



# WHITE PAPER NO. 23

## LEGISLATIVE GENERAL ELECTIONS 2011

### “RISE OF THE INDEPENDENTS”



**New Jersey Election Law Enforcement Commission**

P.O. Box 185, Trenton, New Jersey 08625



*State of New Jersey*

## **ELECTION LAW ENFORCEMENT COMMISSION**

**RONALD DEFILIPPIS**  
Chairman

**WALTER F. TIMPONE**  
Vice Chairman

**AMOS C. SAUNDERS**  
Commissioner

Respond to:  
P.O. Box 185  
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

**JEFFREY M. BRINDLE**  
Executive Director

**JOSEPH W. DONOHUE**  
Deputy Director

**CAROL L. HOEKJE**  
Legal Director

**AMY F. DAVIS**  
Compliance Director

**EDWIN R. MATTHEWS**  
Legal Counsel

## **ACKNOWLEDGEMENT**

The Commissioners would like to thank the various staff members involved in this report, which is the 23<sup>rd</sup> white paper released by the New Jersey Election Law Enforcement Commission (ELEC) over the past 25 years. This series has received international recognition and its contents often have been cited in media reports, the political science literature and studies issued by sister agencies. Besides serving as reference works, the reports also provide valuable background and guidance for the Governor's office, legislators and other policy-makers.

Deputy Director Joseph W. Donohue is the author of White Paper No. 23, Legislative General Elections 2011- Rise of the Independents. The general editor of this report is Executive Director Jeffrey M. Brindle.

Carol Neiman and Kim A. Roman, Associate Director of Information Technology helped gather critical data for the project, and Neiman did statistical proofreading. Legal Director Carol L. Hoekje and Compliance Director Amy F. Davis served as proofreaders.

Report coding and research was handled by Research Associate Steven B. Kimmelman. Administrative Assistant Elbia L. Zeppetelli applied her usual creative touch in formatting the final version.

All 23 white papers are available on ELEC's award-winning website at [www.elec.state.nj.us](http://www.elec.state.nj.us).

# TABLE OF CONTENTS

---

	<b><u>PAGE NO.</u></b>
<b>CHAPTER I</b>	
INTRODUCTION AND SUMMARY .....	1
<b>CHAPTER II</b>	
KEY FUNDRAISING TRENDS .....	3
<b>CHAPTER III</b>	
KEY SPENDING TRENDS .....	13
<b>CHAPTER IV</b>	
RECOMMENDATIONS .....	26
<b>PREVIOUS WHITE PAPERS .....</b>	<b>34</b>

# TABLE OF CONTENTS

---

<u>TABLES</u>	<u>PAGE NO.</u>
1. Total Fundraising and Spending in Legislative Elections .....	3
2. Average Spent per Legislative Seat .....	4
3. Legislative Fundraising and Spending by Party.....	5
4. Spending by Legislative House .....	5
5. Spending Advantage of Incumbent Legislators Over Challengers.....	6
6. Number of Assembly Candidates Who Won Reelection.....	6
7. Number of Senate Candidates Who Won Reelection .....	6
8. Average Contributions to Legislative Candidates .....	7
9. Size of Contributions by Amount to Legislative Candidates.....	8
10. Contributions by Contributor Type to Legislative Candidates .....	10, 11
11. Contributions by PAC Type to Legislative Candidates.....	12
12. Top 10 Districts by Spending in 2011 .....	13
13. Top 10 All Time Legislative Districts by Spending .....	15
14. Independent Spending in NJ Legislative Campaigns since 2001 .....	16
15. Estimated Independent Spending in Legislative Campaigns since 2001.....	18
16. Estimated Independent Spending in Top Ten Legislative Districts 2011.....	19
17. Spending by Category in 2011 Legislative General Election.....	20
18. Total Mass Media Spending by Legislative Candidates as a Percent of Total Campaign Spending.....	20
19. Amount of Uncategorized Media Spending as a Percent of Total Media Spending .....	21
20. Direct Mail as a Percent of Total Media Spending.....	21

# TABLE OF CONTENTS

---

<u>TABLES</u>	<u>PAGE NO.</u>
21. Television Advertisements as a Percent of Total Media Spending .....	21
22. Newspaper and Outdoor Advertising as a Percent of Total Media Spending .....	22
23. Identified Cable TV and Internet Advertising as a Percent of Total Media Spending .....	22
24. Contributions to Other Candidates and Committees and Transfers to Future Campaign by Legislative Candidates .....	23
25. Fundraising Expenses for Legislative Candidates .....	24
26. Consulting Expenses for Legislative Candidates .....	24
27. Polling Expenses for Legislative Candidates .....	24
28. Charitable Donations by Legislative Candidates .....	24
29. Election Day Expenses for Legislative Candidates.....	25
30. Administrative Expenses for Legislative Candidates.....	25
31. Refunds by Legislative Candidates.....	25
32. How Disclosure would Change for Independent Groups under ELEC Legislative Proposal .....	29
33. Percent of Total Expenses Reviewed where Communications Costs are Vague.....	30

# CHAPTER I

---

## INTRODUCTION AND SUMMARY

---

In some ways, the legislative election of 2011 might seem unremarkable.

Only a single incumbent lost.

Some candidates spent personal funds on their campaigns. (Page 8). But none approached the record \$380,000 (in inflation-adjusted dollars) that former Orange Mayor Joel Shain sank into his unsuccessful 27<sup>th</sup> District primary bid in 1983.

The \$45.8 million spent on the campaign was the second highest in history but still less than the \$47.4 million expended on the 2007 legislative elections.

In other respects, however, 2011 was a milestone election.

Bucking one national trend, New Jersey Democrats kept control of both houses only one year after Republicans nationally won the most legislative seats since 1928<sup>1</sup>. Assembly Democrats actually added a seat to their majority.

Another national trend swept like a storm into New Jersey- unprecedented “outside” spending by special interests. Those groups spent an estimated \$1.8 million independently from candidates and parties in the 2011 election. (Page 18).

It was the most independent spending ever by non-party committees in New Jersey legislative elections and represented 4 percent of all spending in the race. It was more than 11 times the amount spent in the 2007 elections.

Rather than being a high water mark, it is likely a starting point for ever-increasing involvement by these so-called “outside” groups.

---

<sup>1</sup> “Republicans Exceed Expectations in 2010 State Legislative Elections,” November 3, 2010, National Conference of State Legislatures.

---

## CHAPTER I. INTRODUCTION AND SUMMARY

---

In fact, one new political committee spending independently in the 2013 campaign- Fund for Jobs, Growth and Security- already has raised \$1.7 million- nearly the estimated total spent in 2011 legislative elections.<sup>2</sup>

Of the \$1.2 million in independent spending that could be identified by district in 2011, about \$1.1 million, or 91 percent, went to the top ten districts. Candidates and parties spent about 63 percent of their funds in the same districts. (Page 19).

Partly because of the wave of independent spending, 2011 represented the largest expenditure ever of private dollars if one disregards public funds spent as part of a pilot project. (Page 4).

The 2011 campaign also was notable because spending in two perennial “battleground” districts- the 2<sup>nd</sup> and 38<sup>th</sup>- was high enough to put them both on the list of the top ten all-time most expensive legislative races. (Page 15).

All 37 Senate incumbents won in 2011- the highest win rate in at least a decade for Senate members. (Page 6).

PACs gave the most dollars ever to legislative campaigns- \$6.5 million- even though, as a percentage of total contributions, the amount was slightly lower than in 2009. (Page 12).

Candidates shared a record \$13.9 million with their colleagues. (Page 23). They also transferred an unprecedented sum to their next campaigns- \$6.4 million. (Page 23).

They reported spending the most in at least a decade on fundraising (\$1.7 million, Page 24) and on polling (\$1 million, Page 24).

Legislative candidates reported spending the least amount in a decade on refunds (\$164,356, Page 25).

*Special Note: This is the 23<sup>rd</sup> in a series of “white” papers, or in-depth research reports, on campaign finance trends released by ELEC since its formation. Copies of all ELEC white papers can be obtained from the agency website: [www.elec.state.nj.us](http://www.elec.state.nj.us).*

---

<sup>2</sup> 20-Day Post Election R-1 Report filed June 24, 2013.

## CHAPTER II

# KEY FUNDRAISING TRENDS

With all 120 seats in contention in 2011, total spending reached \$45.8 million. Only the 2007 campaign, which cost \$47.4 million, had a higher price tag.

For the first time, this white paper is presenting legislative spending totals dating back to 2001 that include funds spent by special interest groups independently of candidates or parties.

Because these so-called “outside” groups are becoming a growing force in national, state and even local politics, ELEC is making a better effort to track these groups even though not all of them must publicly disclose their campaign spending under current state law.

<b>Year</b>	<b>Raised by Legislators</b>	<b>Spent by Legislators</b>	<b>Both Houses?</b>	<b>Independent Spending</b>	<b>Total Spending</b>
<b>2001</b>	\$34,825,851	\$32,550,394	Yes	\$3,166,463	\$35,716,857
<b>2003</b>	\$47,911,008	\$44,990,255	Yes	\$4,857	\$44,995,112
<b>2005</b>	\$25,081,696	\$23,713,193	No	\$3,476	\$23,716,669
<b>2007</b>	\$50,797,317	\$47,231,847	Yes	\$165,000	\$47,396,847
<b>2009</b>	\$20,457,342	\$18,584,098	No	\$15,999	\$18,600,097
<b>2011</b>	\$45,656,674	\$44,024,272	Yes	\$1,835,500	\$45,859,772

\*Includes first quarterly reports filed by some candidates after the election.

Compared to 2007, the previous election with both houses running, the 2011 spending total is 4 percent lower. The 2011 total is 2 percent higher than spending in 2003, another year with both houses in contention.

However, the 2007 total benefited from the infusion of nearly \$4 million in public funds provided to candidates in three districts under the since-discontinued “Clean Elections” pilot program.

## CHAPTER II. KEY FUNDRAISING TRENDS

Subtracting those public funds, the \$45.8 million in private participation in 2011 was the more than the \$43.4 million in private contributions spent in 2007. In fact, it was the most ever in a legislative election.

A key reason for the increase was the participation of outside groups. Legislators themselves spent just \$44 million- less than in 2003.

But because of a big jump in independent spending, total spending was higher in the more recent election.

### Average Spending High

Average spending in 2011 was \$382,165- the second highest ever except for 2007.

<b>Year</b>	<b>Total Spending</b>	<b>Total Contested Seats</b>	<b>Average Spent</b>
<b>2001</b>	\$35,716,857	120	\$297,640
<b>2003</b>	\$44,995,112	120	\$374,959
<b>2005</b>	\$23,716,669	80	\$296,458
<b>2007</b>	\$47,396,847	120	\$394,974
<b>2009</b>	\$18,600,097	80	\$232,501
<b>2011</b>	\$45,859,772	120	\$382,165

### Democrats Continue to Dominate Fundraising

For the sixth straight legislative election, Democrats held the fundraising advantage over the Republicans. They control both houses and two-thirds of the legislative seats. Republicans last had the edge in 1999.

## CHAPTER II. KEY FUNDRAISING TRENDS

Year	Democrats Raised	Democrats Spent	Republicans Raised	Republicans Spent
2001	\$19,344,839	\$18,350,917	\$15,433,716	\$14,144,262
2003	\$29,159,958	\$28,528,080	\$18,649,276	\$16,366,548
2005	\$17,560,153	\$16,522,626	\$7,514,067	\$7,176,582
2007	\$35,617,962	\$33,394,029	\$14,844,892	\$13,532,754
2009	\$14,674,311	\$13,188,346	\$5,682,968	\$5,267,534
2011	\$31,838,968	\$31,055,091	\$13,740,008	\$12,909,239

### **Senators Raise More Than Assembly Members**

Since the margin is narrower in the state Senate, some of the most expensive races have taken place in Senate elections in recent years.

As a result, Senate spending tends to be greater than Assembly spending even though there are only 40 Senators versus 80 Assembly members. 2011 was no exception.

Year	Senate	Percent	Assembly	Percent
2001	\$16,693,489	51%	\$15,843,155	49%
2003	\$24,249,066	54%	\$20,741,190	46%
2007	\$23,028,754	49%	\$24,203,093	51%
2011	\$22,577,034	51%	\$21,447,238	49%

\*Funds for Joint Committees with one Senate candidate and two Assembly candidates were allocated 1/3 to Senate candidates and 2/3 to Assembly candidates.

Senate members also tend to raise more money because except for election periods immediately after redistricting, they have four years, rather than two, to collect funds.

### **Incumbents Top Challengers in Spending.**

Another group with a big edge is incumbents. In 2011, incumbents spent 73 percent of all funds raised for the election, compared to 27 percent for challengers. While the incumbent advantage of 73 percent was slightly lower than in 2009, it was higher than the four previous legislative elections.

## CHAPTER II. KEY FUNDRAISING TRENDS

Year	Incumbents Spent	Challengers Spent	Incumbent Percent	Challenger Percent
2001	\$14,326,038	\$13,670,769	51%	49%
2003	\$25,376,630	\$15,069,233	63%	37%
2005	\$14,279,965	\$8,219,657	63%	37%
2007	\$22,242,726	\$21,160,907	51%	49%
2009	\$12,761,309	\$3,230,602	80%	20%
2011	\$32,174,797	\$11,849,475	73%	27%

### **With Big Funding Advantage, Most Incumbents Reelected- As Usual**

Following a historic trend, nearly all Assembly incumbents, and all Senate incumbents, won reelection in 2011. Only one Assembly incumbent lost in 2011, and only two have suffered defeats in the past three Assembly races.

Year	Total	Won	Lost	Percent Won
2001	59	56	3	94.9%
2003	72	68	4	94.4%
2005	73	70	3	95.9%
2007	54	53	1	98.1%
2009	71	71	0	100%
2011	66	65	1	98.5%

All 37 Senate incumbents won in 2011- the highest win rate in at least a decade.

Year	Total	Won	Lost	Percent Won
2001	32	29	3	90.6%
2003	37	35	2	94.6%
2007	27	24	3	88.9%
2011	37	37	0	100%

## CHAPTER II. KEY FUNDRAISING TRENDS

### Average Contribution Rises

In 2011, the average contribution to legislative candidates rose to its highest level since 2003.

The average dropped sharply during 2005 and 2007, when candidates in a few districts eligible for “Clean Elections” grants were required to gather small contributions from thousands of contributors to obtain public funds.

For instance, there were 12,989 contributions of \$10 during the 2007 race.

With the program now discontinued, averages rose in 2009 and 2011.

<b>Year</b>	<b>Average Contribution</b>	<b>Clean Elections Program In Effect?</b>
<b>2001</b>	\$2,436	No
<b>2003</b>	\$2,803	No
<b>2005</b>	\$1,800	Yes
<b>2007</b>	\$1,472	Yes
<b>2009</b>	\$2,147	No
<b>2011</b>	\$2,501	No

### Contributions by Size

The 11,974 contributions made to legislative candidates in 2011 was the third largest number in the past decade for a legislative election. The largest share of contributions ranged between \$300 and \$1,000- the same for all legislative elections dating back to 2001, excepting 2007.

## CHAPTER II. KEY FUNDRAISING TRENDS

**TABLE 9  
SIZE OF CONTRIBUTIONS BY AMOUNT  
TO LEGISLATIVE CANDIDATES\***

RANGE	2001	%	2003	%	2005	%	2007	%	2009	%	2011	%
>\$100,000	13	0.001	45	0.4%	15	0.2%	44	0.2%	7	0.1%	15	0.1%
\$25,001-\$100,000	141	1%	132	1%	57	0.6%	122	0.5%	45	0.6%	110	1%
\$5,001-\$25,000	556	6%	672	6%	449	5%	793	3%	509	7%	872	7%
\$4,001-\$5000	341	3%	290	2%	152	2%	276	1%	162	2%	321	3%
\$3,001-\$4,000	112	1%	141	1%	66	1%	140	1%	115	2%	217	2%
\$2,001-\$3,000	754	7%	967	8%	647	7%	1,074	4%	721	10%	1,376	11%
\$1,001-\$2,000	985	10%	1,287	11%	647	7%	1,419	6%	702	10%	1,203	10%
\$301-\$1,000	6,353	63%	7,927	65%	4,153	42%	7,355	29%	4,118	58%	6,800	57%
\$300 or less	829	8%	691	6%	3,667	37%	14,228	56%	672	10%	1,060	9%
<b>TOTAL</b>	<b>10,084</b>		<b>12,152</b>		<b>9,853</b>		<b>25,451</b>		<b>7,051</b>		<b>11,974</b>	

\*Candidates are not required to give details about contributions \$300 and smaller but some do so voluntarily.

### Legislative Self-Financing a Minor Trend in New Jersey

Self-financed legislative campaigns have become common in some states but they have not become a major factor yet in New Jersey.

Assemblyman Robert Schroeder (R-39) appeared to be the biggest contributor to his own campaign. He gave \$98,100 to his personal campaign account, and \$14,000 to his joint committee, for a total of \$112,100. Running mate Holly Shepisi (R-39) and relatives gave \$24,320 to her personal account and the joint committee.

Independent candidate Dan Jacobson, who sought an Assembly seat in District 11, contributed a net total of \$38,779 to his committee. Robert Lebovics, who ran for District 37 Senate seat, spent \$31,970, according to his reports. Keith Jensen and John Aslanian, Republicans seeking seats in District 37, each gave \$16,000 to their joint account.

---

## CHAPTER II. KEY FUNDRAISING TRENDS

---

### Sources of Contributions to Legislative Candidates

In comparing elections since 2001 by contributor type, one trend stands out- contributions by legislative committees to other legislative committees continue to grow. In 2001, only about \$2.9 million was transferred between legislative committees, or about 12 percent of all funds. By 2011, the amount had tripled to \$9.3 million, or 31 percent, the largest amount in a decade.<sup>3</sup>

One reason may be redistricting. Most incumbents apparently feel so secure that they can afford to transfer some of their funds to legislative colleagues in more vulnerable districts. That may be one reason why incumbent spending, which includes the transfers, reached an all-time high of \$32 million (see table 5).

The spike in activity among legislative committees also may be explained by the fact that firms with state contracts can contribute to individual legislators up to the full limit allowed by law- \$2,600 per election.

By contrast, under pay-to-play restrictions that began taking effect in 2005, state contractors can give only \$300 or less to legislative leadership committees and state parties.

It is not surprising that individual legislative candidates may be becoming the preferred conduit for contractor contributions. Perhaps as a result, totals from legislative leadership committees and state parties are well below previous peaks.

Legislative leadership committees contributed 32 percent of all funds raised by legislators in the 2005 campaign. In 2011, they gave only 12 percent, though that was slightly higher than the 10 percent support the previous legislative election.

Likewise, support from political parties peaked as a percentage of total funds raised in 2001 at 26 percent. They gave just 11 percent in 2011.

---

<sup>3</sup> The numbers in Table 10 are lower than those in Table 24 because they are based solely on reports filed 20 days after the general election. The numbers in table 24 include figures from reports filed after that period.

## CHAPTER II. KEY FUNDRAISING TRENDS

A third reason for more transfers between legislative committees is the fact that a growing number of legislators during the past decade not only have been using individual campaign accounts but also opened joint committees with running mates.<sup>4</sup>

Unions gave the most dollars ever to legislative candidates in 2011- \$3.8 million directly and through PACs. However, the union share compared to other sources fell from 14 percent in 2009 to 12 percent in 2011.

Businesses gave more money to legislative candidates- \$3.5 million directly and through PACs- than any year since the \$4 million they gave in 2003. As a share of all sources of contributions, it was 12 percent versus 11 percent in 2003.

TABLE 10 CONTRIBUTIONS BY CONTRIBUTOR TYPE TO LEGISLATIVE CANDIDATES						
Type	2001		2003		2005	
Business PAC	\$378,250	2%	\$483,919	1%	\$396,383	2%
Businesses- Direct	\$2,196,293	9%	\$3,542,347	10%	\$1,502,542	8%
Campaign Fund (Mostly Legislative)	\$2,937,138	12%	\$4,090,004	12%	\$3,185,671	18%
Clean Elections Grants	NA		NA		\$260,000	1%
Ideological PAC	\$683,767	3%	\$394,862	1%	\$422,533	2%
Individuals	\$2,313,488	9%	\$3,833,140	11%	\$2,074,153	12%
Interest	\$15,794	0%	\$1,424	0%	\$670	0%
Legislative Leadership Committee	\$5,722,553	23%	\$8,680,885	25%	\$5,639,772	32%
Misc/ Other	\$26,295	0%	\$6,049	0%	\$2,700	0%
Political Committee	\$1,065,668	4%	\$15,200	0%	\$83,500	0%
Political Party Committee	\$6,398,581	26%	\$8,675,890	25%	\$1,415,081	8%
Professional/Trade Association PAC	\$1,441,054	6%	\$2,280,416	7%	\$1,088,073	6%
Unions- Direct	\$325,875	1%	\$619,090	2%	\$355,150	2%
Union PAC	\$1,055,100	4%	\$1,444,337	4%	\$1,305,840	7%
<b>GRAND TOTAL</b>	<b>\$24,559,855</b>		<b>\$34,067,563</b>		<b>\$17,732,068</b>	

<sup>4</sup> Pages 32 and 33, “Trends in Legislative Campaign Financing: Fundraising in the Era of Pay-to-Play Reform, Self-Funders and Recession- 1999-2009, 3<sup>rd</sup> Volume” September 2011.

## CHAPTER II. KEY FUNDRAISING TRENDS

Type	2007		2009		2011	
Business PAC	\$644,730	2%	\$480,568	3%	\$781,264	3%
Businesses- Direct	\$2,281,112	6%	\$1,317,085	9%	\$2,741,804	9%
Campaign Fund (Mostly Legislative)	\$7,208,549	19%	\$3,720,634	25%	\$9,258,303	31%
Clean Elections Grants	\$3,975,889	11%	NA		NA	
Ideological PAC	\$1,008,827	3%	\$331,811	2%	\$740,297	2%
Individuals	\$4,544,569	12%	\$1,820,924	12%	\$3,883,250	13%
Interest	\$29,049	0%	\$1,062	0%	\$9,787	0.03 %
Legislative Leadership Committee	\$7,019,718	19%	\$1,551,636	10%	\$3,552,978	12%
Misc/ Other	\$272,828	1%	\$2,000	0%	\$51,322	0.2%
Political Committee	\$8,795	0%	\$502,389	3%	\$1,000	0.003%
Political Party Committee	\$5,323,576	14%	\$1,981,919	13%	\$3,273,339	11%
Professional/ Trade Association PAC	\$2,107,413	6%	\$1,356,830	9%	\$1,890,230	6%
Unions- Direct	\$673,275	2%	\$562,895	4%	\$694,584	2%
Union PAC	\$2,362,245	6%	\$1,505,830	10%	\$3,073,812	10%
<b>GRAND TOTAL</b>	<b>\$37,460,574</b>		<b>\$15,135,583</b>		<b>\$29,951,970</b>	

PACs as a group contributed slightly less on a percentage basis in 2011 than in 2009- 22 percent versus 24 percent. However, the PAC share still topped the percentage in the four previous legislative elections. The \$6.5 million from PACs represented the most dollars ever, topping the \$6.1 million in 2007.

While contributions from business PACs stayed around 11 to 12 percent between 2001 and 2011, those from union PACs jumped from 30 percent to 47 percent. The \$3.1 million contributed by union PACs was the most ever from union PACs and the most from any PAC type during the entire decade.

## CHAPTER II. KEY FUNDRAISING TRENDS

<b>TABLE 11 CONTRIBUTIONS BY PAC TYPE TO LEGISLATIVE CANDIDATES</b>						
<b>Type</b>	<b>2001</b>	<b>% of All PACs</b>	<b>2003</b>	<b>% of All PACs</b>	<b>2005</b>	<b>% of All PACs</b>
Business PAC	\$378,250	11%	\$483,919	11%	\$396,383	12%
Ideological PAC	\$683,767	19%	\$394,862	9%	\$422,533	13%
Professional/ Trade Association PAC	\$1,441,054	40%	\$2,280,416	50%	\$1,088,073	34%
Union PAC	\$1,055,100	30%	\$1,444,337	31%	\$1,305,840	41%
		<b>% of All Sources</b>		<b>% of All Sources</b>		<b>% of All Sources</b>
<b>All PACs</b>	<b>\$3,558,171</b>	<b>14%</b>	<b>\$4,603,534</b>	<b>14%</b>	<b>\$3,212,830</b>	<b>18%</b>

<b>Type</b>	<b>2007</b>	<b>% of All PACs</b>	<b>2009</b>	<b>% of All PACs</b>	<b>2011</b>	<b>% of All PACs</b>
Business PAC	\$644,730	11%	\$480,568	13%	\$781,264	12%
Ideological PAC	\$1,008,827	16%	\$331,811	9%	\$740,297	11%
Professional/ Trade Association PAC	\$2,107,413	34%	\$1,356,830	37%	\$1,890,230	29%
Union PAC	\$2,362,245	39%	\$1,505,830	41%	\$3,073,812	47%
		<b>% of All Sources</b>		<b>% of All Sources</b>		<b>% of All Sources</b>
<b>All PACs</b>	<b>\$6,123,214</b>	<b>16%</b>	<b>\$3,675,039</b>	<b>24%</b>	<b>\$6,485,603</b>	<b>22%</b>

## CHAPTER III

# KEY SPENDING TRENDS

### **Battleground District Continue to Draw Big Bucks**

Due to redistricting, incumbents of both parties tend to enjoy a major electoral advantage at election time and face little risk of losing.

Typically, only a handful of legislative districts- perhaps five to ten - attract the most spending. 2011 followed this pattern.

Five districts drew more than \$20 million in spending- about 44 percent of total spending for the election. The ten top target districts attracted \$28.8 million- 63 percent of the total spending. Outlays in two districts- the 2<sup>nd</sup> and 38<sup>th</sup> - were among the top ten in state history.

So-called “swing” or “battleground” districts are those where both parties sense a chance for victory. They are districts where neither party has a total lock due to redistricting, and voting margins tend to be tightest.

<b>District</b>	<b>Spent</b>
2	\$5,806,467
38	\$5,183,499
7	\$3,280,534
27	\$2,920,935
3	\$2,861,734
14	\$2,415,746
36	\$1,877,428
1	\$1,582,190
18	\$1,434,669
4	\$1,399,769

The 2<sup>nd</sup> district, a perennial battleground during the previous decade that is located in Atlantic County, drew the heaviest spending in 2011, more than \$5.8 million.

---

## CHAPTER III. KEY SPENDING TRENDS

---

It was the third most expensive legislative race of all time.

If independent groups were required by law to fully detail their spending, it might have been the highest. For instance, it was one of four battleground districts targeted by Americans for Prosperity. The group was not required to detail its spending by district because it avoided using explicit election-related words like “vote for” or “vote against” in its ads.

Republican State Leadership Committee filed independent spending reports with ELEC that reported part of its spending, evidently because it did use “express advocacy” wording in ads. Those reports indicated it spent \$209,762 in District 2.

But a press release issued by the group said it actually spent more than \$300,000 on the campaign.<sup>5</sup> Both parties enjoyed partial victory in District 2, with incumbent Senator Jim Whelan (D-2) and incumbents Assemblymen John Amodio and challenger Christopher A. Brown (both R-2) winning.

Another major target district in recent elections is District 38, which encompasses parts of Bergen and Passaic Counties. It drew nearly \$5.2 million and was the fourth most expensive legislative race of all time.

It drew the most documented spending by independent groups- \$485,685 from five different organizations- NJEA (\$190,674), Better Education for NJ Kids (\$187,584), America’s Family First (\$65,000), Local 32BJ Service Employees International Union NY/NJ American Dream Fund (\$40,000), and Environment NJ (\$2,427). Americans for Prosperity spent an unspecified amount in the district. Known independent spending represented about 9 percent of the funds spent in the district.

Incumbent Senator Robert Gordon, incumbent Assemblywoman Connie Wagner and challenger Timothy Eustace (all D-38<sup>th</sup>) won.

Three of the top ten all-time most expensive legislative campaigns have occurred in District 2 since 2005, while two of the top ten all-time have occurred in District 38 since 2003.

---

<sup>5</sup> “RSLC Ramps Up New Jersey Efforts with TV and Radio Ads Highlighting Senator Whelan’s Faulty Record,” press release, October 13, 2011.

## CHAPTER III. KEY SPENDING TRENDS

**TABLE 13  
TOP 10 ALL TIME LEGISLATIVE  
DISTRICTS BY SPENDING**

District	Total Spending	Democrats	Republicans	Independent Groups	Independent Candidates	Year	Winners
4	\$6,142,441	\$4,570,686	\$1,571,755			2003	Democrats
12	\$5,963,939	\$5,057,798	\$906,141			2007	Republicans
2	\$5,806,467	\$3,519,935	\$2,069,512	\$209,762	\$7,258	2011	Split
38	\$5,183,499	\$3,214,496	\$1,483,318	\$485,685		2011	Democrats
1	\$4,975,772	\$3,605,195	\$1,370,577			2007	Democrats
3	\$4,548,302	\$3,943,220	\$605,083			2003	Democrats
2	\$4,458,631	\$2,832,527	\$1,626,104			2005	Split
2	\$4,314,225	\$3,281,467	\$1,032,758			2007	Split
3	\$3,940,278	\$2,828,825	\$1,111,453			2001	Democrats
38	\$3,417,490	\$2,026,749	\$1,332,035		\$58,706	2003	Democrats

The most expensive legislative showdown ever remains the 2003 clash in the 4<sup>th</sup> Legislative District in which a Democratic slate headed by Fred Madden (who remains a state Senator) defeated a Republican slate headed by George Geist. The campaign cost more than the entire spending for the 1985 gubernatorial general election.

### **Independent Groups Become a Force in Legislative Elections**

Perhaps the most noteworthy aspect of the 2011 legislative election is that it was the year that special interest groups began ramping up their independent spending for and against candidates.

Called “outside spending” because it is supposed to be separate from spending by candidates and parties, independent spending has one big advantage over a direct contribution- it is not subject to contribution limits.

It is not possible to place an exact figure on independent spending in 2011 because statutory disclosure requirements currently are inadequate. But the best estimate is that about \$1.8 million was expended on behalf of, or against, legislative candidates.

## CHAPTER III. KEY SPENDING TRENDS

That represents more than 11 times the estimated independent spending in the 2007 campaign. It represented nearly 4 percent of all spending in the 2011 campaign.

In 2001, the two national parties independently spent \$3.2 million on behalf of legislative candidates, or nearly 9 percent of the total spending.

But a 2002 law banned national parties from collecting unlimited “soft money” contributions, and, consequently, such large independent party expenditures have stopped.

<b>Year</b>	<b>Spending by Legislators</b>	<b>Estimated Independent Spending</b>	<b>Total Spending</b>	<b>Independent Spending as % of Total</b>
<b>2001</b>	\$32,550,394	\$3,166,463	\$35,716,857	8.87%
<b>2003</b>	\$44,990,255	\$4,857	\$44,995,112	0.01%
<b>2005</b>	\$23,713,193	\$3,476	\$23,716,669	0.01%
<b>2007</b>	\$47,231,847	\$165,000	\$47,396,847	0.35%
<b>2009</b>	\$18,584,098	\$15,999	\$18,600,097	0.09%
<b>2011</b>	\$44,024,272	\$1,835,500	\$45,859,772	4.00%
<b>2012*</b>	\$758,612	\$299,049	\$1,057,661	28.27%

\* Special election. Only three Assembly seats in contention.

In 2012, during a special election involving just three Assembly seats, legislative independent spending reached its highest level so far on a percentage basis- 28 percent of the total spending.

The recent growth of independent spending reflects a national trend that started in 2002, when the so-called McCain Feingold law banned the national parties from collecting unrestricted “soft money” contributions. Instead of writing big checks to the parties, special interest groups simply spent the money on their own, often outside federal and state disclosure requirements.

After the Supreme Court in its 2010 *Citizens United v. FEC* ruling ended a ban on unrestricted independent spending by corporations and unions, outside spending tripled to a record \$1.1 billion in 2012, a presidential election year, according to the Center for Responsive Politics.

---

## CHAPTER III. KEY SPENDING TRENDS

---

Some of the groups active in the 2011 legislative elections also are major players at the national level.

The largest spender was believed to be Americans for Prosperity, which describes itself as “an organization of grassroots leaders who engage citizens in the name of limited government and free markets on the local, state, and federal levels.”

In a “grassroots lobbying” report filed after the election, the group indicated it spent \$571,458 during 2011. Along with sponsoring ads that attacked the records of some legislators but stopped short of direct election advocacy, it also lobbied on issues like the Regional Greenhouse Gas Initiative during the same year. It did not break down how much it spent on each issue.

On October 25, 2011, the group announced a media blitz using radio, TV and direct mail to “educate” citizens on the “big government, anti-tax voting records” of five Democratic lawmakers.<sup>6</sup> An advisor to one of those lawmakers later privately estimated the group spent about \$100,000 on ads in his legislative district.

Assuming the same amount was spent against all five targeted candidates, it was estimated that Americans for Prosperity spent as much as \$500,000 on the 2011 legislative races. Such an amount would not be unusual for the group in a state election.

It also spent an estimated \$800,000 in the Wisconsin recall elections in 2011,<sup>7</sup> and \$300,000 in legislative elections in Virginia.<sup>8</sup>

In the 2012 elections, the group spent an estimated \$900,000 to help elect the first Republican majority in Arkansas in 138 years.<sup>9</sup>

---

<sup>6</sup> Americans for Prosperity press release, October 25, 2011.

<sup>7</sup> “Groups, Candidates Spend Record \$44 million in Recalls,” March 12, 2012, Wisconsin Democracy Campaign.

<sup>8</sup> “Virginia Elections May Be A Warning Sign for Obama,” Washington Post, November 8, 2011.

<sup>9</sup> “2012 Marked Turning Point for Arkansas Republicans,” Associated Press, December 29, 2012.

## CHAPTER III. KEY SPENDING TRENDS

<b>TABLE 15 ESTIMATED INDEPENDENT SPENDING IN LEGISLATIVE CAMPAIGNS SINCE 2001</b>	
<b>Group</b>	<b>Spent</b>
Americans for Prosperity*	\$500,000
Better Education for NJ Kids Inc.	\$483,138
New Jersey Education Association	\$414,259
Republican State Leadership Committee	\$300,000
America's Families First	\$65,000
Local 32BJ SEIU American Dream Fund	\$40,000
Planned Parenthood Action Fund Inc	\$20,209
Environment NJ Inc	\$7,940
NJ Family First	\$4,953
Strong New Jersey	NA
<b>TOTAL</b>	<b>\$1,835,500</b>

\*Estimate

Another key independent player in the 2011 legislative elections was Better Education for NJ Kids, Inc., an education reform group founded by hedge fund managers David Tepper, a Democrat, and Alan Fournier, a Republican.<sup>10</sup> It spent \$483,138 in support of candidates from both parties.

Another education group that was a major participant directly and indirectly in the campaign was the New Jersey Education Association (NJEA), a union representing 195,501 teachers and other school workers.

Besides making \$808,450 in contributions directly to legislative candidates of both parties, the union spent an additional \$414,259 on behalf of 9 Democratic legislators mostly running in battleground districts.

An ELEC analysis found that independent spending tends to be more focused on battleground districts than less competitive districts.

Candidates and parties funneled 63 percent of their funds into the top ten districts.

<sup>10</sup> "New Group Makes Big Splash in NJ Education Policy," Asbury Park Press, November 20, 2011 and form 8872 reports filed with Internal Revenue Service.

## CHAPTER III. KEY SPENDING TRENDS

By contrast, of the \$1.2 million in independent spending that ELEC was able to review by district, \$1.1 million, or 91 percent, went to the top ten districts.

<b>District</b>	<b>Candidate Spending</b>	<b>Known Independent Spending*</b>	<b>Total Spending</b>
<b>2</b>	\$5,596,705	\$209,762	\$5,806,467
<b>38</b>	\$4,697,814	\$485,685	\$5,183,499
<b>7</b>	\$3,028,051	\$252,483	\$3,280,534
<b>27</b>	\$2,917,116	\$3,819	\$2,920,935
<b>3</b>	\$2,861,734		\$2,861,734
<b>14</b>	\$2,299,520	\$116,226	\$2,415,746
<b>36</b>	\$1,877,428		\$1,877,428
<b>1</b>	\$1,582,190		\$1,582,190
<b>18</b>	\$1,434,197	\$472	\$1,434,669
<b>4</b>	\$1,350,298	\$49,471	\$1,399,769

\*District details available for about \$1.2 million of \$1.8 million total independent spending.

### **Mass Media Spending Declines but Remains Largest Expense**

In White Paper No. 22<sup>11</sup>, it was noted that mass communications spending as a percentage of overall campaign spending had fallen to 35 percent in 2009, its lowest point since 1999.

While the \$14.4 million spent on media was the largest single expense category in 2011, its percentage of total spending was even smaller- 33 percent. In the four elections between 2001 and 2007, this share had ranged between 53 percent and 56 percent.<sup>12</sup> In dollars, spending peaked at \$22.8 million in 2003.<sup>13</sup>

The mass media total includes network and cable television, radio, internet, billboards, direct mail, newspaper advertising, robocalls and unidentified media.

<sup>11</sup> Page 28, "Trends in Legislative Campaign Financing: Fundraising in the Era of Pay-to-Play Reform, Self-Funders and Recession- 1999-2009."

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

## CHAPTER III. KEY SPENDING TRENDS

TABLE 17 SPENDING BY CATEGORY IN 2011 LEGISLATIVE GENERAL ELECTION		
Category	Amount	Percent of Total
Mass Media	\$14,426,075	33%
Contributions- Political	\$13,906,135	32%
Transfers to Next Campaign	\$6,431,152	15%
Administrative	\$2,410,481	5%
Consultants	\$2,370,730	5%
Fundraising	\$1,738,756	4%
Research and Polling	\$1,041,827	2%
Election Day Activities	\$564,394	1%
Misc/Multiple Purposes	\$542,904	1.2%
Contributions-Charitable	\$427,461	1%
Refunds	\$164,356	0.4%
<b>TOTAL</b>	<b>\$44,024,271</b>	<b>100%</b>

One possible explanation for the decline in mass media spending is a shift to less expensive forms of media, such as cable or internet ads, instead of much more costly network television ads.

Another factor- independent groups, which are not factored into the totals in Table 17, are picking up some media costs that might have been borne by candidates or parties in the past.

It could be, too, that most districts are so safe that candidates don't feel the need to spend heavily on mass media.

TABLE 18 TOTAL MASS MEDIA SPENDING BY LEGISLATIVE CANDIDATES AS A PERCENT OF TOTAL CAMPAIGN SPENDING						
	2001	2003	2005	2007	2009	2011
Mass Media Spending	\$15,894,343	\$22,763,046	\$11,641,252	\$22,284,576	\$6,054,152	\$14,426,075
Percent	56%	54%	55%	53%	35%	33%

## CHAPTER III. KEY SPENDING TRENDS

Efforts to analyze media costs continue to be hampered by imprecise reporting of expensive information by many candidates.

More than \$6.8 million, or 47 percent, of total communications spending simply identified as “media time” with no indication of the type of media. Such vague reporting has been a chronic issue during the past decade.

TABLE 19 AMOUNT OF UNCATEGORIZED MEDIA SPENDING AS A PERCENT OF TOTAL MEDIA SPENDING						
	2001	2003	2005	2007	2009	2011
Uncategorized Media	\$2,447,178	\$11,181,893	\$5,309,891	\$12,920,770	\$1,932,212	\$6,814,855
Percent	15%	49%	46%	58%	32%	47%

Among media expenses that could be categorized, direct mail was the largest category.

TABLE 20 DIRECT MAIL AS A PERCENT OF TOTAL MEDIA SPENDING						
	2001	2003	2005	2007	2009	2011
Direct Mail	\$5,994,869	\$5,962,443	\$3,507,614	\$5,893,596	\$2,905,523	\$3,986,659
Percent	38%	26%	30%	26%	48%	28%

Expenses identified as television were the next largest category of media spending. The \$1.6 million spent in 2011 was more than twice the amount reported in 2009. But it was less than a third of the \$6 million reported in 2001, the peak year for television spending based on reported figures.

That could be more a matter of the vagueness of current reports than a major decline in the use of television.

TABLE 21 TELEVISION ADVERTISEMENTS AS A PERCENT OF TOTAL MEDIA SPENDING						
	2001	2003	2005	2007	2009	2011
Television	\$5,689,794*	\$3,746,983	\$1,597,313	\$2,356,953	\$619,558	\$1,577,335
Percent	36%	16%	14%	11%	10%	11%

\*Corrects figure in White Paper 22.

## CHAPTER III. KEY SPENDING TRENDS

In a year with both houses up for reelection, expenditures on two traditional forms of political advertising- newspapers, and outdoor advertising such as billboards- showed increases from the previous campaign but remained relatively small parts of the candidate communications arsenal.

<b>TABLE 22 NEWSPAPER AND OUTDOOR ADVERTISING AS A PERCENT OF TOTAL MEDIA SPENDING</b>						
	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
Newspapers	\$449,253*	\$648,988	\$309,548	\$143,298	\$101,581*	\$132,487
Percent	3%	3%	3%	1%	2%	1%
Outdoor Advertising	\$393,899*	\$491,143	\$639,779	\$235,307	\$187,174*	\$324,226
Percent	2%	2%	5%	1%	3%	2%

\*Corrects figures in White Paper 22.

Due to the spottiness of expenditure data, it is hard to detail communications expenditures. This is evident in attempts to pinpoint the amount spent on cable television. Anecdotally, candidates and consultants say they make heavy use of cable television. Most likely, the bulk of unidentified media expenditures constitute cable TV buys.

But the exact outlays are unknown. Candidates a decade ago broke out more of these expenditures than they have in more recent elections. Internet advertising is a small but fast-growing communications segment. But it, too, is hard to accurately quantify due to the vagueness of expenditure data. Candidates in more recent years tend to lump together cable and internet purchases.

<b>TABLE 23 IDENTIFIED CABLE TV AND INTERNET ADVERTISING AS A PERCENT OF TOTAL MEDIA SPENDING</b>						
	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
Cable TV	\$2,353,816	\$3,708,009	\$43,113	NA	\$66,637	NA
Internet	\$40,090	NA	\$43,113	\$75,655	\$66,637	NA
Cable/Internet Combined	NA	NA	NA	NA	NA	\$599,168
<b>TOTAL</b>	<b>\$2,393,907</b>	<b>\$3,708,009</b>	<b>\$43,113</b>	<b>\$75,655</b>	<b>\$217,054</b>	<b>\$599,168</b>
Percent	15%	16%	0.4%	0.3%	4%	4%

## CHAPTER III. KEY SPENDING TRENDS

The percentage of candidate campaign funds contributed to other candidates and committees, and transfers to future campaigns, has risen steadily during the past decade. Combined, they reached a new high in 2011- \$20.3 million or 46 percent. The amount was nearly triple the 2001 dollar amount, and more than twice the percentage in 2001.

Most of this increase was driven by a sharp jump in transfers between candidates and party committees to a record \$13.9 million.

Contributions between candidates and committees are an important way for party leaders, budget committee members and other legislators to assist colleagues running in the most vulnerable districts. The large transfer is an indication that most candidates feel secure in their districts and can share their funds with candidates in more vulnerable areas.

Legislative candidates also rolled over an unprecedented sum- \$6.4 million- to future elections- another sign that most incumbents feel safe.

**TABLE 24  
CONTRIBUTIONS TO OTHER CANDIDATES AND COMMITTEES  
AND TRANSFERS TO FUTURE CAMPAIGN BY LEGISLATIVE CANDIDATES**

	2001	2003	2005	2007	2009	2011
Political Contributions	\$5,219,286	\$7,392,713	\$5,001,171	\$9,485,909	\$4,958,467	\$13,906,135
Transfers to Next Campaign	\$478,328	\$1,175,233	NA	\$2,105,018	\$2,272,267	\$6,431,152
<b>TOTAL</b>	<b>\$5,697,614</b>	<b>\$8,567,946</b>	<b>\$5,001,171</b>	<b>\$11,590,927</b>	<b>\$7,230,734</b>	<b>\$20,337,287</b>
Percent	20%	20%	24%	28%	42%	46%

The growing use of joint committees by candidates also has driven up contributions. Candidates raised \$13,563,024 through joint committees in 2011- 81 percent more than in 2009, and the third highest since 1987. Candidates in 2007 jointly raised the most ever -\$16.4 million. For more background, go to White Paper 22.<sup>14</sup>

Legislative candidates in 2011 reported spending more money than ever raising money, though as a percentage of total costs, the share fell from 6 to 4 percent.

<sup>14</sup> Pages 32 and 33, “Trends in Legislative Campaign Financing: Fundraising in the Era of Pay-to-Play Reform, Self-Funders and Recession- 1999-2009, 3<sup>rd</sup> Volume” September 2011.

## CHAPTER III. KEY SPENDING TRENDS

TABLE 25 FUNDRAISING EXPENSES FOR LEGISLATIVE CANDIDATES						
	2001	2003	2005	2007	2009	2011
Fundraising	\$831,233	\$767,468	\$541,807	\$1,119,352	\$1,106,917	\$1,738,756
Percent	3%	2%	3%	3%	6%	4%

Candidates also spent the most since 2003 on consultants, though as a percentage of total spending, candidates in 2003 and 2005 spent more.

TABLE 26 CONSULTING EXPENSES FOR LEGISLATIVE CANDIDATES						
	2001	2003	2005	2007	2009	2011
Consulting	\$1,080,974	\$3,309,063	\$1,732,673	\$1,388,125	\$871,210	\$2,370,730
Percent	4%	8%	8%	3%	5%	5%

Legislative candidates spent the most in at least a decade on polling but it remained around the 2 percent share of all expenses seen for every year except 2005, when it was 3 percent.

TABLE 27 POLLING EXPENSES FOR LEGISLATIVE CANDIDATES						
	2001	2003	2005	2007	2009	2011
Polling	\$570,535	\$882,162	\$541,359	\$854,971	\$295,951	\$1,041,827
Percent	2%	2%	3%	2%	2%	2%

Charitable donations by legislative candidates remained at 1 percent even though the total dollars were the highest since 2003.

TABLE 28 CHARITABLE DONATIONS BY LEGISLATIVE CANDIDATES						
	2001	2003	2005	2007	2009	2011
Charitable Donations	\$350,328	\$433,778	\$324,368	\$267,030	\$166,184	\$427,461
Percent	1%	1%	2%	1%	1%	1%

Election day expenses also stayed around the historic average of about 1 percent.

## CHAPTER III. KEY SPENDING TRENDS

<b>TABLE 29 ELECTION DAY EXPENSES FOR LEGISLATIVE CANDIDATES</b>						
	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
Election Day	\$492,990	\$622,507	\$201,101	\$658,715	\$245,885	\$564,394
Percent	2%	1%	1%	2%	1%	1%

The cost of administering campaigns also stayed at the average for the decade- 5 percent.

<b>TABLE 30 ADMINISTRATIVE EXPENSES FOR LEGISLATIVE CANDIDATES</b>						
	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
Administrative Expenses	\$856,679	\$2,910,023	\$819,081	\$2,633,627	\$843,671	\$2,410,481
Percent	3%	7%	4%	6%	5%	5%

Refunds fell to the smallest level- in dollars and on a percentage basis- in at least the past decade.

<b>TABLE 31 REFUNDS BY LEGISLATIVE CANDIDATES</b>						
	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
Refunds	\$680,096	\$637,288	NA	\$859,046	\$178,803	\$164,356
Percent	2%	2%	NA	2%	1%	0.4%

# CHAPTER IV

---

## RECOMMENDATIONS

---

### **RECOMMENDATION ONE- MORE DISCLOSURE BY INDEPENDENT GROUPS**

The most important trend uncovered by this analysis is that independent spending by special interest groups is rapidly becoming a major force in New Jersey legislative campaigns.

Between 2007 and 2011, this spending rose 1,012 percent.

At this writing in July 2013, independent groups have raised nearly what they spent two years ago for legislative elections even though the general election is just beginning. Even heavier independent spending is expected in the governor's race.

These trends make it clear that more disclosure is necessary for these groups to inform the electorate. Under current law, there is little pre-election disclosure of contributions by independent groups, and even some spending goes unreported.

Critics of U.S. Supreme Court's *Citizens United v. FEC* ruling often focus on the fact that it set the stage for a tripling of independent spending in the 2012 presidential election, primarily by spurring the creation of Super PACs.

What many seem not to fully appreciate is that the same ruling contains one of the broadest mandates ever for campaign finance disclosure.

While the U.S. Supreme Court declared that corporations and unions can raise and spend freely if they do so independently, eight of nine justices also said the voting public is entitled to know who is supplying the funds and doing the spending.

In the words of the majority, "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."<sup>15</sup>

---

<sup>15</sup> *Citizens United v. FEC*, January 21, 2010, 558 U.S. 310, 371

---

## CHAPTER IV. RECOMMENDATIONS

---

As early as *Buckley v. Valeo* in 1976, the high court recognized the importance of disclosure in election financing. “A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return.”<sup>16</sup>

The court further said disclosure was necessary to “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity” and because it is an “essential means of gathering data necessary to detect violations” of campaign finance laws.<sup>17</sup>

Experts like former FEC Chairman Trevor Potter say the Court’s endorsement of disclosure is strong.

“The Supreme Court has been unusually clear in saying that the sources of funding of political advertising and other spending can constitutionally be required to be disclosed. This applies not only to the Super PACs but to C4s, C6s and other groups running campaign ads.”<sup>18</sup>

In “Transparent Elections After Citizens United,” the Brennan Center for Justice concluded that “states have wide latitude to require disclosures not only from classic political committees, but also any entity funding independent expenditures or electioneering communications in future state elections.”<sup>19</sup>

In April 2010, three months after the Citizens United ruling, the Election Law Enforcement Commission, in a unanimous, bipartisan action, agreed to urge the Legislature to expand disclosure requirements for independent groups.

At the time, Super PACs didn’t even exist.

In 2012, Executive Director Jeff Brindle outlined suggested elements of reform legislation and presented it to members of both political parties.

---

<sup>16</sup> *Buckley v. Valeo*, January 30, 1976, 424 U.S. 1, 67

<sup>17</sup> *Ibid.*

<sup>18</sup> “Super PACs: How We Got Here, Where We Need to Go,” Trevor Potter, Campaign Legal Center President, December 2, 2011

<sup>19</sup> P. 2, “Transparent Elections After Citizens United,” Brennan Center for Justice, 2011

---

## CHAPTER IV. RECOMMENDATIONS

---

Currently, groups or individuals that independently spend more than \$1,400 in New Jersey to explicitly urge voters to elect or defeat candidates must report only expenses to ELEC. Under a recent court order, political committees that only engage in independent spending also file disclosure reports.

Under Brindle's proposal, independent expenditures-only committees similar in makeup to federal Super PACs would file disclosure reports listing expenses AND contributions 29 days and 11 days before elections, and 20 days afterward- just like candidates, parties and political committees. Some states like California and Virginia already require broad disclosure by independent groups.

Brindle has further suggested that the Legislature expand the definition of independent expenditures to cover electioneering ads- campaign ads that avoid explicit terms like "vote for" or "vote against" but promote or attack candidates based strictly on where they stand on issues.<sup>20</sup>

Electioneering communications would be defined as political communications made beginning January 1 of a calendar year of a primary, general, May municipal, run-off, school board, or fire district election. The new law would apply to communications by network or cable television, radio, internet, direct mail, other printed literature, telephone and billboards.

The main intent would be to require all 527 or 501(c) non-profit groups or Super PACs, to disclose to voters their major activities involving state or local campaigns.

There would be no contribution or spending limits on the committees spending independently. But they would have to divulge all contributions larger than \$5,000. The contribution threshold would be set considerably higher than the existing \$300 disclosure threshold for candidates and committees to try to minimize the reporting burden for membership groups such as the Sierra Club or Chamber of Commerce.

---

<sup>20</sup> Disclosure requirements expanded to any communication that is "the functional equivalent of express advocacy because it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved mentions a candidacy, a political party or a challenger to a candidate, or takes a position on a candidate's character, qualifications or fitness for office."

**CHAPTER IV. RECOMMENDATIONS**

<b>TABLE 32                      HOW DISCLOSURE WOULD CHANGE FOR INDEPENDENT GROUPS                      UNDER ELEC LEGISLATIVE PROPOSAL</b>		
Independent Spenders that Explicitly Urge a Candidate’s Election or Defeat Must Disclose	CURRENT	PROPOSED
Contributions	Infrequent***	Yes*
Expenditures	Yes	Yes
Independent Spenders that Use Issue Ads to Promote or Oppose Candidates		
Contributions	Infrequent and not before election**	Yes*
Expenditures	Infrequent and not before election**	Yes

\*ELEC proposal would require disclosure only for contributions above \$5,000.

\*\*Some groups have disclosed campaign-related contributions and spending through grass roots lobbying reports filed months after the campaign.

\*\*\*Independent groups that file reports as political committees do disclose contributions. At this writing, there was only one such committee.

Elements of Brindle’s plan have been incorporated in pending legislation, including bills (A-3863/S-2616) co-sponsored by Assemblyman Reed Gusciora (D-15), Assemblywoman Stender (D-22), and Senator Shirley Turner (D-15), and a second bill (S-2748) co-sponsored by Senators James Beach (D-6th) and Linda Greenstein (D-14th).

**RECOMMENDATION TWO- BETTER DISCLOSURE OF CAMPAIGN EXPENSES**

If the rest of this section seems to have a familiar tone, it should. The following recommendations are similar to those presented in White Paper 22.<sup>21</sup>

The bottom line is the same- candidates and parties can do a better job of ensuring more accurate disclosure of campaign expenditures.

Media costs are a particular concern because they often are the biggest expense for a campaign.

Millions of dollars are being spent each election cycle without anyone knowing the exact purpose of the expenditures. In 2011, nearly \$6.8 million was described simply as “media time.”

<sup>21</sup> Pages 36-39, “Trends in Legislative Campaign Financing: Fundraising in the Era of Pay-to-Play Reform, Self-Funders and Recession- 1999-2009, 3<sup>rd</sup> Volume” September 2011.

## CHAPTER IV. RECOMMENDATIONS

**TABLE 33  
PERCENT OF TOTAL EXPENSES REVIEWED  
WHERE COMMUNICATIONS COSTS ARE VAGUE**

	2001	2003	2005	2007	2009	2011
Uncategorized Media Expenses	\$2,447,178	\$11,181,893	\$5,309,891	\$12,920,770	\$1,932,212	\$6,814,855
Total Communications Expenses	\$28,580,801	\$42,421,507	\$21,170,167	\$41,827,011	\$16,980,991	\$14,426,075
Percent	9%	26%	25%	31%	11%	33%

It is likely that the bulk of the uncategorized media spending went to broadcast or cable television. But radio advertisements also are popular with candidates, and internet advertising also seems to be a fast-growing option. It would be beneficial to know if for no other reason than to track these trends.

Only the candidates know the actual amounts. And they aren't always telling.

The result- more is known about some \$5,000 expenses than some \$500,000 media buys.

Parties and candidates are required by law to give subtotals for credit card purchases and they regularly do so even for relatively minor expenditures.

If candidates buy a package with a combination of media services, they should tell the public the subtotals for the various expenses.

Assuming a \$500,000 package buy, they could simply indicate \$250,000 for a cable buy, \$150,000 for a radio buy, and \$100,000 for Internet ads.

It is true that the main priority of campaign finance disclosure reports is to enable the public to see where candidates get their funds.

But many forget that the law also requires accurate reporting of expenditures as well as contributions.

ELEC's excellent compliance manual reflects this requirement.

---

## CHAPTER IV. RECOMMENDATIONS

---

It indicates expenditure reporting requires not only the date of the expenditure, full name and address of the payee, amount, and check number, but also “the purpose of the expenditure.”

In describing the purpose, the manual urges candidates and their treasurers to “describe the specific election-related reason for the expenditure,” such as “newspaper advertising,” “postage,” “printing of campaign fliers,” “headquarter rentals,” “telephone expense,” etc.; generic, non-informative descriptions such as “operations,” “petty cash,” “expenses,” or “reimbursement” are not permitted.”<sup>22</sup>

Campaign treasurers who receive ELEC training are urged to follow these guidelines.

The Federal Election Commission goes a step further than ELEC.

It provides long lists of adequate<sup>23</sup> and inadequate<sup>24</sup> descriptions of each purpose. There are 105 adequate descriptions, and 99 inadequate ones.

“The description must be sufficiently specific, when considered within the context of the payee’s identity, to make the reason for the disbursement clear.”<sup>25</sup>

The FEC list, for example, includes 21 different types of consulting for reporting purposes, including consulting for media, GOTV, microtargeting, and strategic planning.

FEC allows the use of word “media” but, by regulation, it is assumed to apply only to television or radio advertising.<sup>26</sup>

The federal agency further advises candidates: “As a rule of thumb, filers should consider the following question: ‘Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?’”<sup>27</sup>

---

<sup>22</sup> Page 29, “Compliance Manual for Candidates Including a Summary of Requirements, Reporting Forms, and Instructions - March 2013.”

<sup>23</sup> <http://www.fec.gov/rad/pacs/documents/ExamplesofAdequatePurposes.pdf>

<sup>24</sup> [http://www.fec.gov/law/policy/purposeofdisbursement/inadequate\\_purpose\\_list\\_3507.pdf](http://www.fec.gov/law/policy/purposeofdisbursement/inadequate_purpose_list_3507.pdf)

<sup>25</sup> P. 99, “FEC Campaign Guide for Congressional Candidates and Committees August 2011”

<sup>26</sup> 11 CFR Part 104, Notice 2006-23, State of Policy: “Purpose of Disbursement Entries for Filings With the Commission.”

<sup>27</sup> Ibid.

## CHAPTER IV. RECOMMENDATIONS

---

ELEC might consider adopting similar detailed guidance for candidates tailored to the non-federal campaigns it regulates.

Better disclosure not only informs the voting public.

It also can help ELEC and other authorities to enforce the law since campaign expenditures have in recent years become a growing issue nationally and within the state.

Prompted by concerns about inadequate expenditure reporting, ELEC itself has called for legislation that would require better record-keeping for campaign funds spent on dinners and other meetings. A bipartisan bill (A-3009) introduced by Assemblywoman Amy Handlin (R-13) and Valerie Vainieri Huttle (D-37) incorporates that recommendation.

Under the Gubernatorial Public Finance program, ELEC provides thorough disclosure of expenditures by gubernatorial candidates.

The public can download not only electronic copies of candidate reports, but spreadsheets listing the details of candidate expenditures as well as contributions. Because they face greater scrutiny than other candidates, gubernatorial candidates tend to be more precise in describing their expenditures.

A pending bill (S-2748) mentioned above would also require electronic filing by candidates, parties and PACs. ELEC staff has advised the sponsors that additional funding would be necessary to achieve this goal.

Once ELEC upgrades its computer system to permit more complete electronic filing by candidates, parties and PACs, it should make expenditure details for all candidates available in a database that can be used by the public, media, academics, investigators and others to easily search the information. Electronic filing should improve disclosure because ELEC could require filers to pick more specific descriptions when they complete their forms.

Campaign finance laws are supposed to be largely self-enforcing. When it comes to contributions, candidates generally do a fine job with an estimated 90 percent or more compliance. It would only take a little effort to improve disclosure on the expenditure side.

## **CHAPTER IV. RECOMMENDATIONS**

---

ELEC's investigative unit stands ready to step in when violations occur. If expense disclosure doesn't improve, at some point it might be necessary for ELEC investigators to formally audit non-gubernatorial candidates for non-compliance in reporting expenditures, and for ELEC to impose fines where necessary.

Hopefully, this step won't be required for candidates and parties to get the message.

## PREVIOUS WHITE PAPERS

---

- Number One:** [Contribution Limits and Prohibited Contributions](#) (1988)
- Number Two:** [Trends in Legislative Campaign Financing: 1977-1987](#) (1989)
- Number Three:** [Legislative Public Financing](#) (1989)
- Number Four:** [Ideas for an Alternate Funding Source](#) (1989)
- Number Five:** [Lobbying Reform](#) (1990)
- Number Six:** [Autonomy and Jurisdiction](#) (1991)
- Number Seven:** [Is There a PAC Plague in New Jersey?](#) (1991)
- Number Eight:** [Technology in The Future: Strengthening Disclosure](#) (1992)
- Number Nine:** [Legislative Candidates: How They Spend their Money](#) (1994)
- Number Ten:** [Nonconnected, Ideological PACs in the Garden State](#) (1995)
- Number Eleven:** [State Parties And Legislative Leadership Committees: An Analysis 1994-1995](#) (1996)
- Number Twelve:** [Repartyzation: The Rebirth of County Organizations](#) (1997)
- Number Thirteen:** [Trends in Legislative Campaign Financing: 1987-1997 2<sup>nd</sup> Volume](#) (1999)
- Number Fourteen:** [Local Campaign Financing](#) (2000)
- Number Fifteen:** [School Board Campaign Financing](#) (2002)
- Number Sixteen:** [A Resurgent Party System: Repartyzation Takes Hold](#) (2003)
- Number Seventeen:** [Legislative Election 2003: The Rise of Party-Oriented Campaigning](#) (2004)
- Number Eighteen:** [Local Campaign Financing: An Analysis of Trends in Communities Large and Small](#) (2005)
- Number Nineteen:** [The 2005 Assembly Election: New Trends On The Horizon?](#) (2006)
- Number Twenty:** [Legislative General Elections 2007: An Analysis Of Trends In State Senate And Assembly Elections](#) (2009)
- Number Twenty-One:** [School Elections Campaign Financing: An Update](#) (2010)
- Number Twenty-Two:** [Trends in Legislative Campaign Financing: Fundraising in the Era of Pay-to-Play Reform, Self-Funders and Recession • 1999-2009 3<sup>rd</sup> Volume](#) (2011)