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## Chapter 9

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# Compliance and Enforcement

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**T**he Board's audit and legal staffs share responsibility for compliance and enforcement. In ensuring compliance with and enforcement of the campaign finance law and regulations, the Board's primary objectives are to **enforce the contribution and spending limits**, to **obtain disclosure** — to make sure that campaigns report information in an accurate and timely manner so that it can be made available to the public — and to **safeguard the distribution of public funds**. The Board discovers violations of the Act in various ways, including through reviews of information reported by campaign committees, through audits of committees' records conducted during and after the election, through investigations of complaints brought against committees by their opponents, and through other interested parties. The Board's enforcement powers include the ability to investigate complaints; seek penalties and withhold public funds; subpoena documents, records, and testimony; and institute civil lawsuits against candidates and campaigns. Criminal charges may be brought against individuals for violations of the Act and, as discussed below, criminal prosecutions have been concluded. Finally, the Board is authorized by statute to publicize violations of the Act.

### 1993 Enforcement Summary

As in the 1991 elections, the most common violation in 1993 was filing statements late or not at all. As of November 26, 1993, the Board had assessed civil penalties against 47 candidates for late or missing filings for the 1993 elections. Five thousand three hundred and twenty-five dollars has been paid for these kinds of violations, often through deductions from public funds payments.

The Board places emphasis on late filing because lateness severely compromises the Board's ability to fulfill its Charter-mandated disclosure functions. The Board reacts quickly to non-filers, notifying candidates that they must file, assessing a penalty for each additional day that the filing is late, and suspending payment while filings are outstanding. Although some candidates have found this burdensome, these steps provide a significant inducement to the candidates to file in a timely fashion. The Board is then able to review the disclosure information and detect any other potential compliance problems, the campaign may resolve outstanding compliance issues and receive any public funds for which it is eligible, and the public has access to the candidates' financial data. The Board does have procedures for considering mitigating factors in order to avoid unreasonable penalty assessments. Overall, this strategy was extraordinarily successful during the 1993 elections; virtually all required filings were received by the Board.

### **Complaints and Board Determinations**

During the 1993 elections, the Board received 13 formal complaints, of which nine were generated by the mayoral race — five against Dinkins by Giuliani and four against Giuliani by Dinkins. All the unresolved mayoral complaints were withdrawn after the election. (See Appendix J.) Many informal complaints were also received, which were generally resolved without the issuance of Board determinations.

**Party Spending.** One of the complaints by Giuliani claimed that expenditures made by the New York State Democratic Committee were not independent and should be counted against the Dinkins expenditure limit (see p. 46). The Dinkins campaign voluntarily absorbed those expenditures and, based upon the campaign's action, the Board dismissed the complaint as moot.

**Exceeding the Expenditure Limit.** Based on questions raised by a Board audit conducted during the campaign, the Board assessed its largest penalty ever — indeed, one of the largest assessed by any election law enforcement agency in the nation — \$320,000, against the Dinkins campaign for overspending during the primary election.

The Board investigated the unusually high amount of "exempt" expenditures claimed by the Dinkins campaign. Simultaneously, the Giuliani campaign also raised this issue with the Board. The Dinkins campaign had serious compliance problems during the 1989 elections, and it argued that Dinkins' "exempt" spending reflected the commitment of additional resources to ensure compliance during the 1993 elections. The Board found, however, that much of the questioned spending could not be supported by contemporaneous records. The campaign voluntarily reclassified the expenditures and recalculated the total subject to the expenditure limit, admitting it had exceeded the limit by \$160,000.

In determining the amount of the penalty, the Board took into account the fact that, as the campaign had not yet undergone a comprehensive audit, the Board was accepting an unaudited figure supplied by the Dinkins campaign. The Board doubled the \$160,000 sum (the penalty could have been up to three times the amount exceeding the limit), and withheld \$320,000 from a public funds payment otherwise due to the committee before the general election. Further action may or may not be taken against the campaign, pending completion of its final audit. *The New York Times* noted, in reference to this penalty and to other actions taken by the Board, that "on the whole the system worked remarkably well" and that "[t]he positive experience is a tribute to the Campaign Finance Board charged with enforcing the rules."<sup>1</sup>

### **Criminal Matters**

**Arnold Biegen/Parker, Chapin, Flattau & Klimpl.** Some highly-publicized charges against the Dinkins 1989 campaign arose out of the Manhattan District Attorney's investigation of the Dinkins campaign's finance chairman and treasurer, Arnold Biegen, who

embezzled over \$1 million from the campaign and from an elderly widow whose estate he managed.

Arnold Biegen pleaded guilty in February, 1992 to stealing \$158,000 from Dinkins' campaign and \$850,000 from the widow. During the investigation, Biegen made a number of charges against the Dinkins campaign, alleging improprieties in the way contributions were collected and recorded. According to an article in *The New York Times*, "Prosecutors had said that Mr. Biegen tried to get a lighter sentence by 'telling tales about others' that could not be corroborated."<sup>2</sup> Although various accusations against those involved in the campaign were investigated and dismissed, the investigation did lead to the discovery of illegal contributions from the Manhattan law firm of Parker, Chapin, Flattau & Klimpl, at which Biegen was a partner.

In June 1992, the firm admitted that it made illegal contributions to the 1989 Dinkins campaign. It gave nine partners funds totalling \$22,000 to contribute to the Dinkins campaign in the names of the partners and then reimbursed them for the tax consequences of this income. In a settlement with the Manhattan District Attorney's office, the law firm admitted the violation and agreed to pay the City \$150,000, including \$4,500 in matching claims that had been submitted by the campaign for the illegal contributions.

**Ann English.** In the Spring of 1993, the Ann English '91 Committee, which was the principal committee of Ann English, a 1991 candidate for Brooklyn's 38th Council district, pleaded guilty to criminal charges relating to her campaign's finances. The committee had reported rent checks received from tenants in residential buildings in which English had an ownership interest as matchable contributions under the Campaign Finance Program. As the bonus provisions had been applied in the 38th district, these "contributions" enabled the English campaign to collect matching funds at the two-for-one rate. In a plea arrangement, the committee agreed to repay all of the almost-\$35,000 in matching funds disbursed to the campaign — considerably more than the amount of illegal contributions, which totalled \$1,900. The Board followed up the felony conviction by filing a lawsuit against English, her treasurers, and her campaign committee seeking to impose civil penalties for the violations. Ann English paid \$8,000 of her personal funds in settlement of this civil suit.

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NOTES

<sup>1</sup> *The New York Times*, "The Campaign Finance Board, in Action," 14.

<sup>2</sup> Ronald Sullivan, "Dinkins Former Aide Is Sentenced for Embezzlement," *The New York Times*, November 15, 1992, B24.



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## Chapter 10

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# The 1993 New York City

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## Voter Guide: Read It, Use It, Vote!

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**T**he 1993 New York City Voter Guide proved to be an invaluable source of information for a wider, more diverse group of New York City voters than ever before. For the first time, Chinese-speaking voters living in Brooklyn, Manhattan, and Queens could read about local candidates and ballot proposals and get general voting information in their own language, as required by federal law. They joined the more than two million English- and Spanish-speaking voters who have come to rely on the Voter Guide since it was first published for the 1989 municipal elections. "The Campaign Finance Board's renowned Voter Guide remains one of the most effective means of providing voters with valuable nonpartisan information on the candidates and critical voting information," Ronald Hayduk, Coordinator of the Voter Assistance Commission, testified at the Board's December 1993 Public Hearings.<sup>1</sup>

All candidates in the highly contested citywide races for mayor, public advocate, and comptroller submitted statements and appeared in the Guide, as did 132 of 175 borough president and Council candidates, making it a comprehensive catalogue of candidates and issues. The Board delayed production of the general election Voter Guide to include the winner of the runoff primary election between then-incumbent Comptroller Elizabeth Holtzman and Alan Hevesi, fulfilling a commitment to providing timely and accurate election information.

### What's In The Voter Guide

The Voter Guide, which in the summer of 1992 was recognized as one of "10 Ideas That Work for a Better Democracy" by the Washington-based Center for Policy Alternatives, provides essential voter assistance information and candidate profiles to voters. "It certainly gives me the opportunity to be an informed voter," New Yorker Sue Harlow wrote to the Board in August 1993.<sup>3</sup> Candidates have also come to recognize the Voter Guide as an important resource. It offers them exposure to a targeted audience at no cost,

**"It is offerings like [the Voter Guide] that encourage the democratic process in which I feel privileged to participate."  
— Adrian Arnold<sup>2</sup>**

**Fact Sheet 10.1  
THE VOTER GUIDE**

The Voter Guide includes a biography, photograph, and statement for each candidate for the five municipal offices of mayor, public advocate, comptroller, borough president, and City Council member who submits information for inclusion in the Guide; candidates need not be participants in the Campaign Finance Program to appear in the Guide. It also contains a map of each borough divided into Council districts. The Guide is mailed to every household in New York City having a registered voter and is also available at distribution sites established by the Campaign Finance Board throughout New York City. In 1993 the Campaign Finance Board produced 4.3 million Voter Guides for the primary and general elections combined. Of those produced, 3.8 million were mailed, and 450,000 were distributed throughout the five boroughs.

The Campaign Finance Board performs extensive "outreach" to potential candidates every election year to encourage them to submit statements to be included in the Voter Guide. The Board mails the forms needed to submit a statement for the Voter Guide to a large audience, which in 1993 included all New York City District Leaders, County Leaders, Community Boards, Police Precinct Community Councils, political clubs, good government groups, New York City State Assemblymembers, former candidates, incumbents, candidates mentioned in the media, and those who called the Board and identified themselves as potential candidates. The materials sent to these people emphasized the June 22, 1993 statement submission deadline for candidates seeking the Democratic, Republican, Conservative, Right-to-Life, and Liberal party lines. Independent party candidates had until August 10 to submit their statements.

Of the 185 candidates who submitted statements to the Campaign Finance Board, 155 appeared on the ballot and therefore appeared in the 1993 primary and the general election Voter Guides.

something many of the smaller campaigns do not receive from the press and cannot afford to buy. Bob Falk, Libertarian party candidate for public advocate, praised the Voter Guide at the Board's Public Hearings, testifying that "It provides about the only forum that is available to all candidates."<sup>4</sup>

In 1993, the general election Voter Guide included the text of state and City proposals that were on the ballot as well as general information and statements supporting and opposing the City proposals. The term limits ballot proposal and "pro"/"con" statements appeared in all editions of the general election Voter Guide. The two Staten Island secession ballot proposals and "pro"/"con" statements appeared only in the general election Staten Island Voter Guide. The Campaign Finance Board made extensive efforts to solicit "pro" and "con" statements about the two issues. The Board ran advertisements in newspapers, mailed postcards to community organizations, and sent letters soliciting statements to people who had commented publicly on the ballot measures. In 1989, when it published statements about the City Charter referendum on the ballot, the Board was not able to include all submitted statements because the number of respondents made this physically impossible. In 1993, however, all "pro" and "con" statements submitted to the Board were included in the Voter Guide. Commenting on the merits of the Voter Guide in a November 1993 letter to the Board, a voter, Philip Shaps, noted that "[the] inclusion of the four ballot proposals was . . . very helpful."<sup>5</sup> In fact, no criticism whatsoever has been leveled at the Guide's treatment of these controversial City ballot proposals — encouraging evidence that the public judged the Board's treatment of "pro" and "con" statements in the 1993 Voter Guide to be balanced.

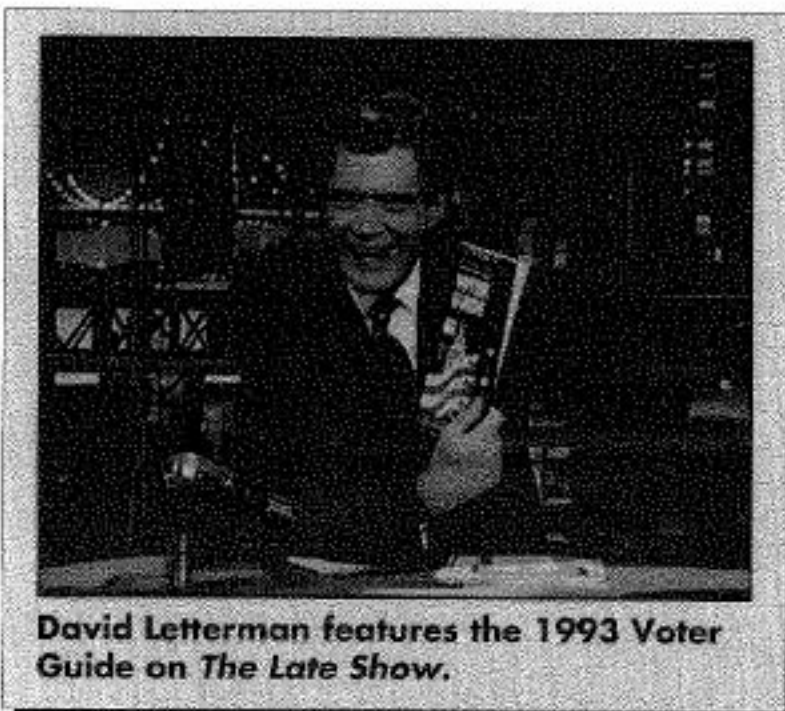
### **The Chinese-language Voter Guide**

A 1992 amendment to the Federal Voting Rights Act required that the Board make available in Chinese the same information that appears in the English/Spanish version of the Guide for the boroughs of Brooklyn, Manhattan, and Queens.<sup>6</sup> The Board produced a single Chinese-language Guide for each election that included all candidates in the boroughs of Brooklyn, Manhattan, and Queens. In a September 1993 letter to the Board, Tim Law, President of the Chinese American Voters Association of Brooklyn, stated that "[the] introduction of the first-published Chinese Voter Guide will help our community members learn and understand the different candidates' platforms of the various governmental offices in the forthcoming primary and general elections."<sup>7</sup>

### **Mailing and Distribution**

Candidates who submitted statements and appeared on the ballot were included in the primary and general election Voter Guides, which were sent to all households having registered voters in the City. Of the candidates who submitted statements, only those running in a primary appeared in the primary election Voter Guide. Only those households having a registered voter eligible to vote in a primary election received a primary election Guide.

As it has done in the past, in 1993 the Board supplemented its mailing by distributing copies of the Guide at different sites throughout the City, including the branches of the City's three public library systems, borough presidents' offices, and the YMCA. The Board also launched an advertising campaign to alert the public to the availability of the Guide. Posters, encouraging voters to "Read It, Use It, Vote!" appeared in English, Spanish, and Chinese



throughout the City's subway system, alerting the public to the distribution of the Voter Guides. Public service announcements aired on radio stations and on television.

Circulation of the Chinese-language edition of the Voter Guide presented the Board with a unique challenge. After consultation with local Chinese community leaders and the New York City Board of Elections, the Campaign Finance Board made an intensive distribution effort in Brooklyn, Manhattan, and Queens through Chinese community

groups and mailed the Chinese-language Voter Guide to certain sections of the boroughs. The Campaign Finance Board's mailing strategy was based on the Board of Elections' identification of election districts with high concentrations of Chinese voting age citizens, as indicated by the 1990 Census.

As it did for the English/Spanish Guide, the Board set up a network of distribution sites throughout New York City for the Chinese Guide. The Board devoted considerable effort to making certain that copies of the Guide were available in a sufficient number of different locations to ensure that it reached all Chinese-speaking voters in the three boroughs. Invaluable assistance provided by many community organizations made this wide-ranging distribution possible.<sup>8</sup> In addition, the Campaign Finance Board set up a Chinese-language telephone line to give callers information about where Chinese language Voter Guides were available. The message was given in three Chinese dialects: Mandarin, Cantonese, and Toisinese, as well as in English. A Chinese-language Voter Guide poster, appearing in the New York City subways, publicized the availability of the Voter Guide and instructed those interested in obtaining a copy to call the telephone line for more information about locations.

### **Work With Other Agencies**

Successful production and distribution of the Voter Guide requires cooperation with many other organizations, both public and private, throughout the City. The Board of Elections supplies the Campaign Finance Board with a computer tape of registered voters' addresses for mailing the Guide and gives important registration and voting as well as ballot

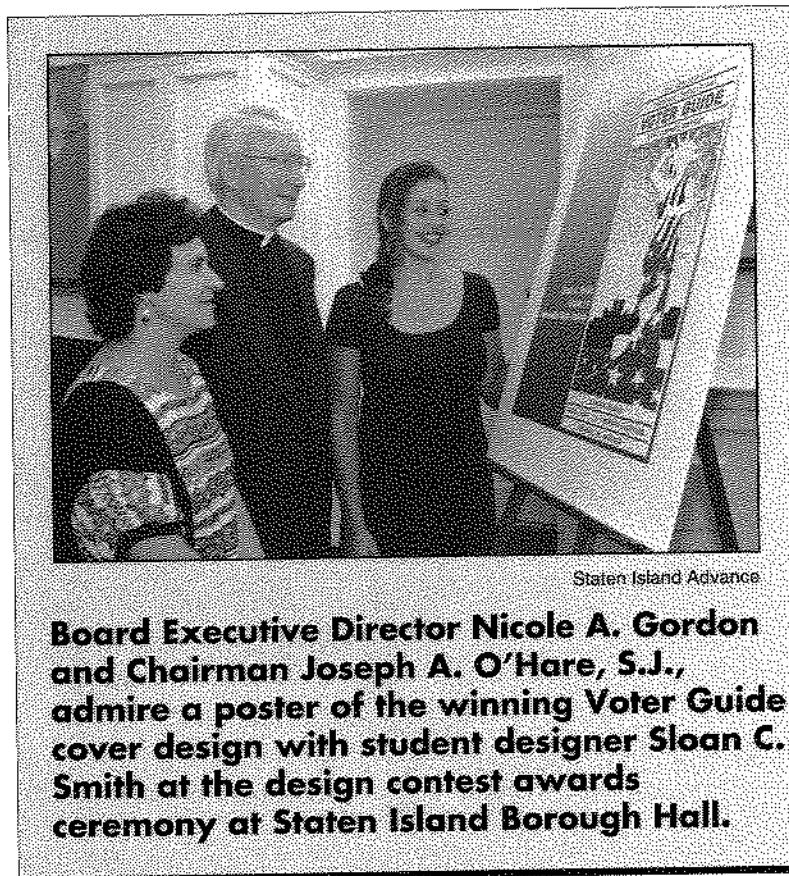
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status information necessary to produce an accurate Guide. The Office of Language Services in the Mayor's Office of Operations helped the Board develop Spanish- and Chinese-language glossaries and helped ensure that the translation of the Voter Guides was of the highest quality. The map appearing in the center of the 1993 Guide was supplied by the League of Women Voters. The Voter Guide was highlighted in the Voter Assistance Commission's informational brochure.

### **Voter Guide Cover Design Contest**

The Board will also publish a Guide for the special election to be held this fall to fill the vacancy in Staten Island's 51st Council district created by Council member Alfred Cerullo's departure to head the Department of Consumer Affairs. The Board held a contest open to area high school students to design the Guide's cover. The winning entry, submitted by Sloan C. Smith of Tottenville High School, will appear on the Guides distributed to the approximately 100,000 voters in the 51st district and on advertisements slated to run on Staten Island Rapid Transit Operating Authority ("SIRTOA") vehicles.



**Board Executive Director Nicole A. Gordon and Chairman Joseph A. O'Hare, S.J., admire a poster of the winning Voter Guide cover design with student designer Sloan C. Smith at the design contest awards ceremony at Staten Island Borough Hall.**

### **The Voter Guide as Model for a Debate Program**

In response to the significant expression of public opinion during the 1993 election in favor of government action to bring about debates among candidates seeking citywide office, the Board developed an innovative proposal based on its experience with both the Campaign Finance Program and the Voter Guide to encourage candidates to debate. The proposal would establish a voluntary Voter Guide Debate Program that citywide candidates could join by an opt-in deadline. This deadline would require candidates to commit publicly to participate in debates early in the campaign, before the field of opposing candidates is

known and before campaign strategy is set. The Voter Guide Debate Program would be run by Board-selected sponsors and would be open to all citywide candidates on the ballot regardless whether they participate in the Campaign Finance Program.<sup>9</sup>

### Conclusion

The Voter Guide gives all candidates, whether or not they participate in the Program, an opportunity to present their message to the voters. Like public disclosure of candidates' campaign finances, the Voter Guide is an important source for educating the electorate about municipal campaigns.

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### NOTES

- <sup>1</sup> *Campaign Finance Board 1993 Hearings*, at 206 (testimony of Ronald Hayduk).
- <sup>2</sup> Letter from Adrian Arnold to Nicole A. Gordon, Executive Director of the Campaign Finance Board, dated September 14, 1993, on file with the Campaign Finance Board.
- <sup>3</sup> Letter from Sue Harlow to the Campaign Finance Board, dated August 17, 1993, on file with the Campaign Finance Board.
- <sup>4</sup> *Campaign Finance Board 1993 Hearings*, at 240 (testimony of public advocate candidate Bob Falk).
- <sup>5</sup> Letter from Philip Shaps to Joseph A. O'Hare, Chairman of the Campaign Finance Board, dated November 1, 1993 on file with the Campaign Finance Board.
- <sup>6</sup> Translation of the Guide into Spanish is required by the Federal Voting Rights Act, 42 U.S.C. §1973 *et seq.*, and under the New York City Charter §1053.
- <sup>7</sup> Letter from Tim Law to Mara Neville, then-Director of Communications at the Campaign Finance Board, dated September 6, 1993, on file with the Campaign Finance Board.
- <sup>8</sup> The Brooklyn Chinese American Association, the Chinese Progressive Association, the Chinatown Voter Education Alliance, the Chinese Consolidated Benevolent Association, the Chinese-American Voters Association of Brooklyn, the Chinese-American Voter Association of Queens, and the Chinese newspaper *The China Press* assisted the Board. The Manhattan and Queens Borough Presidents' offices, the New York City Voter Assistance Commission, the YMCA of Greater New York, and the New York Public Interest Research Group also assisted the Board in distribution of the Chinese-language Voter Guide, as well as the English/Spanish versions of the Voter Guide.
- <sup>9</sup> The Board is currently soliciting reaction to this proposal and intends to consider all comments it receives carefully before deciding whether to make a formal proposal for rules that would provide for a Voter Guide Debate Program. See *The Debate Debate*, June 1994.

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# **PART IV**



## **Board Recommendations**



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# Board Recommendations

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The following recommendations are made on the basis of public hearings conducted by the Board, candidate surveys, informal comments from campaign treasurers and government reform advocates, and evaluations of data collected by the Board on the 1993 elections.

### I. Recommendations for Changes in the Program

In order to streamline and improve the Program, the Board proposes that the Campaign Finance Act be amended as set forth below. Recommendations that the Board made in 1990 and 1992, that have not yet been acted upon, and that are reiterated below, are noted with an asterisk (\*).

1. *Contribution Limits:*

a) *\*Reducing Undue Influence.* In determining the appropriate amount for contribution limits, the Board's objective has been to reduce the risk that large contributions could exercise undue influence, without undercutting participating candidates' ability to raise funds to wage competitive campaigns. Experience during the past three elections indicates that most contributions received by Program participants — especially at the City Council level — are well below the Act's limits. It is the Board's conclusion, therefore, that reducing the current contribution limits, while serving to diminish the reality and perception of undue influence created by high-dollar contributions, would not adversely affect participants' ability to wage competitive campaigns. The Board recommends lowering the current contribution limits as follows:

Office	1993 Contribution Limits	Current Limits <sup>A</sup>	Recommended Limits
Mayor:	\$6,500	\$7,700	\$5,000 <sup>B</sup>
Public Advocate:	\$6,500	\$7,700	\$5,000
Comptroller:	\$6,500	\$7,700	\$5,000
Borough President:	\$5,000	\$5,900	\$3,500
City Council:	\$3,000	\$3,550	\$2,000 <sup>B</sup>

<sup>A</sup> Pursuant to the Act, the limits have been adjusted to reflect changes in the Consumer Price Index.

<sup>B</sup> New recommendations.

Recognizing that public funds are a "cleaner source" of financing an electoral campaign, the Board recommends changing the contribution matching rate to a two-for-one rate up to \$500 for the primary and general elections combined, instead of the current rate of one-for-one up to \$1,000. Amounts over \$500 would not be matchable. This new matching rate would in all likelihood more than offset any losses caused by the lower contribution limits, while furthering the Program's goal of "democratizing" fund raising by providing financial incentives for candidates to collect smaller contributions.<sup>1</sup>

b) *Use of Candidates' Personal Funds.* During the 1993 elections there were several instances in which contributions and loans from candidates and their immediate families were substantial, particularly at the Council level.<sup>2</sup>

Given this reliance on personal funds and because such funding does not present as significant a risk of undue influence as funding from other sources does, both the current and proposed contribution limits should be relaxed for candidates themselves. Some limit is desirable, however, to prevent wealthy participants from having an unfair advantage and to avoid giving participants an incentive to funnel campaign contributions through their personal accounts. The Board recommends that this new limit be equal to three times the limit proposed by the Board for other contributors.

Office	Recommended New Limits on Candidates' Use of Personal Funds <sup>^</sup>
Mayor:	\$15,000
Public Advocate:	\$15,000
Comptroller:	\$15,000
Borough President:	\$10,500
City Council:	\$ 6,000

<sup>^</sup> Limit would apply for both the primary and general elections combined.

## 2. *Threshold:*

Given economic disparities within New York City, the current levels of the Program's threshold dollar amount may deny some serious candidates access to public funds (see pp. 52-55). Analysis of fund raising at the Council level in particular suggests that the threshold number of contributors may present a barrier to some campaigns otherwise able to meet the threshold dollar amount. Finally, contributions under \$10, although matchable once the threshold is met, cannot be claimed for either the resident count or the dollar amount components of the threshold. Experience suggests that prohibiting the use of under \$10 contributions can be a hardship for a participant who raises a considerable amount in contributions of this size.

To compensate for these disparities while preserving the threshold's purpose of preventing the distribution of funds to non-competitive campaigns and maintaining uniform

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standards for candidates running for a given office, the Board proposes the following restructuring of the threshold requirement:

a) *\*The Minimum Dollar Amount.* The Board recommends setting the threshold dollar amounts at the following levels:

Office	Current Threshold Amount	Proposed Threshold Amount
Mayor:	\$250,000	\$150,000
Public Advocate:	\$125,000	\$100,000
Comptroller:	\$125,000	\$100,000
Borough President:	\$ 10,000 - \$46,013	\$ 30,000
City Council	\$ 5,000	\$ 3,000 <sup>^</sup>

<sup>^</sup> New recommendation

b) *\*Number of Resident Contributors.* The Board recommends modifying the current district residency component to require Council candidates to raise contributions from 50 individual contributors in the borough(s) in which they are running, rather than in the Council district. This will enable City Council candidates to appeal to a wider audience for threshold contributions, while maintaining the requirement that they demonstrate sufficient local support.

c) *\*\$10 Requirement.* The Board recommends eliminating the \$10 requirement for the dollar amount component of the threshold, while retaining it for the resident number component. Because contributions under \$10 are ultimately matchable once the threshold is met, it is unreasonable to prohibit participants from applying these contributions toward meeting the threshold amount. On the other hand, maintaining the \$10 requirement for the residency component of the threshold provides a reasonable measure of candidates' serious local support. For example, if the requirement is kept for the resident number component, as the Board is recommending, City Council candidates would still have to raise a minimum of \$500 from 50 borough residents.

### 3. *Public Funds:*

a) *Financial Strength of Opponent.* In 1989 and again in 1993, there were some instances in which Program participants received public funds while facing weak opponents. This sparked criticism of the candidates and of the Program, which currently provides that any participating candidate facing an opponent on the ballot can qualify to receive public funds. Some believe that eligibility for public funds should be contingent upon whether at least one of a participant's opponents raises or spends a specific dollar amount. Yet, lack of funds does not always indicate that a candidate is not competitive. In the 1993 primary election, for example, mayoral candidate Roy Innis only spent \$130,000 to Dinkins' \$6.7 million, and still received 25 percent of the vote. Similarly, in the 41st Council district primary, Program participant Atchudta Barkr, who spent not quite \$5,000 to incumbent

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Enoch Williams' \$42,000, received 48 percent of the vote. The Board believes that the evaluation of a candidate's competitiveness is a political judgment best left to the voters, and notes that public criticism may effectively induce Program participants who face weak opponents not to take public funds.

b) *\*Increased Maximum Public Funds to Council Candidates.* The maximum amount of public funds City Council candidates can receive is lower than that for any other office, although candidates for City Council generally collect a higher percentage of matchable contributions than do candidates for other offices.

... the cap of two-to-one and \$40,000 should be increased ... to perhaps send a message ... that the campaign finance system must be taken seriously [and] that the person in the Program would be better funded. — Arnold Kriss, on behalf of the Jane Crotty campaign.<sup>5</sup>

The Board recommends that the current \$40,000 maximum available in public funds for Council candidates be increased to \$70,000, approximately one-third of the recommended \$200,000 spending limit discussed below. For the 1993 elections, it can be very roughly calculated that some \$80,000 in additional public funds would have been distributed to City Council candidates had the maximum amount available been increased to \$70,000.<sup>6</sup>

#### 4. *Spending:*

a) *\*Consolidate Separate Calendar Year Spending Limits.* Earlier this year, pursuant to the Act, the Board adjusted the expenditure limits to reflect changes in the Consumer Price Index and passed new rules providing for expenditure limits for expenditures made in the first two years of the four-year election cycle by participants in elections for the offices of mayor, public advocate, comptroller, and borough president.<sup>5</sup> In addition, all Program participants are subject to a third-year limit, and to separate primary and general election limits in the election year.

#### Current Spending Limits

Limits	Mayor	Public Advocate & Comptroller	Borough President	City Council
1st/2d Year (new): <sup>A</sup>	\$ 90,000	\$ 90,000	\$ 60,000	N/A
3rd Year: <sup>A</sup>	\$ 180,000	\$ 180,000	\$ 120,000	\$ 40,000
Primary Election: <sup>B</sup>	<u>\$4,732,000</u>	<u>\$2,958,000</u>	<u>\$1,065,000</u>	<u>\$124,000</u>
Total Primary Limit: <sup>C</sup>	\$5,002,000	\$3,228,000	\$1,245,000	\$164,000
General Election: <sup>B</sup>	\$4,732,000	\$2,958,000	\$1,065,000	\$124,000

<sup>A</sup> Spending in excess of these amounts does not violate the Act or Board rules but will be charged against the first limit applicable in the year of the election.

<sup>B</sup> These limits have been adjusted to reflect changes in the Consumer Price Index.

<sup>C</sup> If a primary election expenditure limit is not applicable, the amounts set forth in this row will be applicable for the general election.

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The Board recommends simplifying the Program's spending limits by consolidating the Program's various calendar-year expenditure limits into two limits, one for the primary election and the other for the general election. The two spending limits would cover the entire four-year election cycle: the primary election spending limit would cover the first three years of the election and the period up until the primary, and the general election spending limit would cover the day after the primary election through the day of the general election. The primary election limit would apply to spending during the primary campaign period by each candidate who joins the Program, even if there is in fact no primary election in any party for the office he or she seeks. This change would simplify the Program and would put incumbents and challengers on a more equal footing with respect to spending limits. The amounts proposed for the consolidated limits are set forth in section c below.

b) *Exempt expenditures.* Exempt expenditure claims for compliance costs and constituent services are hard to verify and open to abuse. Variations across offices and between campaigns make it difficult to establish what constitutes "reasonable" exempt spending, as opposed to false and inflated claims in violation of the Act. Therefore, the Board recommends eliminating all categories of exempt expenditures, other than expenditures for elections not covered by the Campaign Finance Act and for legal fees (so as not to encourage frivolous legal action intended to drain an opponent's resources). The Board's recommended spending limits, presented below, are intended to account for the elimination of most exempt expenditure categories.

c) *Spending Limits.* The Board found that candidates for the offices of public advocate, comptroller, and borough president spent substantially less than their expenditure limits would have allowed for the 1993 elections. In contrast, the spending of several candidates for the offices of mayor and City Council member came very close to the limits. Therefore, taking into consideration changes in the Consumer Price Index, consolidation of limits, and the elimination of most exempt expenditure categories, the Board recommends setting new expenditure limits, as follows:

Office	Recommended Limits per election
Mayor:	\$6,000,000
Public Advocate:	\$2,500,000
Comptroller:	\$2,500,000
Borough President:	\$ 900,000
City Council:	\$ 200,000 <sup>A</sup>

<sup>A</sup> Although candidates in the typical Council race rarely spend at this level, this single limit must accommodate 51 districts with varying characteristics, including those with unusual situations that precipitate high spending.

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5. "Bonus":

a) *\*Increased Rewards.* In *Windows of Opportunity*, the Board recommended increasing bonuses for citywide and boroughwide candidates to a three-to-one matching funds payment rate up to three-quarters of the spending limit for contributions up to \$500. For Council candidates, however, the Board's review of the 1991 elections for City Council indicated that the current bonus matching rate of two-for-one up to the maximum amount of public funds (\$40,000, less than one-half of the spending limit) was sufficient for City Council candidates and should be retained.

During the 1993 elections, by contrast, there were seven City Council races in which the two-for-one matching rate was triggered — four races in the primary and three in the general election. In none of the races did public funds payments bring the participants close to the amount of funds raised and spent by non-participating opponents.<sup>6</sup>

In light of this experience, the Board proposes that bonuses for citywide, boroughwide, and Council candidates all be increased to a three-for-one matching rate for contributions up to \$500. As stated in *Windows of Opportunity*, this bonus should be available up to three-quarters of the spending limit for citywide and boroughwide candidates. The Board believes, however, that its proposed maximum payment of \$70,000 in Council races in non-bonus situations would be sufficient in this context as well.

Office	Recommended Maximum Public Funds per election
Mayor:	\$4,500,000
Public Advocate:	\$1,875,000
Comptroller:	\$1,875,000
Borough President:	\$ 675,000
City Council:	\$ 70,000

This change would encourage participation in the Program and would give participants the added financial resources needed to compete against high-spending non-participants. Had this recommendation been in effect for the 1993 elections, it can be very roughly calculated that some \$80,000 more in public matching funds would have been distributed.<sup>7</sup>

b) *Addressing Extraordinary Spending by Non-Participants.* Evidence indicates that in situations in which non-participant spending reaches extremely high levels — such as the race in the 4th City Council district — the bonus for participants as currently implemented has not offset the extremely unfair financial advantage enjoyed by candidates with seemingly unlimited private resources. While money is not the sole determinant of the outcome of elections, gross disparities in spending can influence the results of races as well as feed public perceptions of unfairness. The Board recommends establishing an additional bonus mechanism, whereby extraordinary fund raising or spending by a non-participant above a higher trigger would entitle participants to receive additional funds. This trigger would be

three times the maximum public funds payment.<sup>8</sup> When a non-participant raises or spends more than this higher trigger, opposing participants would become eligible to receive matching funds at a four-to-one payment rate for contributions up to \$500, up to a total amount that is two times the maximum public funds payment.

Office	If a non-participant raises or spends more than...	...participants become eligible to receive matching funds at a four-to-one rate, up to:
Mayor:	\$ 9,000,000	\$ 6,000,000
Public Advocate:	\$ 3,750,000	\$ 2,500,000
Comptroller:	\$ 3,750,000	\$ 2,500,000
Borough President:	\$ 1,350,000	\$ 900,000
City Council:	\$ 210,000	\$ 140,000

While these bonus maximums are higher, analysis suggests that additional outlays from the Public Fund may be offset by the fact that a more effective bonus would encourage more candidates to opt into the Program, and greater Program participation would diminish potential bonus outlays from the Public Fund. Had this recommendation been in effect for the 1993 elections, it can be roughly estimated that about \$120,000 more in public matching funds would have been distributed.<sup>9</sup>

6. *Deadline for Joining the Program:*

At the Board's public hearings, non-participant Howard Lasher testified that he did not join the Campaign Finance Program because the opt-in date was too early.<sup>10</sup> In May 1994, the Board adopted new rules allowing potential candidates to file contemporaneous financial disclosure statements with the Board during the first, second, and third years of the four-year election cycle, instead of reporting all the financial activity during that period in one disclosure statement due June 1 of the election year. With contemporaneous disclosure, the Board would have the additional administrative flexibility to accommodate a later opt-in date. In June 1994, the City Council passed legislation (Int. No. 387) that would have limited the Board's ability to make these contemporaneous filings a condition for matching contributions received early in the election cycle. The Board urged the Mayor to veto this bill. In July 1994, the Council withdrew Int. No. 387 and a new bill (Int. No. 408) was introduced by Council member Mary Pinkett at the request of the Mayor. The new bill would confirm that contemporaneous disclosure is required in order to preserve matchable contribution claims for contributions received during the first three years of the election cycle by prospective candidates for mayor, public advocate, comptroller, and borough president. The bill would also authorize the Board to provide an optional program of contemporaneous disclosure for prospective candidates for City Council.

The Board supports Int. No. 408. City Council action on this bill was pending as this report went to press. Should large numbers of prospective Council candidates take advantage of an optional contemporaneous filing program, the Board may be in a position at a

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## Chapter 11

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later date to recommend changing the opt-in deadline.

\*The Board recommends that the deadline for joining the Program not be fixed by law, but that the law be amended to allow the Board to set the deadline by rule. This would increase the flexibility for unpredictable situations such as a state law change in the date of the primary and would permit the Board to move the opt-in deadline gradually as it becomes administratively feasible to do so.

The Act currently provides a later opt-in date for candidates named solely in an independent petition or certificate of substitution. Thus, these candidates have the strategic advantage of “surveying the field” to see which candidates filing designating petitions have joined the Program before having to decide whether to join themselves. The Board believes a fairer approach would be to subject all prospective candidates to the same deadline, regardless of the manner in which they seek nomination or election, with one exception: an additional seven-day opt-in period should apply in extraordinary circumstances, such as the resignation or removal of an officeholder seeking re-election or the death of any candidate seeking the office.

For primary and general elections held to fill a vacancy after a special election, the opt-in deadline should not be any earlier than 30 days after the special election, rather than the too brief seven-day period currently provided.

### 7. *Disclosure:*

As noted on p. 127, in May 1994, the Board adopted new rules that make the filing of contemporaneous disclosure statements by prospective participants during the first three years of the election cycle a condition for claiming matchable contributions for funds raised in that time period. Full and contemporaneous disclosure of the comprehensive campaign finance information required by the Act is essential for the Board to evaluate fully the validity of matchable contribution claims. In addition, the non-contemporaneous disclosure statement due on June 1 in the election year, which may include financial transactions that are more than three years old, has proven to be an extremely cumbersome task for candidates and their committees, and for the Board as well.

The new rules would allow prospective candidates’ authorized committees to file semi-annual disclosure statements with the Campaign Finance Board, at the same time as the current Board of Elections filing requirements, before the candidates join the Program. Candidates who join the Program would not have been in violation for failure to make these filings, but they could not subsequently assert “stale” claims for public matching funds in a non-contemporaneous disclosure statement. As discussed above, legislation is pending that would confirm the applicability of these rules to prospective candidates for mayor, public advocate, comptroller, and borough president, and authorize an optional contemporaneous disclosure program for prospective candidates for City Council.

*\*Separate Committee for Covered Elections.* In order to reduce the possibility that

**Fact Sheet 11.1**  
**ENACTMENT AND IMPLEMENTATION OF RECOMMENDATIONS**  
**MADE BY THE BOARD IN PREVIOUS YEARS**

In its reports on the 1989 and 1991 elections, *Dollars and Disclosure* (September 1990) and *Windows of Opportunity* (July 1992), the Board made many recommendations for Program changes that have since been adopted as amendments to the Campaign Finance Act, new Board rules, or revised administrative procedures. Nearly all these changes were proposed and implemented in order to simplify the Program's requirements and to provide greater rewards to participants.

The following Board recommendations made in *Dollars and Disclosure* were adopted and first implemented in the 1991 elections:

- Contribution limits now apply on a "per campaign," not a "per election," basis.
- Expenditure limits are no longer complicated by a separate allowance for fund-raising costs.
- The opt-in deadline is April 30, not January 1 of the election year, so that candidates have more time to decide whether to participate in the Program.
- Contributions raised to meet the threshold are matchable once the threshold is met.
- For City Council candidates, the threshold is reduced from \$7,500 to \$5,000.
- The cap on the maximum amount matchable applies to individuals, not households.
- Contributions that are given to pay for an item of significant and enduring value or that are induced by a drawing for prizes, such as a raffle, are not matchable.
- The value of goods or services received incidental to contributions, such as the cost of a meal at a fund-raising event, are not deducted from matchable contributions.
- Contributions of less than \$10 are matchable.
- Certain restrictions on the use of public funds are lifted, others are clarified.
- Contributions from a single contributor totalling \$99 or less need not be itemized unless claimed as matchable contributions. Contributor employer information (employer name, business address, occupation) need not be gathered or disclosed for these small contributions.
- The filing of a disclosure statement may be deferred because of minimal financial activity.
- Contributions and other receipts must be deposited within 10 business days after receipt.

These recommendations made in *Windows of Opportunity* were implemented in the 1993 elections:

- Copies of Campaign Finance Board disclosure schedules may be submitted to the Board of Elections in lieu of corresponding Board of Elections schedules.
- The Board developed and now provides computer software (C-SMART®) which simplifies recordkeeping and reporting and enables electronic filing of disclosure data.
- Participating candidates are no longer required to keep receipts journals.
- Administrative procedures for bonus determinations are revised to ensure that all parties are fully and fairly heard.
- Board rules are clarified to require that all filings be up-to-date and disclosure statements delivered to the Board by the filing deadline in order for the Board to process public funds payments within four business days after the filing is due.
- For cash contributions, participants must get and keep cards signed by the contributors.

contributions in excess of the Act's limits will be used illegally, the Board recommends requiring that participants establish separate committees for elections covered by the Program's requirements and those that are not. Furthermore, to simplify and clarify public disclosure, the Board recommends that participants not be permitted to authorize more than one committee for elections covered by the Program.

*\*Intermediaries.* The Board recommends changing the current definition of "intermediary" to include not only individuals or entities who deliver contributions to a candidate, but also those who successfully solicit contributions for them, excluding professional fund raisers and hosts of small house parties having expenses of \$500 or less.

8. *\*Transition and Inaugural Expenses:*

Contributions to and expenditures by committees established for transition or inaugural purposes are not subject to any limit under the Program or State law.

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.<sup>11</sup> 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. Alternatively, a local law should be enacted regulating the private financing of transition and inaugural activities that would require the disclosure of contributions and spending, establish contribution limits, and prohibit the use of political committees for these purposes.

9. *\*Administrative Penalties:*

To expedite enforcement of the Campaign Finance Act and avoid costly litigation for both candidates and the Board, the Act should be amended to give the Board the direct power to impose administrative penalties for violations.

## **II. Recommendations for Changes in State Law**

The Board's experience over the past three elections demonstrates that there are dimensions of reform of City campaign financing that cannot be fully achieved without amendments to current state law. In 1992, the Board urged the State Legislature to enhance public disclosure requirements and institute contribution limits at the amounts set by the New York City Campaign Finance Act for all New York City candidates running for the offices of mayor, public advocate, comptroller, and borough president, regardless whether they choose to join the Program. Instead, New York State enacted legislation in May 1992 that lowered contribution limits for citywide candidates to \$12,000 for the primary and \$25,000 for the general election, for a total of \$37,000 per campaign. These limits will first go into effect for the 1997 elections.

The Board's proposed State legislation has been introduced in the Assembly and has passed that house three times: in January 1993, as part of an omnibus election law reform

bill, A.1; in May 1993, as A.7739 and A.7740-A; and, in January 1994, again in an omnibus bill, A.1-A. These bills have not been introduced in the State Senate. The Board now proposes further enhancements to the two bills, recommending that state law be amended as follows:

1. *Contribution Limits:*

The experience in the 1989, 1991, and 1993 City elections made plain that candidates for local office in New York City can run effective and successful campaigns within the contribution limits prescribed by the Campaign Finance Act. Meanwhile, large contributions permitted under State election law needlessly enhance the reality or appearance of undue influence and distort the competitive balance among opposing candidates, giving an inappropriate edge to those who decline to abide by the Program's stricter limits. It is the Board's position that the same contribution limits should apply to all candidates seeking the same office, regardless whether they participate in the Program.

The Board recommends that State law be amended to require all candidates running for the offices of mayor, public advocate, comptroller, borough president, and City Council member to abide by the contribution limits set by the Campaign Finance Act. The proposed bill would subject candidates for these offices who do not join the Program to the same contribution limits that apply to those candidates who do join. The Act's contribution limits should also apply to contributions received by every political committee that works directly or indirectly to aid the nomination or election of a candidate for one of these offices.

2. *Disclosure Repository:*

It is critical that all candidates seeking the same offices be subject to the same disclosure requirements. Full public accountability and fair competition for office cannot be achieved when candidates and the political committees that support them are permitted to choose, as a matter of political strategy, whether they will be subject to a disclosure regimen that is less comprehensive and effective than that which applies to their opponents.

Thus, the Board recommends that all candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member, regardless whether they join the Program, be required to submit disclosure statements that contain all the information required by the Program. In this way the public will get comprehensive and comparable disclosure from all candidates seeking these offices.

The Board also recommends amending State law to set up a five-year experiment to make the Board the computerized clearinghouse for all campaign finance information currently required to be filed by candidates for local public office or party position in New York City and the political committees that support them. Computerization of this information would thus be achieved relatively quickly, through the use of existing computer hardware, instead of through the creation of new, expensive, and unproven computer systems. The entry of campaign finance information into CFIS, the Board's database, will greatly facilitate

public scrutiny of the information disclosed.

3. *Surplus Funds:*

To lessen the unfair competitive advantage enjoyed by candidates who have money remaining from a previous election, the Board recommends prohibiting candidates and their committees by State law from using surplus funds in future elections. The Board also recommends clarifying the purposes for which surplus funds may be used.

### **III. Issues under Consideration**

The Campaign Finance Board has made and will make additional recommendations for strengthening the Program, based on further analysis of the 1993 municipal elections. The Board recently issued *The Debate Debate* (June 1994), a report that discusses the issue of linking mandatory debates to campaign finance reform. Although the Board recognizes both the importance of promoting debates in the electoral process and the valid concerns voiced at its 1989, 1991, and 1993 hearings by those who support requiring Program participants to engage in mandatory debates, it questions the wisdom of linking a debate requirement to the receipt of public matching funds. The Board also is concerned that its involvement in the administration and enforcement of a debate requirement might interfere with its ability to appear nonpartisan and objective. The Board is seeking comment on a recommendation to amend its Voter Guide rules to set up an opt-in procedure for all citywide candidates, whether or not they participate in the Campaign Finance Program, to commit to take part in nonpartisan debates run by Board-selected sponsors.

The Board currently is studying issues related to political party spending, independent expenditures (including ways to protect participants, perhaps by disbursing more funds to the targets of such expenditures), joint expenditures by participating candidates, and intermediaries and will issue reports and make recommendations as appropriate.

The Board also is reviewing and may in the future address, among other issues, Voter Guide coverage of additional offices, facilitating candidate access to broadcast media, lobbyist disclosure, transfers, ballot access reform, post-election loans to finance an election recount, flat grants for rerun and runoff elections, the deadline for candidates to submit Voter Guide statements, and whether the payor should be identified on campaign literature.

Another complex issue under the Board's review is that of officeholders' competitive advantage, an issue that 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 State Commission on Governmental Integrity (the "Feerick Commission"). Both commissions recommended a ban on the use of public resources and employees' on-the-job time for campaign activities and a ban or black-out period on officeholder mass mailings and other communications at public expense preceding an election. In *Dollars and Disclosure*, the Board expressed support for the Wilson and Feerick Commissions' recommendations, urging that



an appropriate government agency be empowered to implement and enforce them.

The Board also is considering how to modify rules governing enforcement and compliance to provide for clarified procedures for expedited treatment of matters arising during the election campaign, as well as the development of additional measures to discourage frivolous complaints.

#### **IV. Conclusion**

Since its inception, New York City's Campaign Finance Program has been instrumental in establishing a new standard in City politics of open, competitive elections. The Campaign Finance Program has evolved over its brief, five-year history into a significant factor in New York City elections.

Reform, however, is not achieved overnight. The Program's demonstrated success at the citywide level is tempered by the fundamental challenge to increase its effectiveness at the borough president and Council levels. The Campaign Finance Board is confident that the changes it has proposed at this point on the road to reform will further enhance the purposes of the Campaign Finance Act.

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

James I. Lewis  
Joseph Messina  
Vaughn C. Williams

**NOTES**

<sup>1</sup> Had these proposed lower contribution limits been applied during the 1993 elections, and had these contributions been matched at a rate of two-for-one up to \$500, participants would have gained in public funds payments more than twice what they would have lost in private funds due to the lower contribution limits. Candidates relying on smaller contributions from individuals would have benefited more than those relying on large contributions and contributions from organizations (which are not matchable under the Act). City Council candidates would have gained 26 percent more funds, while the mayoral candidates' gain would have amounted to less than three percent.

**Effect of Lower Contribution Limits and Higher Matching Rate  
on 1993 Candidates' Campaign Funds  
(rounded to the nearest \$1,000)**

Office Sought	Reduction in private funds due to lower contribution limit	Additional Funds due to higher matching rate	Net Gain	% Gain
Mayor:	\$1,025,000	\$1,481,000	\$ 455,000	2.61
Public Advocate:	\$ 43,000	\$ 383,000	\$ 340,000	12.05
Comptroller:	\$ 283,000	\$ 294,000	\$ 11,000	0.23
Borough President:	\$ 65,000	\$ 292,000	\$ 228,000	12.02
City Council:	\$ 99,000	\$ 991,000	\$ 894,000	26.01
Total	\$1,515,000	\$3,441,000	\$1,928,000	6.33

<sup>2</sup> Although aggregate loans, contributions, and advances made by Program participants to their own campaigns were, generally, well under the Board's contribution limits, notable exceptions existed. For example, the combination of loans, contributions, and advances made by one candidate for the office of public advocate to his own campaign amounted to more than three times the contribution limit for that office, and several City Council candidates loaned and contributed almost five times the contribution limit to their campaigns. **Note:** Data were aggregated by the candidate's last name, and may therefore be over-inclusive.

<sup>3</sup> *Campaign Finance Board 1993 Hearings*, at 59-60 (testimony of Arnold Kriss, City Council candidate Jane Crotty's campaign manager).

<sup>4</sup> Based on a projection from data for the 1993 elections.

<sup>5</sup> The Board has stated its intent to propose rules extending the spending limits to candidates for the City Council after a record has been developed on first- and second-year spending for Council races under the Campaign Finance Act.

<sup>6</sup> See Chapter 7 for a detailed account of these races.

<sup>7</sup> Based on a projection from data for the 1993 elections. No candidate at the citywide level, where the potential exposure is greatest for substantial distributions from the Fund, has ever become eligible for the maximum amount of public funds available.

<sup>8</sup> The maximum public funds payment that candidates for the offices of mayor, public advocate, comptroller, and borough president can receive is equal to half the applicable expenditure limit; the recommended

expenditure limits are set forth on p. 125. The recommended maximum public funds payment to Council candidates is \$70,000, approximately one-third of the recommended expenditure limit.

<sup>9</sup> Based on a projection from data for the 1993 elections. *See also* note 7, above.

<sup>10</sup> *Campaign Finance Board 1993 Hearings*, at 97-98 (testimony of Council member-elect Howard Lasher, 47th district).

<sup>11</sup> The two transition and inaugural committees established by Rudolph Giuliani before the November 1993 election voluntarily limited contributions to the \$6,500 limit applicable under the Program to campaign committees. About 450 donors contributed a total of \$1.3 million to these committees. The average contribution was about \$2,000, and about 80 contributors gave at the \$6,500 limit. Approximately one-third of the contributors had also given money to the Giuliani campaign during the election. Giuliani's transition and inaugural committees spent a combined total of \$1.1 million, the bulk of which was used to pay the salaries of the committees' staff (about \$430,000).

In 1989, the political committee set up by David Dinkins for transition and inaugural fund raising imposed limits on donations of \$10,000 per individual and corporation, and \$25,000 per partnership, and filed reports with the City Board of Elections in order to disclose its finances. Dinkins' transition and inaugural committee raised about \$303,000, as reported to the City Board of Elections as of July 11, 1990.

