

**On the Road  
to Reform:  
Campaign Finance in the  
1993 New York City Elections**

**Executive Summary**



**NEW YORK CITY  
CAMPAIGN FINANCE BOARD**



**September 1994**

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## **Preface**

A detailed review of the New York City Campaign Finance Program and the 1993 elections is presented in *On the Road to Reform: Campaign Finance in the 1993 New York City Elections*, a report prepared by the New York City Campaign Finance Board and submitted to the Mayor and the City Council in accordance with Section 3-713 of the Campaign Finance Act. The full report can be obtained from the New York City Campaign Finance Board, 40 Rector Street, New York, New York 10006, (212) 306-7100.

This Executive Summary contains highlights of that report and includes the recommendations made by the Board for improvements in the Campaign Finance Program and State law governing campaign financing.





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## FOREWORD

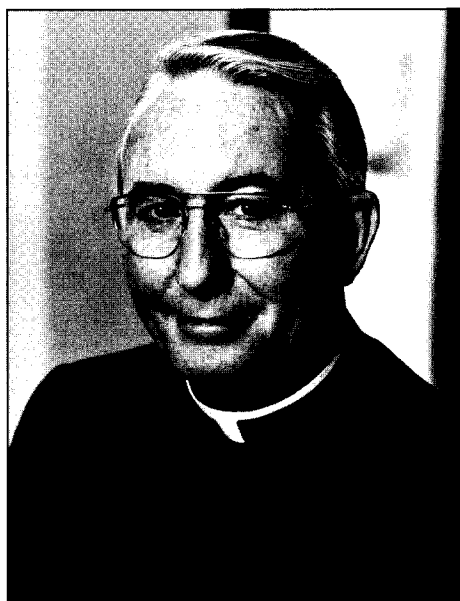
It has been six years and three municipal elections since the Campaign Finance Program was enacted into law in February 1988. The Campaign Finance Board's comprehensive review of the 1993 Campaign (of which this is an Executive Summary), entitled *On the Road to Reform: Campaign Finance in the 1993 New York City Elections*, is the third such report published by the Board. Given this history, I would like to use the brief space this foreword provides to offer two reflections on the development of the Campaign Finance Board as an institution in the political life of New York City.

It should be a source of satisfaction to all New Yorkers, and especially the architects of the 1988 legislation, that the Campaign Finance Program has been, by and large, a success, recognized as such nationally as well as locally. There are many sources of this success, of course, but I would like to single out two elements of the original Campaign Finance Act and City Charter provisions that have been critical to the development of the Program: first, the requirement that the Board publish reports like this one; and second, the nonpartisan manner in which appointments to the Board are to be made.

The Board is mandated by law to review the experience of each election campaign, assess the impact that the Campaign Finance Program had on the campaign, and make recommendations for changes in the Program. In pursuit of this mandate, the Board has not only solicited reactions from all those who have participated in the Program but has also held public hearings after each campaign, at which candidates, campaign officials, and other interested parties have offered testimony on their experience of the Program and their recommendations for change.

Not all of the recommendations proposed in our two previous reports received universal support and were enacted into law. While this has been a disappointment, it has not been a surprise. The Board and its staff make no claim to omniscience, and honest disagreement with our recommendations is understandable.

What is surprising and less understandable, perhaps, is the fact that our recommendations, on occasion, have also been resented as a usurpation of legislative prerogatives. This is most unfortunate. The mandate to review and recommend is a provision of the law that the Board and its staff have been asked to implement. It is a wise provision, and the Program has been simplified and made more effective as a result. In particular, the education of the voting public has been enhanced by the development of disclosure requirements.



**Joseph A. O'Hare, S.J.,  
Chairman of the New York City  
Campaign Finance Board**

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It is our intention to continue to discharge our responsibility to review and recommend, as the law requires, and it is in this spirit that the present Report reviews the road to reform in the 1993 New York City elections.

A critical feature of the New York City Campaign Finance Program has been the strictly nonpartisan culture that has characterized the Board's deliberations and decisions over the past six years. Here, too, the wisdom of the legislative architects of the Program has been confirmed. While the Mayor and the Speaker of the City Council each appoints two members of the Board, they cannot make two appointments from the same party. Further, the City Charter requires that the Board conduct all its activities in a "strictly nonpartisan manner." Many other campaign finance and election-related agencies in the United States are "bipartisan" bodies that find themselves deadlocked along party lines or hesitant to act because they view strong enforcement as a potential quagmire for their various constituencies.

The nonpartisan character of the New York City Campaign Finance Board is one of its most distinctive strengths, admired and even envied by those caught in the occupational paralysis of bipartisan commissions. Over the past six years, the members of the Board have often enough disagreed on their way to a decision. Not every vote has been unanimous. But the disagreement has never been along partisan lines, and this tradition is critical for the Board's credibility.

The Board is drawn more and more into resolving matters that receive press attention and can affect campaigns substantially, both because of the publicity attendant on charges of violations of the Campaign Finance Act, and because of the impact of civil penalties assessed by the Board when it concludes that violations have in fact occurred. It is inevitable that campaigns will pursue every available avenue to bring victory on election day; the Board, for its part, is mindful that its role is not to influence the outcome of elections as a partisan matter. The record of the 1993 elections shows, I believe, that the Board rose to its task of nonpartisan, effective enforcement of the Campaign Finance Act.

As the Campaign Finance Program moves into its seventh year and becomes a more deeply rooted institution of political life in New York City, these two features of the original legislation — the mandate to review and recommend and the nonpartisan character of the Board — are assets that should be protected and promoted.

Finally, on a more personal note, I want to thank the other members of the Board, James Lewis, Joseph Messina, and Vaughn Williams, for their counsel, support, and friendship, particularly during the events of early January 1994. On their behalf, I congratulate Nicole Gordon, our Executive Director, and her talented and dedicated staff for their extraordinary service to the citizens of New York City in the municipal elections of 1993.

Joseph A. O'Hare, S.J.  
Chairman  
New York City Campaign Finance Board

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## Part I

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# The Campaign Finance Program in the 1993 Elections

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**I**ntroduction. 1993 was an eventful year in New York City politics, characterized by intense competition among candidates for citywide office. Voters decided the fate of two referenda that will have a significant impact on the City's future — a new charter that might pave the way to Staten Island's independence, and term limits for the offices of mayor, public advocate, comptroller, borough president, and City Council member.

The elections presented the New York City Campaign Finance Board, the nonpartisan agency that administers what many consider to be the nation's model Campaign Finance Program, with many challenging issues. The Campaign Finance Board has, in its short life, already become a generally accepted part of the local political environment, and is now asked — often in the midst of heated campaigns — to decide issues that have far-reaching implications for the candidates, their races, and campaign finance reform in general. In 1993, the Board assessed the largest civil penalty against a campaign in its history and ruled on entirely new situations created by the presence of a cooperative "Fusion" ticket extending across party lines.

Increased Program participation was inspired (or demanded) by the press, the public, and the candidates themselves. Candidates adhered to contribution and expenditure limits and detailed disclosure of their campaign finances. The public demand for accountability translated into rejection of mayoral aspirant Andrew Stein's extravagant campaign that hurt his mayoral campaign and may have contributed to his withdrawal from politics altogether. New York City saw three citywide offices change hands in 1993, and ethics and campaign finance issues arguably played a role in each case.

Technological advances recently implemented by the Board — including the development of its own computer software for candidates, C-SMART<sup>®</sup>, and an emphasis on electronic filings — made possible the release of an unprecedented amount of disclosure information during the election. Both the local and national press made repeated use of data provided by the Board, and the unprecedented availability of these data significantly enhanced the discussion of many campaign issues.<sup>1</sup> Another aspect of the Board's mandate — publication of the nonpartisan Voter Guide, a valuable forum available to all candidates

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**Fact Sheet 1**  
**THE CAMPAIGN FINANCE PROGRAM AT A GLANCE (PART I)**

**The Campaign Finance Program has four primary components:**

**Contribution limits** are intended to reduce the influence of monied interests on elected officials and apply uniformly to individuals, corporations, unions, partnerships, political action committees, and the candidates themselves. Contributions subject to the limit include both monetary and "in-kind" contributions of goods and services. These limits encourage participants to seek smaller contributions from a greater number of people, making candidates more responsive to their constituents and less beholden to a few large contributors.

**Expenditure limits** are intended to curtail excessive campaign spending. The Campaign Finance Program's spending limits cover most campaign spending, although some spending is "exempt" from the limits, such as the costs of compliance with the Program's requirements. If a Program participant runs against a high-spending opponent who has not joined the Program — and thus is not bound by the same contribution or spending limits — that participant's spending limit is removed and he or she receives public matching funds at a faster rate.

**Matching Public Funds** are intended to increase the value of small contributions from individuals, to make candidates less dependent on large contributions, and to assist candidates who do not have access to monied sources, thus helping to make elections more competitive. To qualify for public financing, candidates must meet "threshold" requirements for the amount and number of contributions raised, abide by the Program's requirements, including contribution and spending limits, and face opposition on the ballot. The Program matches each dollar up to one thousand dollars that a New York City resident gives to a candidate; the amount each candidate can receive in matching funds is capped, depending on the office sought. When running against a well-financed non-participant, a participant receives public funds at an accelerated rate.

**Disclosure** gives a wealth of information to the public, makes possible the effective enforcement of the contribution and expenditure limits, and helps ensure the proper distribution of public funds. Participants must submit comprehensive disclosure statements about their campaigns' financial activity that are far more detailed than what State law requires.

## The Campaign Finance Program in the 1993 Election

### Fact Sheet 1 THE CAMPAIGN FINANCE PROGRAM AT A GLANCE (PART II)

Office	<i>In return for abiding by...</i>		<i>...and meeting...</i>		<i>...candidates could receive...</i>
	Contribution Limit*	Expenditure Limit**	Threshold Dollar Amount	No. of Contributors	Maximum Public Funds**
Mayor	\$ 6,500	\$ 4,000,000	\$ 250,000	1,000	\$ 2,000,000
Public Advocate	6,500	2,500,000	125,000	500	1,250,000
Comptroller	6,500	2,500,000	125,000	500	1,250,000
Borough President	5,000	900,000	10,000 - 46,013 <sup>†</sup>	100	450,000
City Council Member	3,000	105,000	5,000	50	40,000

In return for accepting limits on the amount they can raise and spend, candidates can become eligible to receive public matching funds for contributions from individual New York City residents. (Reflects contribution and spending limits, and requirements for public funds in effect for the 1993 elections.)

\*Primary and general elections combined.

\*\*Per election, in election year.

<sup>†</sup>For borough president, the threshold dollar amount is equal to the number of persons living in each borough (based on the 1990 census) multiplied by two cents, or ten thousand dollars, whichever is greater. The dollar amount for each borough is: Bronx, \$24,076; Brooklyn, \$46,013; Manhattan, \$29,751; Queens, \$39,032; and Staten Island, \$10,000.

whether or not they participate in the Program — was also considerably expanded in 1993. Pursuant to Federal law, a Chinese-language edition of the Guide was distributed to voters in Brooklyn, Manhattan, and Queens,<sup>2</sup> and the general election edition of the Guide contained a section on ballot proposals which included texts of the State and City proposals expected to be on the ballot, followed by a plain language description of the City proposals and statements supporting and opposing each City proposal. This additional section in the 1993 Voter Guide was the most widely available discussion of term limits prior to the November 2nd referendum.

Perhaps the most newsworthy event involving the Board in 1993, however, occurred after the election and focused on Mayor Dinkins' eleventh-hour replacement of Joseph A. O'Hare, S.J., as Chairman of the Campaign Finance Board with a new chairman, Thomas J.

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**Part I**

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Schwarz, in what some perceived as retribution for determinations made by the Board during the election period. Editorials, one of which characterized the move as a “graceless parting shot,”<sup>3</sup> called for the reinstatement of Chairman O’Hare, and took the occasion to praise the Board, its work, and its revitalizing impact on New York City elections:

It is only with comet-like regularity that New York’s political establishment produces something that can serve as a model for other municipal governments. Such is the case of the Campaign Finance Board, the fiercely nonpartisan overseer of New York’s voluntary system of public campaign financing for local offices. Unfortunately, the Board may be paying a price for its independence. — *The New York Observer*<sup>4</sup>

The extent of the public outcry was reflected in the fact that all four local daily newspapers called for the new Chairman’s resignation. Although the event initially cast a shadow over the Board’s future independence, this was dispelled by the resignation of the new appointee and the reinstatement of Chairman O’Hare.

### **Participation and Competition**

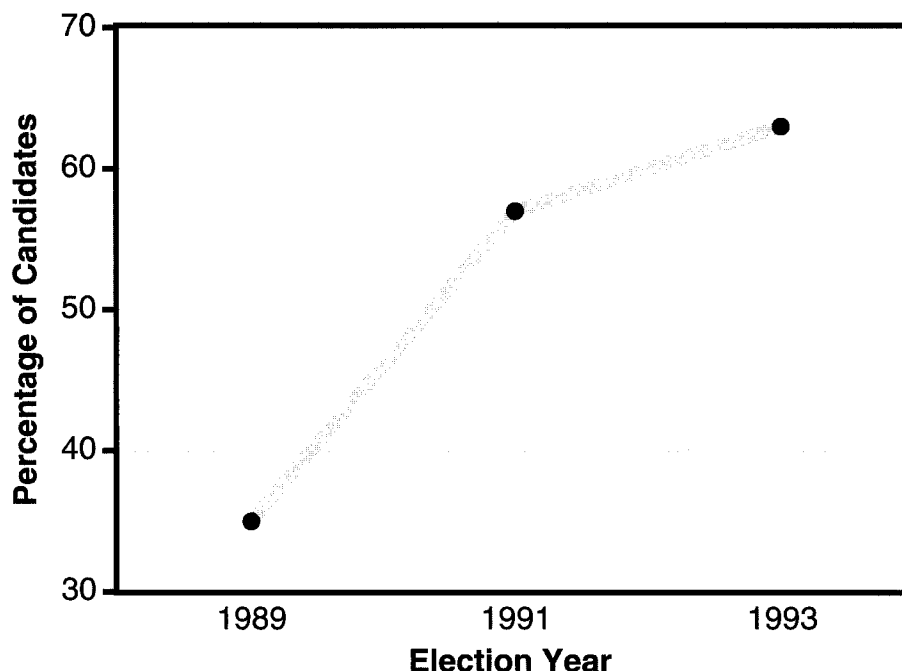
One hundred and eighty-six prospective candidates for five municipal offices “opted in” to the voluntary Program for 1993, of whom 107 — or 63 percent of all candidates running — eventually made it onto the ballot. This rate of participation is much higher than that in the last citywide elections held in 1989, when only 57 candidates joined the Program, of whom 48 appeared on the ballot, accounting for only about 35 percent of all the candidates who were running.

At the citywide level, participation was overwhelming: in 1993, *every* citywide primary consisted *solely* of Program participants. Program participation also continued its steady increase at the Council level. When the Program was first administered during the 1989 elections, a scant 34 percent of candidates running at the Council level joined it. This figure jumped sharply during the 1991 elections for City Council and has continued to rise; considering both the primary and general elections together, participants accounted for about 66 percent of all Council candidates running in 1993. Whereas only about half of all Council incumbents participated in the Program during prior elections, in 1993 over three-quarters were Program participants. The citywide campaigns were intensely competitive. On the other hand, and despite record participation and the \$1.1 million in public funds distributed, Council races were generally less so.

### **Contributions**

Candidates raised more than \$34 million for the 1993 elections, about \$32 million of which was collected by participating candidates.<sup>5</sup> All told, participating candidates in the primary election raised about \$15 million, to which about \$17 million was added for the general election.

**Figure 1**  
**PERCENTAGE OF CANDIDATES ON BALLOT**  
**WHO PARTICIPATED IN THE**  
**CAMPAIGN FINANCE PROGRAM**



Source: Campaign Finance Board data

The largest geographic source of money was Manhattan, which accounted for just under half of the total dollar amount of all contributions to participating candidates during the 1993 elections — about \$8.6 million in the race for mayor alone. Even at the Council level, money from Manhattan played a big role in the outer boroughs, supplying at least 19 percent of candidates' revenues in each borough. Contributions from outside New York City were not far behind those from Manhattan. This Out-of-City money flowed rapidly into some of the City's most competitive races, making up roughly one-third of all contributions received by mayoral and comptroller candidates, 20 percent of all contributions received by public advocate and borough president candidates, and about ten percent of all contributions received by Council candidates.

**Who Gives.** Although contributions from individuals made up most of the participating candidates' financial resources, they accounted for only about 64 percent of the total dollar amount of all contributions received in 1993, as compared to 75 percent in 1989. Corporate money exhibited a resurgence in 1993; whereas in 1989, money from businesses

**Table 1  
CONTRIBUTIONS BY TYPE OF CONTRIBUTOR**

	Election Cycle					
	1993		1991*		1989	
Individuals	\$ 20,391,000	64%	\$ 3,331,000	68%	\$ 21,106,000	75%
Corporations	7,632,000	24	535,000	11	4,466,000	16
Political Committees	1,560,000	5	495,000	10	1,235,000	4
Partnerships	834,000	3	59,000	1	630,000	2
Employee Organizations	612,000	2	285,000	6	473,000	2
Other Organizations	797,000	3	186,000	4	346,000	1

\*City Council only.

Note: Figures rounded to nearest \$1,000. Percentages may not add up to 100 due to rounding.

Source: Campaign Finance Board data (participants only)

accounted for about 16 percent of total revenues, in 1993 the percentage of contributions coming from businesses increased significantly (to 24 percent).

If individuals gave most often, they also gave in small dollar amounts. At every office level, more than 40 percent of all contributors gave less than \$100; at the City Council level, more than 55 percent of all contributors gave less than \$100. Despite the high frequency of small contributions, however, large-dollar contributions still added up to a sizeable portion of candidates' receipts, especially at the mayoral level. Of the contributions received by mayoral candidates, over 16,400 contributions of \$100 or less added up to \$545,000, while over 500 contributions of \$6,500, the contribution limit, amounted to about \$3.8 million. At the Council level, by contrast, contributions of \$100 or less accounted for about \$444,000, while contributions at the Program's \$3,000 limit amounted to approximately \$132,000.

**Contribution Limits.** There is a substantial disparity between the maximum contributions that participating candidates can accept under the Campaign Finance Program and what non-participating candidates can accept under State law. At the mayoral level, a Program participant can accept up to \$6,500 from a single contributor for the primary and the general elections combined, whereas a non-participant can accept up to \$100,000. (A recent amendment to the State limits applicable in 1997 will still allow non-participating citywide candidates to take about five times the amount permitted under the Campaign Finance Program.<sup>6)</sup>



**Table 2  
TOP TEN CONTRIBUTORS, 1993\***

	Number of Candidates Supported	Total
DC 37 AFSCME/PAC	38	\$ 60,094
UFT PAC/Political Education Committee	36	51,913
Real Estate Board Pac	32	46,480
Brown and Wood	9	36,940
Howard J. Rubenstein	22	35,565
Leonard Litwin	16	34,840
Rogers and Wells	12	32,650
ILGWU State and Local Election Fund	13	32,490
Jeffrey Silverman	5	28,000
Rent Stabilization Association PAC	18	27,800

\*Note: In arriving at contribution totals, contributions from contributors with like names were aggregated.

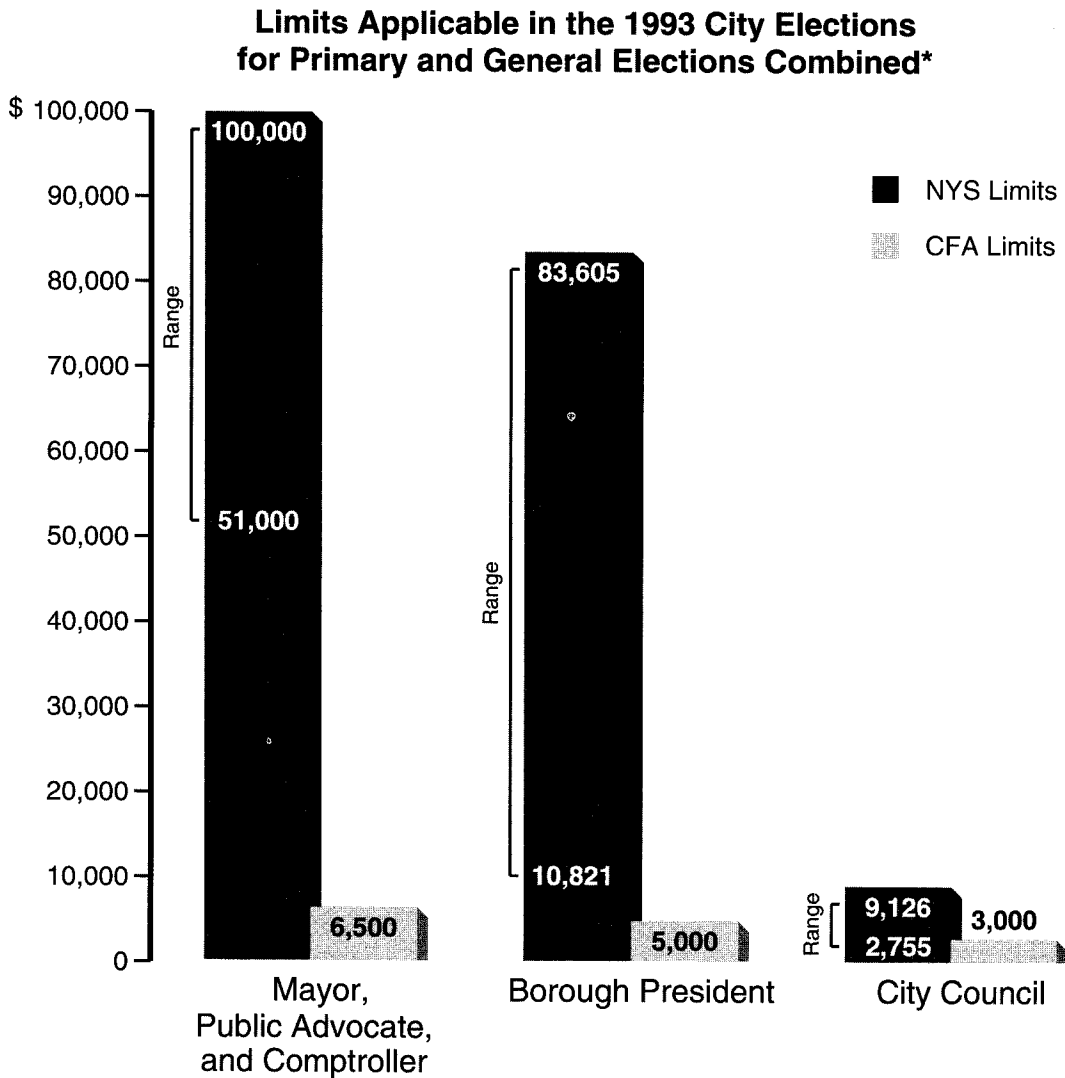
*Source: Campaign Finance Board data (participants only)*

There were accordingly some instances in which non-participants relied on truly extraordinary resources to finance their bids for public office, but even most non-participants' fund raising took place well within the Program's limits.<sup>7</sup>

Large personal loans are also far more useful to non-participating candidates than to participating candidates. Although Campaign Finance Board rules do not place limits on the total amount participating candidates may receive in loans, the Program does require that all loans be repaid by the date of the election and considers any loans outstanding as of that date (or loans forgiven by the lender) to be subject to contribution limits. Non-participants' loans to themselves are not, however, similarly regulated.<sup>8</sup> Wealthy non-participating candidates are therefore free to use personal funds to subsidize their own campaigns.

The higher frequency with which large-dollar contributions are made to mayoral and comptroller candidates suggests that the Program's contribution limits may successfully cap what would otherwise be excessive contributions. About 700 contributors to citywide candidates gave at the Program's \$6,500 limit applicable to these offices, for a total of about \$4.5 million, admittedly an impressive sum. Among the relatively large pool of donors willing and able to give at these levels, some clearly would have given even more under the much higher contribution limits permitted under State election law, as was the case with contributors to Andrew Stein's campaign.

**Figure 2  
MAXIMUM STATE LAW CONTRIBUTION LIMITS\* COMPARED WITH  
CAMPAIGN FINANCE ACT LIMITS (1993)**



\*State contribution limits vary according to the number of registered voters in the City, borough, or Council district (and enrolled voters in the primary election, resulting in different limits for each party primary). In some districts, the contribution limit for City Council candidates falls below the \$3,000 limit applicable under the Campaign Finance Program.

Source: New York State Election Law and the Campaign Finance Act

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## The Campaign Finance Program in the 1993 Election

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**Intermediaries.** Individuals who collect contributions and give them to candidates, sometimes called “bundlers,” played a prominent role in the 1993 elections. Although the Program places strict limits on the amount any one individual or organization can give to a candidate, it does not prevent individuals from collecting contributions from many different sources and giving them to a candidate. Indeed, when contribution size is limited, it may be impossible to run a citywide campaign without the help of intermediaries. Nonetheless, many believe these intermediaries gain significant influence on candidates. At the same time, fund raising is a time-honored and well-regarded means of assisting any number of causes, including candidates’ campaigns.

**Table 3**  
**1993 CONTRIBUTIONS THROUGH INTERMEDIARIES BY OFFICE**

<b>Office</b>	<b>Total "Intermediated" (in thousands)</b>	<b>Number of Intermediaries</b>	<b>Percent of All Contributions</b>
Mayor	\$ 3,365	355	18%
Public Advocate	279	107	10%
Comptroller	386	104	8%
Borough President	10	5	1%
City Council	99	73	3%

*Source: Campaign Finance Board data (participants only)*

While there has been no evidence of an increasing reliance on “bundled” contributions since the Program’s inception, at certain office levels such monies do make up a significant portion of candidates’ receipts.<sup>9</sup> In both 1989 and 1993, about 18 percent of all contributions to mayoral campaigns came through intermediaries. Among other citywide offices, intermediaries accounted for about ten percent of all contributions, while among borough president and Council candidates, such contributions actually added very little to the typical campaign.

When a single individual becomes the conduit for a large block of money, an appearance may be created that the individual has disproportionate influence even though contribution limits are adhered to. By their very nature, “intermediated” contributions when aggregated tend to exceed the contribution limit for a given office, even when individual contributions themselves are within the limit. When aggregated this way, about \$1.5 million coming to Dinkins through intermediaries was above the per-contributor limit of \$6,500; for Giuliani, the figure was about \$500,000.

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**Part I**

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Many would argue that it is naive to think that amounts of this magnitude pass into a campaign without notice. Andrew Greenblatt, Executive Director of Common Cause, stated that “[b]undling is the next problem that needs to be solved. If somebody spends so much time and so much money bundling, they’ve got to believe they’re going to get something for it.”<sup>10</sup> There are, however, controls on intermediaries for Program participants: under the Campaign Finance Act, intermediaries must be publicly disclosed. As State law does not require candidates to disclose intermediaries, the Campaign Finance Board is the sole meaningful source of information about them.

### Spending

Campaign spending amounted to over \$38 million during the 1993 elections. Participants spent about \$36 million, with some \$4 million spent prior to 1993, \$18 million in the primary, and \$14 million in the general election. Mayoral campaigns raised the most money and spent it most freely, with Dinkins and Giuliani spending more than \$19 million across both elections.

**How Candidates Spent their Money.** Citywide candidates put more money into advertising than into anything else, spending most of their resources on television. Those paid the most by candidates in the 1993 elections were vendors whose work was in some way related to advertising. The Garth Group, the Media Company, and the United States

**Table 4  
TOP TEN VENDORS, 1993**

<b>Vendor</b>	<b>Number of Candidates</b>	<b>Total Amount</b>
The Garth Group	3	\$ 5,668,822
The Media Company	1	3,142,103
Morris & Carrick	1	1,666,000
U.S. Post Office	79	933,956
Austin Sheinkopf, Inc.	8	889,713
Trippe, McMahon, & Squier	1	733,847
Zale S. Koff Graphics	41	606,073
Sheraton New York	5	563,594
Automatic Data Processing	6	532,904
Giuliani For New York	3	497,003

*Source: Campaign Finance Board data (participants only)*

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## The Campaign Finance Program in the 1993 Election

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Post Office were all paid to get the candidates' message out. The Garth Group, for example, was the primary media consultant for Giuliani and the Fusion ticket. The \$5.7 million the Garth Group received, however, did not all go into its own coffers; most of it reimbursed the Group's purchase of air time on behalf of the Fusion candidates. The presence of "Giuliani for New York" on the list similarly reflects reimbursements of expenditures made by the Giuliani campaign on behalf of the other Fusion ticket candidates, primarily for advertising.

As would be expected, the greatest difference in spending between most winners and losers — especially in the more lopsided contests — was in media expenditures. For example, in the race for public advocate, the winning candidate had a lot more money to spend and spent it on television. In tight races, by contrast, winners and losers spent about the same amount on television advertising.<sup>11</sup>

**The Spending Limits.** Obviously, the \$36 million spent in 1993 by participating candidates is a significant sum. Has the Program kept spending down among participating candidates? In 1985, the year of the last citywide elections prior to the inception of the Campaign Finance Act, then-Mayor Koch spent over \$7 million (about \$10 million in 1993 dollars when adjusted for inflation<sup>12</sup>), almost all of it in the primary, outspending his closest competitor by seven to one.<sup>13</sup> He captured just under 65 percent of the vote in the primary and nearly 80 percent in the general election. If this is what mayoral campaigns spend when they face little or no opposition, one would expect much higher spending in a truly competitive race. The 1989 and 1993 races were both highly competitive. A comparison of mayoral spending in 1985 to mayoral spending in 1989 and 1993 — when the Dinkins-Giuliani face-offs were won or lost by about 3 percentage points — seems to indicate that if spending has not risen to altogether stellar levels, it can only be attributable to the impact of the Act's spending limits. The fact that mayoral candidates are often able to raise more than they are permitted to spend under the Act likewise suggests that, were it not for the Program's limits, spending would soar, especially in a close race.

Historically, only mayoral campaigns have routinely spent at or near the Program's limit, twice even exceeding it. In the 1989 race, then-Mayor Koch's campaign exceeded the primary spending limit and was assessed a penalty by the Board. During the 1993 elections, after revising his accounting of "exempt" expenditures, then-Mayor Dinkins exceeded the primary spending limit and was also assessed a penalty by the Board (see p. 12).

At the City Council level, the limits would have bitten deeply into several non-participants' campaigns. Some non-participating City Council candidates brought significant resources to bear against their opponents. In the most extreme case, non-participant Andrew Eristoff spent close to \$1 million in his bids for the seat in Manhattan's 4th Council District in special and general elections, winning both races by extremely slim margins — by 57 votes in the special election, and by 201 votes in the general election.<sup>14</sup> In contrast, his major opponent, Jane Crotty (a Program participant), spent only about \$387,000 on these races.

"Exempt" spending — a category created so that candidates would not be placed at

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**Part I**

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a disadvantage by spending incurred to comply with State election law and with the Program's disclosure and record-keeping requirements — was the subject of considerable controversy during the elections. A revision in the accounting of exempt spending by incumbent Mayor Dinkins' campaign in response to audit questions raised by the Board led to an assessment of \$320,000 against the campaign, the largest civil penalty in the Board's history. The campaign could not adequately document the nearly 25 percent of its total spending during the primary claimed as "exempt," and reclassification of expenditures by the campaign placed it, by its own admission, \$160,000 over the primary spending limit. The Board is proposing a modification of this category of spending to narrow the types of activities that may be claimed as exempt, while proposing modest increases in the spending limits for certain offices in order to account for new categories of non-exempt spending. (See pp. 26-27.)

**Joint Expenditures and Independent Spending.** Two other sources of controversy were joint spending by candidates in support of each others' bids for office and spending undertaken on behalf of candidates by third parties.

The 1993 "Fusion ticket" that cut across traditional party lines, uniting candidates for mayor (Giuliani), public advocate (Alter), and comptroller (Badillo), raised issues about candidates' joint expenditures. Joint activities are expressly permitted under the Campaign Finance Act; the benefit each participant receives from the joint material or activity, however, must be proportional to the participant's expenditures for the material or activity.<sup>15</sup> Disagreements over exactly how the spending should be allocated were the impetus behind several complaints brought before the Board during the elections.<sup>16</sup>

If joint spending required a sometimes complex allocation of resources between campaigns, independent spending by political parties and by candidates constituted one of the most challenging issues brought before the Board during the 1993 elections.<sup>17</sup>

The Board presumes that spending by a party to support its nominated candidate is an in-kind contribution to that candidate and subject to the Act's contribution limits.<sup>18</sup> A complaint filed by the Giuliani campaign alleged that some \$500,000 in expenditures by the New York State Democratic Committee ("NYSDC") for radio advertising and the production and mailing of brochures promoting the re-election of then-Mayor Dinkins should be regarded as a contribution to the Dinkins campaign. The Dinkins campaign contended that it had no involvement in the NYSDC's advertising campaign and that the spending was wholly independent. Before the Board ruled, however, the Dinkins campaign voluntarily reimbursed the NYSDC for the money it had spent, without conceding that the NYSDC's spending was not independent. Under the circumstances, the Board determined that the complaint was moot. The Republicans were later brought into the fray by a complaint from the Dinkins campaign over a solicitation by Victory '93, a fund-raising operation of the Republican State Committee, and election-day spending by the Republican party, which the Dinkins campaign alleged were in-kind contributions to the Giuliani campaign, arguing that they were related to the mayoral election. The Giuliani campaign agreed to absorb the pro-rated costs of a Victory '93 letter that mentioned Giuliani specifically. The Dinkins campaign

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## The Campaign Finance Program in the 1993 Election

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withdrew the complaint after the election, but the Board is studying the matter as part of its audit of the Giuliani campaign and as a matter of general concern.<sup>19</sup>

Conflict also erupted over spending by the candidates themselves. Manhattan Borough President Ruth Messinger made expenditures on behalf of then-Mayor Dinkins and of Miriam Friedlander, a former Council member, who was running to win back a seat in 1993. The Giuliani campaign filed a complaint, withdrawn after the election, claiming that the costs of a mailing and leaflet paid for by Messinger's committee in support of Dinkins should be treated as in-kind contributions to Dinkins subject to the \$6,500 limit. In an unrelated dispute over Messinger's spending on behalf of Friedlander, Council member Antonio Pagan submitted an informal complaint to the Board alleging that several mailings, posters, brochures, and flyers supporting Friedlander were in-kind contributions to Friedlander in violation of the \$3,000 limit applicable to Council participants. While these expenditures, if truly "independent," are not subject to the Program's limits, the Board is studying how this kind of spending should be treated in the future.

### Public Funds

The 1993 elections were the third regularly scheduled elections for which the Campaign Finance Board distributed public matching funds. Approximately \$6 million was paid to 65 participants.<sup>20</sup> Candidates for the office of City Council member had the highest percentage of matchable contributions (69 percent), and candidates for mayor had the lowest (28 percent).

Although the injection of neutral public funds into some campaigns can enhance competitiveness, it is not necessarily a decisive factor. Moreover, the 1993 elections posed difficult questions about the structure of the Program's threshold requirements and provisions for "bonus" matching (when a participant faces a well-financed non-participant). Were the Program's threshold requirements too demanding, preventing some viable candidates from obtaining public funds? And was two-for-one matching sufficient to counter the financial advantage enjoyed by non-participants in bonus situations?

**Threshold.** Several Council candidates — including some sitting Council members — had difficulties in meeting the Program's two-part threshold requirement to qualify for public funds (a *minimum number* of 50 contributions of \$10 or more from district residents and a *minimum amount* of \$5,000 in matchable contributions). A few candidates who did not meet the threshold and did not receive public funds did, however, wage extraordinarily competitive campaigns. There were also sharp differences in the percentages of candidates not meeting the threshold in different boroughs, with a geographic concentration in the Bronx of candidates who had difficulty raising the threshold number and amount of contributions. Of those candidates not meeting the threshold, about half failed both aspects of the test, meeting neither the number nor the amount requirement, but in some cases the numeric threshold alone posed a barrier that candidates could not overcome. The \$10-or-greater requirement could play an important role in such instances. While most campaigns do very little fund raising in these small increments, in both 1991 and 1993, several Council

campaigns collected a significant amount of contributions below the \$10 mark. The Board is recommending that the \$10-and-over requirement be eliminated from the minimum dollar amount for the threshold, but retained for the minimum number of contributors. (See p. 25.)

**The “Bonus.”** In several races at the Council level, the Program’s two-for-one matching provisions were sorely inadequate.<sup>21</sup> In the 1993 special election to fill the 4th Council district seat, for example, Andrew Eristoff loaned himself \$256,000 in his race against participant Jane Crotty, with a repeat performance in the fall election; altogether, Eristoff made about \$643,000 of his own resources available to his campaign. Crotty was greatly outspent in both races in spite of two-for-one matching and lost the elections. A representative of her campaign testified at the Board’s post-election public hearings that “. . . the Program must be considered a success, at least from our point of view. . . . But we are hoping that one day money will not determine who sits in the City Council[.]”<sup>22</sup> The Board is recommending revisions in the bonus provisions to overcome these kinds of huge disparities.

#### **Advances in Public Education: the Voter Guide and Disclosure**

One of the most visible aspects of the Board’s mandate is publication of the Voter Guide, a nonpartisan resource on municipal candidates, local ballot issues, and voting procedures. The Guide offers candidates, whether or not they participate in the Program, a highly effective medium for their views. In 1993, the Guide reached an even wider audience. For the first time, pursuant to Federal law, a Chinese-language edition of the Guide was produced for voters in Brooklyn, Manhattan, and Queens; and the general election Guide included texts of State and City proposals expected to be on the ballot, followed by a plain language description of the City proposals and statements supporting and opposing each City proposal. The Guide was the most widely available public forum to contribute to the discussion of term limits prior to the November 2nd referendum.

When preparing for the 1993 elections, the Campaign Finance Board also implemented a series of improvements in its computer systems that placed the Board on the cutting edge of disclosure technology, enabling it to make volumes of material available to the public and the press with unprecedented speed. The Board’s computer software, C-SMART®, developed in response to candidates’ requests, enabled participating candidates to file their disclosure information electronically. This, together with the acceptance of disclosure information in other electronic formats, allowed the Board to make public disclosure available at an extremely rapid pace. Computerized reports of candidates’ campaign finance disclosure statements were released within weeks — sometimes days — of receipt by the Board. The most popular forms of public disclosure were the following computerized, pre-programmed paper reports that the Board released on a regular basis or upon request:

- **Contributions by Candidate**, sorted alphabetically by contributor name,
- **Expenditures by Candidate**, sorted alphabetically by payee name,



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## The Campaign Finance Program in the 1993 Election

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- **Contributions by Candidate**, sorted alphabetically by employer name,
- **Contributions by Intermediary**, sorted alphabetically by intermediary and then contributor name,
- **Contributions by Candidate**, sorted by contribution amount, and
- **Contributions across All Candidates**, sorted alphabetically by contributor name.

The Board also developed the Automated Candidate Contribution and Expenditure Search System ("ACCESS") as an adjunct to its mainframe-based Campaign Finance Information System ("CFIS"), that allows easy search of the entire CFIS database across all candidates.

The Board's accomplishments in the field of public disclosure were perhaps best highlighted by the controversy over political contributions made by municipal bond underwriters to citywide candidates and elected officials. *The Wall Street Journal*, *The New York Times*, *New York Newsday*, and the *New York Law Journal* used data derived from ACCESS to present detailed breakdowns of contributions from underwriting firms and law firms and their employees to citywide candidates.<sup>23</sup> This enhanced disclosure apparently contributed to proposals to curb these contributions by the underwriting industry's regulatory arm, voluntary moratoriums on giving by a number of firms, and self-imposed limits on the acceptance of contributions from these sources by some candidates.<sup>24</sup>

\* \* \* \* \*

In 1993, in each of the citywide races, issues related to ethics and campaign finance were of great — even decisive — importance. In the mayoral race, the negative publicity the Dinkins campaign received after the Democratic State Committee made expenditures for advertisements that critics charged had promoted the Dinkins campaign and the Board's assessment of a \$320,000 penalty against the Dinkins campaign for over-the-limit expenditures were important events in the final days of a very close election. In the race for public advocate, the incumbent Andrew Stein made a dramatic exit from politics altogether, after the rejection by the press and the public of an extravagant campaign unrestrained by Campaign Finance Program limits. And finally, in the comptroller's race, incumbent Elizabeth Holtzman went from clear front-runner status to losing in a primary runoff as a result of a controversy surrounding a Senate campaign loan from Fleet Bank, which subsequently received underwriting business from the City. The visible impact of the Program's contribution and spending limits at the citywide level, as well as the increased discussion of campaign finance-related issues by the press — made possible by the Board's advances in disclosure technology — are clear indications that the Program has changed the City's political environment for candidates for citywide office. "Politics-as-usual" is out; respect for an even playing field and ethical standards is in.

At the Council level, however, the Board faces a different set of challenges. The

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Program appears to have had much less effect. While the Program's spending limit may hamper some Council campaigns, most candidates who mount competitive campaigns stay well within its boundary. The Program's \$3,000-per-contributor limit is also rarely an obstacle to fund raising among Council candidates. Despite unprecedented levels of participation, however, many Council races were not competitive. In some instances, participants facing well-financed, non-participating opponents were financially overwhelmed despite the Program's bonus matching provisions. The Board is confident that the changes it is now recommending would make it easier for participants, especially at the Council level, to gain access to the financial resources they need to wage competitive campaigns. In the meantime, the Board will continue to evaluate various factors that distinguish Council campaigns from citywide races and how the Program should be implemented to increase its effectiveness for all offices.

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## Part II

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# Making It Happen:

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## The Campaign Finance Board

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he effectiveness and reputation of the Campaign Finance Board depend on the impartial judgement and leadership of the Board members and the ability of its staff to carry out the Act's mandates under the Board's direction.

When the Campaign Finance Board was established, care was taken to create a balance on the Board and to remove appointees from the control of the appointing author-

### Campaign Finance Reform, in Action

Last week's mayoral election posed the toughest test yet for New York City's five-year-old voluntary public campaign financing system. The law's spending limits predictably gave rise to a creative search for loopholes, but on the whole the system worked remarkably well. The positive experience is a tribute to the Campaign Finance Board charged with enforcing the rules — and a timely lesson for reformers in Congress.

Both Mayor David Dinkins and Mayor-elect Rudolph Giuliani agreed to participate in the system, which provides public matching funds to municipal candidates who agree to extensive financial disclosure, limits on private contributions and an overall limit on campaign spending. The idea is to curb the influence of big contributors, and to prevent candidates from, in effect, buying City Hall.

But the limits would have been rendered meaningless had the executive director, Nicole Gordon, and the four members of the Campaign Finance Board not acted swiftly to address evasive schemes. The four are the Rev. Joseph O'Hare, the President of Fordham University who serves as chairman; James Lewis, a City College professor; Joseph Messina, an insurance executive, and Vaughn Williams, an attorney.

In the most notorious case of attempted cheat-

ing, the state Democratic Party ran a radio advertising and direct mail campaign in support of Mr. Dinkins, claiming "independence" from the candidate's campaign. The party abandoned the effort, and the Dinkins camp agreed to pay for the ads already run, in anticipation of an adverse decision by the board. The Dinkins campaign was also penalized for claiming bloated administrative expenses. Mr. Giuliani and his citywide running mates, meanwhile, were required to allocate advertising costs so that none of the candidates running on the fusion slate would unfairly subsidize another.

The campaign exposed areas where the city law needs strengthening. There should be tougher rules, for example, on use of staff and government facilities by incumbents. But the board's ability to keep candidates within the rules shames its Federal counterpart — the partisan and largely toothless Federal Election Commission.

So far, the debate over campaign finance reform in Congress has largely ignored the need to create a new enforcement mechanism — one run by qualified, independent-minded appointees authorized to respond in timely fashion to abuses that directly affect an election. As the city's experience suggests, even good legislation doesn't mean much without strong enforcement.

— *New York Times*, November 7, 1993

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ity. A subsequent Charter amendment made it clear that the Board must conduct its operations in a "nonpartisan manner."<sup>25</sup> Two Board members are chosen by the Mayor and must be from different political parties. Two Board members are chosen by the Speaker of the City Council and must be from different political parties. The Chairman is appointed by the Mayor in consultation with the Speaker of the City Council. The Board members serve staggered, fixed terms, so that their seats do not become vacant at the same time, and they do not serve at the will of the appointing authority.

The Chairman of the Campaign Finance Board is Joseph A. O'Hare, S.J., a Democrat. He is the President of Fordham University. Before his appointment to the Campaign Finance Board, he served on the New York City Charter Revision Commission and the Mayor's Commission on Appointments. He was appointed to his first five-year term by Mayor Koch in 1989. He was reappointed to a second five-year term by Mayor Giuliani in 1994. Board member James I. Lewis, a Liberal, is an Assistant Professor at the City College of New York. He was appointed by the Speaker of the City Council to a one-year term in 1988, then reappointed to a five-year term in 1989, which expired in March of 1994. As of this writing, he is serving without appointment to the Board. Joseph Messina, a Democrat, was also appointed by the Speaker of the City Council. He is the President of the Motor Vehicle Accident Indemnification Corporation. He was appointed to fill an unexpired term in 1988, then reappointed in 1991 to a five-year term. Vaughn Williams, a Democrat, was appointed by Mayor Dinkins in 1992 to fill an unexpired five-year term. He is a partner at the law firm of Skadden, Arps, Slate, Meagher and Flom. The fifth Board member position, vacant since 1990, was filled in the summer of 1994 as this Report went to press with the appointment of Bill Green, a Republican who represented New York's 15th Congressional district for nearly 15 years.

Recent events have, in the eyes of many commentators, underscored the importance of insulating the appointment of Board members from the political process. The event that precipitated this concern was the sudden appointment of a new Board Chairman at the end of 1993. In what may have been his last official act, Mayor Dinkins notified the agency that he had appointed Thomas J. Schwarz, a partner at Skadden, Arps, Slate, Meagher and Flom, as a replacement for Father O'Hare, whose term had expired in March of that year and who had continued to serve without appointment. Many good government groups, Mayor-elect Rudolph Giuliani, and, in an unusual display of unanimity, *all* the editorial boards of the local daily newspapers, protested the manner in which the new appointment had been made. *New York Newsday* wrote,

In one of his last, dubious acts of office, Mayor David Dinkins canned the widely respected chairman of the city's Campaign Finance Board, the Rev. Joseph A. O'Hare. This shabby treatment of O'Hare, who has helped make the board a model for the nation, must not stand.<sup>26</sup>

In a letter from representatives of three good government groups, Mr. Schwarz, whose credentials were not questioned, was urged not to accept the appointment:

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## **Making It Happen: The Campaign Finance Program**

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A midnight replacement of Father O'Hare, if successful, would have a clear and chilling message: If an agency is independent and courageous, its leadership is going to suffer. We think it would harm the board's reputation for nonpartisanship and independence for anyone to accept an offer under these circumstances.<sup>27</sup>

Mayor Giuliani pledged to reappoint Father O'Hare to the post and to propose a more independent mechanism of selecting a Chairman. On Friday, January 7, one week after his appointment, Mr. Schwarz stepped down, and Mayor Giuliani reappointed Father O'Hare on January 10.

### **The Board as a Resource for Other Jurisdictions**

The Campaign Finance Board remains at the forefront of local and national governmental reform.<sup>28</sup> Throughout the year, the Campaign Finance Board is called upon as a resource by others studying similar kinds of reform. For example, a presentation was recently made at neighboring Nassau county, where a charter revision commission studied the possibility of a local campaign finance system, and Board staff consulted extensively with the Los Angeles Ethics Commission when it was first established.

The existence of the Program may also have bred a new emphasis on campaign finance and ethics issues that extends beyond the reach of the Campaign Finance Act. The voluntary moratorium on contributions from municipal bond underwriters observed by a number of firms and now codified by a Securities and Exchange Commission rule (see p. 15) may be partly attributable to the increased disclosure made possible by the Program. Mayor Giuliani's two transition and inaugural committees observed the Program's contribution limit despite the fact that these committees are not subject to any contribution limit whatsoever under the Act or under State law.<sup>29</sup> (After the 1989 elections, David Dinkins also imposed a \$10,000 contribution limit on his transition and inaugural committee.) Karen Burstein, a former Brooklyn Family Court Judge now running for State Attorney General, said that she "will comply with the more strict New York City" rules regarding the disclosure of employer information and intermediaries, and will impose a \$2,500 contribution limit on her campaign.<sup>30</sup> (Under State law, candidates for Attorney General can accept up to \$12,000 per election from a single contributor.) Republican candidate for governor George Pataki is requesting employer information from contributors on his solicitation forms, which he is not required to do by State law.

The Board is often invited to participate in good government and ethics forums around the City and elsewhere. Board staff have been invited to Columbia University to address classes in investigative journalism in order to make students aware of the kinds of records and public information that the Board makes available. At the New School for Social Research, Board staff participated in a forum that examined the role of the Program in the 1993 elections. The Board's Chairman and its Executive Director were invited to participate in an American Bar Association-sponsored symposium on how to improve the Federal

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Election Commission, and Board staff have been active participants in the Council on Governmental Ethics Laws, an umbrella organization for campaign finance and ethics agencies throughout the United States and Canada. The Program received extensive coverage in the recent book *Power Failure* about politics in New York City,<sup>31</sup> and Board data have been used in graduate school and scholarly papers. The work of the Board was even the subject of news coverage in Russia, where a television broadcast covering the effect of the Campaign Finance Program on the 1993 mayoral elections was seen by millions of viewers.

**Citations Received by the Board.** Newspapers were not alone in praising the accomplishments of the Campaign Finance Board. In 1991, Chairman O'Hare was presented with an honorary doctoral degree from the City University of New York, in part for his work on the Board.

In the summer of 1992, the Washington D.C.-based Center for Policy Alternatives chose the New York City Voter Guide, a nonpartisan package of information about municipal candidates, local ballot issues, and voting procedures, as one of "10 Ideas That Work for a Better Democracy," featuring it during a conference "highlighting model policies and programs from around the country which have proven effective in strengthening democracy."

On November 19, 1992, as part of its 95th anniversary dinner and awards ceremony, Citizens Union honored Board Chairman O'Hare for his "extraordinary contribution. . . to enhancing the integrity of the City's political life," presenting him with the annual Civic Leadership Award. That same night, the New York County Lawyers' Association presented Nicole A. Gordon, the Executive Director of the Campaign Finance Board, with a Public Service Award.

In December 1992, New York State Common Cause honored the Board for its "even-handed, efficient administration" of the Campaign Finance Program and gave its "I Love an Ethical New York" Annual Leadership Award to Board members O'Hare, Lewis, Messina, and Sotomayor and Executive Director Gordon.

Chairman O'Hare will be the recipient of the 1994 COGEL award, the highest recognition given by the Council on Governmental Ethics Laws.

### Evaluating Progress

The Campaign Finance Board is mandated to undertake a comprehensive review of the impact of the Program after each election and to make recommendations for changes in the law. This Executive Summary contains highlights of the Board's comprehensive report, *On the Road to Reform: Campaign Finance in the 1993 New York City Elections*, which is the Board's third such publication. Following the 1989 citywide elections, the Board published *Dollars and Disclosure: Campaign Finance Reform in New York City*, and, after the off-year 1991 City Council elections, the Board published *Windows of Opportunity: Campaign Finance Reform and the New City Council*, a comprehensive review of the Program's impact

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## **Making It Happen: The Campaign Finance Program**

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on these ground-breaking elections for the newly redistricted City Council.

Others who have evaluated the Program include Peter Vallone, the Speaker of the New York City Council: "Despite all the pundits, experts, and naysayers, this legislative body [the New York City Council] passed a law for the public financing of campaigns, . . . a model for good government everywhere."<sup>32</sup>

In a January 6, 1994 press conference, Mayor Giuliani stated that the Board was "one of the real advances that has occurred in the City of New York. . . . [The Board members] have lifted the integrity of elections in New York above. . . where they are in many other parts of the country. This is one of the good things that people come to New York City to copy. . . as a way of organizing their elections so that the influence of money is decreased and so there is full disclosure. . . ."<sup>33</sup>

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Throughout its short history, the Campaign Finance Board and its staff have continually worked to improve the Program for candidates and the voting public alike. The next section sets forth the Board's recommendations for future improvements in the Program.





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## Part III

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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.

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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>34</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>35</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>A</sup>
Mayor:	\$15,000
Public Advocate:	\$15,000
Comptroller:	\$15,000
Borough President:	\$10,500
City Council:	\$ 6,000

<sup>A</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. 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 standards for candidates running for a given office, the Board proposes the following re-

structuring 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>A</sup>

<sup>A</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 Enoch Williams' \$42,000, received 48 percent of the vote. The Board believes that the

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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>36</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>37</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>38</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.

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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**Part III**

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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.

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>39</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

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## Board Recommendations

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three times the maximum public funds payment.<sup>40</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 in to 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>41</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>42</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. 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 later date to

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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 for 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. 29, 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 2**  
**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.

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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>43</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

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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 is also 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 is also 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

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### NOTES

<sup>1</sup> See, e.g., Tom Robbins and Mark Mooney, "A 'Bundle' of Support for Dave, Rudy," *Daily News*, October 22, 1993, 6.

<sup>2</sup> Since its inception in 1989, the Voter Guide has been published in English and Spanish.

<sup>3</sup> See "Mr. Dinkins' Graceless Parting Shot," *The New York Times*, January 6, 1994, A20. See also "Dave's Revenge Leaves a Bitter Taste," *Daily News*, January 6, 1994, 42; "Dinkins' Dubious Finale," *New York Post*, January 6, 1994, 30; "Wake Up, Mr. Schwarz," *The New York Times*, January 7, 1994, A30; and "Lame Duck Dinkins Dunks O'Hare," *The New York Observer*, January 10, 1994, 4.

<sup>4</sup> *The New York Observer*, "Lame Duck Dinkins Dunks O'Hare," 4.

<sup>5</sup> This amount does not include any public funds payments received by Program participants.

<sup>6</sup> Effective January 1, 1994, contribution limits for citywide candidates were reduced to \$12,000 for the primary and \$25,000 for the general election, for a total of \$37,000 per campaign.

<sup>7</sup> Non-participant Andrew Stein's aborted mayoral campaign was one example of "sky's-the-limit" fund raising. Sixty-five percent of the dollar amount of Stein's funds, about \$3.55 million, was collected in contributions exceeding the Program's \$6,500 limit for the offices of mayor and public advocate. Following a gala fund raiser held on January 21, 1992, at which seats went for between \$1,500 and \$5,000 per plate (with "Golden Benefactors" at \$50,000 per table), Stein was criticized in articles with headlines like "Candidate for Sale" (*Daily News*, January 22, 1992, 20) and "Stein Can Sweep Objections Under Rug" (*New York Newsday*, January 24, 1992, 34). WNBC's Gabe Pressman commented that "Andrew Stein says it's obscene for a candidate to accept government matching funds. . . . What was obscene was that . . . some of New York's wealthiest people were able to cough up to \$50,000 each to feed the campaign coffers of this would-be mayor." (Gabe Pressman, transcript of commentary on January 26, 1992, supplied by News 4 New York.)

Stein's move also drew fire from other politicians and ultimately affected voters' perceptions of him. After the January 1992 fund raiser, then-Mayor Dinkins stated, "[i]t doesn't take a rocket scientist to see a person doesn't contribute \$50,000 simply for routine access." (Frank Lombardi, "Dave Gives Andy a Slap on the Campaign Wallet," *Daily News*, January 22, 1992.) A poll conducted by the cable channel NY 1 in mid-February of 1993 found that nearly 50 percent of the people surveyed felt that Stein's connections to monied interests belied his image as a "man of the people," a perception that was "reinforced by the lavish fund raising dinner held for him last summer. His reputation cannot have been helped by his decision not to limit his campaign spending by participating in public financing." (NY 1 Newspan, February 18-21, 1993, 8.)

<sup>8</sup> State law also regards all loans unpaid as of the date of the election as contributions subject to the applicable limit (Sec 14-114(6)(a)). As there is no limit, however, on contributions from candidates to their own campaigns (Sec. 14-100(9)(3)), there is effectively no restriction under State law on the amount a candidate can lend his or her own campaign.

<sup>9</sup> Data regarding intermediaries from elections before the implementation of the Campaign Finance Act and data for non-participants are unavailable.

<sup>10</sup> Quoted in Robbins and Mooney, "A 'Bundle' of Support for Dave, Rudy," 6.

<sup>11</sup> As campaigns tend to report spending somewhat differently— some campaigns, for example, pay for advertising directly, others pay through consultants— certain expenditure purposes as reported are interchangeable; in this analysis it is assumed that "consulting" is directly related to advertising.

<sup>12</sup> Corrected for a 46 percent increase in the CPI since 1985. Source: U.S. Department of Labor, Bureau of Statistics.

<sup>13</sup> New York City Campaign Finance Board, *Dollars and Disclosure: Campaign Finance Reform in New York City*, September, 1990 (hereafter *Dollars and Disclosure*), 84. Based on reports filed with the Board of Elections, most of his spending was in the primary.

<sup>14</sup> For these elections, Eristoff loaned his own campaign some \$643,000.

<sup>15</sup> Campaign Finance Act §3-715; Rule 1-08(h).

<sup>16</sup> Mark Green's campaign filed a complaint against Susan Alter (and similar complaints were lodged against Badillo by his opponents, Alan Hevesi and Elizabeth Holtzman), alleging that an advertisement featuring Giuliani, Alter, and Badillo but paid for entirely by Giuliani should have been charged to Badillo's and Alter's campaigns as an in-kind contribution (and thus would have exceeded the \$6,500 contribution limit applicable to the offices of public advocate and comptroller). The Giuliani campaign argued that the advertisement was designed solely to support Giuliani's campaign by expressing his message that he would reach out to the City's various constituencies through the Fusion ticket and was not intended to help the other campaigns. The Board, however, did not accept this argument, finding instead that the advertisement was made "in connection with" the Alter and Badillo campaigns and that, although the latter may have had no direct involvement with the advertisement, it was nonetheless not "independent" given the very nature of the Fusion ticket. (As this was the first time the Board had considered the question, the Board did not require reallocation of the expenditures for the advertisement among the three campaigns but made a prospective ruling that would apply to future spending. See Campaign Finance Board Determination No. 1993-6, September 23, 1993.)

<sup>17</sup> Independent expenditures are a widely discussed and difficult topic in campaign finance because of the limits on government's ability to regulate them under the Supreme Court's interpretation of the First Amendment. See *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>18</sup> This presumption can be overcome if it is shown that the spending in question was intended for generic party purposes, not a specific candidate, and that the candidate had no say over how (or, indeed, if) the money would be spent. See Campaign Finance Board Advisory Opinion No. 1991-5 (August 8, 1991).

<sup>19</sup> Both the Dinkins and Giuliani campaigns withdrew all pending complaints against each other after the election.

<sup>20</sup> One additional participant, Ernest Emmanuel, received public funds in anticipation of a race for City Council; however, he was subsequently knocked off the ballot.

<sup>21</sup> Under the Program's bonus provisions, although the rate at which campaigns receive matching funds is doubled and the spending limit is removed, campaigns remain subject to the per-election "cap" on the amount of public funds they can receive. See Fact Sheet, Part II, p. 3.

<sup>22</sup> *Hearings before the New York City Campaign Finance Board*, December 8-9, 1993 (hereafter *Campaign Finance Board 1993 Hearings*), at 71-72 (testimony of Arnold Kriss, City Council candidate Jane Crotty's campaign manager).

<sup>23</sup> See Christi Harlan, "Municipal Bond Group Urges End to Being Solicited," *The Wall Street Journal*, September 8, 1993, A11; Jonathan Fuerbringer, "9 Big Bond Firms Curb Their Giving in Political Races," *The New York Times*, October 8, 1993, A1; Walter Fee, "Donor Ties That Bond," *New York Newsday*, November 20, 1993, 7; Daniel Wise, "Lawyers' Donations Vital to Mayoral Race," *New York Law Journal*, October 29, 1993, 1.

<sup>24</sup> In April 1994, the Securities and Exchange Commission promulgated new rules that would severely

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curtail contributions from municipal bond underwriters to candidates. (See Securities Exchange Act Release No. 33868 (April 7, 1994).)

<sup>25</sup> New York City Charter, §1057.

<sup>26</sup> Editorial, "Bloody Carpet," *New York Newsday*, January 7, 1994, 56.

<sup>27</sup> Letter from the New York Public Interest Research Group, Inc., New York State Common Cause, and the New York City League of Women Voters to Thomas Schwarz, dated January 3, 1994, on file with the Campaign Finance Board.

<sup>28</sup> In addition to the federal presidential matching funds program, the following thirteen states currently provide some form of public financing to candidates: Florida, Hawaii, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, Rhode Island, and Wisconsin. Two other cities have also adopted programs of public financing: Tucson, Arizona and Los Angeles, California.

<sup>29</sup> From filings made by the two committees, Mayor-Elect Inc. and New York City Inaugural, Inc., with the New York City Board of Elections. In an accompanying letter, Mark McCreery, Chief Operating Officer and Comptroller of both committees, stated that "in the spirit of campaign finance reform and in light of the fact that there are no 'governing' rules for 'transition committees', [the committees] followed the rules and regulations of the NYC Campaign Finance Board in regard to contribution limits for individuals and companies."

<sup>30</sup> Ian Fisher, "Gift Limits Sought for Attorney General Race," *The New York Times*, May 13, 1994, B6.

<sup>31</sup> Charles Brecher, Raymond Horton. *Power Failure: New York City Politics & Policy since 1960*. New York: Oxford University Press, 1993.

<sup>32</sup> Peter F. Vallone, Radio Address #144, "Local Campaign Finance Reform — A City Council Success," presented on August 11, 1993.

<sup>33</sup> From a January 6, 1994 press conference televised by WNYC.

<sup>34</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>35</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>36</sup> *Campaign Finance Board 1993 Hearings*, at 59-60 (testimony of Arnold Kriss, City Council candidate Jane Crotty's campaign manager).

<sup>37</sup> Based on a projection from data for the 1993 elections.

<sup>38</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>39</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>40</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. 27. The recommended maximum public funds payment to Council candidates is \$70,000, approximately one-third of the recommended expenditure limit.

<sup>41</sup> Based on a projection from data for the 1993 elections. *See also* note 39, above.

<sup>42</sup> *Campaign Finance Board 1993 Hearings*, at 97-98 (testimony of Council member-elect Howard Lasher, 47th district).

<sup>43</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.

# Appendix

## Campaign Finance Program Participants in the 1993 Elections

### **MAYOR**

David Dinkins\*†  
Rudolph Giuliani\*  
Roy Innis\*  
Jimmy McMillan  
Eric Ruano Melendez\*

### **PUBLIC ADVOCATE**

Susan Alter\*  
Lenora Fulani  
Mark Green\*  
Donald Halperin\*  
Grady O'Cummings  
David Paterson\*  
Roberto Ramirez\*  
John Ravitz  
Ron Reale\*  
Frances Reiter  
Richard Thomas

### **COMPTROLLER**

Herman Badillo\*  
Alan Hevesi\*  
Elizabeth Holtzman\*†

### **BOROUGH PRESIDENT**

Delco Cornett\*  
Fernando Ferrer\*†  
Irving Gelb  
Carl Grillo\*  
Samuel Harvey  
Ruth Messinger\*†  
Guy Molinari\*†  
Claire Shulman\*†  
John Spavins\*  
Geronimo Williamson

### **CITY COUNCIL**

Michael Abel\*†  
Sandy Abby Aboulafia\*  
Donald Adolff  
Roger Aguinardo\*  
Agustin Alamo\*  
Sal Albanese\*†  
Lawrence Ambrosino  
Anthony Avella Jr\*  
Roslyn Bacon  
Howard Barbanel\*  
Atchudta Barkr\*  
Robert Bellinson  
Sandy Bender\*  
Michael Benjamin  
Herbert Berman\*†  
Denny Bhagwandin  
Esther Braun  
Louis Burgess  
Samuel Burke\*  
Louis Caraballo\*  
Adolfo Carrion Jr  
Rafael Castaneira Colon\*†  
Francesca Castellanos\*  
Alfred Cerullo III\*†  
Margaret Chin\*  
Leo Chudzikiewicz Rosenthal  
Una Clarke\*†  
Lee Covino\*  
Jane Crotty\*  
Lucy Cruz\*†  
Joseph Defina\*  
Victor Del Mastro  
William Deltoro\*  
Francisco Diaz Jr\*  
Stephen DiBrienza\*†  
James Dillon\*  
Thomas Duane\*†  
Andrew Eatmon\*

Ronnie Eldridge\*†  
Ernest Emmanuel  
Marcey Feigenbaum  
James Fenelius  
Virginia Fields\*†  
Alan Fintz  
Pamela Fisher  
Ernest Foster\*  
Wendell Foster\*†  
Kathryn Freed\*†  
Miriam Friedlander\*  
Sylvia Friedman\*  
John Fusco\*†  
Thomas Gebert  
Vincent Giandurco  
Edward Gitkind\*  
Barbara Goldman  
Lloyd Henry\*  
Julian Hill Jr  
Allen Hodge  
Samuel Horwitz†  
Allan Jennings\*  
Judith Joice\*  
Paul Kahanowitz  
Alan Kestenbaum  
Lori Knipel  
Karen Koslowitz\*†  
Elliott Kramer  
James Lamorte  
Alan Laufer  
Sheldon Leffler\*†  
Lew Levin\*  
Edward Lewis\*  
Marcus Lewis  
Guillermo Linares\*†  
Martin Malave-Dilan\*†  
Garth Marchant Sr\*  
Helen Marshall\*†  
Joan McCabe\*†

\* Indicates participant was on ballot.

† Incumbent

## Appendix

Robert McClain\*  
Rafael Mendez\*  
Robert Meyers\*  
Joel Michaels\*  
Stanley Michels\*†  
Charles Millard\*†  
David Miller  
Robert Miller  
Ismael Moices  
Colin Moore\*  
Samuel Morell\*  
Alphonzo Mosley\*  
Leon Nadrowski\*  
Jerome O'Donovan\*†  
John O'Hara\*  
Thomas Ognibene\*†  
Luis Ortega  
Antonio Pagan\*†  
John Paine\*  
Jerome Perdom Sr  
Mary Pinkett\*†  
Russell Pinto\*  
Sheldon Plotnick\*  
Adam Powell\*†  
Alfredo Raffo Jr  
Domenic Recchia  
Phillip Reed  
Nilda Luz Rexach\*  
Clarence Reynolds  
Jose Rivera\*†  
Migdalia Rivera\*  
Janice Robertson\*  
Annette Robinson\*†  
Victor Robles\*†  
Olivia Rodriguez  
Secundino Rodriguez  
Jose Roman  
Israel Ruiz\*†  
John Sabini\*†  
Carmelo Saez Jr\*  
Desirie Sanchez  
Frank Sansivieri  
Carlo Schiattarella  
Michael Schlossman\*  
Allen Schmidt\*  
Mitchell Schwadron\*  
Pedro Segui

Alexander Staber\*  
Richard Taylor  
Timothy Touhey  
John Umland  
Peter Vallone\*†  
Anastasia Vasilakis\*  
Ronald Ward  
Lawrence Warden\*†  
Juanita Watkins\*†  
Anthony Weiner\*†  
Thomas White Jr\*†  
Priscilla Wooten\*†

### OFFICE NOT INDICATED

Iris Herskowitz Baez  
Ismael Betancourt  
Adele Cohen  
Domenick Crispino  
Israel Cruz  
Albert Davis  
Ruben Diaz  
Pedro Espada  
Jack Friedman  
Sigfredo Gonzalez  
John Haggerty  
John Klotz  
Albert Lemishow  
Sandra Love  
Michael Nieves  
Wade Rawluk  
Frank Steele  
Forrest Taylor  
Peter Wang  
Ira Williams  
Gerald Wygoda

\*Indicates participant was on ballot.

† Incumbent

