



**ANALYSIS OF CAMPAIGN  
SPENDING IN THE 2010  
NEW YORK ELECTION**

**CAPITAL INVESTMENT\$  
2010**

**Endorsed by:**

**Citizens Union of the City of New York  
Common Cause of New York  
League of Women Voters of New York State  
New York Public Interest Research Group  
Reinvent Albany**

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## **Acknowledgements**

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### **FOR COPIES OF THE REPORT:**

NYPIRG

107 Washington Avenue

Albany, NY 12210

[www.nypirg.org](http://www.nypirg.org)

# CAPITAL INVESTMENT\$ 2010

## Executive Summary

New Yorkers sense the impact that big money has on elections, yet their understanding is likely based on Congressional reports on the issue. However, given New York's sky high contribution limits, the state's campaign finance system offers even greater opportunities to cultivate influence through the use of campaign contributions. State law allows huge campaign donations – far in excess of those allowed in federal elections. The general election donation limit for each two-year election cycle to an Assemblymember – whose district has only 20 percent the population of Congressional districts – is set at \$3,800, while a general election donation to a Congressional candidate is \$2,400. State Senate candidates can receive \$9,500 contributions per contributor for the general election. Candidates for governor can raise a whopping \$37,800 for the general election – fully 15 times the maximum amount allowed US Senate candidates – or those running for president. This report examines how the New York campaign finance system and laws operate and the implications for public policy. It is written to help better understand the state's system of campaign finance.

### SUMMARY OF FINDINGS

This report examined the most recent election period for statewide and state legislative candidates. For statewide candidates, the report examines the filing periods from January 15, 2007 through the 27-post general election report, filed in November, 2010. For state legislative races, the report examines the filing period January 15, 2009 through the 27-post election report. The report's key findings are:

- 1. For the 2010 election period more than \$246 million was raised for statewide and state legislative races.** New York State's staggeringly high contribution limits fuel this fundraising (e.g., contributors may give up to \$94,200 to party committees; maximum to statewide candidates is \$55,900).
- 2. Democratic candidates outraised Republicans for seats in both houses.** The typical Democrat running for the Assembly raised nearly twice as much as the typical Republican candidate. While Democrats in the Senate outraised Republicans, the averages were much closer, reflecting the razor-thin majority they held in that chamber during the 2009-2010 session.
- 3. The Democratic majority legislative campaign committees raised far more than Republican minority committees.** Majority party campaign committees' fundraising in both houses was significantly higher than that of minority parties.

**4. The Cuomo/Duffy ticket raised significantly more money than any other statewide candidate or ticket.** The Cuomo/Duffy team raised nearly four times as much as the Paladino/Edwards ticket.

**5. Individual contributors accounted for about a third of the total money raised (\$83 million of \$246 million); businesses gave more than three times as much as unions.** Individuals and business groups contributed more than half of all campaign money.

**6. Businesses dominated giving to legislative candidates and committees.** With respect to legislative candidates on the general election ballot and party committees, businesses contributed the largest share of donations. The only conference that did not follow this trend was the Assembly Republicans, who received a relatively high proportion of money from individuals.

**7. Individuals were the biggest givers to most statewide candidates.** Individuals were the largest donors to statewide candidates other than candidates Paladino and Wilson whose loans to their campaigns were the largest donations.

**8. Real estate interests top the list of business contributors.** Our analysis of business contributions indicates that real estate and construction were the most generous business sector.

**9. Real estate interests dominated contributions to Cuomo.** With the exception of Attorney General Schneiderman and Comptroller DiNapoli, the four major statewide candidates got the largest share of their contributions from businesses from “real estate & construction.” “Lawyers and Lobbyists” were the biggest contributors to the new Attorney General and Comptroller.

**10. Health interests gave predominantly to Democrats, real estate biggest donors to Republicans.** Health interests gave the most to Democratic candidates on the ballot and legislative campaign committees; real estate gave more than any other sector to their Republican equivalents:

**11. The overwhelming majority of New Yorkers did not donate.** A total of 68,059 individuals donated to candidates and parties; 59,350 of them are New York State residents. 43,154 of these individuals donated to legislative candidates on the general election ballot, including 39,104 state residents.

**12. Eighteen individuals donated \$150,000 or more.** New York law allows huge contributions from individuals and individuals used the generous limits to dominate giving. These 18 individuals are deeply involved in commercial activities.

**13. Fundraising is most intense during the weeks before an election and during “budget season.”**

**14. The top legislative fundraisers tended to be either leaders or candidates in close elections.**

**15. In both houses, incumbents of both parties dramatically outraised challengers.**

**16. Candidates who were in close races relied more heavily on transfers from political party committees.**

### **SUMMARY OF RECOMMENDATIONS**

New York’s legislative candidates rely heavily on getting enormous financial support from a small fraction of the state’s population – typically those businesses, associations and individuals with the money to fund elections and a stake in the outcome of decisionmaking. As a result, New Yorkers are presented with a system is largely underwritten by the wealthy and powerful than supported by the overwhelming proportion of citizens who do not get directly involved in political campaigns.

In order for New York’s democracy to become more responsive to the majority of New Yorkers, it must change. Creation of a new system of campaign financing is a critical component of meaningful reform. There must be a new system that relies on the funding of elections by the public, not special interests. We recommend the governor and the Legislature enact the following solutions:

**Solution #1: Create a voluntary system of public financing.** Such a system will give New Yorkers of average means a concrete opportunity to seriously run for office.

**Solution #2: Overhaul existing campaign finance law** by: dramatically lowering contribution limits, closing loopholes, expanding disclosure, and banning soft money.

**Solution #3: Ban the “personal use” of campaign contributions.**

**Solution #4: Boost campaign finance enforcement.**

**Solution #5: Clean up the campaign finance database.** Our report identified difficulties in using the State Board of Elections’ database.

**Solution #6: Ensure full disclosure of “independent expenditure” efforts.**

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# **CAPITAL INVESTMENT\$ 2010**

## **New York State's System of Campaign Finance**

*"It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes: It is still more necessary that such laws should be thoroughly enforced."*  
*President Theodore Roosevelt, in the speech "New Nationalism"*

### **Introduction: New York State's "Capital Investment\$"**

This report is written to examine how New York State's campaign finance system "works," to shed light on who candidates for statewide and legislative offices rely on to underwrite their campaigns, show the "winners" and the "losers," and to offer the public a roadmap for reform. The report examines how money flowed from contributors to candidates and political parties in the most recent election.

One finding is clear: Statewide and legislative leaders raise a huge amount of campaign dollars and only a few New Yorkers are responsible for the bulk of the money flowing into the system. These few New York donors are groups that are interested, in turn, in driving policy. Recent research has concluded, *"Large donors are more likely to indicate that their giving is motivated by a concern about narrowly targeted benefits for themselves. They are also more likely to contact lawmakers and their staff members about their business, job, or industry."*<sup>1</sup>

Remarkably, one quarter of *all* campaign dollars donated by individuals originate from a total of 169 persons. Their donations, on average, exceed \$63,200, and these contributors wrote checks from addresses in the Greater New York metropolitan area. In addition to these individuals who gave big bucks, businesses, trade associations and unions provided the lion's share of campaign donations.

It is this "political elite" that can exert a huge impact on lawmaking, and the apparent responsiveness of lawmakers to this elite – too often at the public's expense – that is a central reason for the public's increasing unhappiness with Albany.

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<sup>1</sup> Wesley, Y., Malbin, M., et al, "Do Small Donors Improve Representation? Some Answers from Recent Gubernatorial and State Legislative Elections," Paper delivered at the 2008 Annual Meeting of the American Political Science Association, p. 2.

Our report clearly shows that change must come. The state must move to a campaign financing system in which candidates for legislative office rely on average New Yorkers for their funds – not powerful special interests.

# CAPITAL INVESTMENT\$:

## Campaign Contributions Election Cycle 2010

### 1. Overview – State level party committees and candidates running for office in 2010 received over \$246 million in donations.

Over \$246 million was raised by state candidates and state party committees. As seen below, gubernatorial candidates raised more in the aggregate than any other group of candidates. [NOTE: For our analysis of the statewide candidate fundraising, we examined contributions starting in 2007 through 2010. For legislative races, we examined the 2009-2010 period. This analysis does *not* include “housekeeping” donations from the second half of 2010. That information is reported in mid-January, 2011.]

Office	Total Receipts
Governor & LG	\$71,821,400.72
Comptroller	\$12,890,416.44
Attorney General	\$30,511,049.49
Senate	\$55,182,413.54
Assembly	\$27,357,287.12
State level parties	\$48,464,637.37

### 2. Democratic candidates outraised Republicans in both houses.

The average Democrat running for the Assembly raised nearly twice as much as the typical Republican. While Democrats in the Senate outraised Republicans, the averages were much closer, reflecting the razor-thin majority they held in this chamber over the past two years.

House	Party	Total Raised by Candidates	Total Candidates who Filed	Avg. Per Candidate
Assembly	Dem	\$17,054,080.16	131	\$130,183.82
Assembly	GOP	\$6,385,557.89	92	\$69,408.24
Assembly	3rd	\$898,342.96	20	\$44,917.15
Senate	Dem	\$28,374,153.39	57	\$497,792.16
Senate	GOP	\$20,757,626.99	46	\$451,252.76
Senate	3rd	\$682,592.88	5	\$136,518.58

The above Assembly fundraising numbers are very similar to those from the 2008 election cycle, in which the average Democrat raised \$125,030.16, compared to \$75,835.22 for Republicans. In contrast, during the previous election cycle, Democratic Senate candidates averaged \$396,182.91; Republicans, \$565,505.12.

**3. The Democratic majority legislative campaign committees raised far more than Republican minority committees in both houses.**

Majority party campaign committees' fundraising was also significantly higher than that of minority parties with the Democrats having raised significantly more than Republicans in both houses.

<b>Legislative Conference</b>	<b>Amount raised by legislative party committees<sup>2</sup></b>
Assembly Democrats	\$7,495,305.26
Assembly Republicans	\$2,520,377.16
Senate Democrats	\$16,212,748.19
Senate Republicans	\$10,219,644.35

**4. The Cuomo/Duffy ticket raised significantly more money than any other statewide candidate or ticket.**

The Cuomo/Duffy team raised nearly four times as much as the Paladino/Edwards ticket. Interestingly, former Governors Spitzer and Paterson reported more total receipts than any other candidates except their successor in the Executive Mansion over the four year cycle.

<b>Candidate</b>	<b>Total Receipts</b>
Cuomo/Duffy	\$34,758,847.95
Paladino/Edwards	\$9,739,613.21
Paterson	\$11,970,791.03
Spitzer	\$9,838,523.53
Lazio	\$3,883,755.59
Levy	\$1,345,374.78
Other Gov/ LG	\$284,494.63

<sup>2</sup> Housekeeping committees do not need to report their transactions from the second half of 2010 until July 15, 2011. Thus, this report does not include donations raised since July 2010.

DiNapoli	\$4,501,380.35
Wilson	\$7,119,668.00
Other Comp. Cands	\$1,269,368.09
Schneiderman	\$9,051,728.22
Donovan	\$2,427,560.04
Coffey	\$7,516,652.01
Rice	\$6,450,463.24
Dinallo	\$2,792,773.67
Brodsky	\$1,961,502.16
Other AG Cands.	\$310,370.15

**5. Individuals accounted for about a third of the total money raised; businesses gave more than three times as much as unions.**

Individuals and business groups<sup>3</sup> contributed more than half of all campaign money.

Type of Donor	Total Given	% of All Money
Individual	\$83,260,511.57	33.81%
Business, LLC or Trade Association	\$66,900,847.73	27.17%
Other Candidate	\$25,363,588.19	10.30%
Union	\$20,924,637.90	8.50%
Loan	\$20,536,620.46	8.34%
Party	\$13,685,484.87	5.56%
Candidate or family	\$6,498,964.63	2.64%
Unknown <sup>4</sup>	\$2,824,625.47	1.15%
Interest & Expenditure Refunds	\$2,641,275.67	1.07%
Not For Profit	\$1,813,726.94	0.74%
Unitemized	\$1,523,516.25	0.62%
Native American Tribes	\$253,405.00	0.10%

<sup>3</sup> Although Limited Liability Corporations are treated as individuals for the purpose of the state's campaign finance limits, we included them in the "business" category.

<sup>4</sup> This \$2.8 million reflects the contributions made by incorporated entities whose nature we could not identify. This includes large donors for whom a "Google" search did not reveal whether they were a business, union, or not-for-profit, and smaller donors whose nature was not apparent based on their name.

## 6. Businesses and trade associations dominated giving to legislative candidates and committees.

However, when solely looking at legislative candidates on the general election ballot and party committees, businesses contributed the largest share of donations. The only conference that did not follow this trend was the Assembly Republicans, who received a relatively high proportion of money from individuals.

	Assembly Dems	Assembly GOP	Senate Dems	Sen GOP
Business, LLC & trade association	\$8,826,348.19	\$2,327,559.76	\$15,565,372.84	\$11,466,406.48
Individual	\$6,002,623.32	\$2,383,029.53	\$9,621,602.53	\$7,233,479.99
Union	\$4,733,675.12	\$430,945.00	\$5,749,824.37	\$2,349,501.30
Candidate Transfers	\$1,287,003.19	\$1,166,631.05	\$5,118,405.05	\$3,979,609.58
Party Transfers	\$1,786,057.20	\$791,391.98	\$3,562,006.64	\$3,481,055.50
Loans	\$335,946.31	\$1,038,803.27	\$2,876,594.94	\$419,122.56
Other	\$1,207,576.55	\$526,373.81	\$1,225,190.78	\$1,391,244.18
Not For Profit	\$196,082.10	\$68,020.00	\$642,774.72	\$437,285.00
Candidate or family	\$174,073.44	\$173,180.65	\$225,129.71	\$219,566.75

## 7. Individuals were the biggest givers to most statewide candidates followed by business interests.

Individuals were the largest donors to statewide candidates (other than gubernatorial candidates Paladino and comptroller candidate Wilson, who loaned themselves money for their respective runs).

	Cuomo	DiNapoli	Donovan	Schneiderman	Wilson	Paladino
Individual	\$19,974,910	\$1,725,952	\$1,378,873	\$4,186,584	\$2,845,402	\$1,381,348
Loan <sup>5</sup>				\$550,000	\$3,855,000	\$6,048,000
Business, LLCs & trade associations	\$11,299,094	\$1,160,806	\$756,823	\$1,465,687	\$326,152	\$549,139
Candidate or family				\$649,700	\$950	\$1,655,575
Union	\$2,099,645	\$1,171,573	\$95,550	\$880,742	\$500	\$1,000
Other Candidate	\$760,683	\$386,030	\$83,014	\$1,144,282	\$22,825	\$24,825
Other	\$431,935	\$30,875	\$3,650	\$54,925	\$33,592	\$11,699
Not For Profit	\$90,600	\$11,000	\$35,000	\$67,110	\$5,000	\$1,750
Party	\$9,581	\$15,144	\$74,650	\$52,700	\$30,247	\$13,225

<sup>5</sup> Nearly all of the loans going to statewide candidates came directly from the candidates themselves.

## **8. Real estate interests top the list of business contributors.**

We reviewed donors and categorized them below. Our analysis of business contributions indicates that real estate and construction were the most generous in that sector. About 76% (\$50.9 million) of the \$66.9 million identified within one of fourteen categories<sup>6</sup>:

<b>Business Sector</b>	<b>Amount Donated</b>
Real Estate & Construction	\$13,873,651.93
Lawyers & Lobbyists	\$8,095,056.07
Health & Mental Hygiene	\$8,037,859.67
Insurance, Financial, Banking	\$6,874,249.72
Food or Alcohol Production	\$3,506,540.58
Entertainment, Tourism, Restaurants	\$2,205,322.17
Telecom	\$2,125,014.82
Transportation, Shipping, Car Dealers	\$1,970,541.16
Energy	\$1,359,212.41
Service Sector	\$1,075,101.65
Miscellaneous Industry	\$666,996.23
General Retail	\$558,490.80
Business Association or Chamber of Commerce	\$540,411.97
Education	\$57,925.00

## **9. Real estate interests dominated contributions to Cuomo.**

“Lawyers & lobbyists” was the sector that donated the most money to Attorney General Schneiderman and Comptroller DiNapoli; the other four major statewide candidates got the largest share of the contributions from the business sector from “real estate & construction” interests:

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<sup>6</sup> These categories are based on those provided by the New York State Commission on Public Integrity, which categorizes lobbying groups, with some additional changes added by the authors.

<b>Cuomo</b>	
Real Estate & Construction	\$2,632,893.05
Lawyers & Lobbyists	\$1,528,460.90
Insurance, Financial, Banking	\$1,014,523.55
<b>Paladino</b>	
Real Estate & Construction	\$186,452.57
Lawyers & Lobbyists	\$28,223.00
Entertainment, Tourism, Restaurants	\$17,835.04
<b>DiNapoli</b>	
Lawyers & Lobbyists	\$360,346.85
Real Estate & Construction	\$204,086.83
Insurance, Financial, Banking	\$83,375.00
<b>Wilson</b>	
Real Estate & Construction	\$150,550.00
Insurance, Financial, Banking	\$33,500.00
Transportation, Shipping, Car Dealers	\$18,000.00
<b>Schneiderman</b>	
Lawyers & Lobbyists	\$400,029.20
Real Estate & Construction	\$331,318.86
Health & Mental Hygiene	\$117,808.59
<b>Donovan</b>	
Real Estate & Construction	\$265,839.00
Insurance, Financial, Banking	\$75,500.07
Lawyers & Lobbyists	\$58,050.00

## **10. Health interests dominated giving to legislative Democrats and real estate to Republicans.**

Health interests gave the most to Democratic candidates on the ballot and legislative campaign committees; real estate gave more than any other sector to their Republican equivalents:

<b>Assembly Democrats</b>	
Health & Mental Hygiene	\$1,671,523.15
Lawyers & Lobbyists	\$1,195,998.83
Insurance, Financial, Banking	\$1,077,505.13
<b>Senate Democrats</b>	
Health & Mental Hygiene	\$2,764,516.72
Real Estate & Construction	\$2,702,916.29
Lawyers & Lobbyists	\$1,691,965.62
<b>Assembly Republicans</b>	
Real Estate & Construction	\$392,269.11
Health & Mental Hygiene	\$271,793.76
Insurance, Financial, Banking	\$211,514.41
<b>Senate Republicans</b>	
Real Estate & Construction	\$3,147,621.37
Health & Mental Hygiene	\$1,364,865.64
Insurance, Financial, Banking	\$1,364,865.64

## 11. The overwhelming majority of New Yorkers did not donate.

The percentage of all money received that came from individuals increased significantly from 2008 (24.78%) to 2010 (33.81%). This is likely due to the presence of statewide candidates on the ballot. Their ability to receive checks of up to \$55,900 from one person means they are willing to spend a greater share of their fundraising schedule reaching out people. In 2010, legislative candidates and parties received only 23.20% of their funds from individuals, a *decrease* from two years ago.

The vast majority of the \$83,260,511.57 raised from individuals came from those who gave combined totals of \$1,000 or more:

<b>Total \$ to All Committees</b>	<b>Amount</b>	<b>% of \$ from Individuals</b>
\$1,000+	\$72,993,365.12	87.67%
\$251-\$999	\$5,660,598.38	6.80%
\$1-\$250	\$4,606,548.07	5.53%

A total of 68,059 individuals donated to candidates and parties. 59,350 of them are New York State residents. 43,154 individuals donated to *legislative* candidates on the general election ballot, including 39,104 state residents. The total number of donors to these legislative hopefuls is similar to the 42,038 who

gave in 2008, though the percentage coming from in-state is higher: only 34,916 residents gave in the previous cycle.

## 12. Eighteen individuals donated \$150,000 or more.

Since New York law allows huge contributions from individuals, they dominated giving. These individuals usually are involved in commercial activities. It is likely that this list will grow once the housekeeping committees file their final disclosure statements- New York City Mayor Bloomberg reportedly donated a substantial sum to Senate Republicans in the final weeks of the campaign,<sup>7</sup> if so that information will become available in mid-January, 2011. The known large donors are:

Name	Total \$	Largest donations	Biographical Sketch
Bruce Kovner	\$283,200	SRCC, \$80,000; SRCC, \$50,000; DSCC, \$50,000	Founder and chairman of Caxton Associates, a hedge fund. 258th richest American in 2010. Chairman of the conservative American Enterprise Institute. <sup>8</sup>
David Rich	\$221,548	Cuomo, \$16,000; Schneiderman, \$10,000; DiNapoli, \$10,000	Inherited 44% of Rich Foods from his father, a share worth \$1.5B.
James Simons	\$217,350	DSCC, \$50,000; Paterson, \$37,800; Cuomo, \$20,000	According to Forbes, he is the "most successful of all" quantitative hedge fund managers. Runs Renaissance Technologies and is worth \$8.7B, placing him 30th in the country. <sup>9</sup>
J.C. Huizenga	\$214,250	SRCC, \$64,200; NYSGOP, \$50,000; SRCC, \$25,000	Founded National Heritage Academies, a national for-profit network of 67 charter schools, including 4 in NYC, 1 in Buffalo, and 1 in Syracuse <sup>10</sup>
Bernard Schwartz	\$207,900	Paterson, \$27,800; Cuomo, \$25,000; Cuomo, \$20,900	Chairman and CEO of BLS Investments, a private investment firm. <sup>11</sup>
Lawrence Kadish	\$195,550	NYSGOP, \$100,000; NYSGOP, \$25,000; Lazio, \$25,000	Real estate investor, national committeeman of the NYS Republicans. <sup>12</sup>
David Einhorn	\$191,800	Schneiderman \$55,9000; Dinallo, \$37,800; Cuomo, \$25,000	Directs reinsurer Greenlight Capital Re and chemical manufacturer BioFuel Energy Corporation <sup>13</sup>
George Kaufman	\$183,000	Schneiderman, \$25,000; Cuomo, \$25,000;	A real estate investor who currently serves as chairman of film studio Kaufman Astoria Studios. <sup>14</sup>

<sup>7</sup> *Capital Tonight* blog, accessed 12/20/10, <http://www.capitaltonight.com/2010/12/so-much-for-bipartisanship/>.

<sup>8</sup> <http://people.forbes.com/profile/bruce-kovner/76236>

<sup>9</sup> <http://www.forbes.com/wealth/forbes-400/list>

<sup>10</sup> [http://heritageacademies.com/our\\_schools/schools-locator/state=NY](http://heritageacademies.com/our_schools/schools-locator/state=NY)

<sup>11</sup> <http://www.bernardschwartz.com>

<sup>12</sup> <http://www.nygop.org/page/lawrence-kadish>

<sup>13</sup> <http://people.forbes.com/profile/david-einhorn/11726>

		Paterson, \$10,000	
Roger Hertog	\$181,835	Lazio, \$37,800; Paterson, \$35,000; DSCC, \$30,000	Investor who is heavily involved with conservative groups. A trustee of the American Enterprise Institute, chairman emeritus of the Manhattan Institute, and co-owner of the New Republic. <sup>15</sup>
Jerry Weiss	\$179,266	Rice, \$17,000; Paterson, \$15,000; Cuomo, \$15,000	Has worked at Merrill Lynch. Currently executive vice president and chief administrative officer of Freddie Mac. <sup>16</sup>
James Chanos	\$170,000	Paterson, \$37,800; Dinallo, \$36,900; Cuomo, \$25,000	"America's pre-eminent short-seller," he runs hedge fund Kynikos Associates. <sup>17</sup>
Bryan Lawrence	\$169,500	SRCC, \$25,000; DACC, \$25,000; Wilson, \$20,000	Directs investment bank Dillon, Read & Company. <sup>18</sup>
Jeffrey Gural	\$166,225	DSCC, \$25,000; Paterson, \$20,000; Cuomo, \$10,000	"Chairman of Newmark Knight Frank, a full-service commercial real estate firm." <sup>19</sup>
John Castimatidas	\$165,835	SRCC, \$25,000; Cuomo, \$15,000; NYSGOP, \$10,000	Owns Red Apple; considered a run for NYC Mayor in 2009.
Ravenel Curry	\$165,200	Wilson, \$37,800; Cuomo, \$20,000; Paterson, \$20,000	Born "into a prominent banking family," investor in Eagle Capital Management. <sup>20</sup>
Leonard Blavatnik	\$153,600	Schneiderman, \$25,000; Paterson, \$25,000; Cuomo, \$25,000	Controls UC Rusal, "the world's second-biggest aluminum producer" and Russia's third largest oil company, which is currently looking to take over BP. 31 <sup>st</sup> richest American; worth \$7.5B. <sup>21</sup>
William Ackman	\$151,500	Schneiderman, \$25,000; Cuomo, \$25,000; Coffey, \$18,100	Founder and CEO of hedge fund Pershing Square Capital Management. Described as "a value investor with an activist bent" who has owned large shares of Target, Borders, Wendy's, and McDonald's. <sup>22</sup>
Abby Milstein	\$150,000	Schneiderman, \$25,000; Cuomo, \$25,000; Cuomo, \$25,000	Founding partner of law firm Constantine Cannon. <sup>23</sup>

<sup>14</sup> [http://www.kaufmanastoria.com/about\\_04.html](http://www.kaufmanastoria.com/about_04.html)

<sup>15</sup> <http://news.nationalpost.com/2010/07/21/conrad-blacks-saviour-who-is-roger-hertog/>

<sup>16</sup> <http://www.freddiemac.com/bios/exec/weiss.html>

<sup>17</sup> <http://www.nytimes.com/2010/01/08/business/global/08chanos.html>

<sup>18</sup> <http://www.nytimes.com/1996/01/28/style/weddings-marilyn-white-bryan-lawrence.html>

<sup>19</sup> <http://www.newmarkkf.com/home/about-our-firm/professional-profiles.aspx?d=7304&title=Jeffrey-R.-Gural>

<sup>20</sup> <http://www.singlearticles.com/the-utopians-a1323.html>

<sup>21</sup> <http://www.forbes.com/profile/len-blavatnik>

<sup>22</sup> <http://www.streetinsider.com/entities/William+Ackman>

<sup>23</sup> <http://www.law.harvard.edu/news/bulletin/2009/summer/closing.php>

### 13. Fundraising is most intense during the weeks before an election and during “budget season.”

Incumbent legislators raised most of their money near the end of the two year cycle. A look at donations from unions, businesses, and individuals reveals that nearly a fifth of all donations occurred in September and October 2010. For both calendar year 2009 and the first half of 2010, the month in which incumbent legislators raised the most money was March, a time of year when the state budget is theoretically being finalized and special interests attend scores of legislative fundraisers.

Year	Month	Union \$	Individual \$	Business \$	% Interest \$ Raised This Month
2008	Dec	\$59,655.00	\$134,080.88	\$218,182.20	0.98%
2009	Jan	\$169,300.77	\$190,723.14	\$314,190.00	1.60%
2009	Feb	\$344,450.00	\$286,751.85	\$741,584.24	3.25%
<b>2009</b>	<b>Mar</b>	<b>\$455,643.00</b>	<b>\$362,665.73</b>	<b>\$1,259,481.65</b>	<b>4.92%</b>
2009	Apr	\$263,110.00	\$280,109.50	\$655,199.95	2.84%
2009	May	\$233,674.00	\$428,935.03	\$795,283.24	3.46%
2009	Jun	\$244,164.00	\$632,332.37	\$755,678.76	3.87%
2009	Jul	\$221,604.00	\$547,549.35	\$815,210.56	3.76%
2009	Aug	\$117,700.00	\$307,285.50	\$480,246.21	2.15%
2009	Sep	\$176,581.00	\$413,083.00	\$532,100.01	2.66%
2009	Oct	\$284,054.00	\$522,253.22	\$628,554.52	3.40%
2009	Nov	\$144,059.00	\$473,398.30	\$482,950.00	2.61%
2009	Dec	\$143,850.00	\$608,447.79	\$640,564.25	3.30%
<b>2010</b>	<b>Jan</b>	<b>\$277,285.00</b>	<b>\$869,525.64</b>	<b>\$1,073,801.12</b>	<b>5.26%</b>
2010	Feb	\$317,084.00	\$337,646.61	\$827,359.23	3.51%
<b>2010</b>	<b>Mar</b>	<b>\$530,900.00</b>	<b>\$753,115.83</b>	<b>\$1,438,496.49</b>	<b>6.45%</b>
2010	Apr	\$225,845.00	\$616,155.82	\$909,277.41	4.15%
2010	May	\$242,517.00	\$805,237.16	\$778,308.06	4.33%
<b>2010</b>	<b>Jun</b>	<b>\$256,728.00</b>	<b>\$820,025.18</b>	<b>\$1,012,268.28</b>	<b>4.95%</b>
<b>2010</b>	<b>Jul</b>	<b>\$395,765.00</b>	<b>\$951,900.55</b>	<b>\$1,133,351.85</b>	<b>5.88%</b>
<b>2010</b>	<b>Aug</b>	<b>\$475,398.00</b>	<b>\$867,003.31</b>	<b>\$970,894.70</b>	<b>5.48%</b>
<b>2010</b>	<b>Sep</b>	<b>\$622,331.18</b>	<b>\$1,072,672.27</b>	<b>\$1,239,539.09</b>	<b>6.96%</b>
<b>2010</b>	<b>Oct</b>	<b>\$853,974.90</b>	<b>\$2,053,865.06</b>	<b>\$2,307,482.17</b>	<b>12.36%</b>
2010	Nov	\$154,526.69	\$298,083.85	\$339,348.04	1.88%

### 14. The top legislative fundraisers tended to be either leaders or candidates in close elections.

Of the 15 Senate candidates who raised the most money, six held leadership positions and seven were in close races, receiving between 45 and

55% of the vote. The two exceptions, Lee Zeldin and Brian Foley, ran in a race that was widely predicted to be close, yet saw the challenger defeat the incumbent by over 14 points.

*Top Senate Fundraisers*

<b>Candidate</b>	<b>Vote %</b>	<b>Total Raised</b>	
John L. Sampson	93.40%	\$2,547,994.98	Democratic Leader
Jeffrey D. Klein	66.94%	\$2,202,329.87	Democratic Leader
Thomas W. Libous	61.25%	\$1,798,720.95	Republican Leader
Craig Johnson	49.76%	\$1,760,869.53	Contested seat (SD 7)
Carl Kruger	73.21%	\$1,415,402.94	Chair, Finance Cmte
Jack Quinn	45.47%	\$1,191,394.82	Contested seat (SD 58)
Darrel J. Aubertine	47.41%	\$1,108,498.23	Contested seat (SD 48)
Bob Cohen	49.60%	\$1,094,714.69	Contested seat (SD 37)
Greg Ball	51.07%	\$1,087,361.46	Contested seat (SD 40)
Brian X. Foley	42.92%	\$1,078,840.13	Contest seat (SD 3)
Malcolm A. Smith	81.52%	\$1,078,383.25	Democratic Leader
Dean G. Skelos	65.79%	\$1,044,923.58	Republican Leader
David J. Valesky	52.77%	\$1,035,560.95	Contested seat (SD 49)
Lee M. Zeldin	57.08%	\$1,034,477.72	Contested seat (SD 3)
Timothy M. Kennedy	47.23%	\$1,001,046.56	Contested seat (SD 58)

The same trend is generally true in the Assembly, though a few incumbents not widely viewed as conference leaders raised enough to crack the top 15 list:

*Top Assembly Fundraisers*

<b>Candidate</b>	<b>Vote %</b>	<b>Total Raised</b>	
Sheldon Silver	100.00%	\$654,476.98	Democratic Leader
Joseph D. Morelle	60.97%	\$587,294.47	Chair, Insurance Cmte.
Jonathan L. Bing	65.15%	\$519,601.05	Chair, Libraries & Education Technology Cmte.
Vito J. Lopez	89.70%	\$460,680.63	Democratic Leader
Sam Hoyt	53.33%	\$458,652.10	Chair, Local Governments Cmte.
Grace Meng	100.00%	\$455,425.57	Finished first term
Timothy P. Gordon	47.12%	\$447,245.81	Contested seat (AD 108)
David I. Weprin	69.79%	\$354,380.75	Elected during a special
Albert A. Stirpe, Jr.	48.92%	\$336,219.31	Contested seat (AD 121)
Marc S. Alessi	49.02%	\$325,216.30	Contested seat (AD 1)
Peter J. Abbate, Jr.	61.42%	\$289,404.83	Chair, Governmental Employees Cmte.
Robin Schimminger	55.01%	\$286,580.39	Chair, Economic Development, Job Creation, Commerce and Industry Cmte.
Herman D. Farrell Jr.	90.62%	\$285,908.13	Chair, Ways & Means Cmte.
Dov Hikind	65.07%	\$276,644.27	Long-time member
Peter E. Rooney	43.46%	\$269,000.00	Contested seat (AD 101)

**15. In both houses, incumbents dramatically outraised challengers.**

<b>Type of Candidate</b>	<b>Total Candidates Filing</b>	<b>Average Raised</b>	<b>Average # Donations Received</b>	<b>Average \$ per Donation</b>
Assembly Challengers	113	\$59,005.02	137.65	\$428.64
Assembly Incumbents	130	\$135,926.26	322.83	\$421.04
Senate Challengers	48	\$257,249.50	325.79	\$789.61
Senate Incumbents	55	\$617,270.19	785.58	\$785.75
Incumbent Assemblymembers Running for Senate	5	\$703,307.31	944.60	\$744.56

Surprisingly, the typical donation received by a challenger was larger than that received by incumbents. This is perhaps due to the fact that challengers relied on large checks from other candidates and unlimited transfers from party committees to a greater degree than incumbents. In the Assembly, incumbents received 11.36% of their money from these sources; they accounted for 20.07% of receipts reported by challengers. In the Senate, incumbents transferred in

11.74% of their funds while challengers relied on them for a whopping 39.63% of their money.

**16. Candidates who were in close races relied on transfers from political party committees the most.**

Those who received between 45 and 55% of the vote got an average of 30.57% of their money from parties and 5.32% from other candidates. Former Assemblymember Al Stirpe was the clear leader in this category, getting 72.79% of his \$336,219 in the form of transfers.

Party committees also benefit candidates by spending money directly on them. These expenditures are reported on “Schedule R” of campaign finance disclosure forms, and also tend to go to candidates in races perceived as close:

**Candidates who received the most as disclosed on Schedule R filings**

Party Committee	Schedule R \$	Candidate	Percentage of Vote
DSCC	\$581,523.77	Mike Kaplowitz (SD 40)	48.93%
DSCC	\$561,912.56	Suzi Oppenheimer (SD 37)	50.40%
DSCC	\$498,819.56	Brian Foley (SD 3)	42.92%
DSCC	\$397,892.38	Susan Savage (SD 44)	35.80%
DSCC	\$385,705.23	Tony Avella (SD 11)	54.30%
SRCC	\$366,724.89	Frank Padavan (SD 11)	45.70%
DSCC	\$343,717.09	Andrea Stewart-Cousins (SD 35)	55.68%
DSCC	\$316,767.24	Mary Wilmot (SD 55)	46.80%
SRCC	\$280,513.78	Hugh Farley (SD 44)	64.21%
SRCC	\$272,988.28	Patricia Ritchie (SD 48)	52.60%

Unfortunately, it is difficult to get a complete picture of this outside spending. The filings of the State Republican party, who spent around \$3 million over the past two years, claim that none of this was spent to benefit candidates. Numerous local party committees made the same failure of disclosure, as did various issue groups ranging from the obscure (a PAC called “Common Sense” that reported spending less than \$2,000, yet managed to pay for a mailer to every registered voter in Assembly district 121) to the well-known (Ed Koch’s New York Uprising, for example, did not detail its expenditures). In order to get a full picture of how much money is spent and on whom, the Board of Elections needs to start enforcing this basic disclosure law.

# **CAPITAL INVESTMENT\$ 2010: New York State's System of Financing Elections**

## **New York's disgraceful campaign finance system.**

State lawmakers have long been on notice about the failure of New York's campaign finance law. Nearly twenty years ago, the final report of the Commission on Government Integrity was sent to the Governor and state legislative leaders. The Commission's report condemned New York's lax ethical standards calling them "disgraceful" and "embarrassingly weak." In addition, the Commission scolded state leaders for failing to act saying, "*Instead partisan, personal and vested interests have been allowed to come before larger public interests.*"<sup>24</sup>

The now-defunct Commission was created in response to scandals that rocked the political establishment in both New York City and New York State. The Commission, led by Fordham Law School Dean John Feerick and other luminaries including former U.S. Secretary of State Cyrus Vance, was charged by then-Governor Mario Cuomo with examining the way political business is conducted in New York State and developing a blueprint for reform.<sup>25</sup>

Twenty years later, New York City now has the most far reaching and effective system of financing campaigns for city office – in fact a model for the nation – and it has placed significant limits on the efforts of special interests to control government decision-making.

Yet in Albany, nothing has changed. By 1990, the Commission had released 23 reports, including recommendations for sweeping campaign finance and ethics reforms for both state and municipal governments. State lawmakers in Albany ignored these recommendations.

Despite the Commission's statement that "Campaign finance laws in New York are a disgrace",<sup>26</sup> there have been no significant changes in New York law. New York still has sky-high campaign contribution limits, allows unlimited contributions to party "soft money" accounts, permits unfettered campaign

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<sup>24</sup> New York State Commission on Government Integrity, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988.

<sup>25</sup> Executive Order No. 88.1, created The New York State Commission on Government Integrity. Issued by then-Governor Mario Cuomo, April 21, 1987.

<sup>26</sup> New York State Commission on Integrity in Government, "Restoring the Public Trust: A Blueprint for Government Integrity," Volume 1, December 1988, p. 6.

fundraising during the legislative session, and fails to enforce the state's already weak penalty provisions. Not only has the failure of Albany to act left powerful special interests with a huge say over policymaking, it has become a blatant way for lawmakers to subsidize their personal lifestyles. Some lawmakers, for example, now legally use their campaign contributions to lease luxury cars, pay for country club memberships, and travel abroad.

### **Biggest problems with New York's campaign finance law.<sup>27</sup>**

Soft money. The "soft money" loophole (known as "housekeeping" accounts) allows individuals, PACs and corporations to exceed New York's already high "hard" money contribution limits by giving more to the parties. While the law prohibits the use of these donations directly on behalf of candidates, parties use these monies to conduct polls, launch get-out-the-vote drives, to fundraise for more "hard" money and – sometimes – to launch "attack" ads.

Sky-high campaign contribution limits. Unlike federal law and much of the nation, New York State allows extremely large campaign contributions. Political parties are allowed to receive annual contributions of \$94,200; statewide candidates can receive contributions of over \$55,000 (including \$37,800 for the general and up to \$18,100 for a primary) for an election cycle; state senate candidates can receive \$9,500 for the general election (an additional \$6,000 for a primary); and assembly candidates can receive \$3,400 for the general (an additional \$3,800 for a primary). *In addition, New York law allows for a cost-of-living-adjustment for contribution limits that will be raised again in early 2011.*<sup>28</sup>

According to the National Conference on State Legislatures, for "contributions from an individual to a statewide candidate, the national mean is \$4,000 per election cycle; the average is \$7,762. For legislative candidates, the national median is \$2,000 per election cycle; the average is \$3,784 for a state senate candidate and \$3,412 for a state house candidate. The lowest limits nationwide are found in Massachusetts and Montana. The highest limits are in New York and Ohio."<sup>29</sup>

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<sup>27</sup> New York State Election Law, Article 14.

<sup>28</sup> New York State Election Law, Article 14.

<sup>29</sup> National Conference of State Legislatures, "Median and Average Contribution Limits – 2010 Elections," 1/20/1010, accessed 12/22/10, <http://www.ncsl.org/Default.aspx?TabId=16556>. The NCSL also reports that six states - Illinois, Missouri, New Mexico, Oregon, Utah and Virginia - place no limits on contributions at all. Another seven states - Alabama, Indiana, Iowa, Mississippi, North Dakota, Pennsylvania, and Texas - have minimal contribution limits. [NOTE: Illinois and New Mexico passed contribution limits in the 2009 legislative session. NM's will take effect the day after the November 2010 elections, while IL's take effect on January 1, 2011.] Accessed 12/20/10 <http://www.ncsl.org/Default.aspx?TabId=16594>.

Transfers from one political committee to another. On top of the sky-high contribution “limits,” political parties (state parties, county parties, Senate Republicans and Democrats, and Assembly Democrats and Republicans create these committees) are allowed to transfer donations of unlimited size from their accounts to the candidates of their choice. In this way, political parties can easily circumvent contribution limits that exist for statewide and state legislative candidates.

Campaign fundraising during the legislative session. Unlike 28 states, New York imposes no additional limits on campaign fundraising during the legislative session, nor does it impose any unique limitations on lobbyists’ involvement in campaign activities.<sup>30</sup> Typically, elected officials hold roughly 200 fundraisers to raise money from lobbyists and their clients during the state’s legislative session.

Limited disclosure. Unlike federal law, contributors do not have to disclose the names of their employers or even the names of those who actually delivered the contributions (a.k.a. “bundlers”).

Poor enforcement. New York State’s Board of Elections is underfunded and limited by law in its ability to punish election law scofflaws. Campaigns too often refuse to pay fines and the agency is unable to act quickly on violations. The Board is unable to even levy serious penalties for repeat offenders.

Use campaign contributions for “personal” uses. While New York forbids contributions for strictly personal use, candidates can use these monies for any purchase in their role as a candidate or as a public or party official. Incumbents often use these donations for junkets, country club memberships, flowers, leased cars, “legal defense funds,” and other purchases.

Heavy reliance on special interests to fund elections and the extreme difficulties for challengers to raise money. New York’s combination of huge contribution limits and the commonplace practice of incumbents holding fundraisers near the Capitol during the legislative session, promotes a heavy reliance on those with the financial resources to fund elections – typically special interests with business before government. Moreover, relying on powerful special interests makes it

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<sup>30</sup> National Conference of State Legislatures, “Limits on Contributions During the Legislative Session,” 1/25/2010, accessed 12/22/10, <http://www.ncsl.org/Default.aspx?TabId=16544>. According to the NCSL, 28 states place restrictions on giving and receiving campaign contributions during the legislative session. In some states, the ban applies only to contributions by lobbyists, principals and/or political committees; other states have a general ban on contributions. South Carolina bans lobbyist contributions at any time; not just during a legislative session.

extraordinarily difficult for challengers to mount significant challenges, thus denying voters real choices in elections.

New York's legislative candidates rely heavily on enormous financial support from a small fraction of the state's population. As a result, New Yorkers see a system that appears to be far more responsive to the needs of the wealthy and powerful than it is to the huge percentage of citizens that are not directly involved in political campaigns.

Loophole allowing corporations to exceed the \$5,000 aggregate limit. New York State limits campaign contributions by corporations to no more than \$5,000 in the aggregate in one year.<sup>31</sup> However, the State Board of Elections considers each subsidiary as one corporate entity. As a result, corporations with many subsidiaries are able to circumvent the state restriction.

Loophole for Limited Liability Corporations. In 1994 the legislature enacted the "New York Limited Liability Company Law, effective October 24, 1994 (the "LLC Law").<sup>32</sup> The LLC Law allows the formation of a limited liability company to conduct any lawful business and LLCs may be organized with as few as one person, person being defined to include a natural person, corporation, business trust or other limited liability company.<sup>33</sup>

New York's Election Law was not amended to specifically cover political donations contributed by this new form of business entity.

In 1996, the New York State Board of Elections issued an opinion that as defined in the LLC Law, LLCs are not corporations, partnerships or trusts and are not subject to the corporate contribution limits pursuant to Election Law Article 14. Instead, the Board followed the determination of the Federal Election Commission which stated that it would not hold LLCs to the federal ban on corporate political donations.<sup>34</sup>

In 1999, the FEC reversed its position on LLC treatment under federal election law and adopted final regulations (the "FEC LLC Regulation").<sup>35</sup> The FEC LLC

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<sup>31</sup> New York State Election Law, Section 14-116.

<sup>32</sup> Laws of 1994, Chapter 576.

<sup>33</sup> New York Limited Liability Company Law sections 102 (m) and 102 (w).

<sup>34</sup> It's worth noting that New York's campaign contribution limits are significantly more generous than under federal law. Thus in 1999, treating an LLC like an individual under federal law at the time of the FEC's decision meant that an LLC could only give \$1,000 per year per candidate per election; \$20,000 in a calendar year aggregate to national committees; and not aggregate more than \$25,000 in any calendar year. See Federal Register, Vol. 64, No. 132, 7/12/99 (p. 37398).

<sup>35</sup> Federal Register, Vol. 64, No. 132, 7/12/99 (pp. 37397-37400).

Regulation adopted a “check the box” rule. The “check the box” rule treats LLCs for federal election purposes as the LLC has chosen to be treated under the Internal Revenue Code. By default, an LLC that does not check the corporate-status box on its IRS form is treated as a partnership for purposes of both taxation and federal campaign contribution limits.

However, New York State never followed suit.

In 2001, the New York City Campaign Finance Board addressed the issue of whether to apply its “single source” rule to LLCs with a common managing member or separate limited partnerships controlled by a common general partner. In Advisory Opinion 2001-6, the NYCCFB found that under its rules and under common management practices for LLCs, a single individual typically “not only makes decisions and establishes policies for the [LLC] it manages, but also controls all non-material transactions conducted by such [LLC]. Contributions to political candidates would generally be considered non-material transactions.”

Accordingly, the NYCCFB found that in the absence of some agreement to the contrary, LLCs, together with the common managing member or general partner that controls it, would be considered a single source for purposes of the contribution limits applicable under the New York City Administrative Code.

New York State needs to treat LLCs as corporations, not individuals.

# CAPITAL INVESTMENT\$ 2010:

## An Agenda for Reform

**Recommendation: Enact comprehensive campaign finance reform.**

**Solution #1: Create a voluntary system of public financing modeled on New York City.** Many states have developed voluntary systems of public financing – half the states operate some sort of public financing program.<sup>36</sup> However, New York lawmakers do not have to look far for a model of how to reform its campaign finance system. As *The New York Times* commented “New York City’s campaign finance system ranks among the best in the country.”<sup>37</sup>

In 1988, New York City created a voluntary system of public financing in the wake of series of political corruption scandals. New York City created a Campaign Finance Board to be an independent, nonpartisan agency to oversee the program.

The system grants public matching funds to qualifying candidates, who in exchange submit to strict contribution and spending limits and a full audit of their finances. Initially, the program matched every dollar raised by a candidate up to a total of \$1,000 per donation. Over time the program expanded and now matches \$6 for every \$1 raised up to \$175 per donation. In addition, candidates running for citywide office (mayor, comptroller, public advocate) must agree to participate in debates. Corporate contributions are banned and political action committees must register with the city.<sup>38</sup>

As a result of this system, New York City now has competitive elections in which average citizens have a shot at elective office. Moreover, once in office, those legislators now owe little to rich special interests. It is the model that state lawmakers should emulate in Albany.

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<sup>36</sup> National Conference of State Legislatures, “Public Financing of Campaign – An Overview,” 1/6/10, accessed 12/22/10 <http://www.ncsl.org/default.aspx?tabid=16591>. Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina, Rhode Island, Vermont, and Wisconsin all provide funding to candidates. Arizona, Arkansas, Hawaii, Minnesota, Montana, Ohio, Oklahoma, Oregon and Virginia provide tax credits for contributions. Arizona, Idaho, Iowa, Minnesota, New Mexico, North Carolina, Rhode Island, Utah and Virginia provide funding to political parties.

<sup>37</sup> *New York Times* editorial, “Questions for Data and Field,” 8/22/09.

<sup>38</sup> For more information on the history of the New York City campaign finance system, see: <http://www.nycfb.info/press/info/history.aspx>.

### **Benefit #1: More Competitive Elections.**

Key results of the 2009 New York City elections:

- Five incumbents were beaten, “an unprecedented number for a single election. Other incumbents won by slimmer-than-expected margins. More incumbents faced primaries, fewer candidates ran unchallenged, and the average margins of victory were closer than in previous elections.”
- “Under-represented” voters gained significantly in the 2009 election. “After the 2009 elections, the New York City Council had a non-white majority for the first time ever.”<sup>39</sup>

Clearly, New York City’s system of public financing is creating a robust, competitive election atmosphere. The number of candidates is up, the percentage of participating candidates is up, and the number of matchable contributions is up. Candidates cannot simply overwhelm their opponents with truckloads of money. They must compete with “shoe leather” and policy proposals. In this environment, the public is certainly the big winner. Voters can choose candidates whose policies they agree with, rather than vote for the candidate with the greatest name recognition.

### **Benefit #2: Citizen Empowerment.**

In addition, new research on the New York City campaign financing system documents an additional benefit: Drawing in voters who would ordinarily not participate beyond voting.

Recent US Supreme Court decisions have eroded the benefits of a public financing system. The Court’s 2010 decision in *Citizens United v. FEC* allowed interest groups, like the U.S. Chamber of Commerce, to spend as much money as they wanted on behalf of candidates for office. As a result, the Court greatly diminished the benefits of public financing programs in reducing the influence of special interests.

So, if the Supreme Court has sharply curtailed the ability of policymakers to eliminate the flow of special interest dollars, is it beneficial to enact a public financing system?

There is innovative research that demonstrates additional benefits from a public financing system. The Washington-based Campaign Finance Institute<sup>40</sup> has released a series of data-based reports that have identified a new and

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<sup>39</sup> New York City Campaign Finance Board, “New Yorkers Make Their Voices Heard: A Report on the 2009 Elections,” p. 22.

<sup>40</sup> For more information on the Institute, see: <http://www.cfinst.org/>.

important benefit of a voluntary system of public financing – enhanced voter participation.

The Institute has looked at systems that have incentives to get small donors to participate in elections. Research shows small donors are more representative of the public at large – not surprisingly, since few can write big campaign contribution checks. The Institute also found that small donors are interested in candidates’ *positions* while large donors are far more interested in their own commercial or legislative interests. The Institute also found that small donors are more likely to “buy into” the candidates’ campaigns and that there is some evidence that such participation leads to greater participation in civic life generally.<sup>41</sup>

In addition, the Institute examined how well small donors are involved in campaign finance by comparing participation in the New York City system with New York State. The Institute then showed what impact the City system would have on the State if such a voluntary public financing system was enacted.

**Campaign Finance Institute: Donor Role in New York State Legislative Races, Current vs. Establishment of NYC-style System<sup>42</sup>**

Donation size	Current percent participation (Gubernatorial and Legislative Candidates, 2006).	Participation if New York State Lowered Contributions and Enacted a \$4 to \$1 match <sup>43</sup>
\$1-\$250	7%	35%
\$251-\$999	6%	8%
\$1,000+	33%	20%
Non-party	45%	26%
Party	10%	10%

As the chart above shows, enactment of a voluntary public financing system modeled on New York City would dramatically increase the participation of small donors. Moreover, the Institute estimates that such a system would cost roughly \$34 million of public funds. However, if the state got the same

<sup>41</sup> Wesley, Y., Malbin, M., et al, “Do Small Donors Improve Representation? Some Answers from Recent Gubernatorial and State Legislative Elections,” Paper delivered at the 2008 Annual Meeting of the American Political Science Association.

<sup>42</sup> Malbin, M., Brusoe, P., “Should New York City’s Campaign Finance System be a Model for the State?”, Presentation at the Nelson A. Rockefeller Institute of Government, 12/1/10, accessed 12/20/10 [http://www.rockinst.org/pdf/public\\_policy\\_forums/2010-12-01-Malbin\\_slides.pdf](http://www.rockinst.org/pdf/public_policy_forums/2010-12-01-Malbin_slides.pdf).

<sup>43</sup> For the purposes of this analysis, the Campaign Finance Institute uses the requirements found in Assembly bill 8902 (2009) and lowers contribution limits to \$4,000 per election cycle for individuals and limits PACs to \$10,000.

small donor rate as New York City currently does, the percentage of small donors jumps to 57% and the cost of the system increases to \$68 million.<sup>44</sup>

And when it comes to civic participation, New York needs a boost. In a recent survey conducted by Siena College's Research Institute, New York ranked near the bottom in "civic participation."<sup>45</sup> And voter participation levels in the last election placed New York again as one of the nation's worst.<sup>46</sup>

**Solution #2: Overhaul existing campaign finance law.** Moreover, strengthen existing law for those who opt not to participate in the voluntary system. New York State can only create a *voluntary* system of public financing, it cannot force all candidates to participate. Significant changes must be made to the existing campaign finance law in order for the benefits of a public financing system to be realized.

**Ban soft money.** The federal government now bans "soft money" donations to the political parties. Yet, the federal law allows state and local parties to continue to receive these huge donations. New York State should close the soft money loophole.

**Lower contribution limits.** New York State's limits should not exceed those for Congressional candidates.

**Close loopholes.** Eliminate the loophole that allows corporations to circumvent New York's \$5,000 annual aggregate corporate limit by funneling contributions through subsidiaries as well as the loophole that allows LLCs to be subject to individual contribution limits, instead of corporate limits. Candidates should be limited to one committee each. Allowing candidates to maintain multiple committees serve only to obfuscate their total fundraising.

**Expand disclosure.** Require disclosure of the name of the employer or the occupation of the contributor as well as the name of any "bundler" involved in collecting the contributions. Both New York City and federal laws requires such disclosures.

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<sup>44</sup> Malbin, M., Brusoe, P., "Should New York City's Campaign Finance System be a Model for the State?", Presentation at the Nelson A. Rockefeller Institute of Government, 12/1/10, accessed 12/20/10 [http://www.rockinst.org/pdf/public\\_policy\\_forums/2010-12-01-Malbin\\_slides.pdf](http://www.rockinst.org/pdf/public_policy_forums/2010-12-01-Malbin_slides.pdf).

<sup>45</sup> Siena Research Institute, New York Civic Health Index, 2010, "New York Trails Nation in Two of Five Civic Health Areas Participation in Civic Responsibilities and Duties Low New Yorkers Highly Social and Informed; Engagement in Group Meetings and Community Participation Lacking," 12/8/10.

<sup>46</sup> United States Election Project, "2010 General Election Turnout Rates," accessed 12/22/10 [http://elections.gmu.edu/Turnout\\_2010G.html](http://elections.gmu.edu/Turnout_2010G.html).

***Solution #3: Limit the use of campaign contributions to those activities directly involved in campaigning.*** New York State law not only allows the use of campaign contributions for purposes relating to a candidacy, but also to spending relating to an official's role as a public or party official.<sup>47</sup> This loophole allows incumbents – who are rarely challenged in elections – to use campaign donations for essentially personal uses. This loophole must be closed.

***Solution #4: Boost campaign finance enforcement.*** As mentioned earlier, New York State's Board of Elections is underfunded and limited by law in its ability to punish election law scofflaws. Essentially, the State Board focuses its efforts on the formidable task of running New York State's elections.

Therefore, legislation must be enacted that develops more effective enforcement mechanisms, including: centralized reporting at the state level; increased civil fines; increased criminal sanctions and criminal fines for willful violations of Article 14; creation of an independent and nonpartisan entity for administering both Article 14 compliance and the public funding system fines for exceeding contribution limits and violations of campaign finance disclosure laws, as well as appropriate and clearly delineated criminal sanctions. We also believe that, should you not follow our recommendation and assign administration of the public funding system to another entity, the State Board of Election must also be afforded additional resources to be able to adequately enforce the law and any new responsibilities.

***Solution #5: Strengthen the state's campaign finance database.*** The State Board of Elections should perform more comprehensive and thorough checks on the data supplied by the treasurers. Simple checks include using software to verify that addresses and zip codes match up and are entered without obvious typos. Software to provide these checks is readily available and commonly found in a wide variety of commercial applications.

Candidate and Party committees should be required to record the filer identification number of the contributing state-registered PAC. This would aid in the determination of top PAC donors and also help curb the number of misreported transactions on schedule C.

The database descriptions that are provided with the downloadable ASCII files need to be updated. They fail to make reference of schedule R's (money spent by parties on behalf of candidates) in the data descriptor files. Additionally, outside parties should record the filer identification number of the committee on

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<sup>47</sup> New York State Election Law §14-130.

whose behalf they are spending. Finally, the Board should periodically review independent expenditures to make sure they are all properly reported.

The Board should require firms paid large sums by candidates to disclose how they spent this money. There are hundreds of examples of payments being made to “consultants” where descriptions of how this money is ultimately spent are vague or nonexistent. In 2010, a major gubernatorial candidate obfuscated most of his spending by writing large checks to corporations he established, and providing no itemization beyond these payments.

Finally, the Board should investigate ways in which they can make simple modifications to their filing procedures to reflect the modernization of campaigns over the past decade. For example, treasurers are required to select one of nineteen “expenditure purpose codes” for each transaction leaving their committees' bank accounts. While there are separate options for radio, television, and print advertisements, there is no option to identify an expenditure as an internet ad. Thus, the increasing amount of money spent buying online ads is nearly impossible to measure.

***Solution #6: Ensure adequate oversight of “independent expenditure” efforts.*** Earlier this year the US Supreme Court ruled that corporations -- and by extension unions -- should be allowed to spend as much as they want to support or oppose candidates. The Court’s decision, known as “Citizens United,” struck down federal restrictions on corporate spending on candidates and issues – as long as the spending is not coordinated with those candidates.

Under state law, any individual, corporation, union or other entity that wishes to spend money to influence an election must file disclosure reports with the Board of Elections. Since New York cannot limit spending by independent expenditure efforts, policymakers must re-examine this area of law to ensure that public disclosure requirements cover this type of activity.

# **CAPITAL INVESTMENT\$ 2010:**

## **Methodology**

All the numbers contained in this report are based off of databases available at [www.elections.state.ny.us](http://www.elections.state.ny.us). These were downloaded on December 8, 2010 – nearly two weeks after the last filing deadline of the election cycle – and do not reflect any late or amended filings submitted after this date. Election results were obtained from the same website on December 15, 2010. One race (Assembly District 100) was still waiting final results. The validity of all the data is dependent on the accuracy of committee treasurers and the oversight of the State Board of Elections.

For legislative campaign committees and parties' reporting committees, the totals reflect numbers reported in the January 2009 disclosure report (which includes contributions made on November 28, 2008 or later) through the 27-day post-general 2010 report (which includes all contributions up to November 25, 2010). For statewide candidates, the totals include the January 2007 disclosure report (which includes contribution made on December 1, 2006 or later) through the 27-day post-general 2010 report.

Several legislative candidates we examined had two elections during the two year cycle, since they first took office in a special election (Senator Peralta; Members of Assembly Murray, Montesano, Weprin, Castelli, M. Miller, Gibson, and Crespo). The numbers from the specials were included if the candidate ran for the same office in both races.

Contributors from all schedules itemizing receipts were coded according to their type of organization: business interests, unions, candidate/party committees, not for profits (interest groups not affiliated with businesses or unions, e.g. NARAL, NRA, local civic organizations, etc.), unitemized (donors whose names were not released by campaign treasurers), interest, individual, or “unclear” (representing about 1% of money, these are contributions where we could not easily determine the nature of the donor). The names recorded in these fields, at times, contained typographical errors. When possible we corrected typographical errors, such as when a name closely matched that of another except for one or two letters and the addresses were the same (e.g., “Alfonse D’Amato” and “Al Damato”) where obvious solutions were available. Furthermore, names were researched on the internet (by both name and address, independently) and were compared with the names and addresses of PAC’s registered with the state Board of Elections.

Our calculation of estimated individual donors in New York was a total of all the contributors listed on Schedule A that were marked as individuals, whose first

name, last name and zip code were similar enough to appear to be the same individual. Due to typographical errors in the recording of names and addresses it is impossible to determine a precise amount of individual donors – even though we corrected for obvious typos, there were likely hundreds we missed. This number represents the number of individual donors, as defined above, who contributed and not the number of contributions made. Additionally, because campaign finance law allows contributions under \$99 to be un-itemized, it should be noted that there is under-reporting.