



**Board of  
Elections**

# **Independent Expenditure Reporting**

**August 11, 2015**

# Advisory

This presentation on campaign financial disclosure reporting for Independent Expenditures is only a guide. For a full understanding of your legal obligations and responsibilities, please refer to NYS Election Law and related Rules and Regulations and the Opinions of the New York State Board of Elections (NYSBOE). They can both be accessed under the Election Law section of the NYSBOE website. This presentation is not intended to replace or to be inclusive of all laws and statutes governing campaign finance requirements.

# Email NYSBOE

Email us at any time with your questions, and check our website for frequently asked questions and answers. Contact us at:

- [training@elections.ny.gov](mailto:training@elections.ny.gov)

# The Applicable Laws

Article 14 of NYS Election Law deals with *Campaign Receipts and Expenditures*.

Part 6200 of NYSBOE's Rules and Regulations, *Filing Statements of Campaign Receipts and Expenditures*, mandates how financial activity, including independent expenditures, is to be disclosed.



# What Does “Independent” Mean?

- **Independent** means that the expenditure/communication has not been authorized, requested, suggested, fostered or cooperated in by the candidate, his/her committee or agents, or a ballot proposal committee.

# Candidates/Ballot Proposals

As it relates to candidates, **Independent** means that the candidate, the candidate's political committee or its agents did not authorize, request, suggest, foster or cooperate in such expenditure/communication.

As it relates to ballot proposals, **Independent** means that a political committee formed to promote the success or defeat of a ballot proposal or the committee's agents, did not authorize, request, suggest, foster or cooperate in such expenditure/communication.

# What is an “Independent Expenditure”?

An **Independent Expenditure** is an expenditure made by a “person” conveyed to 500 or more members of a “general public audience” by:

- Audio or video communication via broadcast, cable or satellite
- Written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads, or
- Other published statements

and...

## ...Which Contains

- Regardless of when made, words such as “vote,” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the election or defeat of a clearly identified candidate, or
- On or after Jan. 1 of the election year, in which such candidate is seeking office or such proposal shall appear on the ballot, refers to and advocates for or against a clearly identified candidate or ballot proposal, or
- Within 60 days before a general or special election for the office sought by the candidate or 30 days before a primary election, includes or references a clearly identified candidate.

Now, we will further define the following terms: **person, general public audience, labor organization, clearly identified candidate, and advocating for or against.**

# Person (EL 14-107(1)(C))

The term **person** means: person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee, provided, however, that such definition shall not include any party or constituted committee, that is required to file disclosure reports.

As you will recall, the term **person** is used in the definition of Independent Expenditure as follows:

An Independent Expenditure is an expenditure made by a **person** conveyed to 500 or more members of a general public audience by:

- Audio or video communication via broadcast, cable or satellite;
- Written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or
- Other published statements.

# General Public Audience (EL 14-100 (13))

A **general public audience** means an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does **not** mean:

- An audience **solely** comprised of members, retirees, and staff of a labor organization or members of their households; or
- An audience **solely** comprised of employees of a corporation, an unincorporated business entity, or member of a business, trade or professional association or organization.

# General Public Audience

As you recall, the term **general public audience** is used in the definition of Independent Expenditure, as follows:

An Independent Expenditure is an expenditure made by a “person” conveyed to 500 or more members of a **general public audience** by:

- Audio or video communication via broadcast, cable or satellite;
- Written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads; or
- Other published statements.



# Labor Organization (EL 14-100(14))

A **labor organization** is any organization representing employees employed in NYS with the following characteristics:

- Deals with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof; and
- Each local, parent, national or parent international organization of a statewide labor organization and each statewide federation receiving dues from a subsidiary labor organization shall be considered a separate labor organization.

# Labor Organization

For the purposes of the definition of **general public audience**, the term **labor organization** is used in the following context:

A general public audience means an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does **not** mean:

- An audience solely comprised of members, retirees, and staff of a labor organization or members of their households; or
- An audience solely comprised of employees of a corporation, an unincorporated business entity, or member of a business, trade or professional association or organization.

# Clearly Identified Candidate (EL 14-100(12))

The term “clearly identified candidate” means:

- The name of the candidate involved appears;
- A photograph or drawing (caricature) of the candidate appears; or
- The identity of the candidate is apparent by unambiguous reference.

# Clearly Identified Candidate

As you recall, the term **clearly identified candidate** is used in the definition of Independent Expenditure in the following context:

- Regardless of when made, words such as “vote,” “oppose,” “support,” “elect,” “defeat,” or “reject,” which call for the election or defeat of a **clearly identified candidate**; or
- On or after Jan. 1 of the election year, in which such candidate is seeking office or such proposal shall appear on the ballot, refers to and advocates for or against a **clearly identified candidate** or ballot proposal.

# Advocating For or Against (EL 14-107(1)(A))

- **Advocating For or Against means**, in the absence of explicit words of advocacy for or against a candidate or ballot proposal, through the use of images, photos, or language which promotes, supports, attacks, or opposes for or against the clearly identified candidate or ballot proposal...
- For purposes of determining whether or not a communication is advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:
  - a. Whether it identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate's platform or biography;
  - b. Whether it expresses approval or disapproval for said candidate's positions or actions;

**and...**

# ...Factors for Determining Advocating For or Against

- c.** Whether it is part of an ongoing series by the group on the same issue and the series is not timed to an election;
- d.** Has the issue raised in the communication been raised as a distinguishing characteristic amongst the candidates; and
- e.** Whether its timing and the identification of the candidate are related to a non-electoral event (e.g., a vote or a position on legislation by an officeholder who is also a candidate).

However, even if some of the above factors are found, the communication must still be considered in context before arriving at any conclusion.

# What is Not an Independent Expenditure?

An Independent Expenditure shall not include communications where such candidate, the candidate's political committee or its agents, or a political committee formed to promote the success or defeat of a ballot proposal or its agents, did authorize, request, suggest, foster or cooperate in such communications. (EL 14-107(1)(A))

and

## ... Independent Expenditures Do Not Include Expenditures in Connection with...

- A written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite, unless such publication or facilities are owned or controlled by any political party, political committee or candidate; or
- A communication that constitutes a candidate debate or forum; or
- Internal communication by members to the other members of a membership organization of not more than 500 members for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publications, billboards or similar types of general public communications;
- Internal communication by members to the other members of a membership organization of not more than 500 members or communications by a corporation organized for charitable purposes pursuant to 501c3 law of the Internal Revenue Code, within 60 days before a general or special election for the office sought by the candidate or 30 days before a primary election, that includes or references a clearly identified candidate but does not otherwise qualify as an Independent Expenditure; or
- A communication published on the internet, unless the communication is a paid advertisement. (EL 14-107(1)(B))



# Membership Organization

**Membership organization** means a group that has a recognized organizational structure and maintains a list of its members, such as a professional, fraternal, patriotic, or social association or organization, a cooperative, a corporation without capital stock, and is **not** organized primarily for the purpose of influencing the nomination for election, or election, of any candidate for office covered by Article 14 of the Election Law of the State of New York, or any ballot proposal covered therein.

Factors that shall be examined when determining whether or not a group shall be considered a “Membership Organization” for this purpose shall include, but not be limited to the following:

- a) Whether or not the organization is composed of members, some or all of whom are vested with the power or authority to administer the organization pursuant to membership by-laws, constitution or other formal organizational documents;

**and...**



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# Membership Organization (Continued)

- b)** Expressly states the qualifications for membership, including special membership status such as “retired” or “lifetime” member;
- c)** Expressly solicits persons to become members;
- d)** Expressly acknowledges the acceptance of membership, such as by issuing a membership card or sending confirming correspondence;
- e)** Distributes newsletters or other informational messages to its members;
- f)** Has a mission statement that is available for the members and the public to see;
- g)** Is not organized for the purpose of influencing the nomination for election, or election, of any candidate for office or any ballot proposal covered by Article 14 of the Election Law.



# Membership Organization (Continued)

As you recall, the term “membership organization” is used in the definition of what is not an Independent Expenditure in the following context:

As it relates to what is **not** an Independent Expenditure:

- Internal communication by members to other members of a **membership organization** of not more than 500 for the purpose of supporting or opposing a candidate(s) for elective office provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards or similar types of general public communications.

# Next Steps

Before making any Independent Expenditures, you must first register with NYSBOE as an Independent Expenditure Committee.

# Registration: Support/Oppose Candidate(s)

To register an Independent Expenditure Committee to support or oppose candidates, you must register with NYSBOE by submitting:

**The Committee Registration/Treasurer and Bank Information form (CF-02)**

- Indicate Committee Type Number 8 for “Independent Expenditure Committee (Unauthorized)”;
- Complete Section E for candidate(s) that you support or oppose.

**And the Committee Authorization Status form (CF-03)**

- Complete Section B for candidate(s) who have not authorized the committee to aid or take part in their election or nomination.
- The treasurer’s signature must be notarized on the CF-03.

The forms need to be completed in full or will be rejected.

# Registration: Support/Oppose Ballot Prop

To register an Independent Expenditure Committee to support or oppose a ballot proposal you must register with NYSBOE, by submitting:

## **The Committee Registration/Treasurer and Bank Information form (CF-02)**

- Indicate Committee Type Number 9B for “Ballot Issue Committee”;
- Complete Section F for ballot issues that you support or oppose.

The CF-02 form needs to be completed in full or will be rejected.

Note: A CF-03 form is not required for Ballot Issue Committees.

# Welcome Letter

Once registration forms have been received and are determined to be complete, the treasurer of record will receive a Welcome Letter which will include the Filer ID# and Personal Identification Number (PIN) necessary for filing disclosure reports electronically with NYSBOE.

- The PIN acts as the electronic signature for filing Campaign Financial Disclosure Reports and Independent Expenditure disclosures.

# Reporting Requirements

All political committee types are required to file Periodic and Election Cycle reports.

All Independent Expenditure Committees are also required to file Periodic and all Election Cycle reports.

- Independent Expenditure Committees may also have to provide Weekly and/or 24-Hour disclosures.

# 2015 Filing Calendar

## Primary Election (September 10, 2015)

- 32 Day Pre-Primary – August 10
- 11 Day Pre-Primary – August 31
- 10 Day Post-Primary – September 21
- 24-Hour Notice – August 27-September 9

## General Election (November 3, 2015)

- 32 Day Pre-General – October 2
- 11 Day Pre-General – October 23
- 27 Day Post-General – November 30
- 24-Hour Notice – October 19 – November 2

## Periodic Reports

- January 15
- July 15

Cut-off dates are 4 days before the filing due date

# Notice of Non-Participation in Elections Form (CF-20)

If an Independent Expenditure Committee is not participating in a primary, general or special election, submit a **Notice of Non-Participation in Election(s) by Registered PACs, Party and Constituted Committees or Independent Expenditure Committees** form (CF-20).

- The filing of a CF-20 does not remove the obligation of the committee to make any Weekly or 24-Hour disclosures as will be discussed next.
- January and July Periodic Reports are **always** required.

# Allocations - Schedule R

Independent Expenditure Committees supporting or opposing candidates/ballot proposals, **when filing disclosure reports**, must allocate their expenses using **Schedule R** according to the relative benefit each candidate/ballot proposal receives from the expenditures. These amounts are cumulative per candidate/ballot proposal over the campaign cycle.

When a committee spends its first dollar on a candidate/ballot proposal for a particular election campaign, the committee treasurer lists on this schedule the candidate/ballot proposal; the office, the district/municipality, as applicable; and the allocated amount spent for the candidate/ballot proposal.

On each subsequent report, this information is carried forward. As the committee spends more on a candidate/ballot proposal, the amount will increase accordingly.

This **Schedule R** is for record-keeping and does not affect the account balance.

# Additional Disclosures: Weekly/24-Hour

After the Independent Expenditure Committee has registered with NYSBOE, in addition to filing the Campaign Financial Disclosure Reports required of political committees, additional disclosures must be made:

## Weekly Disclosure

- Up to 30 days prior to the applicable primary, general or special election, submit Weekly disclosures on Fridays after receipt of a contribution/loan over \$1,000 or expenditure made over \$5,000.

## 24-Hour Disclosure

- Within 30 days of the applicable primary, general or special election, submit 24-Hour disclosures after receipt of a contribution/loan over \$1,000 or expenditure made over \$5,000.

# Primary and General Election

- Independent Expenditure disclosure requirements are effective June 1, 2014.
- If you are involved in the primary and general elections, make Weekly/24-Hour disclosures as applicable for both.

# Disclosure Reporting Detail

**Weekly and 24-Hour Disclosures** shall include, in addition to any other information required by law:

- (a)** the name, address, occupation and employer of the person making the statement;
- (b)** the name, address, occupation and employer of the person making the Independent Expenditure;
- (c)** the name, address, occupation and employer of any person providing a contribution, gift, loan, advance or deposit of one thousand dollars (\$1,000) or more for the Independent Expenditure, or the provision of services for the same, and the date it was given;

## ...Disclosure Reporting Detail

**(d)** the dollar amount paid for each Independent Expenditure, the name and address of the person or entity receiving the payment, the date the payment was made and a description of the Independent Expenditure; and

**(e)** the election to which the Independent Expenditure pertains and the name of the clearly-identified candidate or the ballot proposal referenced. (EL 14-107(4)).



# How to Disclose Additional Details: Weekly/24-Hour

Go to the NYSBOE website and choose the Independent Expenditure Reporting page, found under the Campaign Finance section, and choose from one of the following:

- [I want to file my Weekly or 24-Hour Independent Expenditure Contributions/Loans](#)
- [I want to file my Weekly or 24-Hour Independent Expenditure Expenditures/Payments](#)
- [View Independent Expenditure Weekly and 24-Hour Notices filed by Date Range](#)

# Making Weekly/24-Hour Disclosures

- When a contribution or loan over \$1,000 is received or an expenditure over \$5,000 is made within 30 days of the applicable election, such transaction must be electronically disclosed within 24 hours to NYSBOE.
- When a contribution or loan over \$1,000 is received or when an expenditure over \$5,000 is made, outside of the 30 day/24-Hour disclosure provision, such transaction must be electronically disclosed on a weekly basis on Fridays, to NYSBOE.
- All 24-Hour and Weekly disclosures must be reported to NYSBOE on the next applicable election cycle or periodic report.
- Click on the applicable report and you will be prompted to enter your Filer ID and PIN.

# Contribution/Loan Entry Screen

## Independent Expenditures

Please enter your weekly and 24 hour notice Contributions/Loans information and click continue:

### Additional Treasurer Information:

Treasurer Occupation

Treasurer Employer

### Contributor/Lender Information

Entity Name

Or Individual Last:

First:

Middle Initial:

Contributor/Lender Occupation (If an Individual)

Contributor/Lender Employer (If an Individual)

### Contributor/Lender Address:

Street:

Apt:

City:

State:

Zip:

### Contribution/Loan Information:

Date Received (mm/dd/yyyy):

Amount

Check Number (if applicable):

Check Date (mm/dd/yyyy) (if applicable):

Choose type of Independent Expenditure Contribution/Loan:

Continue

Reset



# Contribution/Loan Page

**Below is the Independent Expenditure Contribution/Loan that you entered.**

**Review the information and when you are satisfied that your entry is correct, hit the "Submit" button once to submit the entry. Do not submit any entry m**

**If you need to make corrections hit your Browers back button to the previous screen.**

Candidate/Committee Name: A12646 - MONTY COMM  
Treasurer: CARL2 MONTY  
Treasurer Occupation: Bank President  
Treasurer Employer: The Big bank

Contributor: FIRST LAST  
Contributor Occupation: occupation  
Contributor Employer: .  
Contributor Address: 12 Avenue Troy ny 12456

Date of Contribution: 04/30/2014  
Amount: \$15000  
Type of Receipt: LOAN  
Check Number: 123  
Check Date: 04/01/2014

**KNOWINGLY FILING FALSE INFORMATION THROUGH THIS INDEPENDENT EXPENDITURE CONSTITUTES A CLASS A MISDEMEANOR, PUNISHABLE BY A FINE AND/OR IMPRISONMENT.**

Press "Submit Independent Expenditure" below to submit your filing. To cancel, click on the link below to return to the Filing Options Page.

Note: By pressing "Submit Independent Expenditure", you are agreeing to the above statements. Clicking on the link below to return to The Filing Options Page will cancel this action.

Submit Independent Expenditure

[Return to Independent Expenditure Reporting](#)



# Expense/Payment Entry Screen

Candidate/Committee Name: MONTY COMM (a12646)  
Treasurer: CARL2 MONTY  
Treasurer Address: 2 FOX LANE

## **Independent Expenditures**

Please enter your weekly and 24 hour notice Expenditure/Payments information and click continue:

### **Additional Treasurer Information:**

Treasurer Occupation   
Treasurer Employer

### **Recipient Information**

Entity Name   
Or Individual Last:  First:  Middle Initial:

### **Recipient Address:**

Street:  Apt:   
City:  State:  Zip:

### **Receipt Information:**

Date Paid (mm/dd/yyyy):  Amount  Check Number: (If applicable)  Check Date (mm/dd/yyyy) (If applicable):

Enter a description of the Independent Expenditure Expense

### **Election and Candidate or Ballot Prop Information:**

Election Year:  Choose Election Type (Primary, General or Special):  Election Date:

District and Office and Candidate or Ballot Proposition Information:



# Expense/Payment Page

**Below is the Independent Expenditure Expense/Payment that you entered. Review the information and when you are satisfied that your button once to submit the entry. Do not submit any entry more than 1 time.**

**If you need to make corrections hit your Browsers back button to the previous screen.**

Candidate/Committee Name: A12646 - MONTY COMM  
Treasurer: CARL2 MONTY  
Treasurer Address: 2 FOX LANE  
Treasurer Occupation: Lorraine  
Treasurer Employer: bank president

Recipient: TV STATION  
Recipient Address: 14 AVENUE ALBANY WI 47895  
Date of Expenditure: 01/18/2014  
Amount: \$6000  
Type of Expenditure: TV ad  
Check Number: 123  
Check Date: 01/01/2014

Election Year: 2014  
Election Type: P  
Election Date: 09/09/2014  
District and Office and Candidate or Ballot Propositon Information: ballot Prop

**KNOWINGLY FILING FALSE INFORMATION THROUGH THIS INDEPENDENT EXPENDITURE DISCLOSURE CONSTITUTES A CLASS A MISDEMEANOR, PUNISHABLE BY Law § 210.45**

Press "Submit Independent Expenditure" below to submit your filing. To cancel, click on the link below to return to the Filing Options Page.

Note: By pressing "Submit Independent Expenditure", you are agreeing to the above statements. Clicking on the link below to return to The Filing Options Page will cancel this ac

Submit Independent Expenditure



# Before Submitting

- KNOWINGLY FILING FALSE INFORMATION THROUGH THIS INDEPENDENT EXPENDITURE DISCLOSURE CONSTITUTES A CLASS A MISDEMEANOR, PUNISHABLE BY A FINE AND/OR IMPRISONMENT. See Penal Law § 210.45

By pressing "Submit Independent Expenditure", you are agreeing to the statements. Clicking on the link to return to The Filing Options Page will cancel this action.

- **If an Independent Expenditure is incorrect and needs to be amended, contact the State Board of Elections at (518) 474-8200.**

# View Independent Expenditure Entries

All Independent Expenditures can be seen by choosing:

[View Independent Expenditure Weekly and 24-Hour Notices filed by Date Range](#)

- Follow the prompts to check your entries for receipt and accuracy or view any other committee entries.

# Disclosure of Political Communication/ Campaign Materials

All political committees must, at the same time the applicable post-election Campaign Financial Disclosure Report is due and made, submit copies of all the filer's political communication, also known as campaign materials, associated with that election. (EL 14-106)

- Independent Expenditure Committees are required to make additional submissions in conjunction with their Weekly/24-Hour disclosures. (EL 14-107(5))

Such copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing.

# Political Communication (EL 14-106)

The statements required to be filed under the provisions of this article next succeeding a primary, general or special election shall be accompanied by a copy of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, **and reproductions of statements or information published to 500 or more members of a general public audience by computer or other electronic device including but not limited to electronic mail or text message**, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be.

# Additional Submissions of Political Communications

A copy of all political communications paid for by the Independent Expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to 1,000 or more members of a general public audience by computer or other electronic devices:

- Must be submitted on Fridays up to 30 days before the applicable election or within 24 hours if within 30 days before the applicable election. Such submissions must be filed with:

NYS Board of Elections  
40 North Pearl Street, Suite 5  
Albany, NY 12207-2729

These additional submissions of political communications/campaign materials are done in conjunction with the applicable Weekly/24-Hour disclosures made by the Independent Expenditure Committee.

Amended August 27, 2014



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# What is an Attribution?

A statement on any political communication that identifies the source of the communication:

Example:

*“Paid for by ABC Independent Expenditure Committee”*

# Attribution Required

Independent Expenditures that cost more than \$1,000 in the aggregate must:

- Clearly state the name of the person/committee who paid for or otherwise published or distributed the communication (e.g., “*Paid for by ABC Independent Expenditure Committee*”); and
- With respect to communications regarding candidates, state that the communication was **not** expressly authorized or requested by any candidate or by any candidate’s political committee or any of its agents (e.g., “*This communication was not expressly authorized or requested by any candidate or by any candidate’s political committees or any of its agents.*”)

# Additional Penalties – Independent Expenditures

- Failure to identify or falsely identifying an Independent Expenditure is subject to a civil penalty of up to \$1,000 or up to the cost of the communication, whichever is greater. (EL 14-126(3))
- Knowing and willful violation of EL 14-107(3) – (Weekly/ 24-Hour disclosure of Independent Expenditures)-subject to civil penalty of \$5,000 or the cost of the communication, whichever is greater. (EL 14-107(3)(D))

Note: These penalties are in addition to any other Campaign Financial Disclosure Reporting violations or penalties as stated in EL 14-126.



# True Name of Contributor

- The provisions of this regulation are in no way intended to affect the application or validity of EL 14-120, *Campaign Contribution to be Under True Name of Contributor.*

# Campaign Finance Seminars

For a full understanding of campaign financial disclosure requirements for all political committees, NYSBOE offers statewide seminars that cover:

- Candidate/committee registration;
- Financial disclosure reporting;
- Contribution limits;
- Resignation/termination;
- Enforcement.

These seminars are available on the NYSBOE website (<http://www.elections.ny.gov>) on the Education and Training page under the Campaign Finance section.

# CLE/CPE Seminars

NYSBOE has been approved for certain Campaign Finance seminars to offer:

- Three hours of Continuing Professional Education (CPE) credits for Certified Public Accountants (CPAs) and
- Three hours of Continuing Legal Education (CLE) credits for attorneys. All qualifying participants are asked to pre-register on the NYSBOE website at the designated CLE/CPE locations.



# Contact NYSBOE

Email us with questions on Independent Expenditures at:  
[training@elections.ny.gov](mailto:training@elections.ny.gov)

NYS Board of Elections  
40 North Pearl Street, Suite 5  
Albany, NY 12207-2729  
800-458-3453 - [www.elections.ny.gov](http://www.elections.ny.gov)