

Testimony on SB 75

by Dan Meek

to the Senate Committee on Rules

April 21, 2015

SB 75 appears to limit political contributions in Oregon state and local candidate races. In practice, it would not. But it would repeal the more stringent limits and disclosure provisions already enacted by Oregon voters as Measure 47 (2006), shown in the attached chart and summary.

There is only one provision in SB 75 that takes effect, even if SJR 5 is not enacted by Oregon voters in November 2016: No matter what, Section 11 of SB 75 repeals all of Measure 47 (2006), including its limits on political contributions and its extensive disclosure and tagline requirements applicable to independent expenditures.

Unlike Measure 47 (2006), SB 75 does not establish an effective set of limits on contributions. The Measure 47 limits are shown in the attached chart. A central feature of Measure 47 is that all contributions must originate with individuals, defined as U.S. citizens or persons eligible to vote in federal elections. No contributions can originate with entities of any sort.

Under SB 75, however, contains no such prohibition on contributions by entities. Instead, it provides:

1. **All contributions from any source to major and minor political parties are unlimited, including all contributions to political committees created by any political party or county central committee.**
2. **Entities that are not individuals are allowed to make political contributions and in effectively unlimited amounts.**
 - A. Any "person" can contribute \$2600 per year to any candidate and any political committee.

- B. "Person" is defined to include all entities, including corporations, unions, and clubs.¹
- C. It takes 5 minutes and \$100 to create a corporation in Oregon. It takes an instant and zero dollars to create a "club" or "organization." Any "club" or "organization" can then make \$2600 contributions to all candidates and all political committees.
- D. SB 75 addresses this weakly, stating that all contributions of two or more business entities shall be aggregated if "at least 75% of each business entity is owned or controlled by the same individuals or business entities."
 - (1) This restriction does not apply to non-business entities, such as clubs.
 - (2) Even for business entities, the restriction is easily evaded by creating corporations with 3 directors each.

Lest you think that political operatives would not take advantage of this loophole, attached is an April 16, 2015, article from the *NEW YORK TIMES*, *New York State Elections Board Retains a Corporate Donation Loophole*:

The [State Board of Elections] board's four commissioners deadlocked 2-to-2 on the issue of whether to rescind its own 1996 opinion that found that limited-liability companies should be treated like individuals, allowing them to donate up to \$60,800 to a statewide candidate per election cycle. Corporations, meanwhile, have much lower limits.

The so-called L.L.C. loophole has been a source of consternation for reformers who say that it effectively allows donors to make huge contributions to candidates and political parties by funneling them through multiple limited-liability companies.

1. ORS 260.005(16):

"Person" means an individual, corporation, limited liability company, labor organization, association, firm, partnership, joint stock company, club, organization or other combination of individuals having collective capacity.

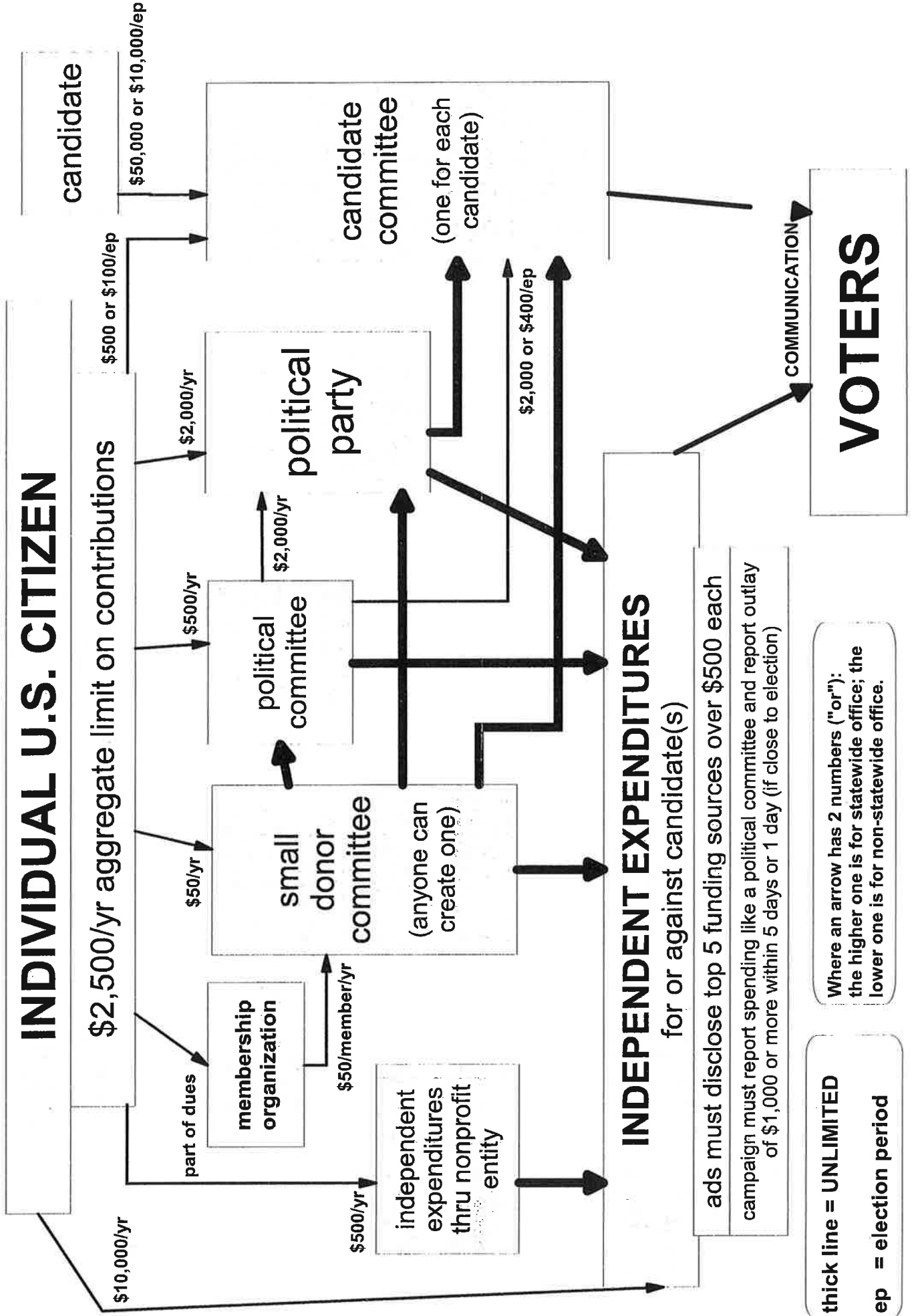
3. SB 75 provides effectively no limits on proliferation of political committees to receive additional contributions.

Another key feature of Measure 47 is its limit on aggregate annual contributions by individuals. SB 75 has no such limit and is thus vulnerable to mass circumvention by the easy proliferation of political committees.

Under SB 75:

- A. Any two individuals or any "person" (including any club or any organization) can create a political committee by filing a form, with no fee. See ORS 260.005(18).
- B. Such political committee can accept contributions in amounts of \$2600 per individual and \$2600 per "person" (which includes any club, organization, etc.) anywhere in the world.
- C. Any individual or "person" can contribute \$2600 per year to each of an unlimited number of political committees.
- D. SB 75 addresses the proliferation of political committees weakly, stating that "all political committees established by the same person are treated as a single political committee" and "all political committees established by the same business entity or its subsidiaries are treated a single political committee."
 - (1) These restrictions do not address the proliferation of political committees created by clubs or other organizations or by more than one individual.
 - (2) Say there is a group of 10 persons. Even if none of them created a club or organization, the number of political committees they could create, without duplicating the same slate of creators, would be 1,012 committees. If they also created clubs, each club could also form a political committee.

Measure 47



Oregon Political Campaign Finance Reform: Summary of Measure 47 (2006)

Limits on Campaign Contributions

Measure 47 bans all corporations, labor union treasuries, and other entities from making contributions in candidate campaigns.

It requires that all campaign contributions come from individual U.S. citizens and limits each to a grand overall total of \$2,500 per year to any combination of the following:

1. Up to \$500 in any statewide race (governor, attorney general, secretary of state, treasurer, labor commissioner, superintendent of education, appeals court judge)
2. Up to \$100 in any non-statewide race (state legislature, county commission, city council, etc.)
3. Up to \$50 each to any number of "Small Donor Committees," each receiving \$50 or less from the person, per year;
4. Up to \$500 each to any number of "Political Committees," each receiving \$500 or less from the person, per year; and
5. Up to \$2,000 to any political party, per year.

The primary and general elections are separate; thus, an individual could contribute the amounts listed in items 1 and 2 above in both the primary election and again in the general election.

Measure 47 allows anyone or any group to create a small donor committee (SDC), which can (1) receive contributions of \$50 or less per person per year and (2) use these funds, in any amount, to support or oppose any candidate or candidates--a very democratic way for individuals to join together their small contributions to express their joint preferences. A membership organization of individuals, such as a public interest group or labor union, can form an SDC and allocate up to \$50 per year of each member's dues to the SDC. Each union local is considered a separate membership organization and can have its own SDC.

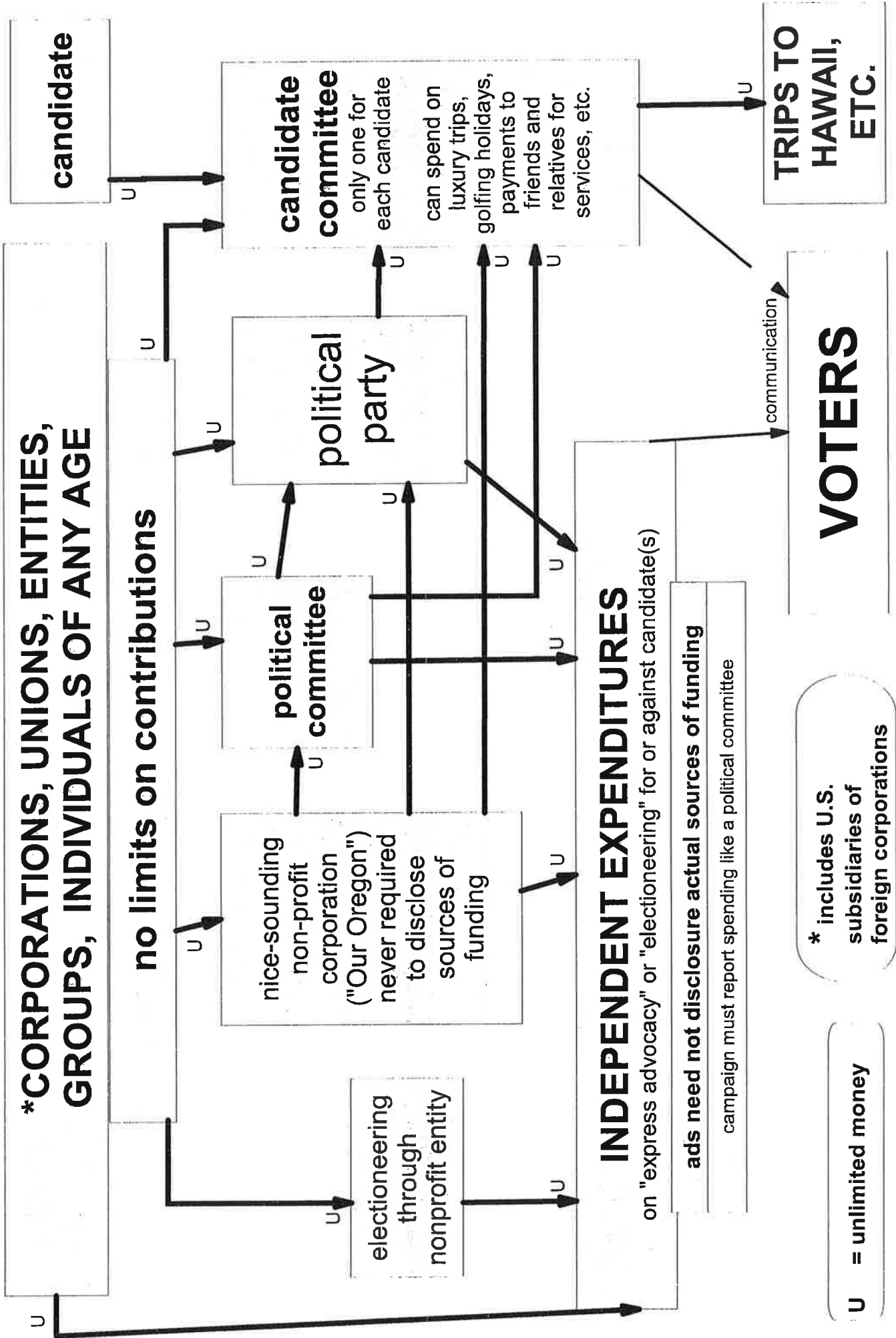
Measure 47 allows a candidate to spend from personal funds not more than \$50,000 in a statewide partisan race or \$10,000 in any other race, with those limits increased by 50% for candidates who are non-incumbents.

Limits on "Independent Expenditures"

To prevent the circumvention of these limits by "independent expenditures" (think of 527 groups on the federal level), Measure 47 bans all such expenditures by corporations, unions, and other entities and limits individuals to "independent expenditures" of not more than \$10,000 per year on all candidate races. Further, Measure 47 requires (in case independent expenditures in excess of the limits occur, for any reason):

1. Every campaign ad funded by "independent expenditures" must prominently disclose everyone who contributed \$1,000 or more to the "independent" campaign, their lines of business, and the amounts contributed; and
2. Anyone making independent expenditures during any 2-year election cycle in excess of \$200 must publicly report the expenditures in the same manner and schedule as a political committee must report.

Current Oregon Political Money System



N.Y. / REGION

New York State Elections Board Retains a Corporate Donation Loophole

By JESSE McKINLEY APRIL 16, 2015

ALBANY — The State Board of Elections declined on Thursday to change a longstanding ruling that critics say has allowed millions of dollars to flow, virtually unchecked, into campaign coffers across New York.

The board's four commissioners deadlocked 2-to-2 on the issue of whether to rescind its own 1996 opinion that found that limited-liability companies should be treated like individuals, allowing them to donate up to \$60,800 to a statewide candidate per election cycle. Corporations, meanwhile, have much lower limits.

The so-called L.L.C. loophole has been a source of consternation for reformers who say that it effectively allows donors to make huge contributions to candidates and political parties by funneling them through multiple limited-liability companies.

But on Thursday, the board's new co-chairman, Peter S. Kosinski, said that it was not its role to revisit its own two-decade-old decision; he said it was the Legislature's responsibility to act.

"This is not a matter for an administrative agency — the State Board of Elections — to decide," said Mr. Kosinski, a Republican and a former co-executive director of the board, adding, "Our role is to administer the law, not make the law."

Two of the board's seats are controlled by Democrats, and two by Republicans, a party split that has been criticized in the past for paralyzing the decision-making process. The vote Thursday split along party lines, with Democrats supporting the motion to change the opinion and two Republicans opposing.

The meeting was a closely watched debut for Mr. Kosinski, who was named to the board this week by Senator Dean G. Skelos of Long Island, the leader of Albany's Republican-controlled upper chamber, and his Republican counterpart in the State Assembly, Brian M. Kolb.

On Wednesday, The New York Times reported that Mr. Skelos, 67, and his son Adam, 32, were the subject of a federal investigation, focusing on Adam Skelos's business dealings.

For his part, Mr. Kosinski thanked Mr. Skelos on Thursday for his appointment before taking up the issue of the loophole, whose elimination has been called for this week by the state attorney general, Eric T. Schneiderman, and several prominent government watchdog groups.

The changes had been proposed by co-chairman Douglas A. Kellner, a Democrat, who suggested that the board had several options for reining in contributions by limited-liability companies, but that the 1996 ruling was outdated at a time of increasing concern about money in politics.

"Action is long overdue on this subject," he said.

A fellow Democrat on the board, Andrew J. Spano, the former executive in Westchester County, was more vocal in his support of the change in the loophole, admitting he himself had taken advantage of it during his time as a candidate. "Why?" he said. "Because it was there. And you needed money."

Mr. Spano added that money had left a tiny number of rich contributors with an outsize influence on elections.

Mr. Spano was named to the board last year by Gov. Andrew M. Cuomo, who has supported closing the L.L.C. loophole.

"We commend Commissioners Kellner and Spano for advancing this reform and are incredibly disappointed their fellow commissioners did not follow suit," said Dani Lever, a spokeswoman for Mr. Cuomo. "The governor has

repeatedly introduced legislation to close the L.L.C. loophole and he will continue to fight to make it a reality.” Mr. Cuomo has himself been the recipient of largess from L.L.C.s.

But the governor did not include it in a raft of ethics proposals he made this year, saying it would have a hard time passing the Legislature, where Democrats control the Assembly and Republicans control the Senate.

“There’s an argument, obviously,” he said in late February. “And that’s why it hasn’t happened for many many years.”

Mr. Cuomo and the Legislature did manage to agree on some ethics changes in the budget passed in late March, though some watchdog groups said they fell well short of what was needed to clean up Albany. Likewise, on Thursday, several activists expressed disappointment that the board had failed to seize yet another chance to make a change in how campaigns are financed.

But they said they were confident that public outrage at continued corruption would eventually force action. Rachael Fauss, the director for public policy at Citizens Union, said thousands of New Yorkers had written the Board of Elections to voice concerns about the “wonky issue” of the L.L.C. loophole. “That tells you something, I think,” she said. “The pressure is rising.”

A version of this article appears in print on April 17, 2015, on page A29 of the New York edition with the headline: State Elections Board Retains a Corporate Donation Loophole.