporate entities as well as individuals - that the incentive for the legislative leaders to return to the negotiating table in the spring would be gone. As such, they felt that a bill had to be agreed upon during the veto session if limits were to become law in Illinois.

Both sides made numerous compromises. Significant achievements for the reform community in the ultimately agreed-upon bill including increased disclosure of contributions, expenditures, and independent expenditures; tighter enforcement including campaign fund audits; and contribution limits at levels lower than the original proposal by the Democratic leaders. Requiring candidates and elected officials to electronically file reports year-round within 2 to 5 days of receiving of any contributions of \$1,000 or more was an historic change in campaign disclosure in Illinois. The same is true for the change from semi-annual to quarterly for the filing of comprehensive, cumulative reports. However, one major sticking point remained. The Democratic legislative leaders were resolute in their unwillingness to consider limits on transfers (contributions) from political parties to candidates.

It is essential to understand that the Speaker and the Senate President considered the legislative caucus committees that they controlled to be political party committees. Exempting contributions from political parties to candidates from limits meant the leaders would be able to fund their candidates in targeted legislative races with unlimited contributions from the legislative caucus committees they controlled. Both the Speaker and Senate President made clear their shared belief that a political party exists to support its candidates and the notion of party limits was a bridge too far. The Governor's Office refused to commit on this issue, saying it was considering all positions.

During the first week of veto session, the Speaker publicly laid down a marker by presenting in the House Executive Committee with an amendment to SB 1466 which contained no limits on contributions from political parties to candidates. Both ICPR and CHANGE testified against the Speaker's amendment in committee. The future was clear. If negotiations failed, HB 1466 with the Speaker's amendment would be the bill going to the Governor.

It was clear that both time and the ability to find agreement were running out. During the second and final week of the session, CHANGE and ICPR leaders determined that they had taken their fight for comprehensive limits as far as it could go. The Democratic leaders were willing to accept limits on contributions from political parties (which by definition included legislative caucus committees) to candidates in primaries, but not the general election. Either the reform groups had to take what was on the table or publicly oppose what would be, without a doubt, a weaker bill that the Democratic leaders would pass and the Governor would sign. With some reluctance, reform community representatives testified in support of SB 1466 with the compromise language on contribution limits before the House and Senate Executive Committees.

Both Chambers approved the bill, with the final vote split along party lines. The Republicans, excluded from the final negotiations felt betrayed by the final outcome. Political considerations may have factored into the Republican caucuses' decision as well, given the high public profile of the contribution limits push and with eyes looking toward the 2010 general election, now just a year away. The Democratic leadership had gone far further on limits than seemed possible one year earlier, since the court of public opinion had forced their hands. The reformers felt as though the clock had run out on them. Without the Governor's championing a stronger bill and fearful of the impact of the pending *Citizens United* case, they felt they had taken negotiations as far as they could go.

Reaction to the passage of SB 1466 was mixed. Some in the press, particularly the Chicago Tribune, railed against it, contending that adopting limits on private money contributions while failing to put limits on contributions from political parties and the legislative caucus committees had actually increased the power of the legislative leaders.<sup>xxxv</sup> Others in the press and reform advocates who had not participated in the negotiation saw it as great progress, though incomplete. Long-time observers and participants in Illinois politics who had not been engaged in the battle had a different reaction. They were stunned that contribution limits had become law in Illinois. The state once branded the "Wild, Wild West" of campaign finance, and one of only a handful of holdout states that failed to act in the years (now decades) since Watergate, had contribution limits.

On December 9, 2009, a year to the day after FBI agents had arrested former Governor Blagojevich, Governor Pat Quinn signed SB 1466 the limits bill into law. Unlike the summer's veto of HB 7, the legislative leaders did not attend. Most provisions of the law, including contribution limits, took effect Jan. 1, 2011, so as to avoid throwing a wrench into the current election cycle and to give the Illinois State Board of Elections time to prepare to implement the new rules. In fact, the unanticipated retirement of Richard M. Daley meant that a high-profile and costly mayoral election was underway when the law came on line.

Reform advocates publicly vowed not to give up the fight on party limits and indeed fought on, but everyone knew that as fury over Blagojevich receded in the public mind, the intensity of the campaign finance battle would diminish. What was still unknown at that point was just how dramatically the *Citizens United* ruling would redefine the terms of the campaign finance debate.

#### **Section 4 – Lesson Learned: Enacting Political Reform in Illinois**

As the case studies demonstrate there is no one clear route to reform. To paraphrase Chicago Mayor Rahm Emanuel, just like a crisis, a scandal is a terrible thing to waste. However, corruption alone, especially in scandal weary Illinois does not always lead to systemic change. Paradoxically, responding to a scandal by dealing with

one bad apple can actually stop the momentum toward systemic reform.

In developing a reform strategy the equation is complex. The problem must be defined and a fitting solution that draws on best practices and complies with the law must be offered, without losing all appeal to those who must enact it. It is essential to compete with political actors, organized interest, the press, and the public for space on the public policy agenda. The motivations of key actors must be understood, while their potential pressure points are identified. A narrative must be developed which is both easy to understand and compelling, but does not oversell. The public must be engaged and encouraged to speak out. There must be consequences or at least the perception that there are consequences for inaction. And then you have to get lucky. The status quo is a powerful force and enacting political reform often means changing the rules of the game that produced the status quo.

### Reform as Policy Change

There are similarities between lobbying for political reform and lobbying for a new fee on direct TV cable providers. What is the message? What is the public policy argument? Do you engage the legislative leaders, fight them, or try to work around them? Does it help or hurt to have the issue perceived as partisan? Can you build general good will in the legislature over the long term that will facilitate achieving a short-term specific goal? Do you engage in public activities to bring outside pressure on the legislature or do you work on the inside, as far away from press scrutiny as possible? Most of these questions are universal.

However, there is a fundamental difference between systematic political reform and the issue of a fee for a private industry. A fee for a private industry is a change in a portion of a policy status quo. Political reform requires changes in the rules of the game under which elected officials, interest groups, and political parties operate. Any change in the rules of the game poses a threat, or at least uncertainty, to those who hold power and those who benefit from all of the policy biases that are part of the status quo. Negative reactions can be based in the specifics of a particular proposal or a general fear of unintended consequences. Political reformers are often taken aback by the lack of enthusiasm, indifference, and outright hostility that is generated by what appears to the reformers to be greatly needed, common sense, good-government improvement in the political process.

To be a successful reformer, one must have a realistic understanding of the concerns that reform proposals create. It is a mistake to underestimate the legitimate concerns that changes in the rules of the game generate for those who are part of the political process. It is a mistake to assume that any opposition or reluctance is rooted in evil motives. It is also a mistake to under-estimate the resistance and resolve of those in power to changes that threaten their power. The resistance by the legislative leaders who are in the majority to a system of comprehensive contribution limits that would fundamentally challenge their power over elections and policy-making has been constant and unwavering since the issue was publicly raised by the report of the Simon-

Stratton commission. At the end of the 2009 battle over the campaign finance bill, that position was as non-negotiable as it was in 1996. All of the changes in political culture, all of the reform victories, and all of the political scandal had not altered the dynamic enough to make comprehensive limits on how legislative leaders used their money in general elections an achievable goal. Maybe a popular, effective Governor engaged on behalf of reform could have altered the outcome, but we will never know. To quote Clint Eastwood in the movie *Magnum Force*, “A man’s got to know his limitations.”

### Reform as Politics

You cannot achieve political reform without engaging in politics. The American political system was designed by the framers of the US Constitution to be a very messy, time-consuming, difficult process. They trusted in majority rule and a democratic process to prevail over the tyranny of the minority. They tried to protect basic rights through the Bill of Rights. But faced with the prospect of tyranny by the majority – the fact that majorities can do bad things – they chose to create a governmental system where the fragmentation of power makes it is difficult to get things done quickly, if at all, unless you have overwhelming consensus or are willing to compromise. Reformers who do not like politics - who are offended by the process – are rarely successful and continually frustrated. “Playing politics” has a very negative connotation. But that well-desired negativity comes from how politics is being played, not from the nature of the politics itself. Engaging (playing) in politics is the essence of democratic self-government. Most successful reformers understand and respect the political process. It probably helps if you actually like politics. An outcome that is not legitimately achieved does not have to be respected and much of the agenda of political reform is directed at ensuring the legitimacy of the political process. But having a political process with integrity and great quality of opportunity to participate does not guarantee “good” outcomes. Sometimes you lose. If the fight was fair, then the only recourse you have is to figure out what went wrong and how to do better in the future. When reformers fail, they fail at politics. They do not fail because of politics.

### The Role of Scandal and the Limits of Scandal as a Way to Reform

One thing that jumps out from examining the time line for reform and the case studies presented in the previous section is the direct, positive relationship between political scandal and political reform. A high-profile scandal often provides momentum for reform in Illinois. The linkage can be direct: stop Blagojevich from selling the state to the highest bidder by adopting pay-to-play. It can also be indirect. If there is going to be an ethics bill passed in the wake of the Ryan scandal, there is an opportunity to promote reform measures that solve “problems” that were not part of scandal, but as still legitimate issues worthy of consideration. Relatives of lobbyists serving on state boards and commissions did not become a concern as a result of the Ryan scandal. It was not on anyone’s radar. But it became part of the 2003 ethics law. Scandals are

opportunities.

While political scandals are useful opportunities, they have two limitations as a way to reform. First, scandals are high-profile events that involve good guys and bad guys. They fit into a narrative that the system is sound except for the occasional bad apple. This mind set makes getting beyond the bad behavior to the factors that caused it difficult, as an extension, to achieve substantive reform. Was Blagojevich just a corrupt individual or was he the logical conclusion of a political system that values self-interest and power over the public good and the public interest? The answer is both, but assuming that corruption is a random occurrence makes it unnecessary to ask if there are systemic problems that produce corruption. Second, scandals do not occur on a regular basis and may not involve the most critical issues that need to be addressed by political reform. Scandal-based reform is by definition reactive and episodic. It is not a substitute for a building a strong institutional capacity and a proactive agenda.

### The Intransigence of the Illinois Political Culture

The essence of Illinois politics is power, winning and control of it in the pursuit of individual self-interest. It is a largely non-ideological politics that recognizes no public interest beyond the aggregate of individual self-interest. Politics is the business of professionals, not amateurs. There is a mindset among public officials that campaign contribution records, lobbyist expenditure reports, and public documents “belong” to the political actors, not the general public. While not highly ideological, the political culture is highly partisan with parties functioning as mechanisms of organization and control. The attitudes, opinions, and beliefs of political culture are learned. They are fixed in the short term. Achieving the goals of political reform requires changing political culture, but that is a long term process.

The resistance to making campaign finance records accessible to the general public that held sway from 1974 to 1997 was rooted in a belief that knowing who contributed to campaigns was the business of the politicians and the political parties, not citizens or the news media. When the State Board of Elections began publishing summary reports of contribution data in the mid-1990s, officials from the office were challenged by lawmakers in a legislative budget hearing for exceeding their authority and mission. The legislature did not embrace increased disclosure in 1997 and 1998 because it was the right thing to do or because it was in the public interest. They acquiesced and offered it in the face of the threat of greater reform – contribution limits. When the potential of mandatory electronic disclosure became clear there were immediate attempts to make electronic filing permissive. Maximizing public access to campaign finance data is not the logical expression of Illinois’ political culture. The continuing resistance among public officials to granting maximum access to public documents through the Freedom of Information Act and the resulting compliance

problems at all levels of the state are rooted in the same set of values and beliefs about whose interests should be served by government.

At its worst, Illinois' political culture engenders a sense of entitlement among public officials. Public documents are "my documents." Lobbyists buying meals and drinks for legislators and legislators handing out legislative scholarships are seen as part of the natural order of things. In this mind set government exists to serve the self-interests of those in power. Former Governor Blagojevich was recorded on a federal wiretap giving voice to this sense of entitlement when he talked about what his official power to appoint a replacement to the US Senate meant to him, "I mean, I've got this thing and it's f\*\*\*ing golden. And I'm just not giving it up for f\*\*\*ing nothing."<sup>xxxvi</sup> From a strategic standpoint, it is imperative for reformers to recognize that the Illinois political culture provides a context which frames everything that takes place.

### The Importance of Legislative Leaders

Power in the Illinois General Assembly is centralized in the hands of the four legislative leaders. They dominate the process in Springfield. They have control over all legislative staff. They control the structure and the procedures. In relative terms, individual members and the committee structure are very weak. Because they control the gavel and the flow of business in the legislative process, the Speaker and the Senate President in particular exercise great power in their respective chambers. The leaders also dominate legislative elections through their control of money to fund competitive races and their control over political campaign organizations made up of legislative staff employees on leave from the legislature.

In the fight over pay-to-play legislation, the Senate President was able to block a bill that had passed the House without opposition and had 49 out of 59 Senators as co-sponsors. Public funding for judicial campaigns has gained very little traction in the Illinois House because of the opposition of Speaker Madigan, who is also chairman of the state Democratic Party, even though the Senate passed such a plan on a bipartisan vote three times. Control over judicial elections is an essential element in party and ward politics in the City of Chicago. The partisan balance of the Illinois Supreme Court has been critical in the outcome of some of their decisions on public policy issues and redistricting. Public financing of judicial elections would alter the process and add uncertainty to the outcomes. Even the notoriety of being the home to the most expensive (\$9.4 million) state Supreme Court race in US history - funded by insurance companies, the US Chamber of Commerce, and major trial lawyer firms in 2004 - has not been sufficient to get a judicial public financing bill out of any House committee.

Any effort to move reform legislation through the Illinois legislature has to take the power of the legislative leaders into account. The leaders do not care about everything that comes before the legislature and they do not always win. But they almost always win on issues they do care about.<sup>xxxvii</sup>

### The Importance of Political Champions

Having an individual who can be a strong political champion for the advocate's message can imbue it with legitimacy and open doors which might otherwise remain closed. However, having an insider as a champion can also present challenges. A body at the table is not the same thing as a committed ally. Likewise, one must be able to discern the difference between the true ally and the individual who is co-opting reform rhetoric to fight his or her own battle. The difficulty can arise in maintaining control over content of a legislative proposal. While all legislation is compromise, there is a very real danger of being hijacked or abandoned by those who appear to the external world as your partners, but are pursuing very different political agendas.

In 1998, the driving agent was not a good government group; rather the external catalyst was an individual - Senator Paul Simon - who had the stature to bring the players to the table. In 1998, reform groups were delivered a full package and merely had to push the Simon effort past the finish line. This process, like all others, involved a series of tradeoffs. The process was thoughtful, but it was also closed. Reforms were virtually guaranteed, but their parameters were controlled by political powers. Dependent as it was upon the prominence of the late Senator Simon, it has also been a process that has not been successfully replicated. It is very difficult to identify a current political actor who would could step into this role and win the trust and commitment of players from both inside and outside the system, let alone cross the partisan divides.

The 2008 success was also reliant upon an internal champion -- Comptroller Dan Hynes. The value of having a committed internal champion cannot be overstated. Hynes, by adopting the pay to play policy for his own office and later by making public a searchable database linking contractors and contributions, kept a spotlight on the issue and defied critics who contended that the policy was unworkable or unnecessary. He had access to the news media and brought legitimacy to the message that favoring contributor contractors was bad fiscal management as well as corrupt. Hynes was also uniquely positioned to advance the proposal. He was a constitutional officer who had been elected statewide. He had access to the legislature, but was not of the legislature. Likewise, with Hynes assuming the high ground and keeping the message consistent, reformers were more able to play the role of tough cops without losing access to the negotiating table.

By contrast, the 2003 campaign shows the peril of having an alleged champion who is actually trying to co-opt all sides. Rod Blagojevich swept into the governor's office on a wave of reform and that was the mantle he wore in the public fight for this legislation. While it would later be revealed that he was exploiting his office for personal gain from the start of his administration, in 2003 he used his bully pulpit to stir up populist hunger for reform. Blagojevich had little affection for the nuances of policy, but hungered for the media spotlight. He understood the political value of reform and also saw how it could be used to limit the political power of his rivals. If Blagojevich is understood as a catalyst for the 2003 effort, perhaps the most apt metaphor is the sand in the oyster. He was an internal irritant.

In 2003 the challenge for reformers was to keep the external message consistent and to keep the internal process moving despite the power plays that were taking place. It proved a challenging environment with which to promote best practices and develop a public legitimacy for the reform. While much good came out of the 2003 legislation, in some respects it was in spite of and not because of the key actors involved. Reform organizations had the tricky and nuanced task of having to separate positive governmental reform from so-called reforms put forward that would advance a personal agenda, but offered little public benefit. This was particularly challenging, as the process unfolded in the public arena. The narrative put forward by the new Governor was of a committed, young leader fighting against the status quo to rid Illinois of corruption. The problem was that from the inside it was readily apparent that the narrative wasn't true. Neither the new Governor nor those who benefited from the status quo were particularly interested in the serious public policy of change.

While 1998 and 2008 illustrate the importance of a strong champion and 2003 highlights the dangers of a faux champion, the fight for limits was largely without an internal champion. Several legislators were supportive and spoke out. After his summer veto of the first campaign finance bill, Governor Pat Quinn could have taken the lead on producing a better law. Instead, he stayed on the sidelines, as he had earlier in the process. He both distanced himself from the excellent work of his own Commission and failed to provide a forceful voice at the negotiating table where he could have influenced the shaping of a more robust limits package. For whatever reason - the state's enormous fiscal problems, the challenges of getting a new administration up and running, or other priorities - the Governor was on the sidelines during the negotiations that shaped the final limits agreement. The lack of an internal advocate significantly weakened the reformers' hand. The Governor was the only inside actor who could have potentially made a difference in the reformer's battle to block the will of the legislative leaders and secure a stronger and perhaps more expansive bill.

## The Importance of Data and Policy Analysis

Public policy is only as good as the data and analysis backing it up. One makes sound policy choices by being a student of best practices and the law, but also by understanding the particulars of the system and the political culture that one works within. Policy-making must be made based on both aspirations and reality. In setting the level of limits, for instance, it is imperative to understand existing patterns. What types and levels of contributions are common for rank and file members? Where does the pattern deviate? What is the role of legislative leaders in financing legislative elections? Where do the problems lie? An appropriate system of contribution limits for New Hampshire might have little relevance in Illinois.

Understanding how the current election system works and appreciating that candidates need resources to campaign allows an advocate to act as an honest broker and to demonstrate that a proposal is not designed to starve the system, but to constrain the excesses at the margins. Using a data based approach also allows reformers to largely remove the issue from the partisan context that always exists and address system consequences and patterns. This approach also builds external credibility with the news media.

It is important to be able to speak to both legislators and the press from a fact based position. This makes policy arguments more difficult to disavow. It also provides the advocate with a consistent and non-partisan framework within which to work. Also, as with most things, attention to detail matters. There are numerous examples of election reforms being borrowed from other states lock, stock and barrel—incorporating their election calendars, nuances and sometimes even references to their unique institutions. Sloppy advocacy is a nonstarter. It doesn't advance your position or win you credibility in the court of public opinion. The basic fact remains the same, just like any effective lobbyist, the reformer must understand how a bill actually becomes a law in Illinois.

Increasingly, reform advocates must be a student of the law. They must look to the rulings of the US Supreme Court, but also keep abreast of legal developments in other states. While there is little value in advancing a proposal that is patently unconstitutional, caution is also warranted on the other side. One does not always know where the courts are going or how they will interpret various refinements to proposals. Reform organizations, which generally do not have the luxury of a legal department, need to forge alliances with private law firms and with legal think tanks. To the extent possible, it is important to analyze the viability of a proposal in advance and to think through how it might be defended on the back end.

## The Importance of Building Institutional Capacity

As the case studies show, reforms are often pushed forward by scrappy organizations high in commitment, but lacking in resources. One of the lessons learned is that reformers often take the routes to reform that they do by necessity rather than a strategic choice because they are starved of resources. Not utilizing cutting edge communications techniques or not bringing in expert witnesses are not decisions made by choice. The availability of resources from the CHANGE coalition in 2009 allowed reformers to significantly increase their effectiveness through the use of organizing and communications techniques. This made possible a campaign that had by necessity to be completed in a year's time.

It is important for the reform community to have an honest dialogue with funders about the need for ongoing resources and support for networking opportunities within the wider reform community in neighboring states and nationally. Resources that flow in during the heat of a policy campaign can very well tip the balance toward victory. However, it is equally important that resources be there during more fallow periods to ensure proper implementation of the laws on the books, to prevent backsliding and to allow reformers to keep the principles and values of reform front and center. Too often reformers pursue low hanging fruit, but are not in a position to effectively pursue the more profound systemic changes, which might be transformative. Reform is a marathon, not a sprint. It is not something that can be accomplished then forgotten. A legislative victory that isn't followed through on the rule-making side can be a lost opportunity or even counter-productive. It is not glamorous, or even newsworthy, but for advocates to be true stewards of their mission they must have the capacity to ensure that their legislative victories are actually meaningful and not misconstrued in the policy implementation stage.

A lack of financial resources does not, however, translate into a complete lack of capacity. Alliances can be forged with national groups and legal experts to supplement the work of advocates with boots on the ground. Communication skills can be learned. Coalitions can be forged. Data can be accessed. What is important is placing a value on these components and devoting time to thoughtfully building them into a reform strategy.

## The Importance of Educating and Engaging the News Media

Most legislators want to be responsive to and representative of what they believe their constituents want. Legislators also have policy positions and a sense of what is needed for the good of the entire state. But one cannot be an effective legislator if you do not get elected. If you want to bring pressure to bear on the legislature from the

outside you have to make them hear the voices of a disaffected public. Unlike teachers, bankers, Realtors, and unions; reform groups rarely have organized members in every legislative district who can build relationships with legislators. An alternative way to build a presence outside of Springfield that has an impact of policy making is to work through local and statewide news media. An effective media strategy is important to some degree for any group trying to effect policy change. For reform advocates it is indispensable.

Reporters and editorial boards are interested in news. Their business requires content. To make legislators and statewide officials hear voices that tell your story, you have to make news. You have to do things and to make proposals that get written about, broadcast, and blogged. How those stories get presented is a function of what reporters and editorial boards understand about reform issues. Educating reporters and editorial boards is an ongoing task that requires seeking them out to make your case and build relationships. It also requires responding to requests for information and interviews. Every press contact is an opportunity to educate reporters about your issues. Every press contact is an opportunity to get your perspective in the news story. The more you are seen as being accessible, knowledgeable, and trustworthy the more reporters will contact you. There are times when the demands of the press can be overwhelming. Responding to reporters about the arrest of former Governor Blagojevich became more than a full-time job. But every interview was an opportunity to talk about the bigger picture and the need to reform the system that produced the Governor and brought him to power. And every press contact is an opportunity to build access and credibility for the future. If you are doing it correctly the news media will come to you as often as you go to them.

Effective media strategies help get you on the agenda and they help you shape policy. The story of the 2009 campaign finance law illustrates how outside pressure focused through the news media can be essential to achieving policy change. Without strong media pressure, opposition from the legislative leaders to even talking about campaign finance reform, let alone putting it on their agenda, might have been successful. Without strong media pressure the weak legislation that passed the legislature in the spring with the support of the Governor might have become law. Without strong media pressure, the legislative leaders would not have gone as far as they did in the final negotiations. The strong opposition to the final agreement on limits (with the absence of limits on contributions from leaders in the general election period) from many newspaper editorial boards throughout the state also demonstrates the complexity of the relationship between advocacy groups and the news media. While interactions can be mutually beneficial, they are independent actors with their own goals and objectives which will not always align with those of reformers.

## The Importance of Crafting and Communicating a Message

The goals of the campaign finance advocate are based in principles and values. The courts have been clear that the primary objective of campaign finance regulation is to inhibit corruption and the appearance of corruption. But what of our secondary goals: Are we trying to encourage political participation? Are we trying to limit private money? Are we trying to encourage electoral competitiveness? These may all be worthwhile goals, but no one set of policies will accomplish them all. In fact, these values may find themselves at cross-purposes. Policies that might make elections more competitive might also make them more expensive and vice versa. The policies advanced and our messages must communicate both the primary legal goal of campaign finance to diminish corruption and our vision for a more healthy vibrant democracy.

The courts have made the crafting of a campaign finance message infinitely more difficult. By legally requiring policy to be designed to limit corruption and the appearance of corruption, advocates must speak to the negative. In Illinois, where scandal is frequent and cynicism runs high, this is not necessarily the strongest message. However, since these are the sole legitimate constitutional reasons for advancing campaign finance reform they must always be at the core of the message.

So how does one craft a message around corruption in an environment that is skeptical of change? One strategy is to hammer on the very real costs of corruption. It is not simply an abstract problem or an embarrassment rather it is a systemic disease, which has a cost, often a large cost, to the taxpayer. It is not whether we focus on campaign reform or a more immediate issue such as the budget, health care or education. Rather, we focus on campaign reform because it will allow us to begin to remove corruption from the equation and be more effective in addressing key social concerns. In a state with such an extensive corruption history the message crafted must also focus on helping people move beyond the reality they know to imagine a better set of circumstances.

Delivering the message can be as challenging as crafting it. In today's world the channels for communication seem almost limitless. The challenge for reformers is to not merely spit into the wind. A key lesson comes in remembering the old adage that all politics are local. Whether utilizing new media or conventional media, it is critically important to speak to people and thereby legislators where they live. This means taking the message beyond Chicago and Springfield. As important as the Chicago Tribune or Facebook may be, it is also essential to get to know local reporters and editorial boards and to identify the blogs or sites, which have particular resonance in neighborhoods and communities. This can be very labor intensive as it means going to Belleville or Moline or Bloomington to meet with community leaders and media. However, these personal

relationships and the insights they provide into the lens through which residents of those communities are viewing an issue are invaluable. Personal relationships also help to build and add legitimacy to a media presence.

Political reform is not often thought of as a visual medium. However, with creativity there are always opportunities to tell the story to a camera. In addition to the often-tired news conference format, rallies, props and well-timed appearances outside of fundraisers can add visual spark to a story. Radio, too, is a medium that shouldn't be forgotten. On a statewide basis, it offers numerous opportunities through interview, news and call-in programs to get the message out and to localize and personalize it.

Finally, social media and other new technologies must be integrated into the overall communication strategy. While some of these are very low or even no direct cost, other techniques such as 800 numbers, tele-townhalls, or software programs which help constituents connect directly with legislators can require a significant investment. At a minimum, reform groups need to be mindful of their website. It is their face to the public. It needs to be fresh, clear and regularly updated. All communications should be aimed at driving people to their website, where they should be encouraged to get more information about the agenda and then take action. This can be done, ideally with a combination of blogs, issue briefings, e-newsletters, Facebook posts, tweets and the like. For graying reformers, it can be a challenge to communicate on all of these platforms. Having younger interns or junior employees assist in developing an integrated social media strategy can be as valuable to a resource starved non-profit as the services of a professional communications firm.

### The Importance of Knowing the Rules

Many reform organizations are 501(c)(3) organizations. This designation provides them with great tax benefits but strictly limits the lobbying that a group can do and prohibits their directly engaging in electioneering.

Lobbying and advocacy are related; but distinct activities. Arguing for or against a bill is generally lobbying, while advocating a position on a broader question of public policy or producing educational materials, generally is not. A reformer delivering testimony to a government committee at the invitation of a legislator is not lobbying. However, delivering that same testimony without invitation may be lobbying. All 501(c)(3) organizations may engage in a nominal amount of lobbying. As nominal is a relatively undefined term, many organizations opt to file under Section H of the tax code which provides a clearer definition and allows them to utilize up to 20% of their resources on lobbying. The question of direct lobbying grows murkier, however, as how it is defined by the IRS is generally quite different than how it is defined in state statute.

On top of this, many funders, such as foundations, prohibit direct lobbying with their resources. It is important for non-profit organizations to track their activities and expenditures to ensure that only allowed resources are used for lobbying purposes.

Electoral involvement is a bit clearer. 501(c)(3) groups cannot endorse candidates or make political contributions. They cannot encourage their members or the public to vote in a specific way. They can, however, moderate debates and with some important limitations produce voters' guides to educate the public on election choices and candidates. While these rules may be well known by funders, candidates seem to be far less aware of them and the requests for endorsements or appearances with candidates or supporting statements may flourish, especially at election time. While there are rules of thumb mainly dealing with fairness and consistency of message inside and outside the electoral window, reformers are encouraged to tread carefully and to seek advice. The Alliance for Justice is one organization that provides resources on these questions.<sup>xxxviii</sup>

Many of the activities described earlier in this paper's case studies were undertaken through the joint efforts of 501(c)-(3) and 501(c)-(4) organizations. Contributions to 501(c)-(4) organizations are not tax-deductible, but they allow greater leeway with both lobbying and electioneering activities. Some organizations, such as the League of Women Voters have both (c)-(3) and (c)-(4) arms, while in other cases coalitions are forged allowing various entities to focus on what is legally allowable.

### The Importance of Crafting Inside and Outside Strategies

A lobbyist trying to pass legislation to make a technical change on behalf of an industry may opt to focus almost solely on the Statehouse. Reformers don't have that luxury. They must build networks, forge coalitions and educate the press and the public. In other words, they must build external demand for the reforms that they advocate. Without this external pressure there is little motivation for the General Assembly to change the rules under which they operate.

Coalition-building is most effective when it brings together the unexpected. Unlikely partners, such as business, labor, religious and civic organizations that come together to share a common message are very effective. Likewise groups such as AARP, which has been a leader in CHANGE Illinois, are particularly powerful both for the sheer membership they bring, but also for demonstrating and articulating how systemic policy issues impact their specific agendas.

Reform leaders should be by nature coalition builders. They must develop strategies to engage the grassroots which may involve everything from social media to

public speaking at venues ranging from the Rotary Club to the church hall. Equally important, they must identify the so-called “grass tops”. Who are the opinion leaders in Illinois? Who are the leaders in key communities? And why should this message resonate with them? In all of this outreach a reputation for integrity and a willingness to deal in good faith are key. Technology and social media are important, but personal networks, meetings and contacts are what open doors.

Coalition management is notoriously difficult. Organizations have different cultures, face competing priorities and often juggle limited resources. It is difficult to keep people at the table and engaged. There is no magic formula, but clarity of message, a timeline and specific expectations can be helpful. As can something as simple and human as remembering to recognize victory and give credit and thanks.

Working the legislature from the inside through face-to-face contact requires a similar toolbox. Knowledge, a clear message, a consistent face and most importantly, honesty are the basics. As stated previously, reform organizations often lack resources. They must rely on their knowledge, hard work, and reputations. This requires transparency, fair factual analysis and consistency. Legislators do not need to like you, but they do need to respect you.

To the extent possible, it is important to have an ongoing presence in Springfield. The individual who is at the Capitol day after day becomes the embodiment of your message. They answer questions, distribute fact sheets, cajole, negotiate and build networks. If your cause is not represented at the Capitol in this way it is easy to fall off of the agenda.

Developing legislative allies is also imperative. They not only sponsor bills, they can provide unique insights into the larger political picture and help you to formulate strategy. Finding a bill sponsor is not terribly difficult, but it also doesn't ensure that a finger will be lifted to advance the proposal. Establishing a legislative ally means building an honest relationship which sometimes means heeding their suggestion of “not now.”

When working within the legislature, it is critically important to understand that the quest for reform is ongoing. Battles can get heated and losses are inevitable. While these cannot always be handled with grace, they do require a certain amount of humility. Toughness may be required, even occasional flashes of anger, but more likely than not you'll have to fight another day.

## The Importance of Winning and Losing and Being There for the Long Run

Political reform is about ideas and principles. In the battle to make democratic self-government work how do you know whether you have won or lost? In one sense the metrics are easy. Failing to pass public financing for Supreme Court elections is the same as failing to pass a fee on direct TV service providers. Successfully putting contribution limits in place is the same as exempting those who shoe horses from state regulation. A win is a win and a loss is a loss. But experienced players in Springfield know that victories can have a shelf life that expires the next time the legislature is in session and the getting a bill killed by a floor vote can be a step forward in achieving a goal that could not get a hearing in the past.

It is both a disadvantage and an advantage that the goals of political reform are long term and global. It is easier to work on a tax exemption than to restructure the entire tax code because you are not challenging the basic rules of the game. But political reform is always about the rules of the game. It is hard to accomplish. Many of legislative achievements in the reform area seem modest, particularly at the time. The breath of the goals – elections that are open and fair, transparency in all aspects of government, mitigating the role of money in elections and policy making, fighting political corruption and engendering ethical behavior in politics and government – make crafting comprehensive, integrated solutions difficult at best.

In a long-term battle you need short-term victories to keep up morale and show progress. In that sense there are no small victories. And if you keep your eye on the long-term goals, you can craft smaller victories in ways that translate into larger victories. Permissive electronic filing and requiring Internet access to campaign reports became mandatory electronic filing and searchable on-line databases of campaign reports, which then became quarterly reports and year-round, real-time reporting of large contributions. It took more than a decade, but the change from the campaign finance world of 1997 in Illinois to now is stunning. Being in it for the long run allows you to pursue strategies that reach beyond the end of the legislative session or the next election. Given the nature of the goals of political reform and the resistance of the status quo to change, the long run is really the only option for advocates of political reform.

Trying to balance short-term victories and long term goals comes down to the art of politics. What is possible? Over time, what gets you closer to your long-term goal? At the end of the negotiations with the legislative leaders in 2009 there was a proposal on the table which expanded disclosure and enforcement and put limits on contributions of private money. It did not put limits on contributions from political parties and legislative caucus committees controlled by the legislative leaders except in primaries. Agreeing to support the proposal would put contribution limits in state law and achieve a publicly

stated goal that had been a key part of the reform agenda in Illinois since the Simon-Stratton commission report was issued in 1997. More than twelve years of effort was on the line. But agreeing to support the proposal meant limits on money from legislative leaders and political parties would not be part of the new law. Do you take the partial victory and risk losing an opportunity to achieve more? Or do you walk away knowing that something less than what you just presented with will become law and trust that you can build on the momentum that got you to this point to come back and achieve comprehensive contribution limits? No one else can make the call. Welcome to the world of politics.

### **Section 5 -Fighting the next war: Reshaping the Agenda for Political Reform**

The task of political reform is never easy. The mountain we have to climb in Illinois is particularly steep. But if we understand the parameters and limitations of policy change and adapt strategies and techniques to the reality of a given time and a given situation, then we can be effective. But effective flurries of activity in the absence of a clear understanding and articulation of what reform means and why it is important are just that, flurries of activity.

The modern reform/good government movement in the United States took shape at the end of the 19<sup>th</sup> century. The movement toward voting rights, ballot access, governmental ethics, and government transparency has been uneven at times, but it has always moved forward.

In 1974, the linchpin of the logic of political reform was regulating and limiting campaign contributions and campaign spending. The greatest perceived threat to “good government” and the “public interest” in the post-Watergate era was the role of money in politics. The Nixon scandals were seen as clear evidence by reformers that the unfettered, secret flow of big money into politics created threats to democratic government. Big, unregulated money distorted the flow and the content of information between citizens and candidates. Big, unregulated money gave rise to campaign techniques and strategies that diminished the engagement of citizens in politics and eroded their support for the outcomes. Big, unregulated money created conflicts of interest for elected officials between the desires of contributors and the desires of constituents, further weakening the bonds between citizens and their political system. Big, unregulated money created systemic corruption that went far beyond the weaknesses or greed of any individual. In short, big, unregulated money threatened to overwhelm all the previous reform victories by creating an environment that weakened democratic processes and diminished the legitimacy of government in the eyes of citizens.

In the pre-*Buckley* world of 1974 the path for moving the reform agenda forward seemed clear. Passing legislation at the national and state level that regulated and limited campaign contributions and campaign spending would severely constrain the corrosive impact of big money on politics. To many, the ultimate goal was the public funding of political campaigns because that would remove the impact of private money on politics by removing it from politics. These were the key legislative goals of political reform in 1974. This is not to suggest that voting rights, ballot access, transparency in government and governmental ethics were unimportant or that there was no unfinished business in putting them in place or making them effective. But they were viewed as a foundation. The big prize was campaign finance reform.

The pre-*Buckley* world of 1974 is gone. Between the 1976 *Buckley* decision that struck down spending limits and the *Citizens United* (2010) and the *McComish* (2011) rulings, states were a veritable laboratory of democracy. Regulation schemas, public financing, robust disclosure, and small-donor incentive programs flourished. Consensus on contribution limits was at the point that the federal government and 46 of the 50 states had adopted some type of limits, with the majority outlawing direct corporate contributions. Public financing systems of varying degrees had been adopted by a number of states. Conspicuously absent from what was occurring throughout the country was any action in Illinois.

We now live in a post-*Buckley*, post-*Citizens United*, post-*SpeechNow*, post-*McComish* world. The cumulative effect of these Supreme Court rulings is that the constitutional framework for regulating and limiting money in politics has become so narrow that its practical impact seems almost trivial. This is not true, but the sentiment is shared by some supporters as well as most critics of campaign finance reform. At the same time, new challenges to voting rights, ballot access and government transparency threaten some of the most significant political reform achievements of the past half century. Just as alarming, the seemingly never-ending incidents of political corruption, petty and great, suggest that holding those involved in government – those doing the people’s business – to a higher ethical standard than those involved in business or in private life may be an unobtainable goal. In light of this, what does political reform - its goals, logic, and strategies – mean in 2012? And what should be the action agenda going forward? We need to be clear about where we are going and why.

A commitment to democratic self-government rests on a belief that civic engagement through democratic institutions is the key to achieving both the full potential of individual citizens and the collective benefits of a government that is effective, efficient, moral, and just. Citizen participation ennobles individuals, the institutions, and the outcomes. Democratic government cannot effectively do the people’s business without the informed, active participation of the people. This applies equally to both public elections and public policy making. The system cannot work

unless people participate, unless that participation is meaningful to public outcomes, and unless people believe that their participation is meaningful. This is an interactive, symbiotic relationship. Lose any part and democratic government will exist in name only. A belief in democratic self-government is a hopeful, positive belief that puts its faith ultimately not in laws, or public or private institutions, or even written constitutions, but in people. In this context, political reform is about insuring and enabling acts of public participation, enriching the quality of public participation, and reducing or eliminating the threats to public participation which undermine public support for democratic self-government. The best means to this end may not always be clear, but the end – the goal – is not in question.

In the United States democratic self-government takes place within a constitutional representative democracy. Citizens participate directly in some political processes and indirectly in others. Citizens participate directly in elections at both the national and state levels. At the national level participation in lawmaking is always indirect. Citizens elect legislators and a president who jointly decides what becomes law. In some states, citizens participate directly in lawmaking through initiative processes as well as indirectly through electing legislators and Governors. All federal judges are appointed while some states elect judges, some appoint judges and some do both. How to structure individual participation in an area such as making laws or selecting judges is a question that illustrates the tradeoffs inherent in the quest for political reform.

Part of the new agenda for political reform is the old agenda for political reform. Political reform is still about encouraging citizen participation through passing laws facilitating more voter registration, more voting, and greater ballot access for candidates and third political parties and fighting every effort to restrict them. Political reform is still about enhancing the quality of citizen participation by providing access to the processes, decisions and the basic policy information of government through Freedom of Information, Open Meetings, and other open government laws. It is still about enhancing the quality of citizen participation through laws requiring disclosure of the economic interests of public officials and the activities and interests of lobbyist. The logic of these goals has not been called into question by the new constitutional framework regulating the role of money in politics or the suffocating crush of political corruption. The task of achieving these goals is not easy. There are always new challenges and we face a political culture in Illinois which is at its best indifferent and at it worse antagonist to these values. Like the price of freedom, the price of reform is constant vigilance.

We need to dramatically increase the amount of information we have about public transactions and the private interests of public officials and public employees. We need to dramatically improve public access to the information on budgets and expenditures and program evaluations. This would enhance the quality of citizen participation and reduce threats to citizen support for the legitimacy of the government and the political process by revealing conflicts of interests in the legislative and executive process. It would make corruption and the appearance of corruption more visible and encourage most public officials to adhere to higher standards. Currently, public employees and officials in Illinois at the state level file Statements of Economic Interest with the Illinois Secretary of State. Officials at the local level file with the County Clerk. These statements are in a format that is not searchable, the questions are far from probing, and they are not audited or examined for accuracy. Lobbyists are required to register with the Secretary of State and file expenditure reports. These reports tell us something, but we need to ask much better questions to get the kind of detailed, comprehensive information necessary to provide the meaningful transparency necessary to make sense of what is happening in Springfield. All state agency contracts between state government and private entities and all property leases between private entities and the state are filed with the Comptroller's office. Some budget and expenditure information is on-line, some is not. The amount of information we have and the detail could be expanded. The Open Meetings Act could be more completely understood and more uniformly enforced. The battle to keep hard fought gains and achieve new ones in implementing and enforcing the Illinois' Freedom of Information Act is a constant struggle.

Transparency through reporting and disclosure casts sunshine on the political process. In some cases, it exposes real or potential conflicts of interest. In others, it provides verification that no conflicts exist. Just as importantly, the fear of disclosure discourages actions and relationships that cannot stand the light of day.

Information is only as meaningful as its context. Data dumping or flooding the public with information which is not searchable or relevant can make it more difficult for the public to sort through information and draw realistic conclusions. There is a strong need to integrate this data and provide timely and complete access to that information. Once-a-year reports, paper reports, and reports posted on line in PDF files are certainly better than not having reports. Having information in a number of databases is better than not having information in a database at all. But, given the prevalence of electronic documents and database software, requiring electronic filing and semi-annual updates for statements of economic interest is not unreasonable. Neither is requiring all filings by registered lobbyists be in digital form. In addition to increasing transparency, this would be the most cost-effective way for the state to administer records. This would parallel the requirement that comprehensive campaign disclosure reports be filed electronically

every three months. All of this information should be accessible online in searchable databases. The next step would be to bring all of the information about economic interests, lobbying activities and registration, campaign contributions and expenditures, and state contracts and property leases together in one integrated database that is searchable on-line.

How to deal with threats to the engagement of citizens in politics and their belief in the legitimacy of the political process has become more problematic in the current environment. Numerous policy options have been tried to deal with corruption and the results have been limited. At the same time, the policy solutions that might best mitigate the impact of big money on politics have been eliminated or severely compromised by recent rulings by the US Supreme Court. While the task may be more difficult, the goals have not changed. The goal of political reform is still to strengthen citizen confidence in the legitimacy of their participation by preventing or exposing corruption and conflicts of interest. The goal of political reform is still reducing the negative influence of big money on citizen participation and citizen satisfaction in both elections and public policy making. The challenge is translating these goals into a message and an action agenda that can achieve success.

In order to win on the issue of money in politics, we first have to stop losing. With the explosion of independent expenditures and the increasing willingness of those who control concentrated wealth at the individual and corporate entity level to engage in electoral politics, the idea that contribution limits can play an effective, even relevant role in elections will be called into question. There is no getting around the fact that limits play no constitutional role in regulating independent expenditures. But contribution limits continue to have a strong role to play in elections in terms of limiting corruption and the appearance of corruption. In addition, framing a discussion of contribution limits in terms of their impact on elections only deals with half of the equation. A large portion of the money that flows into politics has nothing to do with elections and everything to do with policy. Groups with policy interests use money to build relationships and gain access to elected officials. Sometimes they will try to help legislators and candidates who are friendly to their cause by providing direct support in their elections. But most of the time these interests use campaign contributions to gain favor with whoever is in power. Limits on direct, truly uncoordinated contributions are effective in terms of the policy process. They limit corruption, limit opportunities for corruption and limit the appearance of corruption. The same logic applies to limits on contributions to candidates from legislative leaders and political parties. The idea that corruption or the appearance of corruption cannot occur in transactions between candidates and legislative leaders or political parties is a polite fiction that flies in the face of reality and common sense. Limits need to be defended and advanced for what they can do, rather than diminished or eliminated for what they do not do.

It is time to go on the offensive by calling for the prohibition of direct contributions by corporate entities in Illinois. The principle that only people vote and so only people should contribute directly to political campaigns has existed at the federal level for more than 60 years. It is a sound principle that should be adopted in Illinois. Corporations, labor unions or associations as corporate entities cannot contribute directly to federal candidates. With the exception of the 2008 pay-to-play law, Illinois is one of the few states with no prohibitions on who or what can contribute to campaigns. Even if the philosophical argument were not so compelling, the practical impact on corruption and the appearance of corruption from adopting a prohibition on direct contributions to candidates and political parties from corporate entities makes it well worth doing. If companies seeking state contracts cannot contribute to public officials and if public officials cannot solicit companies that want or have state contracts, then both the appearance of *quid pro quos* and actual *quid pro quos* will no longer exist. The same logic applies to prohibitions on contributions from labor unions, corporations, or associations seeking changes in Illinois law. Individuals could still make contributions, but contribution limits and individual, rather than collective, responsibility for illegal actions would reduce the temptations and opportunities for individuals and public officials to engage in corrupt activities.

The *McComish* decision, which struck down a provision in Arizona's citizen-enacted public financing system to provide candidates an incentive to participate and the resources to ensure their campaigns could be plausible, may well limit the effectiveness of comprehensive public financing systems for political campaigns, but public financing can still play a positive role in Illinois elections. Modest public financing grants would expand the number of candidates who run in the primaries and the number of candidates who remain viable in the general election. Resources given equally to all candidates are of greater value to challengers than to incumbents and of greater value to underfunded candidates. The critical need for full public financing is in judicial elections. If we are going to continue to elect judges in Illinois, we need to adopt a system of robust public financing that replaces private money with public money in judicial campaigns to the fullest extent possible. This will not stop independent expenditures, but it will mitigate the appearance of corruption that comes from judicial elections that are proxy wars between trial lawyers and insurance companies or contests where all the candidates are generously supported by the same high profile law firms. When it comes to maintaining the legitimacy of our judicial system, appearances do matter.

There is another option for limiting the impact of big money in politics. Leveling the playing field by adding public money and limiting private money in elections has become very a problematic goal under recent Supreme Court decisions. Leveling the playing field by adding more private money from small donors may be a more useful

approach to achieving the goals of campaign finance reform. Michael Malbin of the Campaign Finance Institute has done extensive research to develop the idea that encouraging small donations through tax credits and rebates and facilitating those donations by online and text message technology has the potential for matching the impact of big donors and big independent expenditures. New York City has instituted an innovative small donor matching system for municipal elections that has produced promising results. Consideration is currently being given to expanding the model to New York state elections. Small donor systems fight the distorting and corrupting effect of big money on elections and policy making by giving candidates alternative sources of funding, thereby diminishing the influence of big donors, if not eliminating those donors altogether. They also increase public participation. Individuals giving a modest amount of money to candidates is a good thing when it engages more people in politics and gives them a sense of involvement and commitment.<sup>xxxix</sup>

Disclosure is the one aspect of campaign finance reform where recent US Supreme Court decisions have strengthened its constitutional status. Disclosure will carry a dual burden in the struggle to mitigate the role of money in politics in the post-*Citizens United* era. A system of campaign finance disclosure which provides online, searchable access to comprehensive data on contributions and expenditures in as close to a real-time basis as possible improves the quality of citizen participation in elections and public policy making. Such disclosures enable citizens to know who is providing financial support for campaigns before they cast their ballots. They know who has contributed to an elected official prior to a legislative role call or a Governor's decision to sign or veto a bill. Comprehensive timely disclosure provides incentives for candidates and public officials to modify their behavior to avoid actions that would give ammunition to an opponent, raise concerns with their constituents, or embarrass their mother. With the implementation of the changes made by the 2009 campaign finance law Illinois has one of the best disclosure systems in the country for direct contributions and candidate expenditures.

The real challenge for disclosure is getting at the sources of funding for groups making independent expenditures. Federal or state law cannot limit independent expenditures, but the sources that fund them do not have to be anonymous. It is both constitutional and good public policy to require that the sources of funds be disclosed. The 2009 law provides a very comprehensive and aggressive set of disclosure requirements for groups and individuals making independent expenditures in Illinois elections. It also provides a very broad, rigorous definition of independent expenditures. It is far superior to what is in place at the federal level. While this system looks good on paper, it is largely untested. The law took effect January 1, 2011. So far only local government elections including those for the city council and mayor in Chicago have been conducted under the new law. In that election a group called For a Better Chicago

moved \$855,000 from their non-profit organization to their state PAC to support their endorsed candidates, but then refused to disclose their donors. The Illinois State Board of Elections upheld the move because it occurred three days prior the date the new disclosure requirements took effect.

The greatest fear is that, just like at the federal level, groups making huge independent expenditures in Illinois elections will claim to be not-for profit, tax-exempt educational or public policy groups whose donors are exempt from disclosure requirements. “Dark money” is the term that has been coined to describe the anonymous money that is funding independent expenditure ads in the 2012 presidential and congressional elections. It remains to be seen whether the requirements in place in Illinois will be effective in minimizing the role of dark money in state campaigns. How vigorous the State Board of Elections is in its interpretation and enforcement of the new law will be a critical factor.

Direct contributions can be limited by law and self-regulated through disclosure requirements. Independent expenditures cannot be limited by law. There can be no self-regulation if their sources of funding are anonymous. Secretly funded independent expenditures are completely unrestrained and unconnected to dynamics of democratic self-government. Here, we need to be clear. The only reason people want to contribute money anonymously to influence elections is because they are cowards or because they have something to hide. The principles of democratic self-government require civic courage and civic honesty.

Finally, we need to raise the public expectations about politics held by Illinois politicians and citizens if we are to reject the politics of personal and private interests and create a politics of the public interest and the common good. Changing Illinois’ political culture has to start at the top. Elected officials at all levels of government have to take political ethics seriously and lead by example. Leading by example means that elected officials need to make clear that being a contributor, associate, or supporter of theirs is not an advantage when it comes to getting jobs, contracts or political favors. An even better standard would be for it to be a disadvantage. Leading by example means that public employment is about bringing the best and the brightest into state government, not rewarding supporters regardless of qualifications. Leading by example means providing high quality services and meeting the state’s obligations rather than putting contributors’ interests before the public interest. Each person in a position of public responsibility must consider the message being sent to the citizens of the state by his or her actions.

It also means the public officials have to take collective ownership of the integrity of political institutions and the political process. Neither chamber of the Illinois state legislature has adopted a written code of ethics for its members and employees or

created a standing ethics committee to enforce it. The 1967 state ethics statute does contain a set of standards, but they are permissive and unenforceable. In 2010, when a state senator questioned the ethics of a colleague for sponsoring a bill that advanced the interests of one of his registered lobbyist father's client, there was no code of ethics or ethics committee to deal with the issue. When the two legislators took up the issue on the senate floor in a heated discussion that led to physical contact, there was no code of ethics or ethics committee to deal with that either. Nor was there any institutional mechanism to deal with another state senator trying to use her official position to interfere with a law enforcement response to a domestic dispute. The response in 2012 to a state representative being indicted for taking a bribe was to form an ad hoc committee because no standing ethics committee was in place in the House. There needs to be an institutional, collective commitment by the legislature to ethics. Instead, ethical issues that do not rise to the level of criminality or criminal acts that do not become a huge political embarrassment for the legislature are ignored until they are forgotten or the legal process provides a resolution or they go away. This stands in stark contrast to the US Congress, where the collective membership and the legislative leaders have made a commitment to ethics with written codes of conduct and standing ethics committees charged with enforcing them.

Changing Illinois' political culture has to include the public. Citizens have to expect more from their politicians and be willing to hold them accountable. One of the costs of public corruption has to be politicians paying a price at the polls for not changing business as usual in Illinois. But that will never happen if citizens are not engaged and participating in the process. The last two years have seen efforts in a number of states to place restriction on the most basic form of political participation – voting. This kind of voter suppression has not been a serious issue in Illinois, but what is needed is an affirmative agenda. Streamlined voter registration, same day registration, and expanded early voting will facilitate and encourage more people to vote. Simplifying candidate petition requirements and lowering signature thresholds to get on the ballot would facilitate and encourage more people to run for office. Reforming the redistricting processes to provide rationality and continuity to legislative districts would help citizens to identify with their districts and their legislators. Engaged citizens who take ownership of the process are more likely to hold public officials to a higher standard.

Indicting and convicting the bad guys is necessary. Changing laws to make corruption or the appearance of corruption more difficult is necessary. Regulating the role of money in politics through limits, prohibitions, and disclosure is also necessary. But these changes are not enough. Long-term change in the nature of Illinois politics has to come from changes in the hearts and minds of Illinois citizens and Illinois politicians.

## Appendix A

### Timeline -Significant Reform Breakthroughs

<b>Reform</b>	<b>Description</b>	<b>Statutory Cite</b>	<b>Passed when?</b>
Electronic Filing	Campaign disclosure reports are filed electronically and posted on-line	10 ILCS 5/9-28	1998
Occupation and employer disclosure	PACs must list the occupation and employer of donors of more than \$500	10 ILCS 5/9-11(4)	1998
Electioneering Communication	Groups that run ads that mention the name of a candidate in the weeks before an election must disclose the source of funds that paid for the communication	10 ILCS 5/9-1.14  10 ILCS 5/9-1.4 (1.5)	2003
Disclosure in Political Communication	PACs that pay for communications must include their name at the payor in mailings, telephone calls, websites, and other messages	10 ILCS 5/9-9.5	2003
Non-Profit Disclosure	Non-profits that give to PACs must disclose the source of the funds given to PACs	10 ILCS 5/9-7.5	2005
Definition of Vote	Clarification for	10 ILCS 5/24A-22	2005

	recount purposes		
Paper Trail	Requires DRE voting machines to provide paper trail for election audit purposes	10 ILCS 5/24C-1	2004 2005
College Registration	Registration materials must be distributed to college students	10 ILCS 5/1A-17	2005
On-Line Voters Guide	State Board of Elections will post to the Internet a voter's guide for statewide and appellate judicial candidates	10 ILCS 5/12A	2005
Liberalized Registration	Registration closes at 14 days rather than 30 days	10 ILCS 5/12A	2005
Liberalized absentee voting	No excuse absentee voting allowed	10 ILCS 5/12A	2005
On-line posting of Statements of Economic Interest	The Secretary of State must post pdfs of all statements of economic interest	5 ILCS 420-4A-106	2005
Lobbyist Statements on-line and searchable	The Secretary of State is required to post lobbyist registrations in an on-line, searchable database	25 ILCS 170/7	2003
Lobbyist Contingency Fees Banned	Lobbyists barred from working on contingency for executive and administrative action (already applied to	25 ILCS 170/8	2004

	legislative lobbying)		
Ethics Commission	Bipartisan commission to rule on ethics disputes	5 ILCS 430/20-5 (Exec) 5 ILCS 430/25-5 (Legis)	2003
Inspectors General	Professional investigators for ethics disputes	5 ILCS 430/20-10 (Exec) 5 ILCS 430/25-10 (Legis)	2003
Ethics Training	Mandatory for all state employees, annually	5 ILCS 430/5-10	2003
Gift Ban	Prohibits gifts from contractors and others to public officials; limits gifts and meals from lobbyists	5 ILCS 430/10	1998 (revised 2003)
Political Activity on State Time	Bans public employees from doing political work on taxpayer time; also applies to local governments	5 ILCS 430/5-15	2003
Ban on Personal Use of Campaign Funds	Bans candidates from giving campaign funds to themselves or their relatives except for services rendered	10 ILCS 5/9-8.10	1998 (revised 2003)
State Property Ban	Bans PACs from soliciting or receiving contributions on state property	5 ILCS 430/5-35 10 ILCS 5/9-8.10	1998 (revised 2003)
Session Day	Barred in Sangamon	5 ILCS 430/5-40	1998

Fundraisers	County on days when the Legislature is in Session, from February 1 through adjournment	10 ILCS 5/9-27.5	(revised 2003)
Offer or Promise	Candidates barred from offering or promising any state action in connection with the solicitation of a campaign contribution	5 ILCS 430/5-30	2003
Ban on Pay to Play	Prohibits state officers, employees and spouses from profiting from state contract and bond deals. Requires bidders to disclose their political contributions. Bans contractors with state business valued over \$50,000 from giving to the officials who oversee their contracts, or to candidates for that office.	10 ILCS 5/9-35	2008
Campaign Contribution Limits	Restricts individual contributions to no more than \$5,000 to any candidate in an election cycle; businesses, labor unions and associations to \$10,000 in	10 ILCS 5/9-8.5	2009

	contributions to candidates; and political action committees to no more than \$50,000 per candidate.		
FOIA Reform	Streamlining of procedures and establishment of public access coordinators, elimination of some exemptions	5ILCS 140/S	2010
Quarterly campaign Disclosure		10 ILCS 5/9-10 (11)	2009
Campaign Fund Audits	Audits of the finances of political committees selected at random by the State Board of Elections to check compliance with state laws.	10 ILCS 5/9-13	2009
Real Time Reporting	Mandates prompt disclosure of all contributions of \$1,000 or more year round	10 ILCS 5/9 -10 (11)	2009
SBE Precedents	Created searchable database of campaign violations and penalties.	10 ILCS 5/9 23.5	2009
Transfer limits on Political Parties	Political parties are limited to \$25,000 transfers in the	10 ILCS 5/9-8.5	2009

	primary; there is no limit in the general election		
Independent Expenditures	Robust definition and required reporting	10 ILCS 5/9-1.15 (8.6)	2009
Revolving Door Prohibitions	<p>State officers , employees, their spouses and immediate family members are prohibited from accepting compensation for one year from any person or company directly affected by certain decisions made when they:</p> <p>participated "personally and substantially in the decision to award State contracts with a cumulative value of over \$25,000"; or</p> <p>made regulatory or licensing decisions.</p>	5 ILCS 430/5-45	2012
Increased Lobbying Reporting	Semi-monthly and more detailed reports required	25 ILCS 170/11	2011
Elimination of legislative scholarships		PA 97-0772	2012

Voting Rights Act	Sets forth redistricting criteria	10 ILCS 120	2011
Redistricting Transparency and Participation	Sets forth future modest transparency and public participation criteria	10 ILCS 125	2011
Lobbying Enforcement	SOS IG mandated to enforce lobbyist act	25 ILCS 170/11	2011

## **Appendix B – 2003 Ethics Act**

### **The 2003 Governmental Ethics Legislation:**

- Creates strong, binding Ethics Commissions for the Executive and Legislative Branches, which set standards for ethics training and hear complaints on ethics violations;
- Establishes five Executive and one Legislative Branch Inspectors General with subpoena powers to investigate complaints;
- Mandates Ethics training for all state employees;
- Prohibits political activity on state time including working on campaigns, soliciting or making political contributions and preparing or distributing campaign materials;
- Bans most lobbyist gifts including golf and tennis outings;
- Shuts revolving door for one year after leaving state employment for those materially involved in negotiating contracts in excess of \$25,000;
- Bans statewide and legislative officers from appearing in state funded public service announcements;
- Expands whistleblower protections;
- Restricts state contractors and lobbyists from serving on most boards and commissions;
- Creates on-line electronic databases of lobbyist registration and gift reports;
- Requires disclosure of ex parte communication in rule making;
- Requires on-line posting of statements of economic interest;
- Requires financial disclosure by sponsors of issue ads featuring candidates in the period immediately before an election;
- Imposes stiff fines for political committees that fail to report funds received right before an election;
- Bans the use of state-printed mailings to supplement election campaigns; and
- Limits late-term gubernatorial appointments.

## Appendix C

### 2008 Pay-to-Play Law (PA-95-0971)

Issue Area		
Bidders	Bids Affected	Bids from companies whose aggregate bids or contracts with state agencies exceed \$50,000
	Disclosure of Contributions from Bidders	Companies whose aggregate bids or contracts with state agencies exceed \$50,000 must register with the State Board of Elections. This registration must include the names of corporations with contracts, affiliated entities (parent, subsidiary, or sibling corporations; related PACs and non-profits), and affiliated persons (executive employees, owners of 7.5% of the company or more, or their spouses or minor children). This registration must be kept up to date. All disclosure reports from all political committees filed with the State Board of Elections will flag donations that come from contractors.
	Restriction on Giving During Pendency of Bid	BANNED from the bidder, affiliated entities and affiliated persons to the officer who oversees the contract or candidates for that office.
Contractors	Disclose of Contributions from Contractors	Companies whose aggregate contracts with state agencies exceed \$50,000 must register with the State Board of Elections. This registration must include the names of corporations with contracts, affiliated entities, and affiliated persons. This registration must be kept up to date. All disclosure reports from all political committees filed with the State Board of Elections will flag donations that come from contractors.
	Restrictions on Contributions from	BANNED from the bidder, affiliated entities, and affiliated persons (executive employees, owners of 7.5% of the company or more, or their spouses or minor children) to the officer who oversees the

	Contractors	contract for longer of term of office or length of contract plus two years
Penalties	Bidders and Contractors	Contracts are voidable if the bidder or contractor fails to keep their registration with the State Board of Elections current, or if they make a contribution. Three violations in a three-year period automatically voids their contracts, and they may not bid for three years.
	Candidates and Political Committees	Payments received by candidates and committees in violation of this law result in a fine equal in amount to the unlawful contribution.

## Appendix D

Comparison of competing limits provisions in 2009 effort to establish contribution limits

### Federal law:

- Individuals can contribute \$2,400 to a candidate committee during an election period. Individuals can contribute \$5,000 to political committees and \$28,500 to a national party committee during a calendar year.
- Businesses, unions and associations are prohibited from contributing directly to candidates from their treasuries. (They may form political committees.)
- Multi-candidate political candidate committees can contribute \$5,000 to a candidate or other political committee during an election period, and \$15,000 to a national party committee during a calendar year.
- National party committees can contribute \$5,000 to a candidate committee during an election period. State, district and local party committees can contribute an aggregate \$5,000 to a candidate during an election period.

### HB 24, ICPR's limits legislation:

- Individuals could contribute \$2,400 to a candidate, political party or legislative caucus committee, during an election period. Individuals could contribute \$2,400 to other political committees, and \$80,000 in total/aggregate contribution, during a two-year period.
- Businesses, unions and associations could contribute \$5,000 to a candidate and \$5,000 to a party, legislative caucus or other committee during an election period. Businesses, unions and associations would be bound by an \$80,000 aggregate contribution cap during a two-year period.
- All other committees could contribute \$5,000 to a local, legislative, judicial or statewide office candidate, during an election period.
- State political parties could contribute \$30,000 to a legislative candidate during the general election period; parties would be prohibited from contributing to candidates during the primary period. One political party committee, as designated by the candidate, could contribute \$10,000 (if a local or judicial candidate), or \$125,000 (if a statewide office candidate), during the general election period.

### HB 7, vetoed legislative proposal:

- Individuals can contribute \$5,000 to a candidate committee, \$10,000 to a multi-candidate committee, \$10,000 to a non-candidate committee, and \$5,000 to an elected official's constituent services committee during a calendar year.
- Businesses, unions and associations can contribute \$10,000 to a candidate, \$20,000 to a multi-candidate committee (including caucus and party committees), \$20,000 to a non-candidate committee, and \$5,000 to a constituent services committee during a calendar year.

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