

# PARTY FAVORS

A REPORT BY THE NEW YORK CITY CAMPAIGN  
FINANCE BOARD

JANUARY 1995



New York City Campaign Finance Board

## **THE NEW YORK CITY CAMPAIGN FINANCE BOARD**

The New York City Campaign Finance Board is the independent, non-partisan City agency charged with administering New York City's Campaign Finance Program, which provides matching funds to candidates who agree to contribution and expenditure limits and detailed disclosure of their campaign finances. The Board also publishes New York City's Voter Guide, which provides information about candidates, ballot proposals, and voting in municipal elections to all registered voters in New York City.

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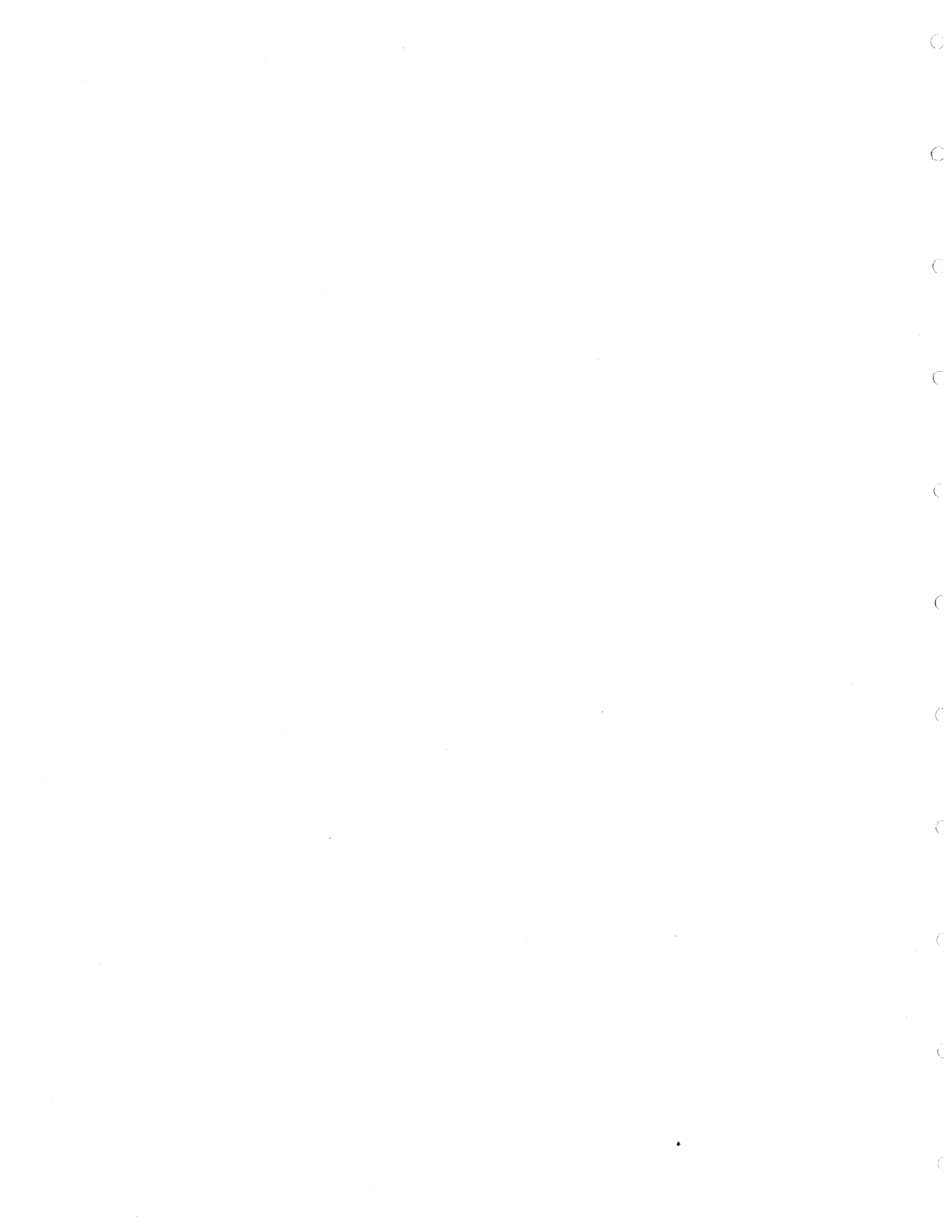
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The Board would like to thank Theresa Wang, Staff Analyst, and Laurence Laufer, Counsel to the Executive Director, for their work in preparing this report.



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## INTRODUCTION

During the down-to-the-wire mayoral race of 1993, the New York State Democratic Committee (the "State Democratic Committee") and the New York Republican State Committee (the "Republican State Committee") spent money on activities that directly or indirectly benefitted their mayoral candidates, both of whom were participating in the New York City Campaign Finance Program (the "Program"): David Dinkins running for re-election as the nominee of the Democratic party, and Rudolph Giuliani, the nominee of the Republican and Liberal parties. Both state committees were criticized for having sought ways to evade the contribution and spending limits of the New York City Campaign Finance Act (the "Act").<sup>1</sup> Both parties, however, maintained that their respective expenditures were not inappropriate under the Act, having been made "independently" of the Dinkins and Giuliani campaigns.

The State Democrats maintain that they followed the letter of the Act when they undertook a promotional campaign that, while containing messages expressly advocating the election of their candidate and the defeat of his opponent, was in fact devised and conducted without any contact with Mayor Dinkins or his agents. One newspaper editorial called the State Democratic Committee's actions "Campaign Finance Chicanery" and belittled its argument, ". . . by any common-sense standard, the state party's spending amounts to cheating."<sup>2</sup>

The State Republicans contend that they ran only a generic campaign promoting the party ticket. They argue that expenditures on "generic" activities undertaken for party-building purposes, including election day efforts to get out the vote and monitor polling sites, should not be attributed to any candidate. There are those, however, who are skeptical of the "independence" of the Republican State Committee's election day efforts: ". . . the buzz out there is that the Republicans got away with murder at the last minute because of their timing."<sup>3</sup>

Both parties have called for clarification of the circumstances under which party spending will be considered a contribution to the party nominee subject to the contribution and spending limits of the Act when the nominee is participating in the Program. On the one hand, a focus on whether a party acts independently has been ridiculed as "an impossible line to swallow . . . rely[ing] on the fuzzy, implausible notion of an 'independent action' by a political party."<sup>4</sup> On the other hand, it must be recognized that political parties perform a unique role in the election process to accomplish a number of goals, including, but not limited to, the election of a particular candidate.

The Campaign Finance Act, as discussed below, does not treat political parties differently from other individuals or organizations. In applying the Act to political party spending, the New York City Campaign Finance Board has developed criteria for determining whether party spending is independent of the party's nominee or chargeable to the nominee's spending limit under the Act. The Board, having reviewed the law, its interpretation of the law, and the events of the 1993 elections, believes that, in general, the current approach is a correct one. This report nonetheless describes recommendations for amendments to Board rules, State law, and the Act, to clarify the treatment of political party spending by shifting the focus away from implausible claims of independence, to give parties appropriate flexibility to promote the party in general, and to limit the risk that the parties will be misused as a channel for evading the limits applicable to candidates participating in the Program.

The Board intends to disseminate this report widely in the hope that comments elicited in response to it will help the Board evaluate the wisdom and practicality of these recommendations before it makes any formal proposal on this subject.

## **RELEVANT LAW**

The Act limits the amount of contributions that candidates in the Program ("participating candidates") may accept from individuals and entities, including political party committees. The limit applicable to contributions from political parties is the same as the limit applicable to contributions from other sources.<sup>5</sup>

In addition to direct monetary donations, the Act defines "contribution" to include:

any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the . . . election . . . of any candidate. . . .

Payments made "independent of the candidate or his or her agents or political committees authorized by such candidate", however, are not contributions.<sup>6</sup>

Under the Act, the Board must make a factual determination whether spending on behalf of a participating candidate, whether by a political party or any other source, is independent of the candidate. Because political party committees are highly likely to cooperate with the party's nominees, the Board presumes that party spending on behalf of a nominee is not independent. In these instances, the participating candidate has the burden of rebutting the presumption. If that presumption is not rebutted, the spending is considered an in-kind contribution subject to the contribution and expenditure limits applicable to the candidate under the Act.<sup>7</sup>

In making these factual determinations, the Board must confront difficult issues, including:

1. Whether a party expenditure that clearly identifies a particular candidate may nonetheless be shown to have been made for "generic" party purposes, so that it will not be considered an in-kind contribution to the candidate; and
2. Whether a party expenditure for apparently generic "party building" purposes may nonetheless be shown to be an in-kind contribution to a candidate, either because the candidate authorized or otherwise cooperated in the making of the expenditure or because the party intended the expenditure to benefit the particular candidate.

Finally, when a political party committee makes expenditures for a participating candidate, a risk arises that the committee is serving as a conduit for contributions far in excess of the Act's contribution limits. State law permits a contributor to give up to \$62,500 per year to a political party committee.<sup>8</sup> Thus, a single contributor may give a total of \$250,000 to a political party committee during a four-year election cycle, in contrast to the \$6,500 that participating candidates seeking City-wide office were permitted to accept for the 1993 elections.

## PARTY SPENDING IN THE 1993 MAYORAL CAMPAIGN<sup>9</sup>

The Board has attempted to evaluate the extent of certain spending by the Democratic and Republican state committees as it relates to the 1993 mayoral campaign within the context of specific, discrete issues as raised by each side in that campaign. What follows is not a comprehensive study of spending by all state and local party organizations that may have taken place relating to the 1993 New York City elections.

### Democrats for Dinkins

In early October of 1993, the State Democratic Committee launched a series of radio advertisements and a direct-mail campaign expressly advocating the re-election of David Dinkins and the defeat of Rudolph Giuliani. The radio commercial, for example, proclaimed that "Giuliani was the Federal Government's lawyer fighting against the rights of women."<sup>10</sup> The direct-mail campaign carried messages, as on one piece of Spanish-language literature, that expressly urged, "Vote for the re-election of Mayor David Dinkins on November 2."<sup>11</sup> The cost of this media advertising was alleged to be more than \$500,000,<sup>12</sup> some \$300,000 of which was given to the State Democratic Committee by the Democratic National Committee to spend on the Dinkins campaign.<sup>13</sup>

Shortly following the airing of the radio commercial and the distribution of the mailings, the Giuliani campaign filed a formal complaint with the Board. The radio commercial and direct-mail literature, the Giuliani campaign claimed, were in-kind contributions to the Dinkins campaign that exceeded the \$6,500 contribution limit. Citing Campaign Finance Board Advisory Opinion No. 1991-5 in support of its argument that the State Democratic Committee expenditure was not independent, the Giuliani campaign called for either the "return [of] an amount equivalent to the promotion's costs (which exceed \$500,000) to the New York State Democratic Committee or else count that amount against the Dinkins campaign's expenditure ceiling." The Giuliani campaign also submitted information on the Republican State Committee's plan for spending, which, in contrast to the State Democratic Committee's candidate-specific materials, allegedly focused only on "generic" party-building activities.<sup>14</sup>

The Dinkins campaign contended that the State Democrats' spending for this advertising was independent of the Dinkins campaign.<sup>15</sup> Furthermore, the Dinkins campaign's verified answer to the Giuliani complaint argued that the Act does not give the Board "power or authority to establish the presumption regarding expenditures by the political party committee . . . and, therefore, that presumption is invalid and may not be applied to the [State Democratic Committee] expenditures .

.. .<sup>16</sup>

The State Democratic Committee also maintained that this spending was undertaken independently, asserting that there had been no contact between it and the Dinkins campaign.<sup>17</sup> According to the State Democratic Committee, the staffing and nature of the State Committee does not automatically allow for or create a process for direct communication with a campaign.<sup>18</sup> Alfred Gordon, the State Democratic Committee Chair, said in defense of his committee's spending, "If people feel the law is not stringent enough, then change the law. If the law stated no independent campaigns by political parties, then we wouldn't do independent campaigns. But the law doesn't do that."<sup>19</sup> Speaking before the Board on October 14, 1993, Gerard E. Harper, counsel to the State



Democratic Committee, echoed the Dinkins campaign's assertion that the Board had no authority to rule on the expenditures: "I don't know that anyone has ever questioned that the [State Democratic Committee] has a legal right to spend money in support of Democratic candidates throughout the State . . . ." <sup>20</sup>

Nevertheless, before the Board arrived at a decision regarding the expenditures, the Dinkins campaign decided to reimburse the State Democratic Committee for the advertising and mailing costs incurred and requested that the State Democratic Committee discontinue the rest of the promotion. The State Democratic Committee accepted the payment and agreed to halt its promotional campaign. <sup>21</sup> Both the Dinkins campaign and the State Democratic Committee expressly stated at that time that the voluntary halt to the advertisements and the reimbursement did not signify an admission that there had been any violation of the Act. <sup>22</sup> The Board concluded that this resolution "eliminate[d] any real or perceived unfair advantage that may have arisen from the [Democratic State Committee's] spending, thus satisfying the purposes of the . . . Act" and rendered moot the issue raised in the complaint. <sup>23</sup>

The Democratic State Committee subsequently made "generic" expenditures. <sup>24</sup> Alfred Gordon testified:

Once the Dinkins campaign paid us the money back which we had expended on the independent campaign, we . . . moved forward with a completely generic effort to assist [D]emocrats in municipal elections. No names or pictures or campaign slogans were mentioned in our literature or our radio ads. Instead of a picture of Mayor Dinkins on our literature, we actually had a picture of a skyscraper, not the most appealing Election Day literature, may I add. Obviously, it wasn't the kind of literature we wanted to run but we were determined to stick within the confines of the Board's interpretation of the law. <sup>25</sup>

The State Democratic Committee's efforts to bring out voters in New York City were reported to cost \$350,000. <sup>26</sup>

### Victory '93

During the 1993 mayoral campaign, the Republican State Committee was planning and executing a spending campaign of its own, "focused solely on enhancing Republican enrollment, getting out the Republican vote and training Republican poll workers." In an October 8, 1994 affidavit to the Board, and sent to the Dinkins campaign on that same day, Republican State Committee Chair William D. Powers claimed that:

independent party expenditures focus on party building activities that are not directly attributable to a clearly defined candidate. . . . Our activities and expenditures are not being made in connection with the election of any particular candidate but rather promote the success and growth of the Republican Party in New York City. <sup>27</sup>

On October 28, 1993, less than a week before the November 2 general election, the Dinkins campaign filed a complaint against the Giuliani campaign charging that certain expenditures by the

Republican State Committee were in-kind contributions to the Giuliani campaign. The complaint alleged that the Republican party's "ballot security" program ("Victory '93"), which involved a "get out the vote" effort and an extensive poll watching operation, was not independent of the Giuliani campaign. The Dinkins campaign cited as evidence a letter dated October 25, 1993, written on Victory '93 letterhead and signed by the Republican State Committee Chair (the "Powers letter"). The apparent purpose of the Powers letter was to raise funds for the Republicans' election day "ballot security" program. The letter, describing contributions as an "investment in the rebuilding of a political system," expressly urged the election of Giuliani, and, while never explicitly naming Dinkins, made negative references to the mayor and his administration.<sup>28</sup> The Dinkins complaint, citing specific negative references, charged that the Powers letter made "obvious, direct attacks on Mayor Dinkins and his administration which have been stated over and over again by Giuliani during this campaign . . . ." It contended that the Powers letter "directly promotes Giuliani by name and attacks Mayor Dinkins, his opponent, and . . . is designed to raise funds for [a] ballot security program, the specific purpose of which is to assist Giuliani and defeat Mayor Dinkins."<sup>29</sup>

The complaint asserted that under Board rules and advisory opinions:

activities and expenditures by a party committee (such as the Republican Committee) in a general election on behalf of a candidate running as the nominee of the party committee . . . are presumed not to be independent of the candidate . . . [and] are presumed to be in-kind contributions to and expenditures by the candidate.<sup>30</sup>

Thus, the Dinkins campaign urged the Board to consider the cost of the Republican State Committee ballot security program to be an in-kind contribution to the Giuliani campaign.

The Giuliani campaign responded that "Victory '93 was the [Republican State Committee's] independent effort 'focused solely on enhancing Republican enrollment, getting out the Republican vote and training Republican poll workers.'" The Powers letter, the Giuliani campaign said, was targeted at past Republican State Committee contributors to raise funds for Victory '93 and had been prepared without the Giuliani campaign's knowledge or consent. Even so, the Giuliani campaign "in the spirit of campaign finance reform . . . along with other participating campaigns . . . voluntarily decided to count the less than \$10,000 cost of this mailing as in-kind contributions and expenditures by our campaigns."<sup>31</sup>

As for the "ballot security" program, the Giuliani campaign and the Republican State Committee responded that it was one component of the Republican party-building effort in the City which employed generic election day activities to "get out the vote" and protect against voter fraud and that "under analogous federal election law . . . such generic party activities are not allocable to any particular candidate."<sup>32</sup> Affidavits submitted by Chairman William Powers and the Committee's Executive Director, John Sweeney, attested to the independence of the State Committee in planning and executing its election day efforts.<sup>33</sup> Given the state of the record presented and the absence of a presumption regarding generic spending, the Board did not issue an immediate determination whether the Republican party's election day activities were in-kind contributions to the Giuliani campaign.<sup>34</sup>

Both before and at the Board's December 1993 hearings, the State Democrats pushed for an investigation of the State Republicans' election day activities, arguing that if the Board presumed the State Democratic Committee's expenditures not to be independent of the Dinkins campaign, then the Board must carefully examine the Republicans' election day effort. The State Democratic Committee argued that the Board must presume the presence of coordinated spending between the Republican State Committee and the Giuliani campaign because State Senator Guy Velella, the Bronx County Republican Chair, had allegedly served as a key advisor to the Giuliani campaign and headed the party's election day effort, which "included literature paid for by the Republican State Committee . . . which expressly referred to the Republican nominees by name."<sup>35</sup> (The Giuliani campaign has maintained that Senator Velella had no duties, responsibilities, or title in the Giuliani campaign, and indeed no evidence was brought to the Board's attention to verify these charges.<sup>36</sup>)

The Republicans countered that their election day effort was a party function because "[p]arties . . . have [a] much broader, long term objective; which is essentially to build strength from within its [sic] organization by promoting various philosophies and concepts so that voters might be inclined to join its ranks."<sup>37</sup> In the eyes of the Republicans, the 1993 City elections provided a unique opportunity for building a Republican presence in the City. The Republican State Committee testified that its election day effort used traditional activities -- voter registration drives, various forms of advocacy dissemination, and candidate recruitment and development -- to build party strength. The election day effort was different from the State Democratic Committee's radio broadcasts and literature, the Republicans argued, because the Republican activities were "generic" and did not mirror the messages of any particular candidate.

The Republican State Committee spending encompassed three main areas: "Get Out the Vote", fundraising, and administrative costs. The Get Out the Vote program consisted of the mailing of absentee ballots to likely Republican voters, telephoning, consultant work, field operations, and donations to local political organizations. Its overall cost was approximately \$370,000. Additional costs for fundraising and administrative expenses brought the total spending to \$540,000.

The effort included extensive training for poll watchers. Jeffrey Buley, the Republican State Committee's counsel, and John Sweeney conducted 15 sessions, providing training and instructional materials to over 1000 people, according to Buley. Lawyers and other volunteers for the training were recruited through the county committee structure and others who had been in contact with Victory '93.

The Republican State Committee also used and paid some local Democratic organizations. According to Buley, the Republican Party was looking for disaffected Democrats and trying to attract them to the Republican party. Consultants were hired by the Republican State Committee specifically to determine which local groups to use and to which to transfer funds.

Information provided to Board staff after the election is consistent with the affidavit of John Sweeney, provided to the Board before the election, which focused on the independence of the Victory '93 effort and identified the Republican State Committee activities as pure party building. According to Sweeney, in 1993, the Republican State Committee was attempting to re-elect Republican incumbents and elect other Republicans to many different City offices. The plan was to build on New York City success and win the governorship and statewide offices in 1994. The

Republicans were organizing a field operation, according to Sweeney, "which for the first time will be capable of pulling out a vote and staffing the polls with Republican inspectors and poll watchers throughout the City to exercise the rights given to us under the state election law". The Republican State Committee maintained that the previous lack of sufficient Republican poll watchers had been a problem because it reduced the vigilance of election inspectors in challenging possible fraudulent voters.<sup>38</sup> Various newspaper accounts of alleged voter fraud accompanied Sweeney's affidavit.

Charges were made that Republican election day activity included instances of voter intimidation. Although some suggested that the Board look into these charges, they fall outside the Board's jurisdiction, and the Board is unaware of any formal action taken on these charges by the U.S. Justice Department or any other agency with appropriate jurisdiction.

By any measure, it is clear that both parties put substantial resources into generic efforts that promoted the party and presumably benefited its ticket.

### **PARTIES AS CONDUITS**

One issue raised was whether excessive contributions were passed through the party to candidates. Although it was Giuliani's campaign that first raised the question at the time of the State Democratic Committee's October radio broadcasts and direct-mail promotion,<sup>39</sup> after the election, the *Daily News* reported:

Fat cat Republicans, limited by public campaign finance laws in what they could give to Rudolph Giuliani, poured tens of thousands of dollars apiece into a huge Election day poll-watching effort, campaign records show.<sup>40</sup>

One contributor, John Loeb, Jr., "said he mistakenly believed that he had given the maximum amount [allowed under the law] to the Republican-Liberal candidate, 'wanted to give more money' and was told by the [campaign] aide 'that one option could be to help him through the Liberal Party.'" <sup>41</sup> As described below, there was a certain degree of support for the parties from contributors who also gave directly to the mayoral candidates.

The Board compared disclosure statements filed by the Giuliani and Dinkins campaigns with the Campaign Finance Board for the 1993 elections with the statements the Republican State Committee, the State Democratic Committee, and the Liberal Party filed with either the State or the City Board of Elections covering the period from July 12, 1993 through January 11, 1994.<sup>42</sup> The numbers of common contributors found in this analysis, and presented below, are surely understated.<sup>43</sup>

The comparison shows that at least 88 contributors who donated \$203,795 to the Giuliani campaign also gave \$255,695 to the Republican Party. Twenty-one of these contributors made contributions to the candidate and the party that in the aggregate exceed \$6,500, which was the Act's contribution limit applicable to contributions accepted by mayoral candidates participating in the Campaign Finance Program for the 1993 elections. Buley stated that he instructed Republican State Committee staff to use the disclosure statements Giuliani filed with the Board as a resource for finding potential donors.<sup>44</sup> Disclosure statements filed with the Board of Elections do not allocate

any portion of the contributions received by the Republican State Committee to the Giuliani campaign.<sup>45</sup> At least 34 contributors who gave a total of \$96,745 to Giuliani also gave \$152,600 to the Liberal Party. Fifteen of these contributors made aggregate contributions exceeding \$6,500. It is also notable that at least 20 contributors who gave a total of \$32,250 to the Giuliani campaign also donated \$24,010 to the Democratic Party.

The Democratic Party had its share of common contributors -- those who gave both to the Dinkins campaign and to the State Democratic Committee. Filings of the campaign and the party indicate that a minimum of 76 contributors who gave \$171,230 to Dinkins also gave \$79,495 to the State Democrats. Sixteen of these contributors made aggregate contributions exceeding \$6,500. In addition, at least 20 contributors who donated a total of \$36,275 to the Dinkins campaign also gave \$14,350 to the Republican Party, and a minimum of 21 contributors who gave a total of \$61,400 to the Dinkins campaign also gave \$126,350 to the Liberal Party.

### **RECOMMENDATIONS<sup>46</sup>**

Political parties are different from other sources of private campaign financing. The most basic party functions are to support candidates and to educate voters. Parties participate in mobilizing the electorate by transmitting political values and information to a large number of voters. The parties generally accumulate political power by representing multiple group interests.<sup>47</sup> Political parties are accorded a special status in New York State election law, under which they nominate candidates at primary elections.

Usually, political party organizations support the party's nominees in the general election, whether by marshalling volunteers, providing expertise, or extending financial aid. (On the other hand, there are instances in which a party organization and its nominee are not so closely aligned, and the party leadership does not significantly support the candidate.) History shows that political parties may seek to leverage the assistance their nominees hope or expect to receive to gain patronage appointments, although civil service reform has limited the extent to which patronage is available for this purpose. With the perceived decline of political parties, a greater risk today may be that large contributions from individual contributors can unduly influence government decision-making in favor of these contributors. Under the Campaign Finance Program, this risk can be reduced as long as political parties do not serve as conduits through which excessive contributions can be directed to participating candidates.

The fortunes and objectives of a political party are, in one sense, tied to the performance of its candidates in a particular election, but also transcend the results of any one election. Under the First Amendment, government must be wary of unduly interfering with a political party's judgment of its interests or its strategy for promoting them. And in any event, the Campaign Finance Board is not authorized to regulate the content or objectives of political party spending.

The objective of the Act, and of the Board in administering the Act, must therefore be limited: to provide clear standards which guard against participating candidates' evasion of the contribution and spending limits. As a starting point, the Board recognizes that, in reality, the stake that parties and their nominees share in a general election campaign makes it extremely unlikely that either the party or its nominees would readily accept or adhere to a standard that completely forbids

communication between them or the sharing of common agents. Likewise, parties and their nominees often have common goals and campaign themes.

### Rules for Generic Spending and In-Kind Contributions

Political party expenditures may be characterized as either candidate-specific or generic "party building". Either kind may include activities on election day, and both candidate-specific and party building expenditures can of course be planned and executed with or without the cooperation of the candidate's campaign.<sup>48</sup>

The complexity of attributing the benefits of generic spending to particular candidates, however, is daunting; in some instances, it could entail an assessment of the relative benefit to a number of candidates, both participants and non-participants, running for different offices and seeking votes among different geographic constituencies.

Participating candidates should not be attempting to prove that a "square peg" of direct party support fits into a "round hole" of independent expenditures. Thus, it is necessary to make clear that communication between, or common agents shared by, parties and their nominees will not require a conclusion that all spending by the party in an election is an in-kind contribution. Because it can be presumed that parties and their nominees communicate and share common agents, neither of these factors is particularly helpful for determining whether political party spending should be charged to a candidate.<sup>49</sup>

Rather, to protect the integrity of the Act's limits, the Board's rules should refine the presumption of its 1991 advisory opinion. The 1991 opinion determined that party spending in a general election "on behalf of" the party nominee is presumed not to be an independent expenditure, but suggested that further analysis of the content of the materials or activity at issue could help overcome the presumption.<sup>50</sup> The new rules would make clear that party spending for materials or activity that includes an *electioneering message* about a *clearly identified candidate* is an in-kind contribution to the party's nominee.<sup>51</sup> A party's financing of the dissemination, distribution, or republication of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate would also be an in-kind contribution to the candidate, as these materials were originated by the candidate's campaign.<sup>52</sup> In addition, Board rules should set forth the specific kinds of "generic" and other party spending which would not be considered an in-kind contribution to a candidate participating in the Program, unless it is demonstrated that the candidate's campaign cooperated in spending that was primarily intended to benefit that candidate. (Some such spending may go to activities that are generally the province of the parties, such as poll-watching at the general election.<sup>53</sup>)

The Board is especially interested in comments about whether spending for the following purposes should be considered "generic" under current law or otherwise not related to the elections of participating candidates:

1. Materials or activities that promote the party, or oppose another party, by name, platform, principles, history, themes, slogans, issues, or philosophy, without reference to particular candidates in an upcoming election subject to

Program requirements.

2. Materials or activities in connection with candidates and elections not subject to Program requirements.
3. Training, compensating, or providing materials for poll watchers appointed by the party pursuant to Election Law §8-500.
4. Promoting party enrollment or voter turnout without reference to particular candidates in an upcoming election subject to Program requirements, including research, polling, recruitment of party employees and volunteers, development and maintenance of voter and contributor lists, and mailing of absentee ballot applications.
5. Raising funds for the party without reference to particular candidates in an upcoming election subject to Program requirements.

Any party spending that is neither "candidate-specific" nor fits within one of the "generic" categories that are ultimately enumerated in Board rules would be presumed to be an in-kind contribution on behalf of particular candidates, unless a formal Campaign Finance Board advisory opinion has concluded otherwise. The possibility would remain that a case could be made, based either on content clearly meant to aid a particular candidate or a showing of intent, that spending that appears to be generic is really an in-kind contribution to a candidate.

The Board notes that under this proposal there is a somewhat greater risk that candidates may work with parties to orchestrate a spending campaign that appears generic, but is actually intended to benefit a particular candidate. Nonetheless, it is the Board's preliminary view that it is preferable to establish a standard that takes into account the unique relationship between parties and their nominees and to avoid as much as possible a case-by-case inquiry into the planning behind and other particular circumstances surrounding a given party expenditure. The Board has attempted to suggest areas for broad spending by political parties on their own behalf (rather than suggesting an increase in the amounts parties may give to candidates participating in the Program). At the same time, the Board expects that party assistance actually orchestrated for the clear benefit of a particular candidate that is disguised as "generic" spending will be readily detected and swiftly addressed.

#### Proposals for Amending State and City Law

As discussed above, preliminary analysis has identified a minimum of 52 contributors who gave aggregate amounts to political party committees and to the party's mayoral nominees in the 1993 elections that exceeded the amount of the contribution limits applicable to these candidates under the Program. There is an appearance that such contributors may use political parties, and vice versa, to evade the limits to which candidates are subject. The risk presented by this evasion is exacerbated by the huge disparity between the \$62,500 annual limit on contributions to political party committees and the contribution limits applicable to candidates participating in the Program.<sup>54</sup> Subject to comments it may receive, the Board currently believes that State law should be amended to reduce substantially the amount that contributors can give to parties.<sup>55</sup>

Amendments to State law are also desirable to ensure that the parties will not be used as conduits through which excessive donations can be channeled to nominees participating in the Program and their non-participating opponents. The following are examples of possible amendments that would clarify ambiguities in current law, establish reasonable requirements for separate accounts, facilitate enforcement of contribution limits applicable in City elections, and improve public disclosure of expenditures made for or against a specific candidate. The Board specifically solicits comments on these possible amendments:

1. Require political party committees to establish separate accounts for candidate expenditures and for all non-candidate expenditures (including so-called "housekeeping" expenditures). Define "candidate expenditures" as transfers to or in-kind contributions on behalf of candidates. Prohibit parties from making independent expenditures on behalf of candidates.
2. Require parties to establish an additional separate account for candidate expenditures in City elections subject to the Program (regardless whether the party's candidate is participating in the Program); no other committee accounts could be used to make expenditures for these candidates.
3. Clarify that the limit on contributions to political party committees is an aggregate limit applicable to every committee provided for in the rules of a political party.<sup>56</sup>
4. Require political party committees to submit separate disclosure schedules for each account established by each committee.<sup>57</sup> These filings should be made with the Campaign Finance Board, as well as with the Board of Elections, to facilitate monitoring and verification of participating candidate compliance with the contribution limits and other requirements applicable in elections covered by the Act.
5. Require all political committees, including political party committees, to enumerate each candidate who is supported or opposed by an itemized disbursement.

The Act provides that the contribution limits applicable to other contributors also apply to the financing nominees receive from their parties.<sup>58</sup> The Act has curtailed excessive contributions, including those made by political parties. Indeed, the resolution of the party spending matters that came to light during the 1993 elections underscores that the current contribution limits have been effective.<sup>59</sup>

The Act should be clarified, however, to include the amounts political parties transfer to or spend on behalf of candidates who do not participate in the Program (including spending to oppose a non-participant's opponent) in Board determinations whether the non-participant has raised or spent the amount that triggers accelerated public funds payments and the removal of spending limits for participating opponents.<sup>60</sup> Distinctions drawn between "candidate-specific" and "party-generic" spending, discussed above, would be relevant to these determinations.



## **CONCLUSION; REQUEST FOR PUBLIC COMMENT**

The Board believes that the above recommendations for changes in its rules, State law, and the Act together provide the best way to address the circumstances in which party spending will be attributed to a party nominee and to accomplish greater accountability for political party spending in City elections. Regardless whether its recommendations are adopted into State and City law, however, the Board believes that a rulemaking under its existing authority is desirable to address what party spending will be presumed to be an in-kind contribution to participating candidates, based upon distinctions between candidate-specific and party-generic expenditures such as those described above.

Before making any formal proposals, however, and in light of the impact these recommendations might have on future New York City elections, the Board wishes to encourage discussion and comment about this report and its recommendations. The Board will consider all comments it receives carefully before proposing new rules or legislation.

Please address comments on this Report to:

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The Board would greatly appreciate receiving comments before May 1, 1995.

1. See, e.g., Editorial, "Campaign Finance Chicanery", *The New York Times*, October 13, 1993, p. A24; Editorial, "Under the Table", *New York Newsday*, October 15, 1993, p. 58; Editorial, "Testing Key Campaign Law", *Daily News*, October 19, 1993, p. 48; Michael Finnegan and Tom Robbins, "GOPers Got Around Campaign Finance Law", *Daily News*, November 11, 1993, p. 20; James C. McKinley, Jr., "Steering Around the New York City Campaign Finance Law", *The New York Times*, December 26, 1993, p. 33.

Candidates for mayor, public advocate, comptroller, borough president, and City Council member who join the Campaign Finance Program agree to abide by its contribution and expenditure limits, extensive public disclosure requirements, and the audit and other compliance-monitoring procedures of the Campaign Finance Board. In return, participating candidates who are on the ballot and meet certain threshold fund raising requirements may qualify for public funds that match contributions they receive from individuals resident in New York City. See generally, New York City Campaign Finance Act, codified at New York City Administrative Code §§3-701, et seq.

2. Editorial, "Campaign Finance Chicanery", *supra* note 1.
3. See Hearings before the New York City Campaign Finance Board, December 8-9, 1993, p. 126 (testimony of Gene Russianoff, Senior Attorney, New York Public Interest Research Group).
4. Editorial, "Under the Table", *supra* note 1.
5. Administrative Code §3-703(1)(f). The contribution limits apply to contributions from political committees, which include committees established by political parties. Administrative Code §3-702(11). These committees are "party committees" and "constituted committees". See New York Election Law §14-100(2), (3). State law expressly exempts from its contribution limits the donations political party committees make to candidates the party supports. Election Law §14-114(3). These monetary donations are considered "transfers". Election Law §14-100(10).
6. Administrative Code §3-702(8). A payment is "independent" if the candidate, his or her agents, or authorized political committees "did not authorize, request, suggest, foster or cooperate in any such activity . . . ." Id. See also Campaign Finance Board Rule 1-02, defining "in-kind contribution", and Election Law §14-100(9). If a payment is found not to be "independent", it is an in-kind contribution, subject to both the contribution and expenditure limits of the Act. Campaign Finance Board Rule 1-04(g)(1). Rule 1-08(f)(1) enumerates factors for determining whether an expenditure is independent, including whether: (1) the participating candidate has agents in common with the spending entity; (2) the participating candidate has cooperated in the formation or operation of the spending entity; and (3) the spending entity is established, maintained, financed, or controlled by a person or entity that also establishes, maintains, finances, or controls a committee authorized by the participating candidate.
7. Campaign Finance Board Advisory Opinion No. 1991-5 (August 8, 1991). Some argue that the Board should not make factual determinations about whether political party spending is independent of the party's nominee. See, e.g., Letter of then-Council member Carolyn B. Maloney to Laurence Laufer, dated September 11, 1991, on file with the Campaign Finance Board. Rather, they contend that under the Act or State Election Law, every political party expenditure on behalf of the party's nominees is conclusively not independent. While no support has been found for a conclusive presumption in the Act or its legislative history, see Letter of Laurence Laufer to Council member Carolyn B. Maloney, dated September 12, 1991, on file with the Campaign Finance Board, experience has shown that the Board's presumption is extremely difficult, if not impossible, to overcome when the party spending is for materials or activities that clearly identify the candidate supported or opposed. The question whether political party spending may be "independent" of the candidate it supports has not been addressed in any formal administrative or judicial interpretation of State law.

The Campaign Finance Act takes much of its language from earlier bills introduced in the New York State Assembly to establish public funding for state campaigns. It is of interest that in a colloquy in the Assembly on one of the State bills from which the Act's language is derived, the bill's sponsor, Richard Gottfried, stated that expenditures by political party committees on behalf of candidates who opt in to the proposed public financing program would be subject to the spending limit applicable to the candidate. The Assembly, State of New York, Record of Proceedings, June 26, 1981, at pp. 9957 - 9963. Gottfried distinguished political party spending from the bill's exemption for independent expenditures:

. . . if it cannot be demonstrated that . . . spending is truly independent of the candidate, then it comes under the [expenditure] limit and there is no way on earth you are going to convince me that anybody in this State is going to deem spending by a Republican county committee on behalf of a Republican candidate to the Assembly to be truly independent.

Ibid., p. 9962.

8. Election Law §14-114(10). The disparity may be even greater. State law seems to permit a \$62,500 per year donation to every committee established by a single political party. Generally, party rules provide for a number of constituted committees, such as state committees and county committees, and may also provide for other party committees. See, e.g., Rules of the New York Republican State Committee at Rule 11 (September 29, 1993); Rules of the Democratic Party of the State of New York at Art. II §§1, 2, 3 (undated); Rules and Regulations of the Liberal Party of New York State at Art. I §2 (September 22, 1990); Rules and Regulations of the Conservative Party of New York State at Art. I §2 (September 21, 1992).

In the case of a party committee, this risk is partly addressed because a portion of every contribution it receives that is not used for "non-candidate expenditures" must be allocated and is deemed a contribution to each candidate supported by the committee. Election Law §14-114(4). This allocated contribution would be subject to the contribution limits of the Act, in the case of participating candidates. But because these "pass through" limitations do not apply to constituted committees, constituted committees could serve as conduits for excessive contributions. Cf. Election Law §14-114(5) (a constituted committee may not spend in one year, other than as "non-candidate expenditures", a portion of an individual contribution that exceeds one-half cent per registered voter in the state, in the case of a state committee, or one cent per registered voter in the district in which the committee is organized). But see Election Law §14-120 (prohibiting the making of contributions other than in the name of the actual contributor) and New York State Board of Elections 1976 Opinion No. 2 (January 19, 1976) (subjecting contributions passed through a political committee, including political party committees, to the contribution limit applicable to the original contributor when both the original contributor and the political committee exercise discretion over the selection of the ultimate recipient).

Moreover, State law contribution limits do not apply to monies received by political party committees that are used "to maintain a permanent headquarters and staff and carry on ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates." Election Law §14-124(3). These "housekeeping expenditures" are disclosed to the Board of Elections on separate disclosure schedules.

9. The Campaign Finance Board is in the process of completing its audits for the 1993 Dinkins and Giuliani campaigns as this report goes to press. Thus, this section does not represent the Board's final conclusions about party spending on behalf of the candidates in the 1993 mayoral elections.
10. State Democratic Committee radio commercial scheduled to air from October 4 through October 31, 1993.
11. State Democratic Committee direct-mail literature. Another piece of literature read, "If you are living in New York, Rudolph Giuliani wants to bring you back to the old days . . . when you didn't have a job. When you didn't have a home. When you were forgotten by city government."
12. Verified complaint filed by Randy M. Mastro on behalf of the Giuliani campaign on October 7, 1993, p. 3.
13. Transcript of New York City Campaign Finance Board meeting, October 14, 1993, p. 32 (testimony of Gerard E. Harper, counsel to the State Democratic Committee). It is nearly impossible to trace the ultimate source of the funds from the Democratic National Committee. Subsequently, in a separate matter unrelated to the New York City Campaign Finance Program, the State Democratic Committee was ordered to return \$669,367.32 in funds it received from the Democratic National Committee in 1993 (\$294,367.32) and 1994 (\$500,000), to the extent these contributions exceeded the annual New York State contribution limit of \$62,500. Holland v. Gordon, No. 4828-94 (Sup. Ct. Albany Co. 1994).
14. Verified complaint, *supra* note 12, p. 3; see affidavit of William D. Powers in support of complaint, October 8, 1993.
15. William Lynch, Jr., Dinkins' campaign manager, maintained that all activities of the State Democratic Committee in relation to the radio advertising and direct-mail campaign in question were:

... conducted completely independent of Mayor Dinkins' re-election campaign and of the DND Committee [Committee for David Dinkins II, Inc.] within the meaning of the . . . Act, . . . State Election Law, . . . State Board of Elections [regulations,] and . . . Campaign Finance Board [rules]; and neither Mayor Dinkins, nor any employee or agent of the re-election campaign or DND Committee, nor the DND Committee itself, has authorized, requested, suggested, fostered or cooperated in the conception, production or distribution of such advertisements or mailings.

No employee or agent of the re-election campaign or the DND Committee has been authorized by Mayor Dinkins or me to authorize, request, suggest, foster or cooperate in such advertisements or mailings by the Democratic Committee.

(Endnote continued on the next page)

Affidavit of William Lynch, Jr., in opposition to complaint, October 12, 1993.

16. Verified answer of Campaign of David N. Dinkins A/K/A Committee for David Dinkins II, Inc., October 13, 1993, p. 5.

The Giuliani campaign disputed this in a letter to the Board from Randy M. Mastro, counsel to the Giuliani campaign. Arguing that the Board's presumption did not abridge free speech or discriminate against political party committees, Mastro wrote that there is an "undeniable nexus between political party committees and the party's candidates . . ." and again urged that the Board should presume the State Democratic Committee expenditure on radio advertisements and direct-mail literature not to be independent of the Dinkins campaign. Letter from Randy M. Mastro to Andrew Schwartz, dated October 18, 1993, on file with the Campaign Finance Board.

17. Gerard E. Harper, counsel to the State Democratic Committee, and Harold Ickes, counsel to the Dinkins campaign, separately testified about the few and limited contacts between them during the 1993 elections. While acknowledging having spoken two or three times, apparently about the fact of conducting independent campaigns and how to do so, both stated that they had not discussed the substance of the State Democratic Committee's "independent" campaign for Dinkins.

18. Dennis Rivera, president of Local 1199 of the National Health and Human Services Employees Union (which actively backed David Dinkins), was a member of the State Committee and a member of the Committee for David Dinkins Finance Committee. Both Gerard Harper, appearing before the Board on October 14, 1993, and Alfred Gordon, chair of the State Democratic Committee, in his testimony before the Board on December 8, 1993, asserted that the fact alone that Dennis Rivera is an elected member of the State Committee does not mean that he automatically has access to the promotional efforts undertaken by the State Democratic Committee. It was the State Democratic Committee's contention that the effort in support of Dinkins was executed by Alfred Gordon, Gigi Georges (the Executive Director), and Andrew Kimball (Political Director) by themselves, with no communication between them and anyone connected with the Dinkins campaign and without a presentation about the effort to Democratic county chairpersons or at an executive committee meeting.

19. Alison Mitchell, "State Democrats' Ad Help for Dinkins is Questioned", *The New York Times*, October 11, 1993, p. 36.

At the Board's hearings in December 1993, Mr. Gordon further testified, "prominent election lawyers instructed us that the letter of the law allowed us to run an aggressive independent campaign, and then to have the Finance Board tell us that there is a presumption we were not independent . . . and that we indeed carried the burden of proof, indicates that the law needs clarification." See Hearings before the New York City Campaign Finance Board, December 1993, *supra* note 3, p. 81.

20. Transcript of New York City Campaign Finance Board meeting, *supra* note 13, p. 25.

21. According to the State Democratic Committee, \$226,031.84 had already been spent on the radio broadcasts and direct-mail campaign as follows: \$15,000 for a direct mail consulting fee; \$155,894.60 for printing and postage of brochures; \$6,762.24 for mail labels; and \$48,375 for radio. Letter from Gerard E. Harper to Andrew Schwartz, dated October 14, 1993, on file with the Campaign Finance Board. See also letter from Harold Ickes to Gerard E. Harper, dated October 13, 1993; letter from Harold Ickes to Andrew Schwartz, dated October 18, 1993; letter from Gerard E. Harper to Harold Ickes, dated October 14, 1994, on file with the Campaign Finance Board. The Dinkins campaign reported a reimbursement of \$226,032 to the State Democratic Committee on October 25, 1993.

22. Harold Ickes, counsel to the Dinkins campaign, wrote that the Dinkins campaign was requesting a halt to the State Democrats' advertisements because of "uncertainty" as to how the Board would rule on the allegations and the "very severe impact" an adverse ruling would have "on the Dinkins campaign as it enters these final weeks." The request was made "without in any way conceding that these expenditures . . . are other than independent of the Dinkins campaign . . ." Letter of October 13, 1993, *supra* note 21. See also Harper letter of October 14, 1993, *supra* note 21 (citing "political concerns") and Ickes letter of October 18, 1993, *supra* note 21 (noting that "the resources needed to fully litigate this matter . . . would divert resources and focus of the Dinkins campaign and the public debate, and [the decision to reimburse was also intended] in order to put to rest any questions as to the adherence by the Dinkins campaign to the spirit as well as the letter of the Act . . .").

23. Campaign Finance Board Determination No. 1993-8, Giuliani v. Dinkins (New York State Democratic Committee Expenditures) (October 19, 1993).

24. On October 24, 1993, Board staff met with representatives of the State Democratic Committee and advised that independently conducted generic radio advertising would not be presumed to be an in-kind contribution to any candidate.
25. See Hearings before the New York City Campaign Finance Board, December 1993, *supra* note 3, pp. 82-83.
26. William Bunch, "Election Attack", *New York Newsday*, December 1, 1993, p. 4. According to this news article, the Democratic poll watchers were volunteers. It is unclear what additional expenditures, if any, may have been made by the State Democratic Committee on such items as training for poll watchers. These issues were not the subject of a Board investigation, as no complaint was made about this kind of spending by the State Democratic Committee.
27. William D. Powers affidavit, *supra* note 14, p. 2
28. Victory '93 letter dated October 25, 1993, signed by William D. Powers, Republican State Committee Chair, on file with the Campaign Finance Board.
29. Verified complaint filed by Harold Ickes on behalf of the Dinkins Campaign on October 28, 1993, p. 4.
30. Ibid.
31. Letter from Randy M. Mastro to Andrew Schwartz, dated October 31, 1993, quoting from William Powers affidavit, *supra* note 14, p. 2, on file with the Campaign Finance Board. The cost was allocated to City-wide candidates Giuliani, Alter, and Badillo, at \$1,500 each, and to Council candidates Kahn, Eristoff, Schlossman, Espada, Barbanel, Rexach, and Fusco (\$610.44 each). The total cost was \$8,773.08. Letter from Jeffrey T. Buley to Mark McCreary, dated November 16, 1993, on file with the Campaign Finance Board.
32. Mastro letter, *supra* note 31.
33. See Powers affidavit, *supra* note 14, and affidavit of John Sweeney in support of answer, October 29, 1993.
34. After the election, the Dinkins and Giuliani campaigns formally withdrew all outstanding complaints filed against each other. The Board responded that it would not consider the issues raised as pending complaints, but reserved the right to review the matters presented and to determine whether further action was warranted, or if the issues raised should be addressed through legislative or regulatory initiatives or through the issuance of advisory opinions. Letter from Harold Ickes to Andrew Schwartz, dated November 9, 1993; letter from Randy M. Mastro to Andrew Schwartz, dated November 9, 1993; letters from Andrew Schwartz to Harold Ickes and Randy M. Mastro, dated December 7, 1993, on file with the Campaign Finance Board.
35. Letter from Alfred Gordon to Andrew Schwartz, dated November 22, 1993, p. 2, on file with the Campaign Finance Board.
36. Letter from John H. Gross, treasurer of Giuliani for New York, to Andrew Schwartz, dated June 24, 1994, on file with the Campaign Finance Board; telephone conversation between John H. Gross and Andrew Schwartz, September 14, 1994.
37. See Hearings before the New York City Campaign Finance Board, December 1993, *supra* note 3, p. 323.
38. Sweeney affidavit, *supra* note 33, pp. 2-3.
39. Lawrence A. Mandelker, a lawyer for the Giuliani campaign, said that because the advertisements were paid for with the state committee's funds, including money it received from the Democratic National Committee, ". . . [s]upporters of the Mayor in theory could have given to the Mayor's campaign, the state committee and the national committee to get around the limits". James C. McKinley, Jr., "Dinkins Aides Seek to Halt Some Ads", *The New York Times*, October 15, 1993, p. B4
40. Finnegan and Robbins, *supra*, note 1. See also Gordon letter, *supra* note 35.
41. William Bunch, "Beating the System?", *New York Newsday*, January 27, 1994, p. 29.

42. The Republican State Committee filed four statements with the State Board of Elections, and several amendments to these statements, covering the period July 12, 1993 through January 11, 1994. The Liberal Party of New York State filed a single statement, covering July 12, 1993 through January 11, 1994, with the City Board of Elections on January 18, 1994. The statement was marked "housekeeping account only". This is, in effect, an affirmative statement that it did not include expenditures on behalf of specific candidates. See Election Law §14-124(3). The State Democratic Committee filed a single statement, covering July 11, 1993 through January 11, 1994, with the State Board of Elections on February 4, 1994. The statement did not allocate any of its expenditures to specific candidates.

43. Contributions were aggregated by contributor based on exact matches of contributor names. Variations in spelling may have prevented full aggregation of contributions from the same source. Because of these variations, the total number of common contributors among these candidates and their nominating parties is almost certainly understated. The aggregate totals are also understated in that they do not include common contributors from previous time periods, contributions to constituted committees and party committees other than the state committees, and transfers from political committees that would be contributions within the meaning of the Act. In addition, statements filed with the State and City Boards of Elections are not subject to audit by the Campaign Finance Board.

These totals may also be overstated to the extent that contributions may be attributed to spending on behalf of other candidates, generic party building expenditures, or, in the case of the Liberal Party, "housekeeping" expenditures. In addition, totals for the Liberal Party may include certain "housekeeping receipts" that are not contributions; for example, the Liberal Party receipts include four payments from the Giuliani campaign committee, totalling \$50,009.93. Raymond Harding, a Liberal Party vice chair, represented these payments to be reimbursements for expenditures the Liberal Party made on behalf of the Giuliani campaign, including expenditures for telephones, photocopying, and the salary of Carl Grillo, the Party's executive director who also directed the field operation for the Giuliani campaign. Bunch, *supra*, note 41; William Bunch, "Fast Pesos," *New York Newsday*, November 22, 1993, p. 8.

44. Interview with Jeffrey Buley, Counsel to the Republican State Committee, conducted by Campaign Finance Board staff on March 25, 1994.

45. A significant portion of the Republican State Committee's expenditures was allocated among ten candidates, none of whom was running for an office covered by the Act. Nine of these candidates were running for offices outside of New York City. Expenditures not allocated to specific candidates were allocated to "generic" or "general" "party building".

46. The analysis and recommendations of this report are limited to political organizations that qualify as parties under State Election Law. Election Law §1-104(3). In 1993, there were five such parties: Democratic, Republican, Conservative, Right-to-Life, and Liberal. Two additional organizations have qualified as political parties as a result of the 1994 gubernatorial election: Independence Fusion and Tax Cut Now. Other political organizations nominating candidates are "independent bodies". Election Law §1-104(12). In addition, this report does not address the question of party spending in primary elections. (Election Law §2-126 prohibits party spending to aid the designation or nomination of a candidate in a primary election; but see *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989) (striking down prohibitions against party committee endorsements in primary elections).)

47. David Adamany, "Political Finance and the American Political Parties", 10 *Hastings Constitutional Law Quarterly* 497 at pp. 501, 505 (1983). Another commentator has noted:

Political parties are unique with major differences between parties and other special interest groups [that] fall into five categories: the extent to which parties pursue their organization activities through contesting elections; the breadth and inclusiveness of the party organization and membership; the sole concentration of the parties on political activities for achieving their goals; the demonstrated stability and longevity of the parties; and the strength of the parties as cues and reference symbols for the electorate at large.

Kirk J. Nahra, "Political Parties and the Campaign Finance Laws: Dilemmas, Concerns and Opportunities", 56 *Fordham Law Review* 98 (1987). For a brief overview of the traditional role played by parties in political campaigns and its erosion in recent years, see Frank J. Sorauf, *Inside Campaign Finance*, Yale University Press (1992), pp. 2-5.

On the other hand, some minor parties may be constituted primarily to focus on a single issue or set of issues. See, e.g., Rules and Regulations of the Right-to-Life Party at Article 1 §2 (1983).

48. Unlike New York law, federal law expressly exempts certain categories of party spending from coverage as contributions to or expenditures by federal candidates. Thus, State and local party committees' payments for the

(Endnote continued on the next page)

following purposes are not in-kind contributions to federal candidates:

preparation, display or mailing of a slate card, sample ballot, or other printed listing of three or more candidates, except for costs incurred with respect to a display of such listing in broadcasts, newspapers, or magazines;

campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used for volunteer activities on behalf of party nominees; and

voter registration and get-out-the-vote activities conducted for presidential nominees.

For the two latter categories, the materials or activities may not be used in general public communications or political advertising. The portion of these costs allocable to federal candidates must be paid for by contributions subject to federal limitations and prohibitions, and the payments may not be made from contributions designated for particular candidates. 2 U.S.C.A. §431(8)(A)(v), (x), (xii); (9)(a)(iv),(viii), (ix); 11 C.F.R. §§100.7(b)(9), (15), (17); 100.8(b)(10), (16), (18). See also 11 C.F.R. §106.5 (allocation requirements). The use of contributions not subject to federal requirements for these State and local party expenditures has become known and is widely criticized as a "soft money" loophole in federal campaign finance law.

49. The law should clearly reflect this reality as well. Subject to comments it may receive, the Board will recommend appropriate technical amendments to the Act.
50. The opinion outlined various factors that the Board would consider in determining whether the expenditure was subject to the Act's limits, including whether it "was made for a purpose other than promoting or facilitating the election of the party's clearly identified nominee" or "was intended solely to promote the success or defeat of a political party or principle". Advisory Opinion No. 1991-5, *supra* note 7.
51. Cf. 11 C.F.R. §109.1(b)(3) (defining "clearly identified candidate").
52. Rule 1-08(f)(2) would be modified to be an irrebuttable presumption when the spending entity is a political party committee.
53. Election Law §8-500.
54. As described in note 8, *supra*, State law appears to allow committees authorized by the same party to receive from a single contributor an amount that in the aggregate exceeds \$62,500 per year. In the 1993 elections, the contribution limit for participating mayoral candidates was \$6,500 for the primary and general election combined. Following an adjustment based on changes in the Consumer Price Index, the Program's contribution limit was increased to \$7,700 for future mayoral elections.
55. The New York State Commission on Government Integrity has recommended an annual limit on the contributions individuals may make to political party committees equal in amount to the per election limit it recommended for contributions by individuals to candidates for Statewide office (\$2,500 to \$4,000). New York State Commission on Government Integrity, *The Midas Touch: Campaign Finance Practices of Statewide Officeholders* (1989) at Appendix Two. According to *Campaign Finance Law '94*, ten states impose limits on contributions to political parties. New York's limits are by far the highest. See Federal Election Commission, *Campaign Finance Law '94*. A large disparity between the limits applicable to contributions to parties and those applicable to contributions to candidates invites exploitation of a soft money loophole wherever it occurs. See, e.g., Iver Jefferson, "Accepting 'Soft Money' As a Necessary Evil", *The New York Times*, December 29, 1994, p. B5. See also note 48, *supra*.
56. Election Law §14-114(10).
57. Cf. State Board of Elections Disclosure Schedules P (Non-Campaign Housekeeping Receipts) and Q (Non-Campaign Housekeeping Expenses) (required to be filed by political party committees).
58. The State Commission on Government Integrity has recommended that limits be placed on the contributions political parties make to candidates. The Commission suggested that political parties be permitted to give contributions up to five times the limit on individual contributors. *The Midas Touch*, *supra* note 55.

Other jurisdictions tend to allow the parties to give more than individuals or political action committees. Thirty-four states (including New Jersey in non-gubernatorial races) have no limit on the amount that parties may give to their nominees; in contrast, 16 of these states impose limits on contributions by individuals and 13 impose limits on contributions by political action committees (PACs). Of the 17 states that do limit political party contributions:

(Endnote continued on the next page)

in 14, the contribution limits applicable to parties are higher than those applicable to individuals; in 11, the limits applicable to parties are higher than those applicable to individuals and PACs. Campaign Finance Law '94, *supra* note 55.

Of the 12 states that provide public financing for candidates seeking elective office (Florida, Hawaii, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, Rhode Island, and Wisconsin), ten limit the amount political parties may contribute to candidates. In eight of these ten states, the political party limit is higher than the regular limit.

Under Federal law, political party committees are permitted to make expenditures on behalf of candidates for federal office within limits that are significantly greater than the contribution limits applicable to individuals and political action committees. 2 U.S.C.A. §441a(d); 11 C.F.R. §110.7(a), (b). Party committees may not make independent expenditures in connection with the general election campaign of specific candidates. 11 C.F.R. §110.7(a)(5), (b)(4). The parties' "right" to make coordinated expenditures is an exception "permitting them to engage in certain activity that would otherwise result in a contribution to the candidate with respect to whom the expenditure was made." FEC Advisory Opinion No. 1980-119 (October 24, 1980).

59. Because of this clear legislative intent, the remedial benefits of the Act's contribution limits to date, and the uncertain consequences of possible changes, the Board does not recommend modifying the contribution limits applicable to the contributions participating candidates receive from political parties.
60. See Administrative Code §3-706(3).



