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## Campaign Funding and Public Integrity Reforms Needed Now

Now that the New Year has dawned and the Independent Counsel Report on the campaign funding violation investigation has been made available to members of the General Assembly and the public, it is time for action.

As the members of the General Assembly and the Delaware citizens who have read the report know, the investigation was searching, and the recommendations for comprehensive reform were “meticulously assembled,” in the words of the *News Journal* editorial of December 31, 2013. The investigation resulted in guilty pleas and civil monetary penalties. The probe into the campaign funding and unreported gifts also revealed not only where other violations occurred, but also where our legislation is in desperate need of reform.

As to those other violations, the detailed fact findings in the report demonstrate where, how, when, and by whom the violations occurred. The findings also showed in plain language why those other violations were not prosecutable. The reasons include the statutes of limitations which had run before the violations became known to investigators, lack of proof of the necessary elements of knowledge and intent, and prosecutorial discretion. The report carefully details in what instances these reasons needed to be honored. One needs only to study the 101 pages and 204 footnotes of the report to understand and appreciate these facts. Last Tuesday’s *News Journal* editorial makes it clear that:

[T]he investigators had to deal with what they could prove. They were bound by what the laws actually state and were confined by formalities such as statutes of limitations. In the long run, that will be the report’s strength. . . . This is not a witch hunt. It is a meticulously assembled report that gives Delawareans a good look at how and where the state’s campaign finance laws work and do not work.

Public prosecutors are bound not only by the law and the need to prove every element of every crime beyond a reasonable doubt, but also prosecutors are Delaware lawyers, ethically bound by the Supreme Court’s Rules of Professional Conduct. Although some critics would have us make criminal charges that are not supported by evidence sufficient to prosecute, to bring such a charge would not only be irresponsible and impose huge and unnecessary expenditures of taxpayer funds, but also it could result in disbarment of prosecutors for professional misconduct.

The report also details relevant financial issues. The State received cash settlements from civil penalties of over \$500,000 and pro bono donations of legal services from the Weil Gotshal firm of over \$150,000, plus a discount of over 40% from billings to the State, resulting in a net cash cost to the State of about \$400,000 from the Weil billings for over 2000 hours of lawyer time. To be sure, the use of state employees has a cost, but out-of-pocket investigator expenses were avoided by using our outstanding State Police investigators, who logged over 5600 hours.

Included among the recommendations for reforms are the need to change the laws in areas such as changing the culture of “gaming the system” with entity contributions; designating state entities as safe harbors for disgorgement of improper donations; strengthening the Public Integrity Commission to deal effectively with requirements that public officers report valuable gifts; and numerous other statutory reforms in the campaign finance and public integrity areas.

The timing of the release of the report is significant not only because of the importance of describing the needed reforms in light of the imminent convening of the General Assembly, but also because new facts seemed continually to emerge—some into the late fall of 2013—as the investigation dug deeper and deeper.

We trust that the report will be helpful to all the members of the General Assembly in the coming weeks and months as they consider the need for reform in the election laws and the public integrity laws.

Moreover, we fervently hope that—beyond the needed legal reforms—there will be a cultural reform in Delaware to eliminate any remnants of the cynical “pay to play” practices that have motivated some aspects of the problems that led to, and are revealed in, this investigation.

A handwritten signature in cursive script, reading "E. Thomas Veasey". The signature is written in dark ink and is positioned to the right of the main text block.

January 2, 2014