

NEW YORK

CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE

These resources are current as of 4/15/2014. We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

This guide summarizes key aspects of laws and regulations governing lobbying on the state level. It is not intended to provide legal advice or to serve as a substitute for legal advice. In some jurisdictions (e.g., New York City), city and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

New York State

Article 14 of the New York State Election Law governs contributions to and expenditures by all New York campaigns. This includes campaigns for Governor, Lt. Governor, Comptroller, Attorney General, State Senate, Assembly, Supreme Court Justice, District Attorney, County Executive, and all other municipal and village offices.¹ Contribution limits in a particular race are based upon a formula keyed to the number of voters or party enrollees in the relevant political jurisdiction,² or a statutory sum,³

¹ Until recently, state law appeared to preempt localities from enacting different contribution or expenditure limits. *See, e.g.*, New York State Attorney General Informal Opinion No. 98-3 (1998) (local government cannot enact local legislation that requires written disclosure of political contributions because of preemption by State Election Law); New York State Attorney General Informal Opinion No. 95-46 (1995) (local government cannot set campaign contribution caps for those entering into contracts with town). At the same time, New York City enacted its own Campaign Finance Act, which permits candidates for municipal offices in the City of New York to “opt in” to a voluntary program to receive public financing if they agree to abide by certain contribution and spending limits. *See* Jeffrey D. Friedlander, *et.al.*, *The New York City Campaign Finance Act*, 16 Hofstra L.R. 345 (1988). *See also* Letter from Robert Abrams, New York State Attorney General, to New York City Mayor Edward Koch (October 21, 1987) reprinted in Paul Ryan, *A Statute of Liberty: How New York City’s Campaign Finance Law is Changing the Face of Local Elections* (2003). In a case of first impression, the New York Supreme Court, upheld the City’s authority to enact its own campaign finance law. *See* 40 Misc. 3d 826 (Sup. Ct. N.Y. Co. 2013).

² Where the law uses a formula to determine the limit, the candidate or contributor must contact the board of elections in the appropriate jurisdiction to ascertain how many voters or party enrollees reside in the jurisdiction.

whichever is higher. There are no limits on campaign spending.

CONTRIBUTION LIMITS AND SOURCE RESTRICTIONS

Office	Election	Individuals, Corporations ⁴ and PACs
Statewide	Primary	Total number of enrolled voters in the candidate's party in the State x \$0.005, but at least \$6,500 and up to \$19,700
	General ⁵	Up to \$41,100
New York State Senate	Primary	\$6,500
	General	\$10,300
New York State Assembly	Primary	\$4,100
	General	\$4,100
New York City Offices of Mayor, Public Advocate, and Comptroller ⁶	Primary	Total number of enrolled voters in candidate's party in the city x \$0.05, but at least \$6,500 and up to \$19,700
	General	Any amount up to \$41,400
Other Public Offices	Primary	\$0.05 x enrolled voters in candidate's party & district but at least \$1,000, with a maximum of \$50,000
	General	\$0.05 x registered voters in candidate's district but at least \$1,000, with a maximum of \$50,000

N.Y. Elec. Law § 14-114; Rules and Regulations of the State Board of Elections, § 6214.0.

The above chart reflects 2013 contribution limits and is subject to adjustment for inflation by the State Board of Elections. Additionally, family members of candidates have different contribution limits. Updated limits and family contribution limits are available [here](#).⁷

Definition of Contribution

- A contribution is anything of value, including money, payment or a loan that is unpaid by the date of the election, made to a candidate's authorized committee in connection with an election, prospective election, or nomination.
- A contribution can be in the form of cash (up to \$100⁸), check, money order or credit card. It can also be an "in-kind" payment, which means in the form of personal services that are provided for free.⁹ The monetary value of such

³ N.Y. Elec. Law. § 14-114 *et seq.*

⁴ See summary below under "Corporate Contributions."

⁵ The general election limits apply to special elections.

⁶ Contribution limits to these offices have been capped at \$4,900 by the New York City Campaign Finance law.

⁷ <http://www.elections.ny.gov/CFContributionLimits.html>

⁸ N.Y. Elec. Law § 14-118(2); "Campaign Finance Handbook 2013," (hereinafter referred to as the "CF Handbook 2013"), p. 37

⁹ N.Y. Elec. Law § 14-100; N.Y. State Board of Elections Opinion 1979 Op. No. 11 (finding that it is an in-kind contribution when an employer departs from its usual practice and grants an employee a paid leave of absence based on political considerations).

contribution is the fair market value and must be declared as an expenditure.¹⁰

Not a Contribution

- Anything that would otherwise be a contribution is not considered a contribution if it is an expenditure/payment made by (1) the candidate or her spouse;¹¹ (2) the authorized committee; and (3) a person or a political committee that is independent of the candidate, her agents, or her authorized committee.¹²
- Volunteer services, and up to \$500 in value for an individual volunteer's travel expenses.¹³
- Up to \$500 in value for the use of a person's home and personal property at an individual's home that has been voluntarily provided to a candidate or political committee for candidate-related activities.¹⁴
- If a candidate has multiple authorized committees, the committees can "transfer" from one to the other. This is not considered a contribution,¹⁵ and, therefore, there are no limits.¹⁶

Individual Aggregate Limit

An individual may contribute an aggregate amount of \$150,000 in one calendar year to all candidates for all primaries, special and general elections for all State and local offices.¹⁷

Corporate Contributions

A corporation may contribute an aggregate amount of \$5,000 to all candidates, constituted committees, political action committees and/or party committees per calendar year.¹⁸ For the purpose of campaign contribution limits, parent and subsidiary companies are each distinct entities; each may contribute up to \$5,000 per year total, provided that each maintains a separate legal existence and has its own funds.¹⁹ Limited liability companies and political action committees ("PACs") are considered to be individuals for contribution limit purposes,²⁰ however, a PAC's annual or election-

¹⁰ Rules and Regulations of the State Board of Elections, § 6200.6.

¹¹ This means that a candidate or her spouse can make unlimited expenditures for the candidate's campaign.

¹² N.Y. State Board of Elections, 1981 Op. No. 5, available at <http://www.elections.ny.gov/NYSBOE/download/law/Opinions12042009.pdf>.

(noting that the contributions are generally defined in relation to the "exchange of money or thing of value between donor and donee").

¹³ N.Y. Elec. Law § 14-100(9)(3).

¹⁴ *Id.*

¹⁵ N.Y. State Board of Elections, 1975 Op. No. 3.

¹⁶ N.Y. State Board of Elections, 1986 Op. No. 2 (explaining that a campaign committee can use its "funds for any lawful purpose" and that there is no limit on the amount that may be transferred between committees).

¹⁷ CF Handbook 2013, p. 24. In *McCutcheon v. Federal Election Commission*, the United States Supreme Court struck down aggregate contribution limits in federal elections. 134 S. Ct. 1434 (2014). In New York, *Progress and Protection PAC v. Walsh*, 733 F.3d 483 (2d. Cir. 2013), the Second Circuit enjoined enforcement of the \$150,000 aggregate limit in New York as it pertains to independent expenditures.

¹⁸ N.Y. Elec. Law. § 14-116(2).

¹⁹ N.Y. State Board of Elections, 1977 Op. No. 11; CF Handbook 2013, p. 27

²⁰ CF Handbook 2013, p. 27

cycle aggregate contributions are not limited.²¹

Housekeeping Committees

There are no limits on the amounts that can be donated to Housekeeping Committees, a committee that can only be formed by a registered political party or constituted committee, and which is responsible for maintaining a permanent party headquarters and staff to carry on ordinary activities that do not directly benefit any specific candidate.²²

Earmarking/Conduits

It is illegal for a person or entity to claim to be making a contribution but really be acting as a conduit for another's undisclosed contribution.²³ Anonymous contributions cannot be accepted and must be turned over to the State Comptroller's office.²⁴

Public Financing

Although there have been many attempts to create a public campaign finance program in New York State, none has succeeded and, currently, New York State does not have a public campaign finance system, except in the case of New York City, which has its own public financing program. Accordingly, candidates for offices in New York State must raise all campaign funds through friends, family and other supporters.²⁵

Membership Communications

The State Board of Elections treats communications to an organization's members as exempt from the definitions of "contribution" and "expenditure," except if funds are expended in connection therewith. This means an organization may freely communicate to its members, but organization expenditures for communications contained in a special edition of its publication or a separate literature encouraging its members to vote for or against a particular candidate will be counted as a contribution if such are reported as a "contribution in-kind" by any candidate committee.²⁶

COMMUNICATIONS

Independent Expenditures

A person or entity may spend money or provide goods or services to, in support of, or against a candidate in a manner that is independent, or uncoordinated with, the

²¹ CF Handbook 2013, pp. 24, 32

²² *Id.*

²³ N.Y. Elec. Law § 14-120. *See, e.g., People v. Leffler*, 13 A.D.3d 164 (1st Dep't. 2004) (Finding former City Councilman guilty of four felonies for falsifying the sources of campaign contributions in an effort to qualify for New York City matching funds). *See also*, John Eligon, *Manhattan Surrogate's Court Judge Acquitted*, NY Times, April 1, 2010, available at <http://www.nytimes.com/2010/04/02/nyregion/02judge.html>

²⁴ N.Y. Elec. Law § 14-128.

²⁵ Jerry H. Goldfeder, *Goldfeder's Modern Election Law*, Second Edition, 75 (2010); *see Goldfeder's Modern Election Law*, Chapter 9, for a summary of New York City's public campaign finance program.

²⁶ *See, e.g.,* N.Y. State Board of Elections, 1978 Op. No. 16.

candidate and the candidate's authorized committee. This is known as an independent expenditure.

Although there is no bright line test to determine whether an expenditure is independent or coordinated, an expenditure is deemed to be independent if the candidate, her agents or campaign committee has not authorized, requested, suggested, fostered, or cooperated in the activity for which the expenditure was made.²⁷ Determinations of independence are fact-based.

Whether a person or entity's expenditure is independent has become especially significant after *Citizens United*. See *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

In New York, independent expenditures are governed by the statute on "political committees."²⁸ As long as the expenditure or in-kind service provided is for the purpose of promoting the success or defeat of a candidate, political party, principle or ballot question (provided such conduct is in connection with a vote), this activity constitutes expenditures by a political committee. And if the expenditure is in excess of \$1,000 in a calendar year, the person or entity is required to register, and file disclosure forms, with the New York State Board of Elections.²⁹ Such disclosure forms will include the source of the entity's funds, its expenditures, and other required data.³⁰ Disclosure requirements for independent expenditures have become more rigorous in New York State Elections.³¹

Electioneering Communication

New York does not have an electioneering communication statute and, accordingly, issue ads are not regulated in the state. Any expenditures that can reasonably be inferred to be in support or opposition to a nomination or an election of a candidate, or to promote the success or defeat of a political party, or principle or of any ballot proposal, will be deemed a contribution; however, if such expenditures qualify as independent from the subject candidate, then such expenditure would not constitute a contribution under the law.³²

Disclaimers

New York State Election law does not require disclaimers on political communications. FEC or other requirements may apply.

PAC REGISTRATION AND REPORTING REQUIREMENTS

²⁷ N.Y. Elec. Law § 14-100(9)(3).

²⁸ N.Y. Elec. Law § 14-100(1).

²⁹ N.Y. Elec. Law § 14-102(4).

³⁰ See, e.g., N.Y. Elec. Law §§ 14-102, 14-106, 14-108 and 14-122.

³¹ See www.elections.ny.gov/NYSBOE/PublicFinancePilot/SubpartC.pdf

³² N.Y. Elec. Law § 14-100(9).

A political action committee, although not specifically defined in New York's Election Law, is any political committee that is not a candidate's authorized committee or a political party committee, but contributes to candidates or other political committees.³³ PACs generally only make contributions; they do not make other election-related expenditures, whether coordinated with, or independent of, a candidate. A political committee that makes such expenditures would not be deemed a PAC.

Registration

- PACs, including out-of-state PACs, must register before spending or receiving any money.
- PACs that file reports with the Federal Election Commission may contribute up to a total of \$1,000 per year in the aggregate to New York State candidates and committees without registering with the New York State Board of Elections. This exception does not apply to PACs that file with any other federal government office or agency.³⁴
- PACs must register with the New York State Board of Elections and other appropriate local boards by filing the Committee Registration/Treasurer and Bank Information Form (CF-02), available here: <http://www.elections.ny.gov/NYSBOE/download/finance/cf02.pdf>. Any amendments to these forms must be submitted within two days of any change. PACs do not have to report information about which candidates they are supporting or opposing in the CF-02 form.³⁵
- A New York PAC is not required to file Form CF-03; this form is required only for political committees that make expenditures in coordination with, or independent of, a candidate. As noted above, PACs only make contributions, not expenditures, and, therefore, the filing of Form CF-03 is not required. A political committee that makes election-related expenditures is not a PAC and must file Form CF-03, identifying all candidates for whom the political committee will make expenditures, whether or not candidates have authorized that political committee.³⁶
- A New York PAC must designate a treasurer; this person does not need to be a New York resident. A PAC must use an account that is maintained at a bank branch that is physically located in New York State.³⁷ Form CF-02 must be mailed, not faxed, to NYS BOE with original signatures.³⁸

Reporting

- PACs are required to file financial disclosure statements (election reports and periodic reports) after registration. If there are no activities for a reporting period, a PAC must file a no-activity statement using the Verification Statement (CF-18),

³³ N.Y. Elec. Law § 14-100.

³⁴ CF Handbook 2013, p. 10.

³⁵ PACs are exempt from the general requirement of filing a statement of candidate authorization because, by definition, they may not be authorized by any candidate..

³⁶ CF Handbook 2013, p. 9.

³⁷ N.Y. Elec. Law § 14-118(1); CF Handbook 2013, p.8.

³⁸ N.Y. Elec. Law § 14-118.

and if a PAC does not intend to support or oppose any candidate in an election, it may submit a Notice of Non-Participation in Election(s) (CF-20) to inform the Board of Elections of this status.³⁹

- Reports must be filed electronically, using the New York State Board of Elections e-filing system available here, (<http://www.elections.ny.gov/CFFileReports.html>) unless the annual activity of the PAC is less than \$1,000 – and is expected to remain below that amount in all future years.⁴⁰ Contributions must be itemized by the candidate or political committee whenever any individual contributor (1) makes a single contribution that results in her aggregate contributions above \$99.00 for (a) the candidate in that election cycle, or (b) a party committee or political action committee in that calendar year.⁴¹
- Reports are due on the following schedule:
 - Periodic reports: Semi-annual and pre- and post-election reports must be filed electronically on Form CF-01. Semi-annual reports are due on July 15 and January 15.⁴²
 - Pre-election reports are due 32 days and 11 days before the primary and general elections. Post-election reports are due 10 days after the primary election and 27 days after the general election.⁴³
 - *24-hour reports*: Reports are due within 24 hours of the time a PAC or PC receives a contribution or loan that exceeds \$1,000 between the cut-off date for filing the 11-day pre-election report and the day of the primary or general election.⁴⁴ PACs and PCs do *not* have to file special reports for *making* contributions.

Termination

PACs may be terminated by filing a Termination Report, using the Campaign Finance Disclosure Form for Local Filers (CF-01 or CF-18). At such time, the PAC must have an ending cash balance of zero and have no outstanding liabilities.⁴⁵

DISCLOSURE

Be sure to read all footnotes carefully for a complete understanding of NY State disclosure requirements.

Public Disclosure

The New York State Board of Elections provides a searchable database on its website for all campaign finance disclosure reports.⁴⁶

³⁹ CF Handbook 2013, p. 11

⁴⁰ Rules and Regulations of the State Board of Elections, § 6200.1(d).

⁴¹ N.Y. Elec. Law § 14-102(1).

⁴² Rules and Regulations of the State Board of Elections, § 6200.2, CF Handbook 2013, p.17

⁴³ *Id.*

⁴⁴ *Id.* at §6200.2(g).

⁴⁵ CF Handbook 2013, p. 43.

⁴⁶ <http://www.elections.ny.gov/DisclosureReports.html>.

In June, 2013, New York State Attorney General Eric Schneiderman released new disclosure requirements for certain nonprofit organizations that engage in political activity. According to the regulations, a “covered organization” must file an Electioneering Disclosure Schedule (EDS) that contains information about expenditures and, in some cases, donors.⁴⁷ Most disclosed information will be made available to the public.⁴⁸ The amount of information an organization must disclose depends on how much it spends in “election-related expenditures” in New York during the reporting period.⁴⁹

Under the new regulations:

EVERY covered organization must include in its EDS:

- The total dollar amount of election-related expenditures it has made *in any election, anywhere, at any level (federal, state, local)*
- The percentage of its total expenses that was election-related.

If an organization spends more than \$10,000 in New York election-related expenditures in a reporting period, it must ALSO include in its EDS:

- An itemized schedule of each New York election-related expenditure exceeding \$50 (see Exception B).⁵⁰
- Information for each donation exceeding \$1,000 aggregate for the reporting period (see Exceptions B, C, D).⁵¹

Exceptions

- A. A covered organization that has made no election-related expenditures *anywhere* during a reporting period may simply indicate so on the EDS and leave the rest of the form blank
- B. Information (expenditure- or donor-related) disclosed to another government agency that will make the information public does not need to be disclosed on the EDS.⁵²

⁴⁷ 501(c)(3)s are explicitly exempted, but most other 501(c) organizations are subject to disclosure regulations. See “covered organization” definition.

⁴⁸ Either an organization or an individual donor can apply for a disclosure exemption if it can show that the covered organization’s “primary activities involve areas of public concern that create a reasonable probability that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.” 13 NYCRR § 91.6(h). Note that this exemption does not relieve an organization from disclosing the donor information on the EDS.

⁴⁹ “Election-related expenditures” include “express election advocacy” **AND** “election targeted issue advocacy” (if the issue advocacy is within forty five days before a primary election or ninety days before a general election); see “election-related expenditure” definition for more information. See also 13 NYCRR § 91.6(5)-(8).

⁵⁰ The itemized schedule must include: (i) amount/fair market value of funds, services, or assets provided and any liabilities incurred; (ii) date of transaction; (iii) name and address of recipients of the expenditure; (iv) clear description, including purpose (such as which candidate/referendum/party it was intended to support or oppose). 13 NYCRR § 91.6(b).

⁵¹ The donor list must include: (i) name and address of each donor; (ii) employer of each individual donor; (iii) date and amount of the donation. 13 NYCRR § 91.6(c).

⁵² See 13 NYCRR § 91.6(d) for more detailed information about this exception

- C. If a covered organization has a separate account that it only uses for New York election-related expenses, and all of its New York election-related expenditures come from that account, then only donors to that account must be disclosed.
- D. If a covered organization has a separate account whose funds are not used for making any New York election-related expenditures, donors to that account do not need to be disclosed.

Definitions

Covered organization – Any charitable organization that is registered (or required to be registered) in New York and that is exempt from taxation under section 501(c) of the Internal Revenue Code, except for 501(c)(3) organizations.

Election-related expenditure – A communication that constitutes either:

- “Express election advocacy”: Communications that call specifically for (or are susceptible of no reasonable interpretation other than a call for) the election or defeat of a particular candidate, referendum, or party; or
- “Election targeted issue advocacy”: Communications made within 45 days of a primary election or 90 days of a general election that identify or depict particular candidates, referenda, or parties by name, but do not explicitly call for their election or defeat.⁵³

Communication

- Paid advertisements broadcast over radio, television, cable, or satellite
- Paid placement of content on the Internet or other electronic communication networks
- Paid advertisements published in a periodical or on a billboard
- Paid telephone communications to 1000 or more households
- Mailings sent or distributed through the US Postal Service or similar private mail carriers to 5000 or more recipients
- Printed materials exceeding 5000 copies

Members – Individuals who:

- Affirmatively consent to be members of the covered organization;
- Contribute funds to the covered organization; or
- Pursuant to the covered organization’s articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the covered organization’s assets or the merger or dissolution of the covered organization.

⁵³ There are two important exceptions to the definition of “election targeted issue advocacy”: (i) communications from a covered organization to its members; (ii) communications promoting a debate, town hall or similar forum to which at least two opposing candidates or ballot question representatives are invited as participants, and which does not promote or advance one candidate or position over another.

For additional guidance, including examples of what needs to be disclosed, see

- Alliance for Justice Bolder Advocacy blog's [Summary](#) and [Q&A](#)⁵⁴
- [Guidance to the Annual Disclosure of Electioneering Activities by Non-501\(c\)\(3\) Registrants.](#)⁵⁵

ENFORCEMENT AND PENALTIES

- Both the contributor and the candidate must comply with contribution limitations.
- The maximum penalty for failing to file a required Period Report or pre- or post-election report is \$500. The penalty applies for each filing that is not made and it is recoverable in a judicial proceeding brought by the New York State or local Board of Elections.
- The treasurer of a committee is personally responsible for its filings and can be penalized for any failure to file, but the committee can pay the penalty.⁵⁶
- The Election Law provides that it is a crime to willingly or knowingly fail to comply with the campaign finance laws.⁵⁷

⁵⁴ <http://bolderadvocacy.org/blog/7-questions-about-new-yorks-new-disclosure-rules>

⁵⁵ <http://www.charitiesnys.com/pdfs/ElectioneeringReportGuidance.pdf>

⁵⁶ N.Y. Elec. Law § 14-118(1); CF Handbook 2013, p. 48.

⁵⁷ N.Y. Elec. Law § 14-126.

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

NYS Board of Elections

The website is available [here](http://www.elections.ny.gov/) (<http://www.elections.ny.gov/>).

The staff directory and individual contact information is available [here](http://www.elections.ny.gov/Contact.html) (<http://www.elections.ny.gov/Contact.html>).

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FOR FURTHER ASSISTANCE

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