

CITIZENS UNION | ISSUE BRIEF AND POSITION STATEMENT

State Campaign Finance Reform with Public Matching Funds

INTRODUCTION

Citizens Union of the City of New York is an independent, non-partisan civic organization of members dedicated to promoting good government and political reform in the city and state of New York. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. Founded in 1897 to fight the corruption of Tammany Hall, Citizens Union currently works to ensure fair elections, clean campaigns, and open, effective government that is accountable to the citizens of New York. We do so by informing the policy debate and influencing the policy outcomes that affect the lives of all New Yorkers.

Believing that an informed citizenry is the cornerstone of a thriving local democracy, Citizens Union Foundation—the non-profit research, education, and advocacy organization affiliated with CU—publishes GothamGazette.com, a front row seat to New York City policies and issues.

Citizens Union has long been concerned about the undue influence and possible corruption that some private campaign contributions can have on candidates and government officials. We remain supportive, however, of citizens having the continued opportunity to participate throughout the course of a candidate's campaign by making political contributions, because we believe it to be part of a healthy democracy. We also believe that candidates should have access to an adequate level of public matching funds in order to have the chance to campaign competitively.

The perception that elected officials in New York State are beholden to special interest groups and the campaign contributions they make undermines the public's confidence in the expected impartiality and integrity of the decisions being made by state government officials. Moreover, the amount of money raised and spent on campaigns increases disconcertedly with each election cycle. Money, or the lack thereof, too often becomes the determinative factor in the viability of candidates running for New York State elections.

New York State's campaign finance laws, having last been changed in 1975, are in dire need of reform. Of the thirty-six states that limit contributions to candidates by individuals, New York's individual contribution limits are only lower than Ohio for state legislative races and the highest in the nation for gubernatorial candidates. It also should be noted that many states – even those that do not limit individual contributions – prohibit contributions from corporations, which New York State does not.

Campaign finance reform in the state must occur in two major ways:

1. statutes and regulations must be changed to drastically reduce contribution limits, strengthen oversight and tighten enforcement, restrict, if not ban, soft money contributions, and require greater disclosure, and
2. public financing with sufficient funds matched from private contributions must be enacted.

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Elements of the first goal were embodied in a July 2007 agreement reached among the then Governor, Senate Majority Leader, and Assembly Speaker that was never translated into legislation. The second goal has been embodied in one form or another for three decades in the Assembly as a public matching funds bill that has been passed in nearly all of those years. Another form of public campaign financing has emerged recently and is known as full public financing. A full public financing bill was carried by then Senator David Paterson and Assemblymember Felix Ortiz starting in 1999, and a similar version is now carried by Minority Leader Malcolm Smith in the Senate.

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This paper describes the current system and its regulations, and analyzes the two different systems of public financing. In reforming the state campaign finance system, Citizens Union recommends a broad set of needed statutory and regulatory changes, and reaffirms its support for the creation of a public matching funds system, strongly preferring it to a full public financing system.

NEW YORK STATE'S CURRENT CAMPAIGN FINANCE SYSTEM

Campaign finances are regulated in New York through a weak system of high contribution limits and lax disclosure requirements. Laws and regulations governing campaign finance are minimally enforced by a bipartisan appointed state board of elections which has the dual responsibility for holding elections and receiving campaign disclosure reports. The categories of regulation, or lack thereof, for New York State are as follows.

Disclosure

In addition to two semi-annual reports every year, candidates for state office are required to file three campaign disclosure reports for each election (primary and general) during the campaign season. In the off election year, they need only file the two semi-annual ones. No disclosure reports are required, however, during the six-month legislative session when most political contributions are made and the state budget and legislation are passed making it difficult to track contributions that are made when important decisions are being made by the Governor and the Legislature.

Candidates for state office are not required to report the occupations and employers of their contributors, making it hard to track and know the source of contributions. Not also required is the reporting of accrued expenses and expenditures that are owed but not paid at the time a service is provided.¹ Reporting campaign expenses on a cash only basis makes it difficult to know during a campaign who provided what services and at what cost if the vendor does not expect to be paid until after the campaign. Additionally, New York has only limited disclosure requirements for independent expenditures by advocacy organizations for election-related advertising.

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¹ "What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action" by Ciara Torres-Spelliscy & Ari Weisbard, published in *Albany Government Law Review*, Vol. 1, 2008.

Contribution Limits

Contribution limits vary depending on the entity receiving or giving the funds. “Hard money” contributions, with lower limits and stricter uses, are given directly to candidates by individuals, unions, or corporations. “Soft money” contributions, with higher limits and broader uses, are given to political action committees, political parties, or party housekeeping accounts for party building activities not intended to benefit a candidate specifically, but often do in both direct and indirect ways. The following chart outlines the current contribution limits in New York State.

Corporations can avoid the \$5,000 limit by having their subsidiaries make allowable contributions. Individuals can also avoid contribution limits by setting up shell limited liability corporations or using commonly controlled LLCs or partnerships to make multiple over the limit, but allowable contributions.

NEW YORK STATE CAMPAIGN CONTRIBUTION LIMITS

LIMITS ²	To Candidates for Assembly	To Candidates for Senator	To Candidates for Governor	To PACS	To Party or Constituted Committees**	To Party Housekeeping***	Maximum Aggregate* Contribution
From Individuals	\$3,800 Primary <u>\$3,800 General</u> \$7,600 Total	\$6,000 Primary <u>\$9,500 General</u> \$15,500 Total	\$18,100 Primary <u>\$37,800 General</u> \$55,900 Total	\$150,000 Year	\$94,200 Year	Unlimited	\$150,000 Year
From Unions	\$3,800 Primary <u>\$3,800 General</u> \$7,600 Total	\$6,000 Primary <u>\$9,500 General</u> \$15,500 Total	\$18,100 Primary <u>\$37,800 General</u> \$55,900 Total	\$150,000 Year	\$94,200 Year	Unlimited	\$150,000 Year
From Corporations <small>(related subsidiaries may make separate contributions)</small>	\$5,000 Year	\$5,000 Year	\$5,000 Year	\$5,000 Year	\$5,000 Year	Unlimited	\$5,000 Year
From PACS	\$3,800 Primary <u>\$3,800 General</u> \$7,600 Total	\$6,000 Primary <u>\$9,500 General</u> \$15,500 Total	\$18,100 Primary <u>\$37,800 General</u> \$55,900 Total	\$150,000 Year	\$94,200 Year	Unlimited	\$150,000 Year
From Political Parties	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

Funds may be raised and used for the primary only if the election is contested.

*Aggregate refers to total contributions to candidates and committees in a given year by individuals or entities such as PACs and corporations.

**Political Parties include County and State Committees, and Legislative Committees such as the Democratic Assembly Campaign Committee.

***Party Housekeeping accounts are for the maintenance of a permanent party headquarters and staff, and ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates. Contributions to party housekeeping do not add to maximum aggregate contribution limits.

Pay-to-Play Regulation

Those that do business with the state have no additional restrictions on the contributions that they can make to candidates for public office. Contractors and lobbyists may give as corporations and individuals, with subsidiaries also able to make additional separate donations. There are no specific restrictions on contributions from lobbyists, who also often “bundle”

² Information and table format obtained from “What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action” by Ciara Torres-Spelliscy & Ari Weisbard, published in Albany Government Law Review, Vol. 1, 2008.

contributions from multiple clients to maximize their fundraising contributions.

Fines and Enforcement

The current maximum fine for failing to file a disclosure statement is \$500, and knowingly and willfully failing to file the statement within 10 days of the deadline is a misdemeanor. Penalties are also awarded for other violations, including a misdemeanor for knowing and willful acceptance or donation of a contribution in an amount exceeding the maximum contribution level. It is a class E felony to evade or attempt to evade contribution limits by making outside expenditures. However, there are no regular audits or on-going oversight provided by the Board of Elections that uncovers such violations and enforces compliance. Violations are often found when an inquiry is made from an outside source and rare is the instance when a penalty or fine is assessed.

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Personal Use and Fund Transfers

While personal use of campaign funds is prohibited, these funds may be legally used for activities that involve the holding of a public office or party position. This broad exception has resulted in the abuse of campaign funds in some cases, and allows the use of such funds on items unrelated to campaigning. Additionally, an unlimited amount of money can be transferred to candidates from party committees and housekeeping accounts allowing contributors another gateway to make over the limit contributions to candidates.

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PUBLIC FUNDING for CAMPAIGNS: MATCHING or FULL

Unlike what exists for local candidates in the City of New York, there is no public financing system for candidates for state office. Citizens Union has historically supported a matching model because it believes that it encourages candidates to earn public funds as voter interest grows, and donor support builds, in their campaigns. It also allows citizens to continue participating throughout the course of a campaign by making contributions to the candidates of their choice. Knowing that there is some support for a full funding system as opposed to a matching one, Citizens Union has examined the issue and proposal for a full-matching system. Each system is described below, followed with an analysis of its respective merits and challenges.

Full Public Financing or “Clean Money Clean Elections”

Full public financing, also known as “Clean Money, Clean Elections” (CMCE), is a voluntary system that provides significant public dollars to candidates in which as much of 90% or more of money received for a campaign are public funds. As one proposal for New York State offers, candidates would first qualify by collecting a set number (400 for Assembly, 1,000 for Senate) of small contributions (\$5-\$100) from voters in their district. Once qualified, participating candidates would agree to no longer engage in private fundraising and not use personal funds for their campaign. A grant of public funds would be given for the primary election and if the candidate advances, again for the general election. The grants would be based on an average of past spending for such campaigns and public funds would constitute as much as ninety percent of the money spent on campaigns. If a participating candidate is outspent by a non-participating opponent or independent expenditures, additional funds of up to four times the original grant would be given.

Proponents state that a CMCE approach in New York State would:

- significantly reduce, if not outright end, the influence of contributors on candidates and public policy,
- level the playing field and allow candidates with little access to fundraising and money to compete for elected office, and
- free-up candidates to focus on campaigning instead of raising money.

Public Matching or Partial Funding

A campaign finance public funds matching program is now in place in New York City. Citizens Union has been a supporter of New York City's program since its inception in 1988, and has helped to strengthen it several times since then, most recently in 2007 when pay-to-play restrictions were added. It is worth noting that an important distinction of the City system is that it requires much greater disclosure and comparatively smaller limits or prohibitions on certain contributions (such as limitations on those from lobbyists) than for the State.

The matching funds or partial public funding campaign finance proposal which has passed the state Assembly many times is based on the program in New York City. It would be a voluntary system structured to give matching funds to participating candidates who agree to cap their election spending to a predetermined amount. In order to qualify for the public matching funds, candidates must raise a set number of small private contributions totaling a threshold amount. The program is structured to limit the influence of large gifts and increase the value of smaller contributions by matching gifts up to a set amount with public funds. Larger contributions would still be allowed and subject to strict and relatively low limits, but matching funds would be provided only for that portion of the contribution that is at or below the individual matching gift cap.

The more support candidates generate for their campaign through private dollars, the more public funds are provided. This approach to public funding can serve as an incentive for candidates to build 'proxy' like support for their candidacy by raising private money for their campaign, as well serve as a barometer of support from voters for the candidate. With partial funding, substantial public funds would still be a majority of the total funds raised and spent in a campaign, but it would also allow for voters to make contributions throughout the course of the campaign to the candidates that they support.

Like those in the New York City model, triggering provisions would need to be included to increase public payments or change expenditure limits in the event of a non-participating, high-spending opponent, or other factors. Depending on the level of spending and/or funds received by the opponent, public funds are first increased, and then the expenditure limit is increased or eliminated. The public match also increases.

CITIZENS UNION RECOMMENDATIONS

1. Enact a Public Matching Funds Campaign Finance Program

Citizens Union strongly believes that providing public funds to candidates to run for elected office is in the public interest and therefore is a legitimate governmental expenditure. Citizens Union also considers that a program of matching public funding is far preferable to that of a full matching program, and it is where we think the state of New York should begin with public financing.

A PUBLIC FUNDS MATCHING SYSTEM WILL:

- allow contributors to give throughout the course of the campaign and help contribute positively to the progressive building of support for the candidate.
- expand the range and diversity of candidates who are financially able to run for office and make elections more competitive.

Citizens Union is concerned that full public financing limits citizens to contributing only during an early qualifying period that is long before campaigns peak and will have the unintended consequence of decreasing citizen participation in democracy and political campaigns. In addition to voting, the way most people express themselves in political campaigns is through modest contributions to their preferred candidates, which does not often occur until the campaign has reached the forefront of public attention.

A public funds matching system will:

- reduce the influence of special interests in elections and lessen the value of large contributions as long as the limits on the size of the contribution are low.
- increase the value of smaller gifts and empower contributors to make small gifts because of the added value of a public match at some multiple of a contribution up to a given amount, as public dollars are directly connected to the gift each contributor makes.
- allow contributors to give throughout the course of the campaign and help contribute positively to the progressive building of support for the candidate. Since many voters do not become fully engaged in campaigns until they are well underway, a public matching system allows these political expressions to be harnessed.
- expand the range and diversity of candidates who are financially able to run for office and make elections more competitive.
- allow for the state to provide public funds only to candidates who meet certain reporting and expenditure requirements throughout the course of the campaign, unlike full financing when one lump sum is provided upfront once a minimal threshold of private fundraising is met.

There will always be a lot of money waiting, and wanting, to be spent on campaigns and politics. Citizens Union is concerned that full public funding of candidate campaigns may simply force private contributions into political party committees and independent expenditure campaigns at a far greater level than currently exists. A matching system can help channel the inevitable flow of funds during a campaign into a well-regulated financing system, as well as extend the value of public dollars. Public funding will not necessarily diminish the amount of money that is raised and spent for political campaigns, especially in New York State, nor is that necessarily the goal of campaign finance reform. Rather, public funding will reduce the dependence of candidates on large donors and special interests, while making it easier for challengers and political newcomers to compete effectively with incumbents and more established politicians.

Citizens Union also is concerned over the estimated implementation cost of full public financing, initially estimated at least \$30 million over a four-year period. It is questionable as to whether this accurately reflects the true and full costs of campaigns for all four statewide offices and 212 legislative seats during a four year period, particularly since it will encourage candidates who might not otherwise would have chosen to run.

With both the matching and full public financing systems, Citizens Union is concerned about the impact self-financed candidates have on campaigns and the disparity that exists for candidates participating in the program who face a well-funded or self-funded opponent. Citizens Union is also concerned that public funds can be unnecessarily used by incumbents who face little opposition, or challengers looking to raise their profile for reasons other than seeking office. Both matters need to be addressed when public campaign financing is adopted.

Citizens Union believes that a strong public matching funds program must be accompanied by a system of drastically lower contribution limits, strengthened enforcement and oversight, restrictions, if not a ban, on soft money, and greater disclosure of contributions and expenses. In doing so, it reaffirms its support for these previously articulated positions.

2. Limit Size, Ban Some Forms, and Lower Scope of Contributions

- Significantly lower campaign contribution limits for candidates, all party and designated committees, political action committees, and party housekeeping accounts.
- Ban institutional contributions by corporations, limited liability companies, partnerships, trade unions and other organizations (except for committees formed specifically for a political purpose).
- Require that corporations and their subsidiaries, as defined by the Internal Revenue Code, be treated as a single entity with a combined aggregate limit of \$5,000 per calendar year.
- Strengthen the ban on the use of campaign contributions for personal use by clarifying what is a permissible campaign expense.
- Restrict, if not ban, soft money contributions.
- The use of contributions made to political parties for “housekeeping” activities should be limited to the construction and maintenance of party headquarters or offices and not as a funnel to candidates’ campaigns.
- Enact pay-to-play restrictions requiring disclosure of, and limiting the size of contributions from, those who lobby or do business with the state.
- Transfers by party committees to candidates or other committees should be limited to twice the limit set on individual contributors and contributions to party committees should be subject to the same ceiling placed on contributions to candidates.
- Create a safety valve for candidates facing opponents who have contributed a high number of times over the applicable individual contribution limit to their own campaigns. Under this provision, candidates facing self-financed opponents could accept donations up to twice the contribution limit until they raised an amount equal to self-financed candidate’s contribution.

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3. Increase Disclosure

- Require greater disclosure and reporting of campaign contributors and expenditures to include full name, home address, and employer/business name and address for each contribution, and require candidates to report this information in their periodic reports.
- Require that at least two periodic campaign finance reports be filed during the legislative session to reflect contributions given during the budget adoption and review process.
- Require that all party or constituted committees fall within the regulatory framework that covers political committees. All transfers by and between party committees should be regulated; all party committees should be required to file reports of receipts and expenditures five days before the general election each year.
- Require greater disclosure from those who make independent expenditures with the intent of informing the public and influencing the voters about a particular candidate.

- Amend State Finance Law to require persons seeking to do business with the State with a value of \$25,000 or more, to file a report listing all contributions or loans over a certain amount to any elected official holding New York statewide or legislative office made within two years of initiating the effort to do business with the State. In addition, persons who make such campaign contributions while doing business with the State should have to report them.
- Require transitional and inaugural expenses be fully disclosed with contribution limitations similar to those set for election campaigns.

4. Strengthen Enforcement

- Add a fifth non-partisan commissioner to the four member board of the state Board of Elections since a two - two tie between Republican and Democratic commissioners prevents any campaign finance investigation from moving forward. Alternatively, allow an investigation to move forward in the event of a two-two tie.
- Developing more effective enforcement mechanisms, including greater fines for exceeding contribution limits and violations of campaign finance disclosure laws. Citizens Union proposes that the maximum penalty for failing to file a statement required by law should be increased from \$500 to as much as \$5,000. Violations of the law which are currently punishable only as an A misdemeanor or an E felony should also subject the violator to high civil penalties (for example, \$20,000 for knowingly and willingly accepting a contribution that exceeds the ceiling).
- Create a discrete elections enforcement unit within the state Board of Elections with adequate resources and independence to investigate, either on its own initiative or upon complaint, potential violations of the Election Law and make recommendations for enforcement to the board.
- Ensure that the Attorney General and local district attorneys can independently of the state Board of Elections investigate and prosecute alleged violations of the Election Law.

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