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## Chapter 8:

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# Expenditures

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Participating candidates spent a total of \$32.2 million on their bids for office in the 1989 elections. Mayoral candidates accounted for more than two-thirds of the total, spending \$22.6 million, as Figure 8.1 shows. Participating comptroller candidates spent a total of approximately \$3.9 million, borough president candidates spent \$3.1 million, and City Council candidates spent \$2.6 million.

Broadcast television expenses dominated the expenditures of mayoral and comptroller candidates, constituting 42 and 34 percent, respectively, of those offices' total expenditures. Borough president candidates' expenditures were about evenly spread between television and printing and mailing. City Council candidates reached voters primarily through printing and mailing campaign brochures. After advertising, the costs of consultants, campaign workers' salaries, and office expenses were the next largest categories of expenditures for all offices.

The Program's expenditure limits appear to have effectively controlled campaign outlays for participating mayoral candidates. Each participating mayoral candidate could spend no more than \$3.6 million for the 1989 primary election. In contrast, non-participant Ronald Lauder spent over \$13.7 million for the primary election, more than three times the Act's expenditure limits. Although most candidates are not as well-financed as Lauder, he exemplifies the unlimited campaign spending that can occur in New York City if candidates are not bound by spending limits such as those imposed by the Campaign Finance Program.

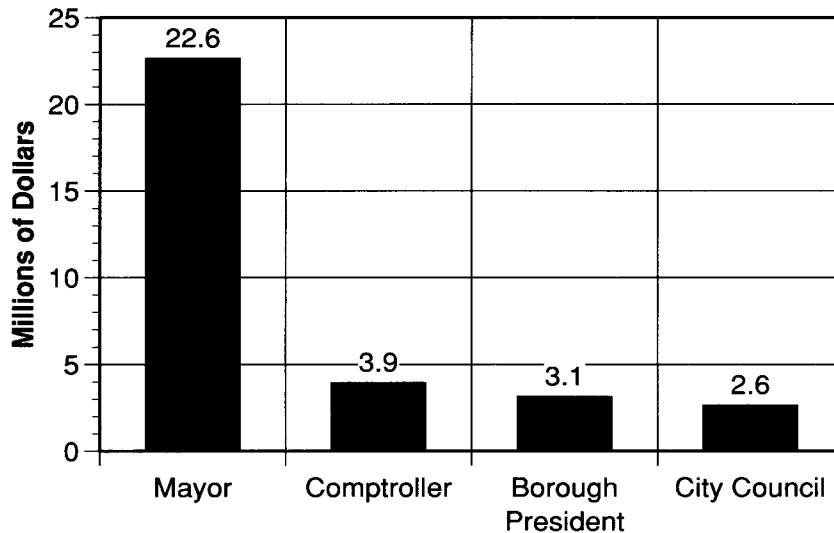
According to City Board of Elections filings by the Koch campaign, former Mayor Koch spent a total of \$7.10 million (or \$8.53 million in 1989 dollars) for his 1985 campaign. The runner-up in 1985, Carol Bellamy, reported spending only \$925,000 (or \$1.11 million in 1989 dollars). Unlike the 1989 mayoral race, the 1985 election was not highly contested, with Koch winning 64 percent of the primary election and 78 percent of the general election vote. Bellamy received only 19 percent of the primary election vote and 10 percent for the general election. In the highly contested primary and general races in 1989, David Dinkins spent a total of \$8.04 million. Dinkins won a four-way primary with 51 percent of the vote and a close general election with 50 percent of the vote. In spite of the fact that the 1989 election was highly competitive, expenditures made by the winning candidate were effectively less than those made by the winner in 1985. The ceiling on expenditures for the 1989 primary and general elections imposed by the Act effectively leveled the playing field among competing candidates, as shown by the much narrower variation in levels of spending among candidates compared with 1985. (See Table 8.4.) The ceiling also controlled the costs of what might otherwise have been an extremely expensive election.

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Figure 8.1

**TOTAL EXPENDITURES BY PARTICIPATING CANDIDATES**



Source: Campaign Finance Board Data

Former comptroller Harrison Goldin reported spending \$1.51 million (or \$1.81 million in 1989 dollars) on his minimally contested 1985 comptroller race, which he won with 78 percent of the vote in the primary and 84 percent in the general election. In 1989, participant Elizabeth Holtzman spent a total of \$1.71 million in a highly contested four-way race for comptroller, which she won with 47 percent of the vote in the primary and 74 percent in the general election.

The campaign expenditures of participating mayoral candidates Dinkins and Koch and Manhattan borough president candidate Messinger were all close to the applicable spending limits for their office in either the primary or general elections. Dinkins and Messinger both had excess campaign contributions and could have spent more, had their expenditures not been restrained by the Act's limits.

The way in which participating candidates spent the funds available to them and recommendations for expenditure limits applicable to each office in future elections are discussed below. The amounts that participating candidates spent on "qualified" or educational expenditures, on fund raising, and on expenditures exempt from the limits of the Act are also discussed, as are "independent" expenditures.

**Purpose of Expenditures**

The major expenditures for participating candidates were television advertising, print advertising, consultant fees, campaign workers' salaries, office expenses, miscellaneous fund-raising costs, and printing, as Table 8.1 shows.<sup>1</sup>

Table 8.1

**PURPOSE OF EXPENDITURES**  
(Percent of total expenditures by office)

	<u>Mayor</u>	<u>Comptroller</u>	<u>Borough President</u>	<u>City Council</u>
Television advertising	42.2 %	33.9 %	25.3 %	0.0 %
Print advertising	6.6	8.1	10.0	14.3
Radio advertising	0.6	4.0	1.0	0.5
Consultants	6.5	15.3	3.4	7.4
Campaign workers' salaries	6.9	10.5	9.1	3.2
Misc. fund-raising costs	3.3	1.3	7.9	3.9
Meals	2.9	1.2	3.9	3.4
Mailing list	0.7	0.4	0.5	1.7
Office expenses*	5.7	4.5	10.4	12.7
Polls	2.2	0.8	2.2	1.2
Professional services**	2.5	0.7	1.9	3.9
Printing	2.1	3.9	6.5	10.4
Other expenses	10.8	11.4	12.6	16.6
Blanks or incorrect entries	7.0	4.0	5.3	20.8

\*Office expenses include telephone, postage, rent, and supplies.

\*\*Professional services include fees of accountants, computer consultants, and lawyers.

Source: Campaign Finance Board Data

The cost of television advertising dominated mayoral and comptroller candidates' spending, as illustrated in Tables 8.1 and 8.2. Mass media was the focus of these candidates' campaigns, and New York City is one of the most expensive media markets in the nation. A prime time 30-second advertisement in New York is reported to cost upwards of \$20,000,<sup>2</sup> and a week's package of television advertising costs about \$200,000 or \$250,000.<sup>3</sup> The high costs of television advertising are important to consider in connection with the expenditure limits for citywide offices, especially since these costs increase at a higher rate than do costs in most other sectors of the economy.<sup>4</sup> As former Mayor Koch stated at the Public Hearings, "most of the money that we spent in our campaign was spent on the media—television—and there was really not a sufficient sum to run a street campaign. . . . It's excluded with these limitations because the money just has to be used for TV."

Table 8.2

**TELEVISION ADVERTISING**  
**(Amount spent for 1989 elections as reported**  
**by participating candidates)**

<u>Mayor</u>	<u>Amount</u>	<u>Percent of Total</u> <u>Campaign Expenditures</u>
Dinkins	\$ 3,012,970	37.5 %
Giuliani	2,525,509	41.0
Goldin	826,972	33.2
Koch	2,585,000	63.3
Ravitch	592,732	32.3
 <u>Comptroller</u>		
Hevesi	264,713	31.8
Holtzman	471,261	27.5
Macchiarola	590,824	69.8
Nadler	0	0.0

Source: Campaign Finance Board Data

**Recommendation:** To curb rising campaign expenditures, the Board supports efforts to provide candidates with access to free or subsidized broadcast or cable television time, although the Board recognizes the many difficulties, including First Amendment concerns, in doing so. Airtime should be provided in larger blocks to raise the level of debate above the 30-second paid political advertisements that currently dominate mayoral candidates' campaigns.

The growing influence of mass media and direct mail in campaigns has led candidates to rely on political consultants to produce their political commercials, compile voter or fund-raising lists, and conduct polls. Campaign consultant fees made up 6.5 percent of participating mayoral candidates' total expenditures, 15.3 percent for comptroller candidates, 3.4 percent for borough president candidates, and 7.4 percent for City Council candidates.

The major mayoral candidates all enlisted the aid of veteran political consultants. Koch relied on media expert David Garth as he had in three previous mayoral campaigns. Consultants David Doak and Robert Shrum ran the media campaign for David Dinkins, and Roger Ailes advised Giuliani's campaign. Consultants Christopher Mottola, Anthony Schwartz, and Anthony Podesta advised Lauder's, Goldin's, and Ravitch's campaigns, respectively.

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In contrast to citywide candidates, participating borough president and City Council candidates had proportionately larger expenditures for print advertising, office expenses (largely postage), and printing. As Council member Greitzer observed, "It is well recognized that radio and TV advertising for City Council campaigns is unproductive. The only real means of communicating with voters in Council races is through mailings." Greitzer added that the cost for a mailing in the 3rd District was almost \$9,000 for postage alone.

### Expenditure Limits

Based on 1989 data, the expenditure limits of the Act for each office are analyzed below.

### Consolidation of Expenditure Limits

The Act currently sets separate expenditure limits for election time periods and for fund-raising expenses. There are separate expenditure limits for the primary and general elections in the last year of an election cycle, and another limit for the year preceding the election. The Board has authority under the Act to set separate limits for the first and second years of the election cycle as well, subject to City Council review. Candidates' fund-raising expenses are permitted to exceed the applicable expenditure limit in each of the above periods by twenty percent of the limit or \$20,000, whichever is greater. Expenditure and fund-raising limits for all offices in the 1989 municipal elections are set forth in Table 8.3.

<b>Office</b>	<b>1988 Expenditure Limit</b>	<b>1988 Fund-raising Allowance</b>	<b>1989 Election Expenditure Limits*</b>	<b>1989 Election Fund-raising Allowances*</b>
Mayor	\$ 150,000	\$ 30,000	\$ 3,000,000	\$ 600,000
Comptroller	150,000	30,000	1,750,000	350,000
City Council President	150,000	30,000	1,750,000	350,000
Borough President	100,000	20,000	625,000	125,000
City Council	50,000	20,000	60,000	20,000

\*These limits are applied separately to the primary and general elections.

The separate fund-raising allowance was added to the Act by amendment in January 1989 because it was thought that monies spent for the purpose of raising funds should not be counted against a candidate's campaign spending limit. In effect, the fund-raising allowances raised the expenditure limits for all candidates.

**Recommendation:** These separate expenditure limits proved burdensome for candidates to comply with and difficult for the Board to monitor. The Board recommends consolidation of expenditure limits into two limits that would cover the entire four-year election cycle. The first limit would cover the primary election period, extending from the beginning of the term of office until primary election day, and the second would cover the general election period, beginning the day after the primary until the general election. The primary election limit would apply to all candidates, regardless whether they were actually entered in a primary election. Expenditures for fund raising would be placed under the same ceiling as other campaign expenditures.

This change would simplify reporting and allow greater financial flexibility for candidates. Candidates, public interest groups, and others who testified at the Public Hearings favored consolidating the expenditure limits.

### **Expenditure Limits for Each Office**

**Mayor.** Expenditure limits for the office of mayor in the 1989 primary and general elections were set by the Act at \$3,000,000. The total amount spent in the primary could effectively be as high as \$3,675,000, because the fund-raising allowance of \$600,000, and up to half the amount of the third year limit (\$75,000), if unspent, could be added to the expenditure limit. The general election limit was \$3,600,000, including the \$3,000,000 expenditure limit and the \$600,000 fund-raising allowance. Mayoral candidates' spending approached these limits in both the primary and general elections, as shown in Table 8.4.<sup>5</sup> Exempt expenditures, such as compliance costs and officeholder expenses, are not within the spending limits of the Act and thus are excluded from Table 8.4 as well as from the tables and discussions of spending limits for other offices contained in this chapter.<sup>6</sup>

In the Republican primary, Giuliani's opponent, Ronald Lauder, a non-participant, spent \$13.7 million. According to reports filed with the Board of Elections, Lauder contributed more than \$12.9 million to his own primary and general election campaigns.

For the office of mayor, with the exception of non-participant Ronald Lauder, the expenditure limits appear to have controlled campaign costs and substantially leveled the playing field, since several candidates' spending approached the limits. At the Public Hearings, former Mayor Koch, who believed his campaign was unduly constrained by the limits, advocated raising them. Giuliani supported maintaining the current limits.

**Recommendation:** Subject to future analysis, the Board recommends that the mayoral expenditure limit be set at \$4,500,000 (including fund-raising costs) each for the primary election period and the general election period in the 1993 elections. This reflects consolidation of the

Table 8.4

**PARTICIPATING MAYORAL CANDIDATES' EXPENDITURES COVERED BY ACT'S LIMITS**

	<u>Dinkins</u>	<u>Koch</u>	<u>Goldin</u>	<u>Ravitch</u>	<u>Giuliani</u>
1988	\$ 160,333	\$ 129,913	\$ 114,710	\$ 0	\$ 0
1989 Primary	3,131,350	3,673,201*	1,715,628	1,794,749	2,910,950**
1989 General	3,569,322	0	0	0	2,925,741

\*The Koch campaign's spending for the primary election as reported exceeds the expenditure limit and is currently being reviewed by the Board's auditors.

\*\*Expenditure caps lifted for primary election.

Source: Campaign Finance Board Data

separate limits, an increase based on the Consumer Price Index, some upward adjustment reflecting the likelihood that media expenses and other costs for mayoral campaigns will increase at a higher rate than the Consumer Price Index, and the testimony of some that the limit should be higher.

**Comptroller and City Council President.** Expenditure limits for the citywide offices of comptroller and City Council president in the 1989 primary and general elections were \$1,750,000. Including the fund-raising allowance of \$350,000 and potential rollover of \$75,000 of unspent funds from the third year limit, primary expenditures for these offices could be as high as \$2,175,000. Expenditures in the general election could total \$2,100,000, including the fund-raising allowance. As Table 8.5 indicates, participating comptroller candidates did not approach the total spending limits in either the 1989 primary or general election.

Table 8.5

**PARTICIPATING COMPTROLLER CANDIDATES' EXPENDITURES COVERED BY ACT'S LIMITS**

	<u>Holtzman</u>	<u>Hevesi</u>	<u>Macchiarola</u>	<u>Nadler</u>
1988	\$ 0	\$ 0	\$ 0	\$ 50,206
1989 Primary	1,263,962	805,631	846,109	441,496
1989 General	290,592	0	0	0

Source: Campaign Finance Board Data

No candidate running for City Council president joined the Program, so no participant expenditure data exist for that office. Non-participant Andrew Stein spent a total of \$1.56 million for the 1989 elections, according to reports filed with the City Board of Elections. Stein's principal primary election opponent, Rafael Mendez, reported spending \$3,459.

**Recommendation:** The Board recommends that the expenditure limit for Comptroller and City Council president be set at \$3,000,000, representing consolidation of various limits and the apparent lack of need for a higher spending limit.

**Borough President.** Expenditure limits for borough president candidates in the 1989 primary and general elections were \$625,000. Primary spending, including the fund-raising allowance of \$125,000 and possible rollover of unspent third year funds of \$50,000, could be up to \$800,000. Including the fund-raising allowance, spending in the general election could total \$750,000.

As Table 8.6 shows, the only participating borough president candidate even to approach the total spending limits in either the 1989 primary or general election was Messinger. She spent \$764,538 in the primary and \$668,856 in the general. The other borough president candidates spent substantially less. Of course, the different characteristics of the five boroughs and the fact that only Staten Island's borough president race was highly contested in 1989 suggest that expenditure patterns would be markedly different from borough to borough.

**Table 8.6**

**PARTICIPATING BOROUGH PRESIDENT CANDIDATES' EXPENDITURES COVERED BY ACT'S LIMITS**

	<u>Ferrer</u>	<u>Golden</u>	<u>Messinger</u>	<u>Shulman</u>
1988	\$ 92,789	\$ 14,105	\$ 74,535	\$ 23,344
1989 Primary	0	131,668	764,538	0
1989 General	223,306	6,520	668,856	71,765
	<u>Molinari</u>	<u>Lamberti</u>		
1988	\$ 0	\$ 0		
1989 Primary	0	0		
1989 General	392,553	300,343		

Source: Campaign Finance Board Data



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**Recommendation:** The Board recommends that the expenditure limit for borough president candidates be set at \$1,000,000 for each election period, representing consolidation of the 1989 limits and some upward adjustment incorporating the Consumer Price Index rise.

**City Council.** City Council expenditure limits for the primary and general elections in 1989 were set at \$60,000. The total primary spending limit could be as high as \$105,000, including the fund-raising allowance of \$20,000, and up to half the unspent amount of the third year limit (or \$25,000). The total general election limit was \$80,000, consisting of the \$60,000 limit plus the \$20,000 fund-raising allowance.

Of the 24 participating Council candidates who made expenditures for the primary election, five spent less than \$20,000 on their campaigns, and ten spent between \$20,000 and \$70,000. Nine Council candidates reported spending more than \$70,000 for the 1989 primary as shown in Table 8.7.<sup>7</sup> Total expenditures for each participating Council candidate in the 1989 primary and general elections are set forth in Appendix H.

<u>Candidate</u>	<u>Expenditures Covered</u> <u>By Act's Limits</u>
Shorenstein	\$151,112*
Eldridge	149,121*
Stringer	134,246*
Gerges	118,300*
Taylor	86,519*
Maloney	83,242
Sheffer	77,367*
Greitzer	76,365*
Fields	75,692

\*Expenditure cap lifted.

Source: Campaign Finance Board Data

Expenditure caps for a participating Council candidate are removed if the candidate faces a non-participating opponent who has raised or spent over \$30,000 (half the \$60,000 expenditure limit). Seven of the nine Council candidates who spent over \$70,000 in the primary

election were running in races in which the Act's expenditure caps had been lifted because of high-spending non-participants. Five of the participating Council candidates whose primary expenditures exceeded \$70,000 were competing for the open seat in Manhattan's 4th District.

In the general election, spending by participating Council candidates was lower than in the primary. Of 20 participating Council candidates reporting expenditures in the general election, seven spent less than \$8,000; five spent between \$10,000 and \$20,000; and six spent between \$25,000 and \$55,000. Only two participants approached the \$80,000 general election expenditure limit: Dryfoos spent \$68,458 and Molinari spent \$71,936.

Several candidates and public interest groups testifying at the Public Hearings supported raising the Council expenditure limits. Thomas Duane, a challenger in the 3rd Council District, who spent \$163,000 on his campaign, testified that although he supports public financing of elections he did not participate in the Program because he believed the existing Council limits were too low to allow him to run a successful race against an incumbent.

**Recommendation:** Based upon Council candidate spending in the 1989 elections and in light of the testimony of many that the limits should be increased, the Board recommends that the expenditure limits for that office be set at \$150,000 for the primary period and \$150,000 for the general election period. This limit consolidates all the current applicable limits and incorporates an adjustment based on the Consumer Price Index increase. Given the reduction in Council district size after redistricting, these limits should be sufficient to ensure that Program participants in highly contested races will be able to compete effectively.

### **Reporting of Expenditures**

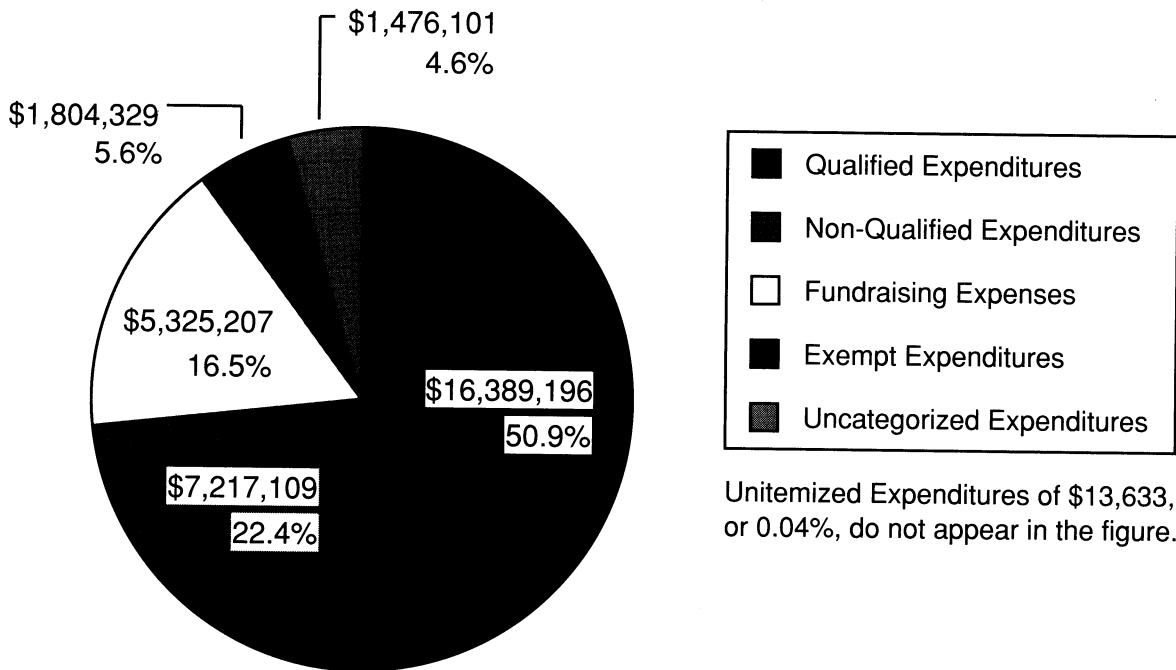
Participating candidates reported their campaign expenditures to the Board in the following five categories: qualified expenditures for services or materials used to educate the public (for which public funds may be used); non-qualified expenditures, including campaign office and administrative expenses; fund-raising expenses; unitemized expenditures (for amounts lower than \$50); and exempt expenditures, such as compliance and officeholder expenses. Participating candidates reported spending more than half their funds on qualified purposes, as shown in Figure 8.2.

**Qualified Expenditures.** Under the Act, public funds provided to candidates may only be used for "qualified" campaign expenditures. There are two restrictions on qualified expenditures. They must be made during the calendar year of the election, and they must serve the function of "educating" the public about the candidates and issues of the election. Qualified expenditures include advertising, voter communication, voter registration drives, and other expenditures that inform the public. In addition to reporting qualified expenditures separately from the rest of their campaign expenditures, candidates are required to keep separate bank accounts for public funds which can be spent only for qualified purposes.

The vast majority of qualified expenditures were for advertising, printing, and postage for mailings to voters. The educational restrictions on the use of public funds were designed to

Figure 8.2

**BREAKDOWN OF EXPENDITURES BY PARTICIPATING CANDIDATES**



Source: Campaign Finance Board Data

ensure that candidates use public funds to communicate with voters and not for expenditures of limited public value. As money is fungible, however, the restriction serves little apparent purpose. Public funds are not always spent directly on qualified expenditures because candidates are permitted to transfer public money into private campaign accounts for reimbursement of qualified campaign expenditures made from those accounts. It is cumbersome and unnecessary for campaigns to have to shift money between accounts merely to pay for certain campaign expenses with public funds. Candidates and treasurers who testified at the Public Hearings about restrictions on the use of public funds urged that they be eliminated. They argued that candidates should be allowed to use public funds for any legitimate campaign purposes.

**Recommendation:** The Board recommends that the education restriction be eliminated and that candidates be permitted to spend public funds for legitimate campaign expenses incurred during the calendar year of the election. This change will give candidates greater flexibility in the use of public funds, reduce their reporting burden, and facilitate the Board's monitoring of compliance. The Board also recommends retaining the current prohibition against using public funds for petition litigation expenses. In addition, the Act should be amended to clarify that participating candidates may not give public funds to other candidates or political committees.

**Fund Raising.** Fund-raising expenditures accounted for approximately 17 percent of participating candidates' total expenditures (including exempt expenditures). Participating comptroller candidates' total expenditures for fund raising were higher than those of candidates for other offices, accounting for 24 percent of all expenditures. Fund raising made up 16 percent of mayoral candidates' total spending, 15 percent of borough president candidates' spending, and 12 percent of Council candidates' spending. Like total expenditures, total primary fund-raising expenditures were approximately twice those made in the general election. Primary election fund raising for all candidates totaled \$3.3 million, while general election fund raising totaled \$1.5 million.

**Exempt Expenditures.** In addition to separate limits for fund raising, certain expenditures are exempt from the spending limits of the Act because they are unrelated to a participant's candidacy (such as expenditures on unrelated campaigns) and are thus outside the jurisdiction of the Act, or because they were made before 1988. Certain other expenditures are excluded from the limits to give candidates flexibility in dealing with costs that for policy and fairness reasons should not be regulated. These exempt expenditures include expenditures for professional services necessary for compliance with the Act and state election law; expenditures to challenge or defend ballot petitions; independent expenditures; constituent service or officeholder expenses unrelated to an election campaign; and the payment or cost of preparation of income taxes.

Approximately \$1.8 million, or 5.6 percent of all spending by participating candidates, was for purposes that are exempt from the expenditure limits of the Act. Expenditures for professional services necessary to comply with the law were by far the largest exempt expenditures. Of the total exempt expenditures reported by participating candidates, compliance expenses made up 42.2 percent; officeholder expenses, 16 percent; expenditures prior to 1988, 7.6 percent; taxes, 7.2 percent; and petition battle expenses, 2.8 percent.<sup>8</sup> Petition litigation expenses were more substantial at the City Council level than at the citywide level, making up 18.3 percent of participating Council candidates' exempt expenditures.

**Recommendation:** To clarify further the scope of the compliance exemption, the Board recommends amending the Act to provide that all expenditures for compliance purposes are exempt, not just the fees of lawyers, accountants, and other professionals.<sup>9</sup>

At the Public Hearings, Common Cause and Citizens Union questioned whether the cost of litigation challenging petitions should be exempt from expenditure limits. They believe that by exempting such costs, the Act, in effect, encourages petition litigation. Although the Board fully supports reform of New York State's ballot access laws, this issue should be directly addressed by the State Legislature. It is the position of the Board at this time that the Campaign Finance Act should not be the vehicle either to promote or discourage petition challenges.

### **Independent Expenditures**

Expenditures made independently of the candidate are not subject to the contribution or expenditure limits of the Campaign Finance Act. "Independent of the candidate" means that the

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candidate, his or her agents, or his or her committee “did not authorize, request, suggest, foster, or cooperate in any such activity.” For example, an advertisement supporting a candidate placed in a newspaper by an individual who is not connected with the candidate’s campaign and did not consult the campaign about the advertisement is an independent expenditure. If, however, the candidate did authorize or cooperate in the expenditure, it is considered an in-kind contribution to and expenditure by the candidate.

Independent spending is constitutionally protected under the First Amendment guarantees of freedom of speech and association. In *Buckley v. Valeo*, the Supreme Court struck down limitations on independent expenditures made by individuals or groups in support of candidates.<sup>10</sup> Since that time, the Court has invalidated limits on expenditures made by independent political committees on behalf of publicly-funded presidential candidates.<sup>11</sup>

Unlimited independent expenditures present a dilemma for campaign finance reform, because they threaten to undermine contribution and expenditure limits. In addition, voters cannot hold candidates accountable for charges leveled against their opponents by independent groups. Because of constitutional limitations imposed by *Buckley*, campaign finance reform laws cannot directly restrict independent expenditures. Under the Act, the Board has the power to pursue investigations and enforcement actions against candidates in situations in which expenditures seem to have been coordinated. So far, however, independent spending does not seem to have become a major problem in New York City elections, as it has on the federal level.

In determining whether an independent expenditure has been made under the Campaign Finance Act, the question often turns on the definition of “cooperation.” What activities, contacts, and communication by the candidate are to be considered “cooperation” with those making expenditures on the candidate’s behalf? The Board considers many factors in determining whether an expenditure is independent, including whether the person, political committee, or other entity making the expenditure is also an agent of the candidate, and whether the candidate cooperated in the formation or operation of the entity making the disbursement.

Under the Act, individuals, political committees, political parties, corporations, and unions in New York City engaged solely in independent activities are not limited in the amount of funds that they may raise and spend in favor of a candidate. These entities may most clearly establish and maintain the independent nature of their activities by simply not communicating with the candidate for any purpose. A mere request by an independent committee for opinion papers, press releases, or photographs of the candidate and the forwarding of that material by the candidate does not constitute “cooperation” with the candidate. If, however, the independent committee later pays to distribute or publish such materials, this activity is presumed to be “cooperated in” by the candidate. The Board has ruled that an appearance by a candidate at a campaign event paid for by an independent committee indicates that the candidate “cooperated in” the activity.<sup>12</sup>

**Recommendation:** Because of the inhibiting effect this may have on candidate communication with voters, the Board recommends that the Act be amended to allow

candidate appearances at events staged by groups not affiliated with the candidate's campaign if no fund raising for the candidate takes place in connection with the event.

Strengthening disclosure requirements is one of the best ways to address the problem of independent expenditures. New York State law currently requires political committees to disclose all expenditures that they make, including independent expenditures. The Board supports strengthening disclosure under state law to require that any individuals or entities (in addition to political committees) making independent expenditures must disclose the amount and purpose of such expenditures and the candidate on whose behalf they are made.

\* \* \*

Providing candidates with public financing also helps neutralize the effect of independent expenditures. In addition, as public funds make up a greater proportion of candidates' expenditures, their reliance on private contributions is reduced. In the next chapter, the distribution of public funds to candidates in 1989 is described.

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#### NOTES

<sup>1</sup> The information about the purpose of candidate expenditures is not precise because of subjective decisions by candidates and treasurers about categorizing expenditures, and because of the number of expenditures for which the purpose was left blank, reported as "other", or reported incorrectly. In addition, because the purpose of expenditures reported to the Board from the pre-effective period on state forms is not reported in a uniform manner, this information for pre-effective date expenditures could not be included in the CFIS database. The data do, however, provide some guide to the principal campaign costs for participating candidates.

<sup>2</sup> New Jersey Election Law Enforcement Commission, *Gubernatorial Cost Analysis Report*, June 1988, 18.

<sup>3</sup> Testimony of Seth Dubin, treasurer of Richard Ravitch's mayoral campaign, at the Public Hearings.

<sup>4</sup> New Jersey Election Law Enforcement Commission, *Gubernatorial Cost Analysis Report*, June 1988, 17-21.

<sup>5</sup> Tables 8.4, 8.5, 8.6, and 8.7, and Appendices H and I set forth the expenditure data reported by candidates to the Board using codes that were intended to apply for 1988, for the 1989 primary, and for the 1989 general election. In some cases, candidates may have reported expenditures under the wrong election codes. In addition, these total expenditure figures are subject to final verification by the Board's auditors.

<sup>6</sup> The amount of each candidate's total expenditures (including exempt expenditures) is set forth in Appendix H.

<sup>7</sup> Expenditures shown in Table 8.7 are those reported by candidates under the code for the 1989 primary, and do not include expenditures reported as made in 1988 or prior thereto, which may also have been used for the primary.

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<sup>8</sup> For 24 percent of all exempt expenditures candidates either left the description blank or used an incorrect code, indicating confusion with the descriptive codes or the reporting of exempt expenditures which could not be classified under existing codes.

<sup>9</sup> This amendment would codify the results of the Board's Advisory Opinion No. 1989-33 (July 19, 1989).

<sup>10</sup> 424 U.S. 1, 39-51, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976).

<sup>11</sup> *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985).

<sup>12</sup> Campaign Finance Board Advisory Opinions Nos. 1989-26 (June 12, 1989), 1989-34, and 1989-36 (July 19, 1989).

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# Public Funds

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In the first public financing of campaigns to take place in New York City, the Campaign Finance Board distributed approximately \$4.5 million to municipal candidates in the 1989 elections. Thirty-six of the 48 participating candidates who appeared on the ballot met the threshold and received public funds payments. Figure 9.1 shows the amount of public funds paid to candidates for each office.

Public funds were of varying importance to different candidates. For some, public funds played an important role, making up a significant percentage of their 1989 primary and general election expenditures. (See Table 9.3.) One of the two newly elected Council members, C. Virginia Fields, stated that “the availability of matching funds was indeed significant in . . . [my] race.” Council candidate Adele Cohen testified, “I appreciate the almost \$10,000 I received. I could not have run this campaign without it.” For others, public funds were less significant. Some candidates did not reach the threshold to qualify for public funds or received minimal amounts. Some participants did not accept the public funds they were eligible for, and others returned all or a portion of the public funds they received.

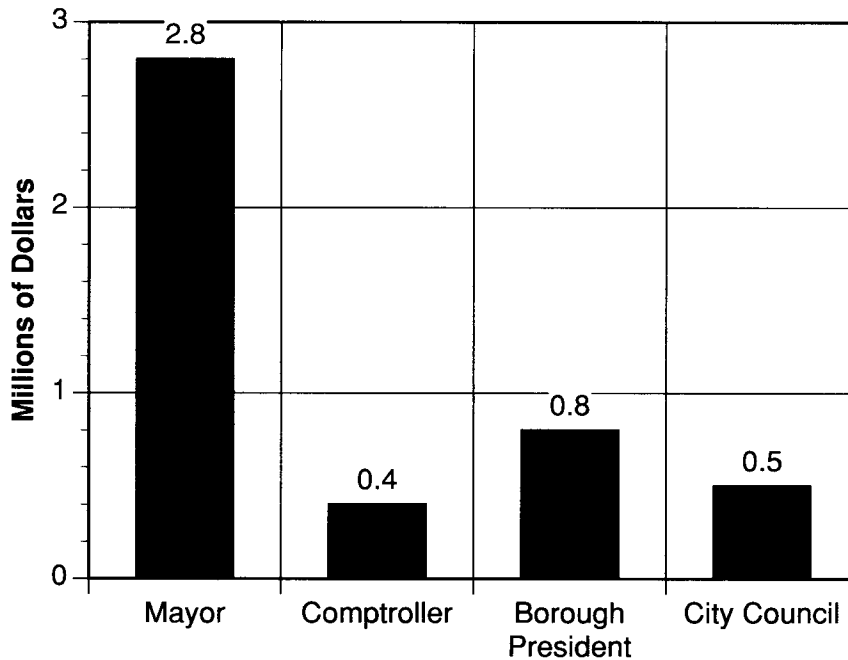
Based on the results of the 1989 elections, this chapter examines the level of the thresholds for receiving public funds set for each office. It examines the amount of public funds received by participating candidates in the 1989 elections and how to increase the financial rewards of the Program. Strengthening the protection for Program candidates who face well-financed, non-participating opponents is also discussed.

### Threshold Requirements

Candidates must demonstrate a basic level of financial support by reaching the eligibility threshold for the office which they seek, as described in Chapter 3. The first \$500 of each contribution made by a New York City resident to a candidate will count towards the threshold that the candidate must reach to qualify for public funds, and once this threshold has been met, additional individual contributions are matched on a dollar-for-dollar basis. Candidates must raise a threshold dollar amount of contributions from a minimum number of New York City residents as set forth in Table 9.1.

The threshold requirement prevents public funds from being distributed to non-competitive candidates who do not have a broad base of popular support. If no thresholds



**Figure 9.1****TOTAL PUBLIC FUNDS DISTRIBUTED  
TO PARTICIPATING CANDIDATES**

Source: Campaign Finance Board Data

existed, or if the thresholds were set too low, the availability of public financing might require payment of public funds to a wide field of non-competitive candidates. On the other hand, if threshold levels are set too high, they can discourage participation in the Program. The threshold levels for each office are examined below.

**Mayor.** Participating mayoral candidates Dinkins and Ravitch reported meeting the \$250,000 threshold in June 1989.<sup>1</sup> Giuliani and Koch reached the threshold in July, and Goldin reached it in September. Seth Dubin, treasurer of Ravitch's campaign, testified at the Public Hearings that, in his view, meeting the threshold was a substantial burden for the Ravitch campaign. He advocated eliminating the threshold entirely and relying on the ballot qualification requirements to weed out candidates without broad-based support.

**Comptroller.** Comptroller candidates Holtzman and Macchiarola met the \$125,000 threshold in June 1989, and Hevesi reached the threshold in September. Nadler, who eventually dropped out of the race, did not raise sufficient contributions to meet the threshold.

Table 9.1

## 1989 THRESHOLD REQUIREMENTS

<u>Office</u>	<u>Minimum Aggregate Amount of Threshold Contributions</u>	<u>Minimum Number of Contributors Giving Between \$10 and \$500</u>
Mayor	\$ 250,000	1,000 contributors who are NYC residents
Comptroller	125,000	500 contributors who are NYC residents
City Council President	125,000	500 contributors who are NYC residents
Borough President*		
Bronx	23,379	100 contributors who are residents of the borough in which the office is sought
Brooklyn	44,619	
Manhattan	28,566	
Queens	37,827	
Staten Island	10,000	
City Council	7,500	50 contributors who are residents of the district in which the office is sought

\*Computed at \$0.02 per person in the borough population, or \$10,000, whichever is greater.

**Borough President.** The thresholds for borough president candidates vary based on the population of each borough. Borough president candidate Messinger met Manhattan's \$28,566 threshold in June 1989, followed by Lamberti and Molinari, who reached Staten Island's \$10,000 threshold in September. The other participating borough president candidates, Ferrer, Golden, and Shulman, did not reach their respective thresholds.

**City Council.** Twenty-five of 33 participating City Council candidates reached the \$7,500 threshold and received public funds. Seventeen City Council candidates met the threshold in June 1989, one reached the threshold in July, two in August, three in Septem-

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ber, one in October, and one in December. Of the eight participating City Council candidates who never reached the threshold and did not receive public funds, three were incumbents (Alter, Berman, and DiBrienza), who were either uncontested or had minimal competition and thus had no need to raise large amounts of contributions or even attempt to qualify for public matching funds. Incumbents Eisland and Vallone raised substantial amounts of contributions, but did not claim public fund payments. Two challengers, Espaillat and Maresca, fell just short of reaching the threshold. Perednia, who did not complete required filings with the Board until July 1990, was the eighth candidate who failed to reach the threshold.

The five participating Council candidates who just met the threshold, incumbents Harrison, Horwitz, and Robles, and challengers Owens and Paperman, each received less than \$5,000 in public funds. The fact that both Harrison and Horwitz returned all the public funds they received suggests that they did not need the funds.

Among participating City Council candidates, incumbents and challengers met the threshold with roughly equal success. Twelve out of 17 participating incumbents reached the threshold, and 13 out of 16 participating challengers also met the threshold.

**Recommendation:** The Board finds that in some cases the threshold limits were too high and, in any event, were not set in an equitable manner. In particular, the level of the threshold for City Council candidates was higher in relation to the maximum matching funds eligibility for that office than for any other office. The ratio of office threshold to the maximum matching funds eligibility for an office may be thought of as a burden-to-reward ratio. The higher the ratio, the greater the effort required by candidates to raise matchable contributions in order to maximize their public fund payments. The City Council threshold of \$7,500 represents 25 percent of the \$30,000 maximum in matching funds for which City Council candidates may qualify. In contrast, the ratios of the threshold levels compared with maximum matching funds eligibility for all other offices are substantially lower than for the City Council, ranging from 3.2 percent for Staten Island borough president, to 16.7 percent for mayoral candidates. The fact that the City Council threshold is higher in comparison to that office's maximum matching funds limit than that of any other office suggests that the threshold should be reduced.

In addition, the size of Council districts will be reduced by roughly one-third as a result of redistricting to create the 16 new Council seats mandated by the Charter. Because Council candidates in 1991 will be raising money from a smaller population base, a proportionate reduction in the Council threshold is appropriate.<sup>2</sup>

The Board recommends conforming the threshold amounts set for each office to an equivalent proportion of the maximum public fund payment limits. A uniform "burden-to-reward" ratio of 1-to-15 results in the following thresholds: for mayor \$150,000; for comptroller and City Council president \$100,000; for borough president \$30,000; and for City Council \$5,000.

**Distribution of Public Funds**

The maximum in public matching funds that a candidate can receive is equal to half the applicable expenditure limit, as set forth in Table 9.2.

The Act imposes certain restrictions and prohibitions on the use of public funds, as discussed in Chapter 8. If a candidate has surplus campaign funds remaining after the elections, the candidate must return funds to the Board to reimburse the Fund up to the amount of public monies received by the candidate.

<u>Office</u>	<u>Amount</u>
Mayor	\$ 1,500,000
Comptroller	875,000
City Council President	875,000
Borough President	312,500
City Council	30,000

The Campaign Finance Board distributed a total of approximately \$4.5 million dollars in public funds to eligible candidates in the 1989 elections.<sup>3</sup> The Board distributed \$2.9 million to candidates in the primary election and \$1.6 million in the general election. The breakdown of public funds distributed between the primary and general elections was almost two to one, roughly paralleling the breakdown of contributions and expenditures reported for these periods.

Just as mayoral candidates accounted for the largest shares of contributions to and expenditures made by all participating candidates, they also received the most public funds. Of the total public funds distributed, mayoral candidates received 62 percent, comptroller candidates received 9 percent, borough president candidates received 18 percent (more than three-fourths of which went to Messinger), and City Council candidates received 11 percent. The total dollar amount of public funds paid by the Board to each eligible candidate and any amounts returned by candidates to the Fund are set forth in Table 9.3. The table also shows the net public funds received by each candidate as a percentage of the candidate's primary and general election expenditures, indicating the relative importance of public funds in each candidate's campaign.

**Mayor.** Mayoral candidates received \$2.8 million of the \$4.5 million in public funds distributed. Giuliani received the largest share, 44 percent, of all public funds distributed to

Table 9.3

**PUBLIC FUNDS DISTRIBUTED TO PARTICIPATING CANDIDATES  
FOR THE 1989 ELECTIONS**

	Total Public Funds Distributed to Candidate <u>by the Board</u>	Campaign Surplus and Other Amounts Returned by Candidate <u>to Public Fund*</u>	Net Public Funds Received by Candidate as a Percentage of Candidate's Primary and General <u>Election Expenditures</u>
<u>Mayor</u>			
Dinkins	\$ 986,149	\$ 100,075	12.4 %
Giuliani	1,218,964	0	19.8
Goldin	14,641	14,641	0.0
Koch	334,433	0	9.0
Ravitch	<u>225,321</u>	<u>1,845</u>	<u>12.2</u>
Office Total	2,779,508	116,561	12.9
<u>Comptroller</u>			
Hevesi	49,573	0	6.0
Holtzman	250,932	0	15.9
Macchiarola	121,150	0	14.3
Nadler	<u>0</u>	<u>0</u>	<u>0.0</u>
Office Total	421,655	0	11.3
<u>Borough President</u>			
Ferrer	0	0	0.0
Golden	7,511	7,511	0.0
Lamberti	75,637	5,648	20.7
Messinger	600,714	0	40.8
Molinari	115,366	0	29.4
Shulman	<u>0</u>	<u>0</u>	<u>0.0</u>
Office Total	799,228	13,159	28.9
<u>City Council</u>			
Albanese	6,558	6,558	0.0
Alter	0	0	0.0
Berman	0	0	0.0

(cont'd)

Table 9.3 (cont'd)

	Total Public Funds Distributed to Candidate by the Board	Campaign Surplus and Other Amounts Returned by Candidate to Public Fund*	Net Public Funds Received by Candidate as a Percentage of Candidate's Primary and General Election Expenditures
Cline	10,660	6	42.2
Cohen	10,198	0	29.4
Crispino	19,422	19,422	0.0
DiBrienza	0	0	0.0
Dryfoos	30,000	0	19.6
Eichenthal	25,502	0	46.3
Eisland	0	0	0.0
Eldridge	49,725	0	25.2
Espaillet	0	0	0.0
Fields	27,558	0	30.5
Friedlander	19,936	0	25.8
Gerges	30,000	0	23.1
Goldfeder	30,000	0	53.5
Greitzer	30,968	0	37.6
Harrison	3,990	3,990	0.0
Horwitz	2,856	2,856	0.0
Maloney	34,805	0	29.2
Maresca	0	0	0.0
Michels	18,983	7,423	19.6
Molinari	15,852	0	20.4
Owens	4,088	0	13.0
Paperman	3,035	0	9.9
Perednia	0	0	0.0
Perkins	6,105	0	27.0
Robles	4,366	0	13.1
Sheffer	30,000	0	34.9
Shorenstein	30,000	0	19.8
Stringer	30,000	0	22.2
Taylor	30,000	0	34.0
Vallone	<u>0</u>	<u>0</u>	<u>0.0</u>
Office Total	504,607	40,255	22.4
Total	4,504,998	169,975	14.9

\*As of August 1, 1990.

Source: Campaign Finance Board Data

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mayoral candidates because he received two-for-one matching during the Republican primary in which a non-participating opponent, Ronald Lauder, spent \$13.7 million. Dinkins received the second largest share, 35 percent, of all public funds distributed to mayoral candidates. Koch and Ravitch received 12 percent and 8 percent, respectively, of the public funds distributed to mayoral candidates.

**Comptroller.** Eligible comptroller candidates received 9 percent of all public funds distributed. Holtzman received the largest share, 60 percent, of the public funds paid to comptroller candidates. Primary candidates Macchiarola and Hevesi received approximately 29 percent and 12 percent, respectively, of the public funds distributed to comptroller candidates. Nadler, who ultimately withdrew from the race, did not meet the threshold and thus was not eligible to receive public funds.

**Borough President.** Borough president candidates received 18 percent of all the public funds distributed to eligible candidates, although only three borough president candidates, Messinger, Lamberti, and Molinari, received public funds, and Messinger received 75 percent of these funds. Ferrer, Golden, and Shulman did not reach the threshold. Messinger received \$600,714, the third highest public funds payment of all candidates, after Giuliani and Dinkins.

Some have criticized the Program for providing public funding to candidates facing minimal opposition, such as Messinger. The Program currently provides that any candidate facing ballot opposition can qualify to receive public funds. Changing this clear cut test would require the Board to decide whether candidates face “serious” or “token” opposition, which is perhaps a political issue best judged by the voters.

**City Council.** City Council candidates received 11 percent of all public funds distributed. Measured by total dollars distributed, the benefits of public financing were spread comparably between incumbents and non-incumbents. Twelve participating incumbents received \$217,736, or 43 percent, of all the public funds paid to Council candidates, and 13 non-incumbents received \$286,871, or 57 percent of the public funds. Non-incumbents appear to have relied on public fund payments more, however, as the payments constituted 28 percent of non-incumbents’ 1989 primary and general election expenditures, as compared to 17 percent for incumbents. This suggests that the availability of public funds did, to some extent, further the Act’s goal of encouraging competition.

As a group, non-incumbents seeking Council seats claimed a much higher percentage of their total gross contributions as matchable than did incumbents. On average, non-incumbents claimed about 55 percent of all their total contributions for the 1989 primary and general elections as matchable, and incumbents claimed an average of 24 percent. One reason for this is that incumbents received a higher percentage of contributions from organizations (which are not matchable), rather than from individuals. In addition, non-incumbents tended to receive somewhat smaller median contributions than did incumbents, so a greater portion of their total gross contributions were eligible for matching funds. Non-incumbents may also have made a greater effort to raise and claim matchable contributions and receive public funds.

Nine participating Council candidates received \$30,000, the maximum amount of public matching funds, in the primary election. Three of these, Gerges, Greitzer, and Maloney, were incumbents running in competitive races. The remaining six, Eldridge, Goldfeder, Sheffer, Shorenstein, Stringer, and Taylor, were candidates running for the open seat in Manhattan's 4th Council District. The seven participating candidates running in the 4th District together received \$210,385 in public matching funds, which represents 42 percent of all the public funds distributed to Council candidates and 73 percent of the public funds distributed to Council non-incumbents. In the primary, ten Council candidates were opposed by high-spending non-participants, and therefore their primary contributions were matched at the rate of two-for-one. These included Eichenthal, Gerges, Greitzer, and the seven candidates running in Manhattan's 4th District.

Council incumbents were also more likely to return public funds or not accept them than were non-incumbents, which may be because the incumbents had surplus campaign funds or were not in highly contested races. Five incumbents returned a total of \$40,249 to the Fund. Albanese, Crispino, Harrison, and Horwitz returned the total amount of public funds they received, and Michels returned a substantial portion. Raymond Cline, the only Council non-incumbent returning any money to the Fund, returned \$6.00. Vallone and Eisland did not claim any payments, although their filings indicate that they would have been eligible to do so. At the Public Hearings, Council member Berman stated, "I did not seek matching monies because I did not have a primary, and I didn't consider my general election substantive enough to warrant taking government money." Notwithstanding the criticisms of expenditures of public funds by borough president candidate Ruth Messinger, who faced minimal opposition, it appears, generally, that candidates who were not in seriously contested races did not turn to the Fund for matching money, even though they presumably could have done so.

### **Increase Financial Rewards for Participation**

As currently structured, New York City's matching program is not providing a large enough financial reward to participating candidates. Public financing is the major incentive to encourage candidates to join the Program, and a high rate of participation is important for the success of the Program.

Although the projected cost of public financing for the 1989 elections was originally estimated at \$28 million, only about \$4.5 million was actually distributed. Early estimates of the cost of the public matching program were necessarily very speculative, and they assumed all candidates would receive the maximum in public matching funds. It appears that many candidates may not have adjusted their fund-raising techniques to enable them to maximize their receipt of public funds. In fact, none of the candidates in two strongly contested citywide races approached the limit for receiving matching funds. One of the six borough president candidates, nine of 20 City Council candidates in the Program in the primary, and only one of the 22 City Council candidates in the Program in the much less contested general election maximized their receipt of matching funds.



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In 1989, public fund payments to participating candidates made up only 15 percent of their total primary and general election expenditures. This is a much lower level of public funding to candidates than provided by successful matching programs in certain other jurisdictions. In the federal matching funds system for presidential primaries, public fund payments constituted 31 percent of the major party candidates' expenditures in the 1988 primary elections. In New Jersey, public fund payments constituted more than 58 percent of gubernatorial candidates' total campaign expenditures in the 1989 primary election, and over 59 percent in the 1985 primary and general elections.

At the Public Hearings, former Mayor Koch stated that "because of the rising cost of running a campaign, and the need to encourage participation by candidates in the system of public financing, . . . an increase in the amount of public funds available may be justified. This could be accomplished by matching . . . contributions used to reach the threshold for public financing, by matching contributions in excess of \$500, and/or by matching small contributions in the ratio of two-to-one instead of one-to-one." Comptroller candidate Macchiarola stated, "Something should be done to make . . . access [to funds] easier by reduction of the threshold numbers, [or] by perhaps doing better than one-for-one in a match, by making it clear that we welcome candidates."

The financial rewards of the Program should be increased to encourage a high level of participation. Matching contributions used to reach the threshold is the simplest and most effective step to increase financial benefits to participating candidates.

### **Matching the Threshold**

In the 1989 elections, the fact that contributions used by candidates to reach the threshold were not matched resulted in scant financial rewards for many candidates. Candidates who barely exceeded the threshold and thus received minimal public funds included mayoral candidate Goldin and Council candidates Harrison, Horwitz, Owens, Paperman, and Robles.

Those who testified at the Public Hearings overwhelmingly supported matching threshold contributions. Candidates Giuliani, Macchiarola, Messinger, Albanese, Fields, Gerges, Goldfeder, Maloney, and Michels; campaign attorneys Paul Asofsky and Rick Schwartz; and Citizens Union, Common Cause, and NYPIRG all recommended that contributions used to reach the threshold be matched. Council member Fields stated, "[t]here is an urgent need for early dollars when a [challenger] . . . decides to . . . run for political office. . . . I think it is important to consider . . . matching funds for the threshold amount."

New York City has the only public matching funds program in the nation that does not match threshold contributions. Of the eight campaign finance programs in other jurisdictions that provide matching funds, seven match the threshold completely, and one matches two-thirds of the threshold amount.

**Recommendation:** The Board strongly recommends matching the contributions raised to meet the threshold requirement once the threshold is reached. Matching the threshold is the

single most urgent and fundamental change in the Act proposed by the Board. It would increase financial incentives to all participants in an even manner and would provide candidates with money earlier in the campaign when they need it most. In addition, matching the threshold tends to reduce any inequity arising among different offices if the threshold levels are not set “just right,” because all candidates who ultimately meet the threshold receive the money. In 1989, matching the threshold would have meant that roughly \$1.7 million more in public funds would have been distributed to participating candidates, and, most important, at an early stage in the campaign.

### **Increase Matching Rate**

The Board also recommends matching individual contributions up to \$500 per campaign at the rate of two-for-one rather than matching up to \$500 at the rate of one-for-one on a per election basis. This change would increase financial rewards to all candidates in direct proportion to the amount of matchable contributions they receive. It would place an even higher premium on raising small matchable contributions, and could further decrease candidates’ reliance on large contributors, contributions from organizations, and contributions from individuals outside the City. Increasing the rate of matching for contributions up to \$500 would encourage greater participation in the Program as public funds become a larger portion of a candidate’s total expenditures. It is also consistent with the Board’s recommendation that there be only one contribution limit for both the primary and general elections. Currently, one contributor can give a \$500 matchable contribution in both the primary and general elections. If there is a single contribution limit per contributor for a campaign, the amount of the “match” should be increased accordingly.

**Match Contributions Under \$10.** As requested by some candidates, the Board recommends matching contributions under \$10. Although this change may cause some administrative difficulty, it could encourage grass roots fund raising.

### **Greater Protection for Program Candidates Facing High-Spending Non-Participants**

Many candidates’ greatest fear about joining the Program is that they will face a well-financed opponent who does not join the Program and thus can receive much larger contributions and make unlimited expenditures against them. To protect participating candidates from being overwhelmed by high-spending non-participants, the Program must afford these participants additional financial resources and flexibility. If a candidate who is participating in the Program faces a non-participating opponent who raises or spends over half the applicable expenditure limit, the Program currently provides that the rate of matching is doubled for the participating candidate, and the expenditure limit is lifted. A candidate facing a non-participating opponent, however, is still bound by the contribution limits, the reporting requirements, and the matching funds ceiling.

**Recommendation:** To increase the bonus to participating candidates and provide an additional incentive for all candidates to join the Program, the Board recommends increasing the bonus payment rate for participants running against high-spending non-participants from two-

for-one to three-for-one. In addition, because the Board has recommended increasing the expenditure limits, the bonus should be triggered when a non-participant has raised or spent one-tenth of the applicable expenditure limit, and the maximum bonus payment for such participating candidates should be increased to 75 percent of the expenditure limit.<sup>4</sup>

### **Timing of Receipt of Matchable Contributions**

About 80 percent of all matchable contributions reported by participating candidates was raised within the 1989 calendar year, and most of the remaining amount was received in the preceding two calendar years. The amount of matchable contributions reported by all candidates within the election year peaked, as would be expected, in August, September, and October.

Currently, contributions received at any point in the four-year election cycle as well as surplus funds from previous elections are eligible for matching. It is primarily incumbents who receive contributions in the years before the election year. Many other jurisdictions with matching programs restrict the contributions that can qualify for matching to those received within the election year or in the last two years of the election cycle. Such restrictions might help discourage permanent campaigning. The Board will study the advisability of adopting restrictions on matching early contributions over the next election cycle, and recommends against matching surplus funds in future elections. (See Recommendation No. 18 in Chapter 15.)

### **Simplifying Reporting of Matchable Contributions**

The reporting of matchable contributions would be greatly simplified by the elimination of two technical requirements, the so-called "household rule" and the "deduction rule." The "household rule" treats a husband, wife, and unemancipated children as a single contributor for purposes of determining the amount of a matchable contribution. In practice, this means that if a husband contributes \$500 to a candidate, and his wife or child later makes a contribution to the same candidate, the subsequent contribution does not count for threshold or matching purposes.

**Recommendation:** The Board recommends eliminating the "household rule." This requirement is not only difficult to administer, but it also unfairly limits the size of a matchable contribution solely on the basis of the marital status or family relationships of the contributors. The proposed change would permit contributions from spouses or dependent children to be fully matched, up to \$500 per campaign. The concern that wealthy individuals may funnel their own contributions through spouses and children is already addressed by a state law which makes this a misdemeanor.

The "deduction rule" currently requires that the amount of a matchable contribution claim be reduced by the value of goods and services given to the contributor. For example, when a contributor attends a \$100-a-plate fund-raising dinner for a candidate and receives a dinner worth \$25, only \$75 of that \$100 gift can be counted as a matchable contribution.

For all participating candidates, only \$248,082, or less than 4 percent of all matchable contributions, was deducted from the amount of matchable contribution claims because of goods or services provided to contributors.

**Recommendation:** The Board recommends eliminating the deduction rule and replacing it with restrictions modelled on federal law, to ensure that the purchase of items with a significant value will not be matched with public funds.

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One of the benefits to candidates in joining the Program is eligibility for public financing under the Act. One of the obligations they accept in return for the benefits of the Program is the requirement that they provide the public with detailed disclosure of their campaign finances, as described in the next chapter.

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#### NOTES

<sup>1</sup> The date on which a candidate met the threshold refers to the date of the campaign finance disclosure filing in which the candidate reported reaching the threshold.

<sup>2</sup> Because the new Council district boundaries will not be set until the spring of 1991, the Board recommends a one-time suspension of the requirement that a Council candidate receive contributions from at least 50 residents of his or her district to qualify for public funds. Instead, the 50 threshold contributors, like all contributors for matchable contributions, need only be New York City residents for the 1991 elections.

<sup>3</sup> This figure represents the total dollar amount of checks written to candidates by the Campaign Finance Board in the 1989 elections. If funds returned by candidates are subtracted from this amount, the total amount of public funds accepted and used by candidates for the 1989 elections was \$4.3 million.

<sup>4</sup> To increase the bonus to participating candidates facing high-spending opponents, the Board in March recommended permitting participating candidates to contribute an additional amount of personal funds equal to ten times the applicable contribution limit to their own campaigns. Under current law, candidates may not use their personal funds in excess of the contribution limit. In light of the Board's subsequent recommendations to lower the bonus trigger for participating candidates facing high-spending non-participants, increasing the bonus matching rate from two-for-one to three-for-one, and increasing the maximum bonus payment, the additional personal funds incentive for candidates may not be needed.

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## Chapter 10:

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# Disclosure Reports

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uring New York City's 1989 municipal elections, more information than ever before was made readily available to the press and the public about how participating candidates raised and spent their campaign funds. This was the result of the periodic reports filed by the candidates with the Campaign Finance Board. At the Public Hearings, mayoral candidate Rudolph Giuliani emphasized the importance of public disclosure:

"[The] law's major contribution is that it has regularized and publicized a process that in the past would have been a lot more secret; . . . the primary purpose of [campaign finance regulation] . . . is disclosure so that the public, the press, and political opponents can . . . take a look at who in fact is financing a campaign, and therefore raise appropriate questions about—not just conflict of interest, but also where the balance of political power might lie should a certain person be elected or continue in public office."

One of the primary tasks of the Campaign Finance Board was to ensure that these disclosure reports were made publicly available within hours of their filing at the Board and to assist members of the press and the public in understanding how the data were reported. Because this was the first election held under the Campaign Finance Act, many unfamiliar reporting rules and newly-adopted regulations also had to be explained to the press and the public. During 1989, the Campaign Finance Board responded to more than a thousand requests for information, provided hundreds of copies of the candidates' financial reports to the press and the public, and issued twenty press releases that identified candidates who participated in the Program and announced each payment of public funds to them.

### **Public Access to Disclosure Reports**

During 1989, approximately 500 newspaper articles and editorials that related to the work of the Campaign Finance Board appeared in major New York City newspapers. The Board handled hundreds of requests to examine candidates' campaign finance reports, the vast majority from newspaper reporters assigned to cover the elections, as well as dozens from members of the public and government reform groups.

The Campaign Finance Board's disclosure forms are more detailed, easier to read, and more readily available than the state forms that candidates must also file with the New York City Board of Elections. The press came to rely on the disclosure reports filed with the

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Board as the most reliable source of information on how much the 48 participating candidates were raising and spending, who was contributing to candidates' campaigns, and how much they were giving. The financial information contained in these reports, as well as the information contained in the press releases issued by the Board, became source material, not only for newspaper reports, but also for substantial radio and television coverage of the 1989 elections. Candidates and their staffs also examined copies of the financial disclosure reports on file at the Campaign Finance Board. In certain cases, this disclosure information became the basis for formal complaints filed by one candidate against another, as discussed in Appendix K.

**Computerized Public Disclosure.** In October 1989, the Campaign Finance Board released its first computerized disclosure reports, listing all contributions reported by the two major mayoral candidates in the 1989 general election, Dinkins and Giuliani. The computerized disclosure reports are much easier to use than the disclosure reports filed by the candidates because the information on contributions is organized alphabetically and is presented for the whole campaign rather than for separate filing periods.<sup>1</sup> These computerized financial disclosure reports are the first ever produced during an election campaign in New York City history, and were created from the financial disclosure reports filed by each candidate using the Campaign Finance Board's mainframe computer, the Campaign Finance Information System.

The computerized reports are available for public inspection and photocopying in the same manner as reports filed by the candidates. Dozens of journalists examined these reports and gave them high marks for thoroughness and usefulness. The Campaign Finance Board published similar computerized disclosure documents listing all reported contributions and expenditures for the 48 participating candidates in August 1990. In future elections, the Board plans to publish computerized disclosure documents for all participants during the campaigns as well as after the elections.

**Computer Diskettes For Public Disclosure.** In January 1990, the Campaign Finance Board released the first two sets of computer diskettes containing all contribution data for the 1989 elections reported by the Dinkins and Giuliani campaigns up to that date.<sup>2</sup> The computer diskettes include all the information on the Board's previously-released computerized disclosure reports. The distribution of this information on computer diskettes enables members of the press and the public with computer expertise to perform their own analysis of the data. The Board's Systems staff created a listing of the 49 different data elements for each of the approximately 40,000 reported contribution transactions contained on the diskettes. The Board will release computer diskettes containing contribution information for all participating candidates.

### **Public Disclosure Data: The Candidates' Reports**

Participating candidates were required to file up to 13 or more reports with the Campaign Finance Board, as described in Chapter 3. In the 1989 elections, participating candidates, overall, had a good record of compliance with the report filing deadlines. Only

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## Chapter 10

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five of the 48 participating candidates failed to file one or two of the reports required by the Act, and only one candidate's reports were filled out so incorrectly and inaccurately that the Board could not accept them.

**Reducing the Number of Reports.** Commenting on disclosure, Council member Carol Greitzer stated “[t]he guiding word for the [Campaign Finance Board] must be streamline—regulations, reports, forms—the works.” At the Public Hearings, several Council members, including Albanese, Berman, Eisland (by letter), and Katzman (by letter), favored reducing the number of reports City Council candidates are required to file. Some candidates objected to having to file reports for time periods in which they had minimal campaign contributions and expenditures. Manhattan borough president candidate Messenger and Harold Mayerson, counsel to the Council Political Action Committee, suggested having a minimum activity threshold that would trigger complete filing requirements.

**Recommendation:** The Board recommends permitting candidates to defer a filing if they have received less than \$2,000 in contributions and loans since their last report. Relevant information would be reported to the Board at a later filing date. Candidates who had spent more than 85 percent of the applicable expenditure limit would not be allowed to defer a filing. This would ease the reporting burdens of candidates who are not involved in competitive elections and would primarily benefit Council candidates running relatively small campaigns.

### Disclosure of Contribution and Expenditure Information

**Contributions.** Participating candidates reported a great deal of contributor information. About 113,000 contribution transactions were reported, and supporting contributor information—contributor name, address, and contribution amount—was filled in for 96 percent of these, as required by the Act. Candidates were not as successful in reporting contributor occupation and employment information.<sup>3</sup> The disclosure of contributors' occupation and employment is a major improvement over the disclosure required under state law, because it allows the public to gauge whether a candidate is backed by a particular firm or industry or by members of a particular occupation. The press, in particular, made extensive use of this information. Contributor occupation was disclosed for 53 percent of all contributions. For contributions claimed as eligible for threshold or matching, the disclosure of contributor occupation was better, with 58 percent filled in. Contributors' employment information—employer name and address—was disclosed for 43 percent of all contributions. Candidates did a better job of obtaining employer information for larger contributions: employer information was filled in for 53 percent of all amounts over \$100, and for 61 percent of all amounts over \$1,000. The Board alerted some campaigns that they had consistently reported low levels of employer information. These campaigns sent follow-up letters to contributors requesting the missing information. Candidates' follow-up efforts improved disclosure of employer information somewhat.

**Expenditures.** Payee information—name, address, and amount—was filled in for 87 percent of the 19,000 expenditures reported by participating candidates. The payee name and amount was filled in for all reported expenditures.

**Recommendation:** At the Public Hearings, Council Speaker Vallone, Council members Maloney and Michels, and former Corporation Counsel Peter Zimroth advocated requiring disclosure of employer information only for contributions over a certain amount. To reduce candidates' reporting burden, the Board recommends amending the Act so that disclosure of contributors' employment information is not required for amounts of \$99 or less. Some candidates also suggested that disclosure information be required only for contributions over a certain amount. The Board proposes that candidates not be required to itemize contributions of \$99 or less and expenditures below \$50. This proposed change will reduce the volume of disclosure reports and ease the burden on participating candidates without undermining the purposes of the law. All contributions for which a candidate wishes to claim matching funds, however, would still have to be completely itemized. The Board vigorously opposes the suggestion that candidates who do not accept public funds be permitted to use state forms in lieu of Campaign Finance Board forms. (See Recommendation No. 11(e) in Chapter 15.)

### **Creating Computer Software For Candidates**

One of the goals of the Campaign Finance Board is to develop a computer software package that will allow candidates who participate in the Campaign Finance Program to file their financial disclosure reports electronically. For those campaigns that have access to a personal computer, a Campaign Finance Program software package would greatly simplify campaign bookkeeping and accounting procedures. It would also substantially reduce errors by campaigns in listing relevant data. For the Board, candidate software should prove to be a cost saving by eliminating the need for much of the manual data entry that is now required to transfer the information filed by candidates on their disclosure reports into the Board's computer system. Permitting candidates to file disclosure reports electronically with accompanying hard copy would also facilitate the Board's ongoing review of candidates' filings and could accelerate the process of making payments and creating public disclosure reports. Of course, candidates without access to a computer system would always be able to file their financial disclosure statements on printed forms. Unfortunately, the delay in enactment of changes recommended by the Board in March will make it virtually impossible to design computer software in time for the 1991 elections.

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### **NOTES**

<sup>1</sup> Five different types of hard copy reports were created for each candidate, arranged (i) alphabetically by the contributor's last name or company name; (ii) alphabetically by the contributor's employer's name; (iii) alphabetically by the last name of any intermediary who delivered the contribution to the candidate; (iv) by contributor address by borough; and (v) by contributor address by city and state if outside of New York City, or where borough information was not supplied by the candidate.

<sup>2</sup> The computer package consists of 26 diskettes: 15 diskettes contain contribution data supplied by the Dinkins campaign, and 11 diskettes contain contribution data supplied by the Giuliani campaign. The diskettes are 3-1/2 inch, IBM-compatible, micro-floppy disks, and can be used with a variety of personal



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## Chapter 10

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computer systems. The data are “ASCII” encoded (American Standard Code for Information Interchange), which enables the user to transfer the data to any database system.

<sup>3</sup> The Board has interpreted the Act to require that candidates make a “good faith effort” to obtain contributors’ occupation and employment information. Candidates must request this information, but contributors do not necessarily have to provide it. Campaign Finance Board Advisory Opinions Nos. 1989-16 (April 6, 1989) and 1989-31 (July 12, 1989).

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**PART III**

**ADMINISTRATION OF THE  
CAMPAIGN  
FINANCE PROGRAM**

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## Chapter 11:

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# Campaign Finance Program

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## Operations

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y law, the Board must pay matching funds to candidates within four business days after candidates file their matching funds claims, or as soon thereafter as possible. The Board reviews all candidates' filings upon receipt to determine which candidates have qualified to receive matching funds and the amount to which they are entitled. In addition to performing these desk audits of the candidates' filings, the

Board conducts field audits of the candidates' campaigns to ensure that books and records were kept in accordance with the Program's requirements and that the campaigns accurately reported contributions, particularly those for which matching funds are claimed, and expenditures, including expenditures made with public funds.

### Campaign Finance Information System

The law mandates that the Board develop a computer database containing information on candidates' contributions and expenditures, which is available to the public. Working with consultants from the City's Department of General Services and a private contractor, Ernst and Young, the Board developed the Campaign Finance Information System, a computer system used to store and analyze candidates' data.<sup>1</sup> CFIS now contains 132,000 records of participants' campaign activity for the 1989 elections, of which 113,000 are contribution records and 19,000 are expenditure records. These records can be sorted and analyzed in a variety of ways, such as by the name and address of contributors, by the name of intermediaries who delivered contributions, and by the employers of individual contributors. From the start, the Board has been committed to having all its operations fully computerized, and, as a result, already possesses the kind of automated information system that many other campaign finance and election agencies are only beginning to implement.

CFIS has already allowed extensive analysis of the participants' 1989 campaign finances, as is evident from the information contained in this Report. The value of the CFIS database will continue to increase as comparable information from future election cycles is included in the system. The press, the public, political analysts, and academicians, as well as the candidates and the Board, will be able to compare campaign finance data from different elections and to study trends and relationships between contributions, expenditures, votes, and other variables.

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## **Chapter 11**

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In addition to producing public disclosure reports described in the previous chapter, CFIS was used by the Board to calculate payments to candidates and to monitor candidates' compliance with the Act in the 1989 elections.

### **Public Fund Payments**

The Board adopted a payment procedure which allowed it to distribute money to candidates quickly, to prevent overpayments to candidates, and to correct for candidate reporting errors during each payment period. The Board relied on summary data provided by the candidates to make payments to them within four days. The Board withheld a percentage of the claimed funds until after desk audits could reveal whether the detailed contributions records demonstrated eligibility for all the matching funds claimed. Ten percent of the claims made for the first reporting period were withheld from all candidates. After the in-house desk audit was performed, the Board withheld a percentage of each candidate's subsequent payments based on the individual candidate's rate of questioned contributions. Contributions questioned by the Board included those for which a contributor's name or address was left blank, for which a business address was reported in place of a residential address, or for which claims were made for matching funds in excess of \$500 per contribution. Candidates were given an opportunity to provide the Board with additional information on contributions questioned by the Board, and the Board adjusted the payments and withholding rates accordingly.

In February 1990, the Board issued a payment which covered all remaining matching contributions candidates received through the end of 1989. This payment was based entirely on the detailed contribution records reported by the candidates rather than on the summary figures. Final payments or demands for repayment will be made after the Board completes its field audits of the candidates' records.

### **Field Audits**

Unlike other public financing agencies, the Board conducted two compliance visits—to the Dinkins and Giuliani campaigns—during the election. The Board conducted field audits of remaining candidates' campaigns after the 1989 elections were over. (In the future, more compliance visits will be undertaken for participating candidates during the campaign.) In contrast to the desk audits performed to screen invalid matching funds claims during the payment process, the purpose of the field audits is broader. The Board's auditors inspect the records kept by each participating candidate's campaign committee to ensure that the committee has complied with contribution and expenditure limits, accurately reported financial activity to the Board, adhered to restrictions on the spending of public matching funds, and, in general, followed the Board's recordkeeping requirements. The audits also determine whether the campaign has a surplus or deficit.

As of July, the Board had completed field audits of two-thirds of the participants who received public funds. After all the field audits are complete, the Board will issue a public report summarizing the results. It appears that most participants had a good record of

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## **Campaign Finance Program Operations**

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compliance with expenditure and contribution limits. Many candidates' campaign committees, however, did not maintain adequate records and documentation. A number of committees also commingled funds used for the primary and general elections in a single bank account.

To help correct these problems in the future, the Board plans to visit candidates' campaign offices early in the campaign to ensure that participants have a clear understanding of how to comply with the law's reporting requirements and are maintaining records as required by the law and Campaign Finance Program rules. The Board is also re-examining its record-keeping requirements to ensure that they are realistic and necessary in light of the size and sophistication of many campaigns.

### **Enforcement**

As previously stated, candidates who participated in the Campaign Finance Program for the 1989 elections appear to have achieved a good overall record of compliance. Given candidates' unfamiliarity with the new Act at the time of the 1989 campaign, the Board's policy was to work with participants to attain a high degree of compliance rather than resorting to enforcement procedures and penalties in the first instance. At the same time, the Board investigated potential violations raised by its own audit findings and by complaints submitted by third parties. The Board requested additional information and documentation as appropriate during and after the campaign to ensure adequate compliance and disclosure. The Board was mindful, however, of the adverse effects its findings could have on candidates during the campaign and succeeded in keeping its proceedings confidential to avoid allowing any unsubstantiated allegations of violations to become public.

### **Monitoring Compliance**

During the campaign, the Board's staff monitors participating candidates' compliance with filing deadlines, contribution and expenditure limits, loan restrictions, and disclosure requirements. If potential violations are not resolved when candidates respond to questions about their contributions reports, the Board can withhold public funds and has the authority to use its investigative powers to subpoena documents, records, or testimony from candidates' campaigns.

The Board also investigates possible violations alleged in formal and informal complaints brought against candidates by third parties. During the 1989 election campaign, the Board's staff investigated numerous alleged violations by participating candidates and resolved them primarily by alerting candidates to potential violations and permitting the candidates to explain or correct them. Because these matters were resolved quickly, the Board did not need to seek penalties on any matters raised during the campaign.

The Board's auditors made compliance visits to the Dinkins and Giuliani campaigns just prior to the general election. In the case of the Dinkins campaign, this pre-election visit to the campaign's premises revealed that the Dinkins campaign was not keeping records

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## Chapter 11

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sufficient to enable the Board to verify whether the campaign was in compliance with the Act. The Board therefore withheld 25 percent of the public funds claimed by the Dinkins campaign and worked with the Dinkins campaign to define the records necessary to complete and document an audit trail. Other outstanding issues with various campaigns are similarly in the process of resolution.

**Complaints.** The formal complaint process set up by the Board allows third parties to charge participants with violations of the Act or the Program's regulations by filing a sworn or affirmed written complaint. The Board conducts an initial review of each complaint and will dismiss outright those which are baseless on their face or do not substantially comply with the regulations. If the complaint is not dismissed at this stage, the Board notifies the complainant that it has received the complaint and may request additional evidence from the complainant. At the same time, the Board serves a copy of the complaint on all named respondents, who are given 20 days to submit an answer setting forth any reasons why the Board should dismiss the complaint. If a respondent's answer does not enable the Board to resolve the matter, the regulations allow the Board to investigate.

Following an investigation, the Board may determine that no violation was found and terminate the proceeding, or, alternatively, find reason to believe the respondent has violated the Act or regulations and so inform the respondent. The respondent is then granted the opportunity to submit any additional information. If the matter is not terminated at this stage, the Board may initiate conciliation procedures to resolve the matter. If the parties fail to reach a conciliation agreement, the Board may seek to impose a penalty through the commencement of a civil action in State Supreme Court or through an administrative hearing.

Nine formal complaints were filed with the Board during the 1989 campaign, eight during the primary election campaign and one during the general election campaign. The complaints most commonly charged that candidates failed to report or to report properly expenditures and in-kind contributions. Two complaints were filed against mayoral candidates, one against a comptroller candidate, and six against Council candidates. All complaints were resolved prior to the election, eight by written Board determinations, summarized in Appendix K, and one by litigation.

### **Litigation**

Prior to the 1989 elections, it was predicted that Campaign Finance Act issues, like all election law matters, would end up in the courts. Although no substantial number of suits were filed concerning the constitutionality and legality of the Program or disputes between candidates regarding compliance, the Board did go to court in two cases involving campaign finance and Voter Guide issues. Other litigation was threatened, but did not occur.

On the eve of the first payments by the Board of public funds, Alan Hevesi, a candidate for comptroller in the Democratic primary, sought to enjoin the payment of any public funds to Elizabeth Holtzman, a primary opponent. Hevesi alleged that Holtzman had

violated the Act by accepting excessive contributions and failing to segregate funds properly. The Court found that Hevesi had administrative remedies to pursue through the Board and denied the request for an injunction. The Board investigated the complaint and accepted amended reports from the Holtzman campaign. Hevesi discontinued the court proceeding.

A second case involved publication of the Voter Guide. James Sullivan, a candidate for City Council in the 26th District, sought to enjoin distribution of the Brooklyn edition of the Voter Guide because his photograph did not appear in it. Board rules for the Voter Guide call for the candidate's photograph to be published with a statement submitted by the candidate. In light of the Board's factual argument that Sullivan had submitted his photograph after the deadline and too late for publication, the Court denied the injunction.

### **Penalties**

The Campaign Finance Act provides for a civil penalty of up to \$10,000 for failure to file a financial report as required by the Act or regulations and for any other violations of the Act. For exceeding the expenditure limits, the Act authorizes a civil penalty of up to three times the amount by which the candidate has exceeded the applicable limit. These penalties are the sole liability of the candidate. In addition, a criminal penalty provision makes it a Class A misdemeanor to file false information with the Board or conceal evidence intentionally. In the event a criminal violation is found, the Board is directed to recover all public funds the candidate received through fraudulent criminal activity.

Although penalties can be substantial, procedures make timely enforcement difficult. First, the statute does not grant the Board authority to levy fines. Instead, the Board must initiate an action in court for a finding that a violation has occurred and imposition of a civil penalty. For penalties to be effective during a campaign, violations must be addressed during the campaign. It is exceedingly unusual for a case to go from inception to judgment during the time in which a campaign for public office lasts.

The defined statutory penalties, however, are not the only enforcement tools available. The Board has other means to compel compliance. It is mandated under law to publicize the names of violators, and it is authorized to withhold or delay payment of public funds and can seek court orders compelling the filing of financial reports. These remedies have serious implications for a candidate when imposed by the Board during the campaign, but it is the exposure of candidates' violations to the press and public that remains the greatest incentive for compliance.

**Recommendation:** The Board recommends that the enforcement provisions of the Act be clarified and strengthened. To expedite enforcement actions, the Act should be amended to authorize the Board to initiate an administrative penalty determination by notifying candidates of violations. An administrative penalty assessment procedure would avoid costly litigation for both candidates and the Board.



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## **Chapter 11**

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Among its most important administrative functions is the Board's responsibility under the Act to provide the public with information about the Program, discussed in the next chapter.

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### **NOTES**

<sup>1</sup> Salvatore Salamone, Director of the Mayor's Office of Computer Plans and Controls, was instrumental in setting up the Campaign Finance Information System for the Board.

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## Chapter 12:

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# Public Information

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**T**he success of the Campaign Finance Program is closely linked to the success of the Campaign Finance Board's public information effort. In passing the Act, the City Council declared that, "whether or not the reliance of candidates on large private campaign contributions actually results in corruption or improper influence, it has a deleterious effect upon government in that it creates the appearance of such abuses and thereby gives rise to citizen apathy and cynicism." In keeping with its legal mandate, the Board publicizes the highly detailed campaign finance information which the Program's stringent disclosure requirements yield about participating candidates, as described in Chapter 10. The Board also provides voters with descriptive information about all municipal candidates through the Voter Guide, discussed in Chapter 13.

The Board keeps the public informed of campaign finance reforms through a three-pronged effort, by keeping the press and the public apprised of the Board's actions and how the Program works; by conducting a public education program; and by helping candidates understand the Program's rules.

### Press

Press coverage of the Program is crucial because the law was enacted specifically to help restore public confidence in the New York City electoral system. To ensure that the public is aware of the Program's results, the Board maintains regular contact with the media. In July of 1989, the Board held a press conference to announce the first disbursement of public funds to participating candidates. The Board followed each subsequent public fund payment with a press release sent to local, state, and national publications, wire services, radio stations, and television networks. The Board plans to increase the kinds of financial information about campaigns which it provides to the press and the public, particularly to include information about non-participants, so that the public can easily compare the campaign finances of those who are in the Program and abiding by its limitations with those who are not.

Several major metropolitan newspapers praised the Program for diminishing the presence of wealthy contributors in the 1989 campaigns. The *New York Times* called the Program "An Electoral Example for the Country" in one editorial. "The new public campaign financing system has worked well to reduce the influence of big money in this year's New York City election campaign . . . already top city officials are much less beholden to wealthy

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## Chapter 12

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favor-seekers,” the *Times* stated in another editorial. “The new law accomplished its number one mission,” *Newsday* editorialized after the primary election. “It induced many office-seekers to reach past the fat cats and persuade humbler folks to contribute to their campaigns as well. Such broadened participation will help check the political hegemony of the rich.” And, as the *Daily News* put it after the general election, the Campaign Finance Act “was a reform aimed at reducing the poisonous influence of big money . . . . And it worked.”

### Public Education

As part of its effort to educate voters about the Campaign Finance Program, the Board regularly addresses community groups and civic organizations and communicates to the public through cable television programs and public service announcements. In 1989, Board staff spoke at meetings and events sponsored by civic organizations such as the League of Women Voters of the City of New York, the City Club of New York, the Women’s City Club of New York Inc., Common Cause, the Center for Law and Social Justice, and the National Women’s Political Caucus. The Board produced and distributed public service announcements about the Program and the Voter Guide to metropolitan radio and television stations. The Board also ran subway advertisements about the Voter Guide in the weeks prior to the 1989 elections.

In 1990, the Board produced an hour-long panel discussion program shown on Manhattan Cable Television Channel L. The show, moderated by Board Chairman O’Hare, featured City Council members Abraham Gerges, Ronnie Eldridge, and C. Virginia Fields, all of whom participated in the Program, and representatives from the federal and New Jersey campaign finance agencies. Staff members also appeared on local cable television shows on Manhattan Cable Channel C and Staten Island Community TV. The Board has also produced a half-hour television documentary of excerpts from the Public Hearings described in Chapter 2 and distributed it to cable and public television stations throughout New York State.

### Candidate Education

The Board’s candidate education program is designed to inform potential candidates that public campaign financing is available and to assist participating candidates in complying with the Program’s rules. Part of the function of public campaign financing is to encourage a higher level of participation and competition in New York City elections by helping candidates who otherwise would not have the financial resources to mount campaigns. To identify and educate City residents who might be interested in running for office, the Board’s staff addressed Community Boards throughout the City during 1989. Board staff members were also in frequent contact with political parties and government reform groups, which are often in contact with potential candidates.

Once candidates entered the Program, the Board’s legal and auditing staff assisted candidates in complying with the Act’s requirements. In the winter and spring of 1989, the Board held several seminars for candidates. Participating Council member Sal Albanese

stated that “the workshops held by the Board instructing candidates or their representatives on how to fill out the [disclosure] forms . . . were very helpful. These workshops should be continued in the future.” Campaign staffs of many participating candidates met separately with Board staff members during May 1989 to discuss specific questions they had about the disclosure requirements.

The Board issued various educational materials for candidates during its first months of operation. The Board’s rules were consolidated into a compendium including the Act and relevant City Charter provisions. This compendium was made available to all participating candidates and interested persons and updated periodically. Additional materials, including disclosure report instructions, a brief brochure, and guides to the Program and the Board’s rules, were prepared and circulated to explain the Program’s requirements.

Largely as a result of the Program’s newness and complexity, the Board’s staff found it necessary to spend a great deal of time during the 1989 campaign directly instructing participants and their campaign staffs in how to comply with the Act. To assist future participants more effectively, the Board plans to improve and expand its candidate education materials, including the distribution of a compliance kit explaining the Program’s requirements and providing examples of how to fill out disclosure forms and maintain ledgers. The Board also plans to organize a Candidate Services unit made up of non-technical staff, specifically to work with smaller campaigns.

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In addition to apprising the press, the public, and candidates about the Program, the Board’s largest public information effort is production and distribution of the Voter Guide, which is mailed to all registered voters, as described in Chapter 13.

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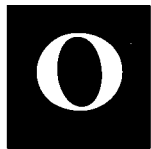
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## Chapter 13:

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# The Voter Guide

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One of the most ambitious and successful of the Board's projects in 1989 was the publication of New York City's first Voter Guide. Although not included in the Campaign Finance Act as one of the Board's responsibilities, publication of the Voter Guide by the Board is mandated by a 1988 City Charter provision. The Voter Guide is designed to give City voters a concise, non-partisan package of information about municipal candidates, ballot proposals, and other information of relevance to voters. In 1989, about 4.7 million copies of the Voter Guide were mailed to registered voters for the primary and general elections. The Board's staff distributed an additional 250,000 copies and 760 audio tapes in English and Spanish to public places to ensure that the Voter Guide was made widely available.

The response to the publication by the public and press was extremely enthusiastic. The Board received numerous letters from registered voters praising the Guide. "The Voter Guide you publish is a useful tool for a confusing yet important responsibility—voting. Did my taxes go into this? I hope so," wrote one City resident. "This election I *really* did my homework. When I went to the polls yesterday, thanks to the Guide, I was the most informed I have ever been about a New York City election," wrote another. Members of government reform organizations also found the Voter Guide exemplary in getting useful information to voters. Larry Makinson, project director of the Washington, D.C.-based Center for Responsive Politics, wrote: "Thank you for the advance copy of your new 1989 Primary Voters Guide. It sets an outstanding example of how to deliver informative, yet even-handed materials to the voting public. . . . In this age where money buys exposure, which in turn often buys elections, it is particularly refreshing to see a platform where all candidates appear on an equal footing." And Gene Russianoff, staff attorney with NYPIRG, wrote that "[t]he Guide is highly informative. The format has many excellent features, such as tips on voters' rights, maps of Council districts, illustrations on how to use the voting machine and notes that you can carry into the voting booth. The candidate profiles are particularly useful. And, the Guide is in the mails and getting to voters. I live in Prospect Heights, Brooklyn and mine arrived on August 30th. This morning I even saw two people reading Guides on the #2 train—right near one of the fine subway placards advertising the Guide!"

To make sure voters were aware of the Voter Guide and understood its purpose as a non-partisan package of candidate information, the Board had 30,000 advertising posters printed in English and Spanish—enough to have at least one placed in every car in New York City's subway system. The ads ran for four weeks before both the primary and general elections.

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The Board published two different editions of the 1989 Voter Guide, one each for the primary and general elections, with a separate version of each edition for each of New York City's five boroughs. Each version contained a map, provided by the League of Women Voters, showing its borough's Council districts and included information on all citywide candidates and the City Council and borough president candidates for the particular borough. As mandated by the Charter, each version was published in English and Spanish.

### **Content of the Voter Guide**

The Voter Guide contains two sections. One gives information on voting, and the other provides information about the candidates. The Voter Guide covers all the municipal offices included in the Campaign Finance Program: those of mayor, comptroller, City Council president, borough president, and City Council member. In 1989, the general election edition had an additional section on ballot proposals which included a plain-language description of changes in the City Charter proposed by the Charter Revision Commission and a summary of the arguments in favor of and against the proposals.

**Voting Assistance.** The voting assistance section of the Guide includes information on the date and time of the elections, how to register to vote, and how and where to vote. It is presented in an easily read question-and-answer format. This section of the 1989 Voter Guide included the "VOTER-89" voter assistance telephone hotline, initiated by the National Nonpartisan Voter Registration Campaign and implemented by the City Board of Elections. The Guide was responsible for generating more calls to the hotline than any other single source in the 1989 elections, according to Jane Kalmus, executive director of the National Nonpartisan Campaign. More than 1,000 of the 7,000 callers said they got the number from the Voter Guide. Indeed, no single source generated as many calls even in the 1988 presidential elections. "Nowhere are three million people targeted at one time, not ads, not public service announcements, not television, not subway car cards," she explained. "The only single source that reaches every registered voter is the Voter Guide."

The voting assistance section also helped increase the number of registered voters in New York City, according to Jon R. Del Giorno, administrative manager of the City Board of Elections. The section gave readers the addresses for Board of Elections offices in each borough. The primary election edition let people know that they still had time to register for the general election. "The work of your organization has made an increase for this General Election. Thank you for all your efforts in encouraging New Yorkers to register to vote," Del Giorno wrote.

**Candidate Profiles.** Perhaps the largest problem New York City voters face is the lack of information about the candidates seeking their vote. The Voter Guide's candidate section helps to remedy that problem by giving voters a substantial amount of information about candidates. The information included is provided entirely by the candidates themselves. The biographical part of the candidates' profiles contains information about each candidate's party affiliation, occupation, professional and educational background, major organizational affiliations, endorsements, and prior public service experience. In the part of the

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profiles reserved for statements, candidates present their views and positions on issues important to them. Photographs are included with the profiles to help voters recognize candidates. In addition, if a candidate takes part in the Campaign Finance Program, that fact is indicated at the bottom of the candidate's profile. The Board accepts statements from candidates as submitted, and does not assume responsibility for the factual accuracy of the statements.<sup>1</sup>

In order for the Board to remain impartial and to respect candidates' First Amendment rights, candidate statements are not edited except to ensure that the limit on the number of words is observed. Each of the more than 130 candidate statements submitted for the Voter Guide in 1989 was, however, reviewed by Campaign Finance Board staff, and the Board did review submissions for potentially libelous material. In two instances, candidates were asked to consider revising their statements, and in both cases the candidates chose to do so, at least in part.

**Recommendation:** Some candidates have suggested that the Board take a more active role in editing statements that contain "negative" comments about adversaries. The Board concludes, however, that the First Amendment protection of free speech and robust political debate do not permit the Board to censor statements submitted by the candidates in the manner suggested. It has also been suggested that the Voter Guide could be used as an incentive for joining the Campaign Finance Program if it were to include profiles only of the candidates participating in the Program. The Board strongly believes that the public is best served if the Voter Guide continues to be a comprehensive voter education pamphlet, containing information about all candidates for municipal office, and not only those who choose to participate in the Program. In future Voter Guides, however, the Board intends to highlight more clearly the fact that a candidate has or has not joined the Program.

### Candidates in the 1989 Voter Guide

A total of 116 candidates appeared at least once in either of the two 1989 Voter Guide editions. The primary election edition contained 56 profiles, and the general election edition contained 72. Although a handful of the candidates in the Voter Guide withdrew or were disqualified from the ballot after the Guide went to press, 109 of the 139 candidates on the primary and general election day ballots—more than 78 percent—appeared in the Voter Guide. The 30 who did not appear had not submitted statements for inclusion in the Guide, probably because they were not running active campaigns, or, in a handful of cases, were unfamiliar with the new Guide. (Board staff did track petition filings with the Board of Elections to ensure that all candidates were informed of the opportunity to appear in the Voter Guide.) Those who did not submit statements were for the most part Republicans in general election Council races, raising the question of how serious these candidacies were.

### Publication, Mailing, and Distribution

The Board's staff worked long hours in the weeks just before the election in order to compile profiles of all the candidates in time to publish and distribute the Voter Guide before the elections. Prior to publication, the text was translated for the Spanish version of the Guide

as mandated by the Charter. The primary election edition of the Voter Guide was completed and the first copies mailed within four weeks after the primary petition filing deadline, which is the first date on which the Board knew which candidates should be included. The first copies of the general election edition were mailed within four weeks after the primary election.

The Charter mandates that the Campaign Finance Board send a copy of the Voter Guide to every household having a registered voter. The Board mailed the Voter Guide using a computerized address list extracted from the New York City Board of Elections' database of registered voters. Table 13.1 shows the number of copies mailed to voters.

In addition, the Board's staff distributed about 250,000 copies of the Voter Guide throughout the five boroughs to every branch of the New York City Public Library, public and private colleges, hospitals, voter participation projects, not-for-profit organizations, Homeless Voter-89, City agencies, public buildings such as courthouses and borough municipal buildings, and the City Board of Elections.

The Board also produced the Voter Guide on audio tapes in English and Spanish for the visually impaired. For the 1989 elections, 760 tapes were produced and distributed to associations and libraries that provide services for the blind, visually impaired, or physically disabled, or were mailed to individuals who requested them.

### **The Voter Guide and the Campaign Finance Program**

The Voter Guide helps accomplish the same major goal that the Campaign Finance Program promotes: diminishing the importance of money in New York City's political campaigns. By including free, equal space for all candidates on the ballot and providing copies to a targeted audience of all registered voters, the Guide helps all candidates compete effectively for public office regardless of their personal wealth or their access to large contributions. Candidates receive equal space for their profiles regardless of the level of the office they are seeking.

<b>VOTER GUIDE MAILING VOLUME</b>		
<u>Borough</u>	<u>Primary Election</u>	<u>General Election</u>
Brooklyn	628,780	748,680
Manhattan	575,087	715,020
Queens	507,143	612,000
Staten Island	111,207	128,520
Bronx	<u>359,543</u>	<u>412,800</u>
Total	2,181,760	2,617,020



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The high cost of political advertising fuels rising campaign costs and may discourage individuals from running for office. In the 1989 elections, participants spent a total of \$14.5 million on all advertising, including television, radio, and print. Participating candidates' expenses for print advertising alone were \$2.5 million. With its wide and targeted circulation, the Voter Guide gives candidates valuable campaign publicity at no cost to themselves. The Board assumes the costs for design, production, and distribution of the Voter Guide once candidates submit profile information. In 1989, the Voter Guide cost less than 30 cents per copy.

In an informal survey of 391 voters conducted by Board staff on general election day, those questioned found the Guide extremely helpful and wanted overwhelmingly to receive it in future elections. Because there will be 51 Council districts in 1991 and because the Voter Guide is now an accepted part of New York City elections, it is reasonable to expect that even more candidates will appear in the Voter Guide in the future. As the Voter Guide becomes a permanent part of New York City politics, voters will undoubtedly come to rely on it as a chief source of election information. As a result, the Voter Guide will make it even easier for candidates without access to wealthy contributors to communicate with the public.

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To inform voters about the candidates and stimulate political debate, in addition to the Voter Guide produced by the Board, many candidates suggested that a debate requirement should be added to the Program, discussed in the next chapter.

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### NOTES

<sup>1</sup> The candidate is required to certify that the statement is true and is subject to felony charges if the information submitted is false.

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## Chapter 14:

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# Candidate Debates

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In the 1989 general election, the difficulty that mayoral candidates Dinkins and Giuliani had in agreeing on the format of televised debates—whether to include Conservative Ronald Lauder and Right-to-Life Party candidate Henry Hewes—caused uncertainty about whether the debates would take place. The candidates ultimately debated twice, late in the general election campaign.

Many speakers at the Board's Public Hearings supported a debate requirement as a condition for receiving public matching funds. The justifications for a debate requirement are varied. Comptroller candidate Frank Macchiarola likened debates to the Voter Guide in providing candidates access to the public. NYPIRG's Neal Rosenstein stated that "[d]ebates are the kind of return on the investment of tax dollars that voters have a right to expect." Republican political consultant James Severin stated that debates "level the playing field" for wealthy and poor candidates. Dean John Feerick cited recent mayoral campaigns in which debates were a subject of political "wrangling." "While there are plenty of vital issues for candidates to discuss, the question of whether or not to participate in a debate should not itself be a subject of debate," said Dean Feerick. Former Mayor Edward Koch supported a debate requirement, but cautioned that government intrusion in the political process should be limited. The *New York Times* and the *Daily News* favored exploring the idea of adding a debate requirement to the Campaign Finance Act.

Supporters of a debate requirement differed, however, on whether it should apply to City Council candidates. Some did not see a need for mandated debates in City Council contests. Council members Sal Albanese, Herbert Berman, and Abraham Gerges, however, supported requiring debates among Council candidates.

Opponents of a debate requirement included Dr. Herbert Alexander, who noted that candidates who do not participate in the public financing program, such as Ronald Lauder in the 1989 mayoral election, cannot be compelled to debate. Dr. Alexander predicted that participation in the public financing program might decline if new conditions, such as a debate requirement, were added. Former Corporation Counsel Peter Zimroth stated that the Campaign Finance Law cannot be "the panacea for every issue of campaigning—of ethics in campaigning or fairness in campaigning." Furthermore, "in spite of all the political back and forth in the last campaign, in fact, we had debates."

Currently, New Jersey is the only public campaign financing jurisdiction that mandates debate participation as a condition of receiving public funds.<sup>1</sup> The New Jersey Election

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## Chapter 14

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Law Enforcement Commission (“ELEC”) administers and enforces the requirement, which applies to gubernatorial candidates who have met a fund-raising threshold. ELEC selects sponsors who organize two primary election and two general election debates. At hearings held by ELEC in 1990, several gubernatorial candidates criticized the fund-raising threshold as effectively barring independent candidates from debates. New Jersey Common Cause criticized the debate requirement as burdensome and unrelated to the goals of the public financing system. New Jersey State Senator Gerald Cardinale, a Republican primary gubernatorial candidate who participated in debates, favored increasing the number of primary debates from two to five and giving the Commission more responsibility for the debate format.

The Campaign Finance Board recognizes the importance of promoting debates in the political process, but is concerned that its involvement in the administration and enforcement of a debate requirement might interfere with its ability to appear nonpartisan and objective. All the decisions involved in administering debates can be interpreted as highly political: which candidates are invited to debate (participants only, non-participants, minor party candidates); the number and timing of debates; the choice of sponsor and moderator; and the debate format, including length of time for candidates’ responses, rebuttals, and opening and closing statements. Candidates’ decisions about whether and whom to debate are a key part of their campaign strategy. Decisions made by the Board in administering a debate requirement during the course of a campaign could be thought to favor one candidate or another, despite the Board’s best efforts to be even-handed.

In addition to the practical problem of fairly administering debates, the Board questions whether government agencies should be involved in mandated political debates or whether pressure on candidates from the public and press is the more appropriate way to bring about debates.

**Recommendation:** Should the Council nonetheless decide to add a debate requirement to the Campaign Finance Act, the Board urges that any legislation be specific and carefully crafted to ensure that rules for the process are determined well in advance of any particular campaign so that the Board does not become unnecessarily involved in what might be interpreted as partisan political decisions.

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The Board’s recommendations on debates and other subjects that have been noted throughout this Report are fully set forth in the next chapter.

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### NOTES

<sup>1</sup> In June, 1990 Los Angeles voters approved a campaign financing law which mandates that public fund recipients engage in public debates.

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**PART IV**

**BOARD**

**RECOMMENDATIONS**

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## Chapter 15:

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# Recommendations and

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# Conclusion

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**T**he experience of the 1989 elections demonstrated that the Campaign Finance Act was a fundamental success, but it also revealed aspects of the law that need to be refined. In light of the first year's experience, the Board proposes that the Campaign Finance Act be amended, as described throughout this Report and detailed below, to simplify and strengthen the Program. The Board's recommendations are intended foremost to encourage greater participation in the Program by Council candidates and to maintain the high level of participation by citywide and borough president candidates experienced in 1989. To that end, the Board proposes increasing the financial rewards of the Program and streamlining the candidates' reporting requirements while maintaining high standards of disclosure.

In response to testimony and comments received, the Board is committed to simplifying the Program as much as possible through its own administrative procedures. It is planning to do this by streamlining forms and regulations; developing plain language guides, including a compliance kit illustrating sample ledgers, forms, and other bookkeeping acceptable to the Board; and creating a Candidate Services unit made up of non-technical staff to assist candidates, especially at the Council level. Substantial simplification is impossible, however, without amendments to the current complex and burdensome requirements of the law which, in some cases, have little benefit to the public.

The most urgent recommendations affect City Council candidates and were made on March 27, 1990. Because the Charter mandates elections for an expanded City Council in 1991, the Board requested expedited consideration of these recommendations, so that candidates preparing for the 1991 elections can know as soon as possible what rules will be applicable to them if they join the Program and how they must conduct their campaign fund raising now in order to be in compliance when they join. In addition, Council changes should be acted upon immediately so that the Board can proceed to make the major efforts required to streamline and amend its regulations and disclosure forms, produce a candidate compliance kit, begin informing candidates about Program requirements, and revise its computer system based on any changes in the law. Time is also needed to work together with the State and City Boards of Elections in the hope of developing Campaign Finance Board forms acceptable for filing with the Elections Boards. Some detailed

technical or clarifying changes, to be included in the Board's draft of proposed legislation, are not discussed here.<sup>1</sup>

**March Recommendations, Including Changes  
Affecting 1991 City Council Elections**

Most of the recommendations relating to the office of City Council were first proposed by the Board in March of 1990. Speaker Vallone and Council members Gerges, Albanese, Dryfoos, Eisland, Greitzer, and Harrison introduced a bill (Intro. No. 441) containing these recommendations in May 1990. At a hearing before the Governmental Operations Committee on June 18, 1990, after having received reactions from the Mayor's Office to the March proposals, the Board made additional proposals which are included in this section.

1. **Match Threshold Contributions.** To increase financial rewards to participating candidates, the Board strongly recommends matching contributions used to reach the threshold requirement once the threshold is reached. This change is perhaps the most important reform now recommended by the Board. Matching the threshold would provide candidates with money earlier in the campaign, when they need it most, and would increase financial rewards to participants in an even manner. Almost all candidates who testified at the Board's Public Hearings in December favored matching threshold contributions, a change that would apply to all offices.

2. **Per Campaign Contribution Limit.** The Board recommends combining the separate contribution limits for the primary and general elections into one limit covering both elections. A single "per campaign" limit will significantly reduce the candidates' reporting burden, eliminate the need for candidates to maintain separate primary and general election bank accounts, and replace the complicated accounting procedure needed for "carrying over" leftover primary contributions for use in the general election. A single contribution limit will give candidates much greater flexibility in raising and allocating contributions for use in the primary or general election, and will make disclosure reports easier for the public to understand. The proposal for a per campaign limit would apply to all offices.

3. **Match Contributions Two-for-One up to \$500.** Consistent with its proposal for "per campaign" contribution limits, the Board recommends matching contributions on a "per campaign" rather than a per election basis. Instead of the one-for-one match for up to \$500 per contributor in the primary and another \$500 in the general election, the Board proposes to match contributions at a two-for-one rate, up to \$500 per contributor, for the primary and general elections combined. This change will provide added financial rewards for candidates who collect smaller contributions and, with the per campaign limit, will simplify reporting requirements.

4. **Contribution Limit for Council Candidates.** After an extensive review of the 1989 data and in light of the one-third reduction in Council district size that will take place

in 1991, when 16 new seats will be created, the Board recommends that the new per campaign contribution limit for the City Council be set at \$3,000, in place of two separate limits of \$2,000 for the primary and for the general election as was the case in 1989.

5. **Threshold for Council Candidates.** The Board recommends that the Council threshold level be reduced from \$7,500 to \$5,000. Because Council candidates in 1991 will be raising money from a smaller population base, a proportionate reduction in the Council threshold is warranted. In addition, the existing Council threshold is disproportionately high in relation to the maximum public fund payment Council candidates may receive, when compared with other offices. Reducing the threshold to \$5,000 would create a more uniform burden-to-benefit ratio for all offices. Because the boundaries of the 1991 Council districts will not be set until of spring of 1991, the Board also recommends a one-time suspension of the requirement that a Council candidate must receive contributions from at least 50 contributors living in the district in order to qualify for public funds. Instead the Board recommends that, for the 1991 elections only, the 50 threshold contributors need only be City residents.

6. **Consolidate Expenditure Limits.** The current distinction between expenditures for fund raising and other campaign expenditures should be eliminated. Consolidation of the two limits would greatly reduce the candidates' reporting, record-keeping, and accounting burdens.

The Board also recommends that the five separate expenditure limit time periods contemplated by the Act be consolidated into two expenditure limit periods covering the entire four-year election cycle. The primary election period would cover the first day of the term of office until primary election day, and the general election period would cover the day after the primary until the general election. The primary election limit would apply to expenditures made by all candidates, whether or not they have a primary race. This consolidation of expenditure limits would apply to all offices.

7. **Expenditure Limit for Council Candidates.** Considering the 1989 data and testimony from Council candidates at the Public Hearings, particularly for the more expensive and competitive Council races, the Board recommends that the Council expenditure limits for the primary election period and the general election period be set at \$150,000 each.

8. **Increase Rewards for Participants Who Face Free-Spending Non-Participants.** In instances in which a participating candidate is opposed by a well-financed non-participant, the Board recommends the following additional bonuses in order to enhance the participant's competitiveness: (a) the matching fund payment rate should be increased from two-for-one to three-for-one; (b) the maximum public fund payment to a participant should be increased from one-half to three-quarters of the expenditure limit; and (c) these bonuses should be triggered when the non-participant accepts contributions or makes expenditures in excess of one-tenth of the expenditure limit, rather than one-half. These bonuses will afford Program participants with additional financial resources and flexibility



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when competing against a well-financed non-participant and will encourage more candidates to participate in the Program.

9. **Give Candidates More Time to Join Program.** In response to testimony received at the Public Hearings, the Board recommends giving candidates more time to decide whether to participate in the Program. The first deadline for joining should be postponed from January 1 to March 31 in the year of the election. This deadline would apply to candidates with campaign committees in place on March 31. A later deadline, June 15, would apply to candidates seeking party nominations who first form their campaign committees after March 31.

The Board strongly recommends against providing candidates with an opportunity to withdraw from the Program after they have joined. An “opt-out” procedure would confuse and mislead the voters about whether a candidate is participating and would waste administrative resources on participants who ultimately withdraw from the Program for “strategic” reasons. Moreover, it would threaten to undermine participation through a series of “last-minute” decisions to withdraw from the Program. Candidates should make their decision to commit or not to commit to the goals of the Campaign Finance Program prior to the certification deadline. Rather than using an opting-out procedure to protect participating candidates from non-participating opponents, the Board supports increasing the Program’s benefits to ensure that all participants will be able to run competitive races against free-spending opponents, as described above.

10. **Eliminate Restrictions on Spending Public Funds.** The Board supports eliminating the requirement that public funds may be spent only for “educational” purposes. As suggested by numerous candidates at the Public Hearings, public funds should be available for any campaign-related expenses. The current prohibition against using public funds for petition litigation should, however, be retained. The Act should also be amended to clarify that participating candidates may not give public funds to other candidates or political committees.

11. **Streamline Reporting Requirements.** The Board seeks to ease reporting requirements for participating candidates while maintaining the high standard of disclosure that is fundamental to the Program’s success. The changes proposed below, together with the new consolidated contribution and expenditure limits and other proposed reforms, will substantially simplify candidate reporting.

a. **Repeal Deduction Rule.** The “deduction rule,” which requires that the amount of a matchable contribution claim be reduced by the value of goods and services (including fund-raising dinners) given to a contributor, should be eliminated as unnecessary and burdensome and replaced by restrictions modelled upon federal law, which ensure that contributions from individuals who in return receive items of significant value are not matched with public funds.

b. **Repeal Household Rule.** The rule treating a husband, wife, and unemancipated children as a single contributor for purposes of determining the amount of a matchable contribution should be repealed. This requirement is very difficult to administer, and unfairly limits the size of a matchable contribution solely on the basis of the marital status or familial relationship

of the contributor. The concern that wealthy individuals may funnel their own contributions through spouses and children is already addressed by a state law making that activity a misdemeanor.

c. **No Itemizing for Small Contributions and Expenditures.** Candidates should not be required to itemize contributions of \$99 or less or expenditures below \$50 in a campaign. This change would reduce the volume of disclosure reports, easing the burden on participating candidates. Only itemized contributions, however, would be matched with public funds. Similarly, disclosure requirements for employment information would not apply to contributors who have given \$99 or less in a campaign.

d. **Deferral of Reporting for Periods of Low Financial Activity.** Candidates should be permitted to defer a filing for a particular period if they have received less than \$2,000 (or a higher amount as may be determined by the Board) in contributions and loans since their last filing. This information would be reported to the Board at a later filing date. This change will ease the reporting burdens of candidates who are not involved in competitive elections without any loss in relevant disclosure. Candidates who have spent more than 85 percent of the applicable expenditure limit would not, however, be permitted to defer a filing deadline.

e. **Maintain High Standards of Disclosure.** The Board will simplify and reduce the number of its required disclosure forms. In addition, the Board is committed to working with the State and City Boards of Elections to devise forms that will be acceptable both for purposes of the Campaign Finance Program and state election law disclosure requirements. The Board, however, is determined to maintain the high standard of disclosure which was hailed as one of the most significant reforms of the Program in 1989.

The Board vigorously opposes the suggestion that it accept State Board of Elections forms for Campaign Finance Board purposes. These forms are entirely inadequate for meeting the more detailed disclosure requirements of the City law and would not permit effective monitoring or enforcement of the Act. It would also mislead the public to suggest that candidates submitting state forms are complying with the requirements of the Program even though they are not providing the public with the additional information to which it is entitled. Furthermore, it would be extremely difficult and a substantial waste of public resources for the Board to attempt to create a computer program that would integrate state form data into its computer system in a manner that would allow timely, meaningful, and comprehensive public disclosure. Inasmuch as the Board is mandated to computerize the candidates' financial data, this result would defeat the intent of the Charter. An alternate suggestion, to supplement state forms with additional Campaign Finance Board forms, would also impose new burdens and create unnecessary confusion, and substantially increase the likelihood of error in reporting information.

12. **Match Contributions Less Than \$10.** As requested by some candidates, the Board supports providing matching funds for contributions of less than \$10. This change could encourage greater grass roots fund-raising activity.

13. **Administrative Penalties.** The Act should be amended to authorize the Board to initiate an administrative penalty determination by notifying participating candidates of possible violations. An administrative penalty assessment procedure would expedite enforcement actions and avoid costly litigation for both candidates and the Board.

**Additional Recommendations, Including Changes  
Affecting Citywide and Borough President Offices**

Upon further review of the Program's first year, the Board is now proposing citywide and borough president contribution and expenditure limits and threshold levels, as well as recommendations on intermediaries, surplus funds, candidate appearances, and transition and inaugural expenses, among others. Although not as urgent as the changes affecting the Council races, these recommendations should also be considered in a timely manner to ensure that candidates are aware as early as possible of the rules that will be in place for the 1993 elections.

14. **Citywide and Borough President Contribution Limits.** In setting contribution limits, the Board studied the number and dollar distributions of contributions to each office and examined each office's receipt of contributions at or near the 1989 limits. Based on the 1989 data and comments received at the Public Hearings, the Board supports setting new "per campaign" contribution limits at the following amounts:

Mayor:	\$ 6,500
Comptroller:	5,000
City Council President:	5,000
Borough President:	3,500

Runoff and special election limits should be set at one-half these limits.

15. **Citywide and Borough President Threshold Levels.** The Board recommends conforming the threshold amounts set for each office to an equivalent proportion of the maximum public fund payment limit resulting from the proposed expenditure limits below. A uniform "burden-to-reward" ratio of 1-to-15 results in the following thresholds:

Mayor:	\$ 150,000
Comptroller:	100,000
City Council President:	100,000
Borough President:	30,000

16. **Citywide and Borough President Expenditure Limits.** Based on the 1989 expenditure data for each office and comments received at the Public Hearings, the Board proposes that the following expenditure limits apply for the primary election period and again for the general election:

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## Recommendations and Conclusion

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Mayor:	\$ 4,500,000
Comptroller:	3,000,000
City Council President:	3,000,000
Borough President:	1,000,000

17. **Intermediaries.** The current definition of “intermediary” as one who “delivers” a contribution to a candidate is both over- and under-inclusive. The Board recommends that it be refined so that candidates must report persons and entities known by the candidates to have successfully solicited contributions for them, but not professional fund raisers and hosts of small house parties having expenses of \$500 or less.

18. **Surplus Funds.** In order to lessen the competitive advantage enjoyed by candidates who have money remaining from a previous election, the Board recommends a prohibition against claiming any of that leftover money as threshold or matchable contributions. In addition, participants should be prohibited from using surplus funds in an amount greater than five percent of the expenditure limit applicable in an election covered by the Program. These changes would also greatly simplify the Program’s reporting and accounting requirements.

The Board suggests that new rules regarding surplus funds be implemented only prospectively, for the first time in the 1993 elections for Council candidates and the 1997 elections for the other covered offices, so as not to undermine candidate expectations and disrupt activities already undertaken in the current election cycle.

19. **Candidate Appearances.** The Board recommends amending the Act to provide that candidate appearances at a campaign event sponsored by a group not affiliated with the candidate’s campaign, in connection with which no funds are solicited for the candidate, do not result in charging the costs of that event to the candidate as a contribution or an expenditure.

20. **Transition and Inaugural Expenses.** Winning candidates should not have to rely on private fund raising for transition and inaugural expenses because of the risk that large contributions will buy undue influence after a candidate is elected. The Board recommends against amending the Act to allow participants to use surplus campaign funds for post-election transition and inauguration expenses prior to repaying surplus public funds. If public funds are to be used for these purposes, the City budget should include an appropriation for them so that the cost to the public is determined by the regular budgeting process and not by the happenstance of what surplus campaign funds remain for a winning candidate.

21. **Voter Guide.** Some have suggested that the Voter Guide could be used as an incentive for participation by including only profiles of those candidates in the Program. The Board strongly believes that the public is best served if the Voter Guide continues to be a comprehensive voter education pamphlet, containing information about all candidates for municipal office, and not just those who choose to participate in the Campaign Finance

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Program. The Board does, however, intend to highlight the fact of participation or non-participation more clearly in future Voter Guides.

Some expressed concern about published statements by candidates critical of other candidates and suggested that the Board play an active role in editing the statements. The Board concludes, however, that the First Amendment protection of free speech and robust political debate does not permit it to censor statements submitted by candidates in the manner suggested. The Board reaffirms its current policy of editing statements only for length and to alert candidates if their own submissions appear to contain potentially libelous material.

22. **Debates.** The Board recognizes the importance of debates in the political process but questions the desirability of government involvement in them. Should the City Council choose to mandate debates, it is essential that any provisions governing mandated debates be specific and carefully crafted. Rules for the debates should be determined well in advance of any particular campaign to ensure that the role of the administering agency and the public's regard for the debate process are not impaired by any appearance of partisan decision-making.

23. **Separate Committee for Covered Elections.** In order to reduce the possibility that contributions in excess of the Act's limits will be used illegally, the Board recommends requiring participating candidates to establish separate political committees for elections covered by the Program's requirements and those that are not.

24. **Repeal Pre-Effective Date Contribution Limit.** The Board recommends repealing the special contribution limit applicable to funds received before February 29, 1988, because it is confusing and largely obsolete.

### State Law Recommendations

In addition to changes in the City's Campaign Finance Act, the Board supports the following changes in state election law.

25. **State Law Contribution Limit.** The Board urges the State Legislature to establish mandatory contribution limits for New York City offices at the amounts set by the Campaign Finance Act. In the absence of state law amendments, the Board urges the City Board of Elections to publish the amounts of the contribution limits applicable under state law well in advance of the primary and general elections.

26. **Corporate and Union Contributions.** The State Legislature should consider prohibiting contributions by corporations and unions. The Feerick Commission advocated this restriction, which follows federal law. Corporations and unions would, however, be permitted to organize political action committees for the purpose of raising and making political contributions.

27. **Independent Expenditures.** The Board recommends that state law be amended so that all persons and entities making independent expenditures for or against candidates must publicly disclose these expenditures and the candidate to whom the expenditures relate.

### **Issues Under On-Going Consideration**

The Board will continue to make recommendations for improvements in the Campaign Finance Program, based on further analysis of the 1989 elections and the experience of future elections. The Board will routinely review the contribution and expenditure limits and the threshold levels for all offices after each election. There are many additional, difficult areas that the Board is continuing to study, including the issues of political party spending, corporate and union political activity and candidates' reporting of in-kind contributions, independent expenditures, segregated contributions, relief for debtor candidates who have lost in their election bids, whether contributions made early in the election cycle should be matched with public funds, and whether the Voter Guide should be expanded to include more offices, such as that of District Attorney. The Board is still considering whether it is appropriate to restrict public fund payments to candidates who face only "token" opposition, although the Board believes at this time that the evaluation of a candidate's competitiveness is a political judgment for the voters, not the Board. To broaden political debate and control rising campaign costs, the Board supports and may explore efforts to provide candidates with access to free or subsidized broadcast or cable television time. The Board will also study the activities of legislative political action committees.

Officeholders' competitive advantage is another complex issue because the line separating officeholders' activities as elected officials from their activities as candidates is hard to define. The issue has been extensively studied on the state level by the New York State Blue Ribbon Commission to Review Legislative Practices in Relation to Political Campaign Activities of Legislative Employees (the "Wilson Commission") and the Feerick Commission. Both Commissions recommended a ban on the use of public resources and legislative employees' on-the-job time for campaign activities and a ban or "blackout period" on officeholder mass mailings and other communications at public expense preceding an election. The Board supports the Wilson and Feerick Commissions' recommendations generally and urges that an appropriate government agency be empowered to implement and enforce them.

### **Conclusion**

The establishment of an ambitious program of campaign finance reform in February 1988 was an act of political courage and vision by the Mayor and the City Council. In shaping the structure of the new Campaign Finance Act, its principal architects had limited data to guide their calculations, which is why the Act wisely called for a careful review of the actual experience of the Program after the completion of the election campaign.

This Report provides the data and analyses that were developed as a result of that review and after broad consultation. In the 1989 elections, the Program proved to be a sound

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one, but it would be unrealistic to expect that the far-reaching reforms implicit in the Program could be fully achieved in its first implementation. In any case, at the end of the campaign the Program had already become an accepted feature of the New York City political landscape.

The recommendations for changes in the Program contained in this Report are based on careful analysis of the experience of the 1989 election campaign. The Campaign Finance Board is confident that the political leaders of the City will build on the foundation they so bravely established in 1988 and develop an even more effective set of electoral reforms that will encourage the citizens of New York to participate more fully in the political life of their City.

Joseph A. O'Hare, S.J.  
Chairman

James I. Lewis  
Robert B. McKay  
Joseph Messina  
Sonia Sotomayor

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### NOTES

<sup>1</sup> For example, the Board recommends changes in the Act to clarify that (i) candidates are free to undertake joint campaign activity with other candidates and that joint spending by candidates will not be considered a contribution by one campaign to the other if the benefit derived from the joint activity is proportional to the candidates' expenditures and (ii) all compliance costs are exempt from the Act's expenditure limits.