Piece by Piece, Check by Check:
How Loss of the Aggregation Rule Deprived Voters of Timely Disclosure of Nearly $500,000 in Campaign Donations, and What the General Assembly Can Do to Fix It.

A loophole in the state's campaign finance regulations allowed the identities of more than 500 contributors of a total of nearly $500,000 to escape disclosure to the public until after the recent municipal elections.

In previous municipal elections, committees were required to disclose within the 30-day period prior to an election the identities of donors who had given $500 or more in contributions. The $500 amount included the aggregation of smaller amounts from the same contributor. Once the $500 level was reached, the recipient had two business days to disclose the contribution to the Illinois State Board of Elections (SBE). This disclosure applied only to donations received in the 30 days before an election.

Although the state's 2009 revisions to campaign finance laws require more frequent regular reporting of receipts and expenditures (every three months instead of every six months), the revisions included expanding the window in which candidates must disclose large donors from 30 days before an election to a year-round requirement. In exchange for more frequent disclosure, the statute raised from $500 to $1,000 the amount that would trigger immediate reporting of large contributors.

After a last minute intercession by a legislative panel, the new law has been interpreted by the SBE as requiring immediate disclosure only of single contributions of $1,000 or more. Aggregating smaller donations no longer triggers disclosure.

Over 190 candidate and party committees were able to avoid disclosure as a result of the loophole. Because of the absence of required aggregation, the support of 505 different contributors was hidden from voters until after the election.

In the most egregious examples, donors gave multiple checks on the same day that were individually below the $1,000 threshold but would have been disclosed if the money came in a single check. At least one candidate has acknowledged advising his contributors on ways to avoid immediate disclosure.

As a result, voters were denied the opportunity to evaluate the true size of the donations until weeks or months had passed. The loophole has made it easy for candidates and contributors to avoid real-time disclosure of large campaign donations.

Most of the donations that were not disclosed before the election were from donors who gave multiple $500 checks on different days. These donors gave a combined total of $2.4 million to candidates, and of that, $497,411 was not revealed until after the election. Most candidates did publicly acknowledge some support from the donors before the election, though the full extent of support, and the timing of some donations, was not revealed until the each candidate's quarterly report was filed between April 1 and April 15.

Findings

Here are some of the findings of the research conducted by the Illinois Campaign for Political Reform:

- Twenty-one candidate and party committees reported getting two or more donations on the same day from the same donor that were each under the disclosure threshold but would have been subject to disclosure if the money came in a single check. These include Gov. Pat Quinn, Lt. Gov. Sheila Simon, the Senate Democratic Victory Fund, House Republican Leader Tom Cross, and the campaign fund of Chicago Mayor-elect Rahm Emanuel.

- Chicago for Rahm, the campaign fund of Rahm Emanuel, shielded the most donations with the loophole. He avoided disclosure of $26,000 until after the February 22 election, including $15,375 received from eight donors each of whom gave multiple checks on the same day. Leonard Berlin, a doctor at Rush Hospital, wrote two $500 checks on January 31. Jason Vincent, COO of "New Hope," also wrote two $500 checks that day, and nearly three weeks later, Vincent wrote another $500 check. Lynn Cutler, a policy advisor at the law firm Holland & Knight, wrote two checks, one for $500 check and one for $750, on February 7. Metropolitan Water Reclamation District Commissioner Debra Shore wrote two $500 checks, also on February 7. Duane DesParte, an executive at Exelon Corp., wrote two $500 checks on February 17, as did Ken Norgan of Norco Ltd. The following day, Rahm received two $500 checks form Park One, Inc, which operates parking lots in the Loop. On Valentine's Day came donations from real estate developer Robert A. Kohl in the form two checks, one for $610 and one for $765. Four days later, on February 18, Kohl gave another $500. None of this money was disclosed until 5:04 pm on Friday, April 15, long after Emanuel was elected Mayor on February 22.

- Speaker of the House and 13th Ward Committeeman Michael J. Madigan gave substantial help to Ald. Michael R. Zalewski, who represents the neighboring 23rd Ward on the Chicago City Council. After the election, Friends of Mike Zalewski reported receiving five donations from Madigan's political committee on February 9 totaling $2,745.93. Because all of the individual donations were below $1,000, Zalewski did not have to report receiving any support from Madigan prior to the election. Madigan's financial support for Zalewski was not made public until the day of the February 22 election. On February 22, Madigan gave Zalewski $5,000 in a single check, which was disclosed to the public on that same day. Zalewski's son, named Michael J. Zalewski, serves along with Madigan in the Illinois House of Representatives.

- Chicago Ald. Leslie Hairston's campaign fund reported four checks from Safeway Construction Co., a builder with several city contracts, totaling $1,750. These include two checks on January 21 -- one for $500 and one for $250, and separate $500 checks on February 23 and March 4. None of these donations were disclosed until after the April 5 run-off election.

- James Cappleman, running to succeed 46th Ward Ald. Helen Schiller, received $1,400 in donations from Ellen Feinberg over the course of the campaign. Feinberg lives in the ward and works for the CME Group (Chicago Merchantile Exchange). Feinberg's money came in a check for $250 on January 26, another for $150 on February 17, followed by two $500 checks, on March 4 and March 20. None of this money was disclosed until after the April 5 run-off, which Cappleman won.

- Gov. Pat Quinn reported six donations from three different donors, all of them lawyers or law firms, on January 31. Each donor wrote two checks, each for $500. Because the money came in two checks rather than one, Quinn did not need to report the receipts for another two and a half months.

- Chicago Ald. Toni Foulkes reported receiving over $35,000 in donations from SEIU affiliates, suggesting her degree of union support. Still, the total reported amount of her support increased by more than a third when she filed her Quarterly Report on April 14, after the April 5 run-off. Foulkes' Quarterly Report showed another $12,348 in receipts, including 150 checks, each for $75, plus one more for $150, all received on February 28.

Several candidates may have structured their contributions to their own campaign so as to avoid disclosure.

- Springfield City Council candidate Joe McMenamin, made five transfers of $900 each from his federal PAC to his state PAC on January 5, 11, 14, and 18, and again on February 1. (McMenamin lost a race Congress in 2010 and was able to transfer funds from his federal PAC to his aldermanic campaign. Later, from his own pocket he gave his campaign $900 on March 19, another $900 on March 20, $700 on March 21, and $960 on March 22. All told, he delivered $7,960 to his campaign without disclosing the funds to the public until after the election. *The State Journal-Register* has reported that McMenamin deliberately structured giving to his campaign so as to avoid disclosure, and that he counseled some donors to his campaign to do the same. And, indeed, he also received $200 from Margot Kramer on January 2, followed by another check for $300 on January 12 and a $500 check on February 21. He also reported two $500 checks from Kay Mackenzie, one on January 20 and another two weeks later. Melvin Wing gave $500 checks on January 8, 14, and 28, and again on February 1 and 9. McMenamin's total receipts for the first quarter were $21,395. Nearly three-fourths of that came from donors who gave over the disclosure threshold; none of it was disclosed until after Election Day.[1]

- Chicago aldermanic candidate Tommy Abina gave his political committee $700 in personal funds each day of February, from the 1st through the 7th, and again on the 9th. (The 8th was a Tuesday). His $5,600 was not disclosed to the public until well after the election.

Some donors may have divided donations so as to minimize or avoid disclosure.

- The Construction and General Laborer's District Council of Chicago gave two $500 checks to the Kane County Democratic Central Committee on February 23, and two $500 checks to the campaign fund of Republican Cook County Commissioner Peter Silvestri on March 5. None of the contributions were disclosed until the Quarterly Reports came out.

- Devane Mulvey, a consulting firm that works on campaigns and elections, made donations to three candidates that appear to have been structured so as to hide all or part of the transaction. On February 16, it gave Citizens for Keith Farnham $7,489, which was disclosed to the public, and an

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[1] Bernard Schoenberg, "McMenamin exploits finance loophole" April 27, 2011 http://www.mysuburbanlife.com/countryside/statenews/x328919753/Bernard-Schoenburg-McMenamin-exploits-finance-loophole

additional $154.69, which was not. Two days later, on February 18, they gave State Rep. Emily Klunk McAsey's campaign $3,623, which was disclosed, and also another $153, which was not. On February 28, they gave State Rep. Dan Burke $900, and the following day, they gave another $191.40. Neither of the donations to Burke was disclosed for another six weeks.

- The United Food and Commercial Workers Union Local 881 (UFCW) gave $31,593 among four Chicago aldermanic candidates, only $20,090 of which was disclosed before the April run-off election. The union gave $2.500 to 49th Ward Ald. Joe Moore on January 21, which was disclosed, but on March 5, they gave another $1,751, which was not disclosed as it came in seven different checks. They gave $1,494 to Ald. Toni Foulkes on February 14, which was disclosed, and then another $3,600 on the day of the February election, which was not disclosed as it came in 12 different donations. The day after the February election, UFCW gave Foulkes' another $3,920, which was reported. On March 11, their $980 check went undisclosed until after Foulkes had won the April run-off, but the $1,176 they gave three days later, and also the $10,000 they gave on March 16, were both reported before the run-off. Their two $500 checks to appointed Ald. Tom Cullerton, one on January 15 and one on March 23, were not reported until after the April run-off, which Cullerton won, although their endorsement of Cullerton was public. Their $1,000 donation to the Committee to Elect Marina Faz-Huppert on January 14 was disclosed, but their seven donations totaling $1,870 on March 4 were not, nor was the $344 check on March 5, all of which came in after Faz Huppert lost the February 22 election.

<u>How the loophole was created</u>

The change that allowed some large donations to remain hidden was inserted by a legislative panel to regulations proposed by the State Board of Elections to implement the new campaign finance law. The 2009 overhaul instituted contribution limits in Illinois for the first time, and also greatly expanded disclosure of campaign finances. Prior to the new law, political committees filed disclosure reports twice each year, and had to file supplemental reports in the 30 days before an election. Now, the new campaign finance law requires political committees to file disclosure reports every three months, and also to file supplemental reports year round when they receive large donations. The loophole inserted into the regulations affects the supplemental reports that are now required to be filed year-round.

The loophole was placed into state regulations at the last minute by the Joint Committee on Administrative Rules (JCAR), which reviews all regulations before they become effective. The State Board of Elections proposed rules that would have required political committees to aggregate donations for the purpose of supplemental disclosure. JCAR objected, instead reading the statute to require disclosure only of individual checks that were over the threshold. Faced with the prospect of having no regulations in place during the 2011 municipal elections if it insisted on their initial proposed regulations, the State Board of Elections agreed to the change.

Conclusion

We recognize that JCAR made a purposeful choice to eliminate the aggregation rule. This has been an obvious and detrimental effort by the legislature to on the one hand trumpet improvements to disclosure while at the same time reducing the amount of information provided to the public in a timely manner.

The change to the aggregation rule allowed candidates to hide nearly half a million in donations in just the first three months of the year. While the money was eventually disclosed in the Quarterly Reports filed in April, the delay in reporting denied the public of the chance to see money from large contributors in virtual real-time. Most importantly, voters were denied the opportunity to evaluate these large donors before casting their ballots. Given that the rule change was made in January and so quickly produced so many hidden donations, we can only expect this problem to accelerate going in to the 2012 legislative races.

ICPR urges the legislature to restore the aggregation rule to campaign finance disclosure. A simple change to statute is all that is needed to clarify that disclosure of donations from sources that give multiple donations that total over the threshold should be disclosed to the public, and that neither donors nor political committees can evade disclosure by structuring their giving in increments below $1,000. Failure to restore the aggregation rule prior to the 2012 primary election undermines the very essence of timely disclosure.