

BUNDLES OF TROUBLE?

A REPORT BY THE NEW YORK CITY CAMPAIGN
FINANCE BOARD

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New York City Campaign Finance Board

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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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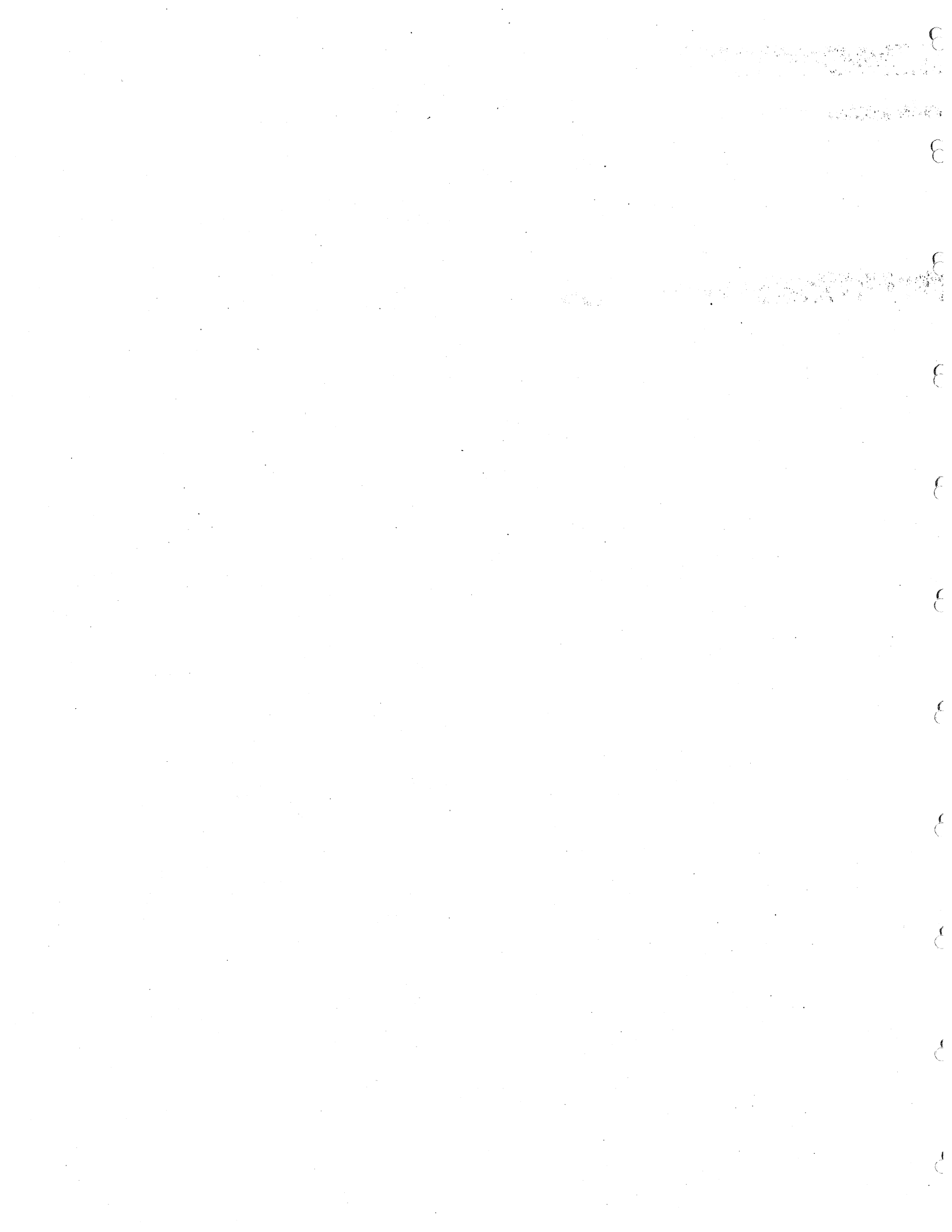


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"While huge contributions from big business have all but disappeared, about one-fifth of the money raised for both [mayoral] campaigns still comes from supporters collecting many contributions from employees or family members, a technique known as bundling." - James McKinley, New York Times.¹

"It is inappropriate to limit the amount that an individual can raise from others as long as each one of those others do not exceed the applicable contribution limit. I don't see any meaningful difference between the activities of a person who solicits votes for a candidate and the activities of a person who solicits money for a candidate." - Lawrence Mandelker, Election Law Attorney.²

INTRODUCTION

The New York City Campaign Finance Act ("Act") places limits on the amount of contributions that candidates participating in the Campaign Finance Program ("Program") may receive from a single source.³ When someone delivers the contributions of others to participating candidates, the Act's public disclosure provisions require the candidate's campaign to identify the "intermediary," but there is no limit on how much a campaign may receive through a single intermediary. Intermediaries who raise and deliver contributions from others are commonly referred to as "bundlers."

During the 1993 New York City elections, participating candidates disclosed to the Campaign Finance Board ("Board") over four million dollars of intermediated contributions (out of a total of over \$30 million in contributions), most of which was for the mayoral campaigns. Two hundred and five intermediaries for Rudolph Giuliani delivered 1725 contributions totalling more than \$1 million, while 149 intermediaries for David Dinkins delivered 2373 contributions totalling over \$2 million.

"Bundling" received considerable attention in the local news media in 1993.⁴ A common theme was that this practice circumvents the Act's contribution limits:

[T]he big spenders, including lobbyists and corporations, get around the [contribution] limit by making it clear to employees which candidate to donate to, or by soliciting individual donations within legal limits on behalf of their candidate -- a practice known as 'bundling'⁵

During the first election subject to the Act, in 1989, it was similarly reported that the practice of bundling was "intended to get a candidate's attention, just as huge contributions from individuals did before the new law was enacted"⁶ At the core of such statements lies an assumption that intermediaries hold the potential to exercise undue influence on candidates and the outcomes of campaigns.

In 1993, donations associated with Wall Street brokerage firms drew particular attention,

highlighting the conflict of interest inherent in the authority of certain elected officials to grant contracts for the marketing of municipal bonds to firms making campaign contributions. In October of that year, executives of seventeen municipal securities underwriting firms voluntarily imposed a ban on political contributions affecting their own firms and employees. In April 1994, the Securities and Exchange Commission approved rules issued by the Municipal Securities Rulemaking Board that banned dealers from doing municipal securities business with an issuer for two years after any contribution to an official of the issuer by the dealer, a municipal finance professional associated with the dealer, or any political action committee associated with the dealer or professional.⁷ (The importance of public disclosure, including the Act's provision for the disclosure of the contributor's employer, business address, and occupation, is underscored by these developments.)

Bundling in the 1993 election received additional notoriety when the Manhattan District Attorney received a complaint from a person whose contribution to the Giuliani campaign was delivered by realtor William W. Koepfel. Koepfel was eventually indicted by a grand jury on a felony charge of illegally demanding campaign contributions from tenants seeking rent-stabilized units. The Giuliani campaign was not implicated, and, in fact, the campaign offered to refund any contribution from any one who felt coerced to make a contribution.⁸ The case highlights coercion of contributions as a possible abuse by intermediaries delivering contributions.

The practice of bundling raises a number of questions. Do bundled contributions in effect undermine the Act's contribution limits? Do they also undermine the fair and open competition for office the Act was intended to foster? Are the current disclosure requirements sufficient? Is additional regulation necessary?

This report reviews the intermediary activity reported by participating candidates during the 1993 elections and discusses its relation to the Act's central objectives of providing clear and relevant public disclosure of campaign financing activities, curbing the perception and reality of undue influence, promoting competitiveness in elections, and providing public funds that match contributor support for candidates who qualify. It presents conclusions and inferences drawn from detailed quantitative analyses of intermediated contributions as reported to the Board.⁹ The report concludes with the Board's recommendations for new restrictions on conduct that may undermine the purposes of the Act.

CURRENT LAW AND POPULAR PERCEPTION

The Act defines "intermediary" as a person or entity "which, other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity" to a candidate.¹⁰ Thus, the law specifically addresses "intermediation," the act of a "middleman" who arranges to deliver at least one contribution from another source to a campaign. The Act's disclosure requirements are triggered only when the intermediary "delivers" the contribution.

Popular perceptions of "bundling" go beyond this legal definition in a number of ways.

While a person who successfully solicits or encourages others to make contributions to a certain candidate, but does not "deliver" them, may not technically be an intermediary under the Act, the risk of undue influence posed by this other kind of coordinated fund raising may be the same. On yet another level, attention may focus less on "intermediation" (in the sense of "delivery" or other coordination by a middleman) and more on whether contributions appear to be associated with a common employer or other common interest, regardless whether there is an intermediary or evidence of any other kind of coordination among the contributors.¹¹

Given the nature of the available data, this report focuses on intermediaries as they are currently defined by law, noting those matters that also relate to intermediation in the broader sense of solicitation or coordination. It also makes a variety of comparisons between "direct" contributions (those for which no intermediary was reported) and "intermediated" contributions.

GRASS ROOTS AND/OR BIG MONEY?

Intermediaries volunteer a fund raising service to political campaigns in much the same way that others supporting a campaign may volunteer their organizational ability, professional knowledge, or community experience. Intermediation can ease a candidate's adjustment to the constraints that contribution limits pose by helping candidates maximize their base of financial support. By raising contributions, the intermediary in effect mobilizes other citizens for political action.¹² Indeed, to encourage grass-roots fund raising, the Act was amended in 1990 to exempt individuals hosting certain fund raisers in their places of residence from disclosure as intermediaries.¹³ These "house party" hosts are not considered intermediaries if their expenses do not exceed \$500, and total contributions made by an individual do not exceed \$500.¹⁴ Thus, the data available for review in this report do not include small contributions made in this context.

A contributor's choice to use an intermediary can itself be a meaningful form of political expression, reflecting a desire to associate with the interests represented by the intermediary and the intermediated contributors, such as in the case of Emily's List.¹⁵ Regulations that limit or prohibit intermediation must be evaluated in the context of constitutionally-protected rights of political expression and association.

The risk, of course, is that intermediaries may seek to leverage their fund raising success into benefits for themselves or the interests they represent. Like direct contributions, bundled contributions can be a means for buying access, influence, and political power. Because candidates and their consultants recognize that representatives of wealthy business or special interests are especially well positioned to raise large amounts, the candidates can be expected to seek their services as intermediaries.

A large bundler clearly has a potential for influencing the candidate in a way similar to that of a large contributor. It must be emphasized that unlike large contributors, however, intermediaries do not simply draw on their own resources, but volunteer and work to mobilize others. Indeed, a large bundle consisting of many small contributions can have a dual, even paradoxical appearance

of both "grass roots" and "big money" fund raising; a large total amount given and a large number of contributors are both likely to get the candidate's and the public's attention. Some risk or appearance of additional influence seems to be an inherent byproduct of any successful voluntary private fund raising effort.

But intermediation becomes troubling in a different way when it suggests the possibility of improper influence over an individual's choice to contribute to a campaign. For example, potential intermediaries may pressure employees or partners to contribute to particular candidates. While the City's conflict-of-interest law explicitly prohibits City officials from using coercion to persuade City employees to make contributions, it is not clear that such conduct is always prohibited in the private sector.¹⁶ Other potential abuses, such as rewarding or covertly reimbursing employees or other persons for their contributions, may violate a State law requiring that contributions be made in the true name of the contributor.¹⁷

Andrew Greenblatt, Executive Director of New York State Common Cause, singled out bundling as "the next problem that needs to be solved [because] if somebody spends so much time and so much money bundling, they've got to believe they're going to get something for it."¹⁸ At a public hearing the Board held after the 1993 elections, Greenblatt proposed that "bundled money [be treated] as if it was a contribution from [both] the bundler as well as [the contributor]," and that a cap be set on the amount permitted to be bundled as a percentage of the expenditure limit.¹⁹ At the same hearing, the New York Public Interest Research Group ("NYPIRG") recommended making intermediated contributions ineligible for public matching funds.²⁰

Not everyone is enthusiastic about further regulation, however. For example, attorney Lawrence Mandelker, who represented the Koch campaign in the 1989 elections and the Giuliani campaign in the 1993 elections, argues that bundling is simply speech that promotes the candidate's election and should not be addressed by laws that go beyond disclosure.²¹

DISCLOSURE

Under the Act, participating candidates must report, to the best of their knowledge, the employer name, business address, and occupation of each contributor giving contributions totalling more than \$99 and of each intermediary delivering contributions.²² The disclosure of campaign financing "networks" can shed light on "who is bundling what for whom." Disclosure may deter abuses and, unlike restrictions, it allows the voting public, rather than regulators and lawmakers, to reach its own conclusions about the relevance of the activity. But disclosure is useful only when it is accurate, complete, and timely. Insufficient detail and reports filed after the election do not give voters an opportunity to make an evaluation that could inform their choice on election day. On the other hand, disclosure requirements should be as simple and straightforward as possible to promote campaign compliance and public comprehension. Indeed, increasing disclosure requirements or other regulation of intermediaries could unintentionally bring about less disclosure by driving the activity underground.

Because neither intermediaries nor contributors have direct disclosure obligations under the Act, what is known about intermediaries is based solely on what participating candidates' campaigns know and report.²³ Disclosure is not required unless the intermediary "delivers" the contributions to the campaign, and the campaign knows that intermediation has taken place. Of course, if a candidate does not know of the intermediation, there is little risk that the intermediary has the ability to exert undue influence.

Compliance with the disclosure requirement is premised on the good faith effort of participating candidates, which is monitored by the Campaign Finance Board.²⁴ Various abuses are conceivable, including a committee's decision not to make the required disclosure. While there are specific record keeping requirements to show that a good faith effort has been made, the current absence of requirements for a detailed, regular paper trail associated with intermediation and the lack of direct obligations on the part of intermediaries and contributors can make it difficult to verify candidate compliance with disclosure requirements. Moreover, because technical compliance may be achieved by carefully arranging bundling activity in a fashion that might remove it from a literal reading of the Act's definition of intermediary, more sophisticated operators may attempt to undermine the broader purposes of reform. For example, in an October 1993, *New York Law Journal* story on contributions and fund raising by the legal profession, reporter Daniel Wise wrote:

several lawyers listed as intermediaries said the [Campaign] Finance Board records substantially understated their activity because donations they solicited, but which were submitted directly by the donor, are not recorded in the intermediary reports.²⁵

Focussing on the intermediary's physical "delivery" of contributions does not appear to be the best way to identify the contribution clusters that pose the greatest risk of improper influence over the candidate. Board rules address this concern in one context by requiring that when a person directs an agent to deliver a contribution to a campaign, it is the principal, not the agent, who must be reported as the intermediary.²⁶

Furthermore, intermediary disclosure is not complete for all opposing candidates because the Act applies only to those candidates for City office who choose to participate in the voluntary Program. Because New York State Election Law does not require the disclosure of intermediaries, non-participating candidates do not disclose them, so the extent to which non-participating candidates benefit from this form of activity cannot be readily determined.²⁷ As noted below, the Board has sought amendments to State law that would require intermediary disclosure on behalf of non-participating candidates.

* * *

What has been disclosed about intermediaries and what do the data tell us?

Table 1A: Intermediated Contributions, 1989²⁸

Office	No. of Candidates Reporting Intermediaries/All Participating Candidates on Ballot	Total Amount Delivered by Intermediaries	Number of Intermediaries	Total Contributed to All Participating Candidates	Intermediated Contributions as a Percentage of Total Contribution Amount
Mayor	5/5	\$3,913,058	391	\$20,152,334	19.4
Comptroller	4/4	670,174	162	3,547,378	18.9
Borough President	3/6	15,980	10	2,902,683	0.6
City Council	8/33	44,252	49	2,459,209	1.8
Total	20/48	4,643,464	612	29,061,604	16.0

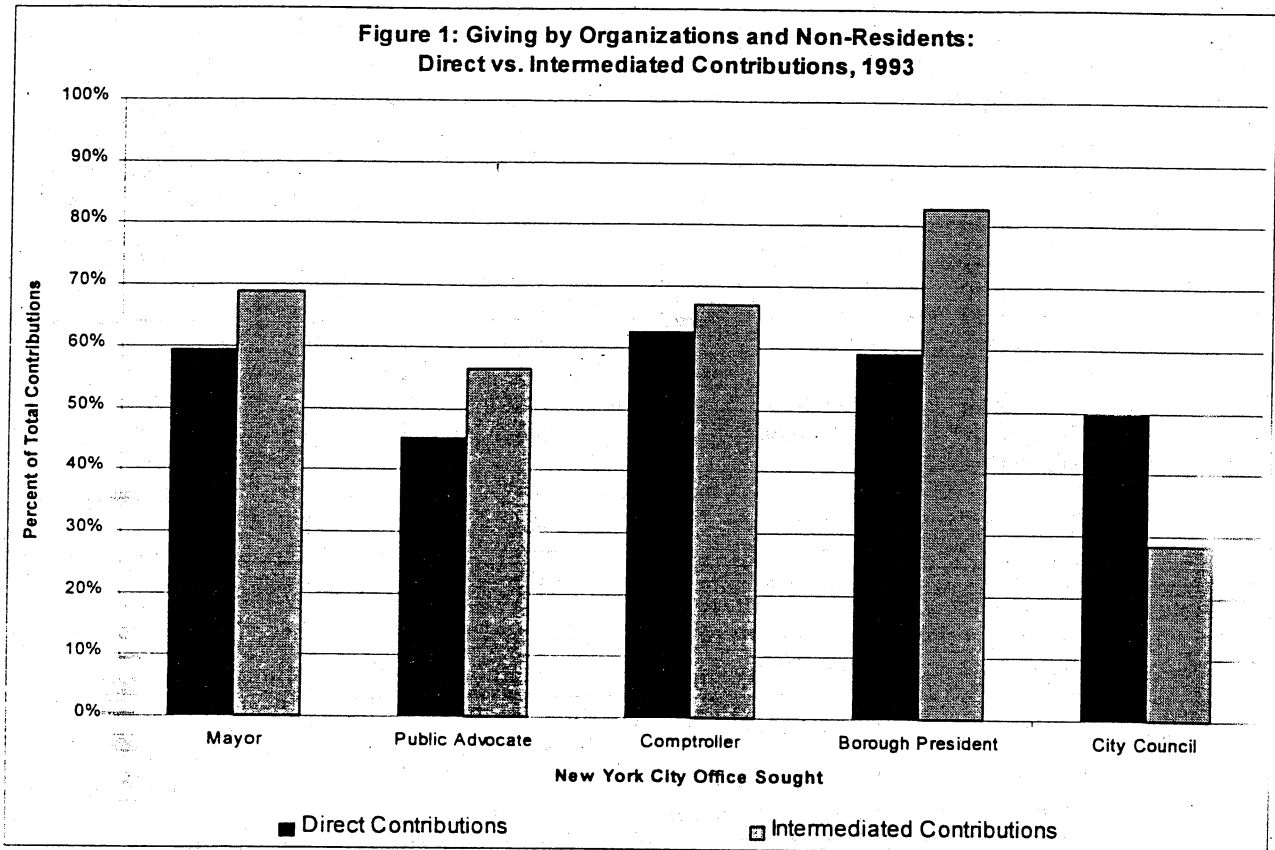
Table 1B: Intermediated Contributions, 1993

Office	No. of Candidates Reporting Intermediaries/All Participating Candidates on Ballot	Total Amount Delivered by Intermediaries	Number of Intermediaries	Total Contributed to All Participating Candidates	Intermediated Contributions as a Percentage of Total Contribution Amount
Mayor	2/4	\$3,362,121	354	\$17,421,024	19.3
Public Advocate	4/6	289,585	120	2,912,324	9.9
Comptroller	3/3	390,810	105	4,897,597	8.0
Borough President	2/7	14,250	6	1,942,690	0.7
City Council	12/87	98,067	33	3,509,828	2.8
Total	23/107	4,154,833	618	30,683,463	13.5

Campaign Finance Board filings reflect that the total dollar amount and percentage of contributions reported to be delivered by intermediaries actually declined somewhat from 1989 to 1993.²⁹ The percentage of contributions reportedly delivered by intermediaries remained about the same for the candidates for mayor, but dropped considerably among candidates for comptroller.

Intermediated contributions were more often from organizations and from persons residing

outside New York City than were direct contributions. Organizations and non-residents may indeed have an interest in New York City elections, but their donations certainly do not reflect the grass roots political mobilization of individual New Yorkers that the Program is intended to encourage. Contributions from organizations and non-residents accordingly do not qualify for public matching funds.



Have intermediaries been a conduit for potential influence by particular interests? The next table shows common employers and other common interests or occupations among intermediated contributors whose intermediary delivered \$20,000 or more in the 1993 elections. The information listed is as reflected on candidates' reports to the Board.

Table 2: "Bundles" Over \$20,000: Intermediary Employer and Intermediated Contributors' Common Employers, 1993³⁰

Candidate	Intermediary Name	Intermediary Employer	Total Intermediated	Number of Contributions	Common Employers Reported Among Contributors
Dinkins	Edgar Bronfman	Joseph E. Seagram & Sons	\$284,150	63	
	James Harmon	Wertheim Schroeder & Co.	165,300	111	Coopers & Lybrand Morgan Stanley Paul Weiss Weil Gotshal Wertheim Schroeder
	Robert Fee	Turner Construction Corp.	73,000	28	
	Gerber & Garson Esq.	Not Supplied	68,562	287	
	Jeffrey Soref	Not Supplied	66,350	22	
	Leonard Riggio	Barnes & Noble Inc.	48,300	35	
	Gordon Davis	Lord Day Lord	46,840	38	
	Seavey & Seavey	Not Supplied	46,500	29	
	Bruce Ratner	Forest City Ratner	45,000	17	Forest City Ratner
	Gerald Goldman	Not Supplied	44,650	35	
	Ronald Gault	First Boston Corp.	43,100	32	First Boston
	Sanjeanetta Harris	J.P. Morgan & Co.	41,025	59	J.P. Morgan
	Garland Wood	Goldman Sachs	37,950	30	Goldman Sachs
	Lewis Rappoport	Raskin & Rappoport	36,300	41	
	Roscoe Brown	Not Supplied	35,000	19	
	Charles Uribe	A & J Contracting	33,000	7	
Paul Elston	Long Lake Energy Corp.	31,450	85		

Candidate	Intermediary Name	Intermediary Employer	Total Intermediated	Number of Contributions	Common Employers Reported Among Contributors
Dinkins (cont'd)	James Haddon	Paine Webber	30,900	43	Paine Webber
	John Matthews	Americorp Securities	29,500	5	
	Ethan Geto	Geto & DeMilly	27,500	25	Brodsky Organization
	Jeff Sachs	Not Supplied	26,500	11	
	Miles Berger	Not Supplied	26,200	5	
	Jack Rudin	Rudin Mgt. Co. Inc.	26,000	20	
	Charles Koppelman	EMI Records Group Inc.	26,000	4	EMI Records Group Inc.
	Henry Kravis	Kohlberg Kravis	25,000	5	Kohlberg Kravis
	Betsy Gotbaum	Not Supplied	25,000	8	Noel Group
	Lawrence Kanterman	Kanterman Taub & Breitner	23,375	11	Bear Stearns Kanterman Taub & Breitner
	Kevin Greenidge	Kevin Greenidge MD PC	22,130	24	
	Lehrer McGovern Bovis, Inc	Not Supplied	22,050	43	
	Haille Chestnut	Not Supplied	21,850	19	
	Paul Williams	Wood Williams Rafalsky Harris	21,500	12	Wood Williams Rafalsky Harris
Giuliani	William W. Koepfel	Koepfel & Koepfel	78,450	49	
	Gene Petracca	Petracca & Sons	52,735	152	AFC Enterprises Petracca & Sons
	Robert J. Costello	Phelan & Costello PC	46,800	34	Pile Foundation
	Michael Pajak	Polstar Publishers Inc.	44,925	165	

Candidate	Intermediary Name	Intermediary Employer	Total Intermediated	Number of Contributions	Common Employers Reported Among Contributors
Giuliani (cont'd)	Michael S. Limb	Ghakor Co. Inc.	42,196	190	
	Kenneth Rosenbaum	Not Supplied	38,650	56	
	Daniel J. Sitomer	Brown & Wood	30,050	13	
	Saul S. Cohen	Rosenman & Colin	28,750	33	Dean Witter Rosenman & Colin
	John D. Wren	Omnicom Group	24,500	6	
	Kenneth G. Langone	Invemed Assoc.	24,500	5	
	Karan Bobby Kumar	Minority Business Times	22,000	5	
	Jonathan A. Ballan	Moser & Moser	21,545	16	
Green	Stephen Green	S.L. Green	85,370	94	S.L. Green
	David Boies	Cravath Swaine	20,500	7	
Hevesi	Ken Marcus	McDonough Marcus Cohn & Tretter	28,250	20	
	Stanley Shaw	Shaw Licitra	22,000	12	Shaw Licitra Holland & Knight
	Pamela Liapakis	Sullivan & Liapakis	20,265	26	Sullivan & Liapakis
Holtzman	Kenneth Olson	Goldman Sachs	24,000	12	Goldman Sachs
Levin	Eliezer Perr	NY Modular	24,650	32	

Participating candidates in the 1993 elections also reported receiving large amounts of direct contributions from contributors with the same employer, as shown in the following table:

Table 3: Direct Contributions Totalled by Common Contributor Employer, 1993³¹

Candidate	Contributor Employer³²	Total Contributions by Contributors
Dinkins	Merrill Lynch	\$91,220
	Bear Stearns	65,599
	Warner Music/Warner Brothers/Time Warner/Time Inc.	61,345
	Lehman Brothers/Shearson Lehman	59,409
	Goldman Sachs	48,995
	Board of Education	34,856
	Medco Containment Services	31,500
	Atlantic Records	27,000
	Off Track Betting Corp.	24,030
	Pryor McClendon Counts & Co.	23,320
	J.P. Morgan	21,070
	City University of New York	20,012
	Hanson Consulting Group	20,000
Giuliani	Merrill Lynch	67,001
	Bear Stearns	59,688
	Lehman Brothers/Shearson Lehman	43,055
	R. W. Pressprich	29,500
	Donaldson Lufkin & Jenrette	27,330
	Forstman Little & Co.	24,625
	Paine Webber	20,480
Hevesi	Fisher Brothers	29,250
Holtzman	Bear Stearns	36,750
	Lehman Brothers/Shearson Lehman	36,750
	Prudential	26,750
	Paine Webber	25,325
	Merrill Lynch	25,175

Candidate	Contributor Employer ³²	Total Contributions by Contributors
Holtzman (cont'd)	J.P. Morgan	23,010
	W.R. Lazard	24,850
	Goldman Sachs	21,000

The fact that a number of contributors share a common employer certainly does not require the conclusion that their contributions were intended to serve the interest of that employer or that there was any coordinated giving. But the large amounts listed in Table 3 suggest that, in some instances, coordinated giving may be taking place without full public reporting of coordination. This could reflect the candidate's failure to disclose actual intermediaries or the possibility that contributors are making contributions in a coordinated fashion other than by having an intermediary "deliver" the contributions within the meaning of the Act.

Indeed, reported intermediaries may account for only a relatively small portion of the contributions associated with a particular entity. For example, in the case of Merrill Lynch (the top contributor employer to both the Dinkins and Giuliani campaigns, as noted in Table 3), contributions by the corporation, its political action committee, and its employees totalled \$108,695 to Dinkins and \$68,001 to Giuliani. Intermediated contributions made up \$16,975 (15.6%) of this total for Dinkins and only \$1,000 (1.5%) of this total for Giuliani. The amount accounted for by contributions from reported Merrill Lynch employees delivered by an intermediary also reported to be employed by Merrill Lynch was even smaller (\$8,500 or 7.8% of the Merrill Lynch total for Dinkins and zero for Giuliani). This either indicates that there was significant under-reporting of intermediaries or that intermediation was indeed simply a relatively small factor in the contributions associated with this employer.³³

Audits conducted by Board staff have included inquiry into the possible under-reporting of intermediaries. In the 1989 elections, questions by Board auditors led city-wide and borough president campaigns to disclose an additional 130 intermediaries who had delivered a total of \$332,674 from 1,355 contributors. A comparable inquiry in the 1993 elections resulted in the disclosure of an additional 14 intermediaries, who delivered \$120,867 from 258 contributors. The reduced "post-audit" disclosure in the 1993 elections appears to have been the result primarily of better initial compliance with the intermediary disclosure requirement, which, in turn, may have been the result of the audit inquiries in the previous election and of ongoing questions by audit staff during the campaign.

The use of intermediaries may also affect the quality of public disclosure in other areas. As noted above, participating candidates must report to the best of their knowledge the employer name, business address, and occupation of each contributor giving \$100 or more, which requires a "good faith effort" on their part to obtain and disclose this information. Does the fact that an intermediary delivered the contribution increase or reduce the likelihood that a campaign will report contributor employment information?

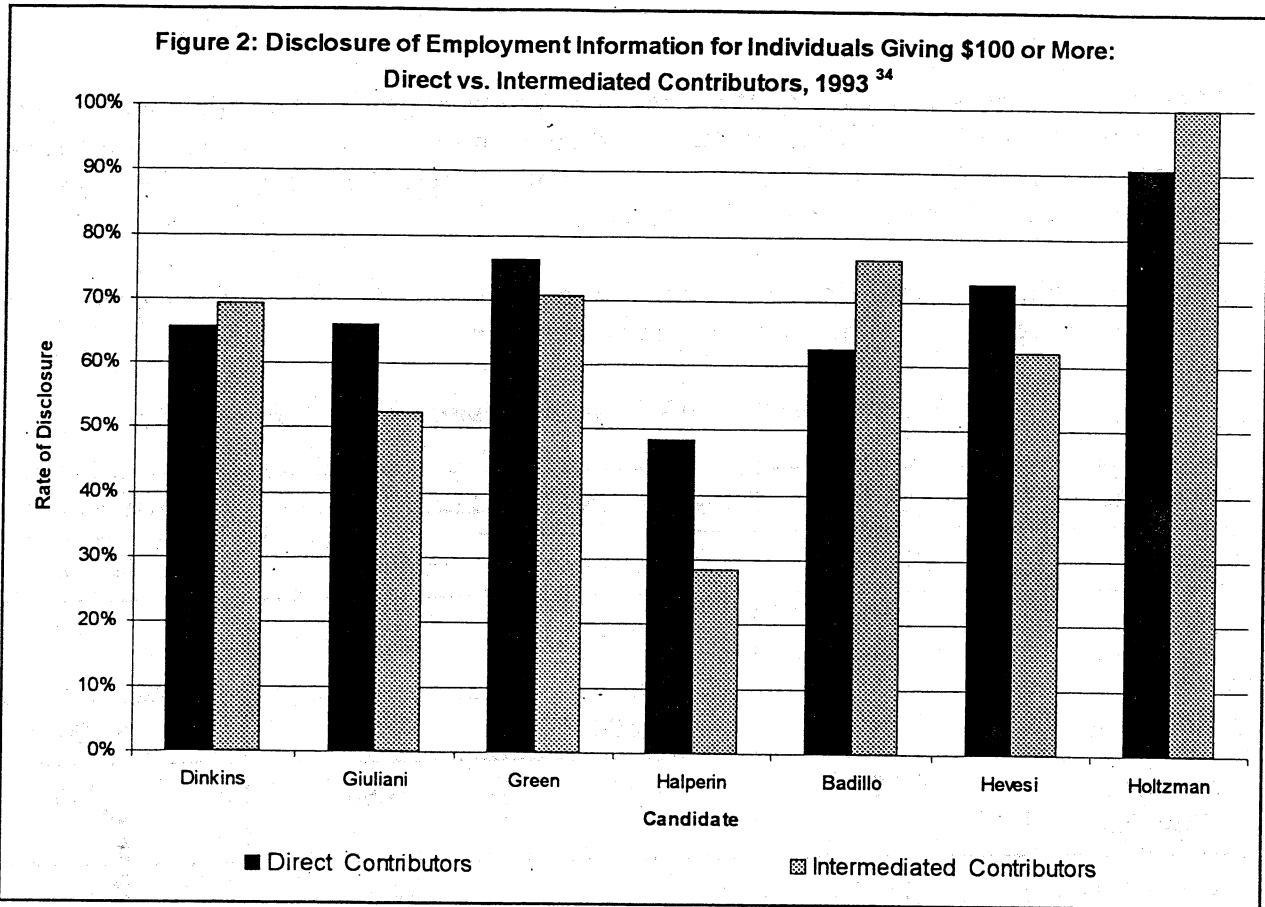


Figure 2 shows that there was considerable variation in the rates at which these 1993 citywide campaigns disclosed employment information for individual contributors. The overall completeness of contributor employment disclosure in 1993 was clearly a product of the particular effort made by the individual campaign. Delivery through an intermediary did not consistently predict the rate of employment disclosure across candidates. In three campaigns (Dinkins, Badillo, and Holtzman) delivery by an intermediary coincided with a higher disclosure rate of contributor employment information.³⁴ In four campaigns (Giuliani, Green, Halperin, and Hevesi) delivery by an intermediary coincided with a decrease in employment disclosure.

This mixed result is not surprising. On the one hand, in many cases, the intermediary should generally be in a better position than the campaign to know more about the employment circumstances of the intermediated contributor. On the other hand, intermediaries may have less incentive to collect contributor employment information because they are not directly subject to the Act's requirements and thus may also be less familiar with the reporting obligations applicable to participating candidates. The lack of a "direct connection" between the campaign and intermediated contributor can be an impediment to full disclosure.

CONTRIBUTION LIMITS

Whereas there are limits on the amount a participating candidate may accept from any one contributor, there is no limit on the amount that a candidate may receive through a single intermediary. Some jurisdictions have addressed this medium for large infusions of campaign

one contributor, there is no limit on the amount that a candidate may receive through a single intermediary. Some jurisdictions have addressed this medium for large infusions of campaign funds by treating an intermediary as a contributor of the amount bundled, and thereby capping the amount that may be bundled at the contribution limit.³⁶

The following tables examine the size of the “typical bundle” in the 1993 elections and its relation to the contribution limit applicable to the candidate.

Table 4A: Typical “Bundles” and the Contribution Limit, 1993

Office	Average Bundle	Median Bundle	Largest Bundle	Contribution Limit
Mayor	\$9,498	\$4,000	\$284,150	\$6,500
Public Advocate	2,413	563	85,370	6,500
Comptroller	3,722	1,500	28,250	6,500 ³⁷
Borough President	2,375	1,625	4,900	5,000
City Council	2,972	1,645	24,650	3,000

Table 4B: Bundling in Excess of Contribution Limit Among City-wide Candidates, 1993³⁸

Candidate/ Office	No. of Intermediaries	No. of Bundles over \$6,500	Total Contributions in Bundles over \$6,500	Percent of Intermediated Contributions in Bundles over \$6,500	Total Amount Bundled
Mayor: Dinkins	149	81	\$2,040,351	92.5	\$2,206,773
Giuliani	205	50	867,789	75.1	1,155,348
Mayor/Total	354	131	2,908,140	86.5	3,362,121
Public Advocate: Green	46	5	136,370	73.5	185,490
Halperin	20	3	29,889	38.6	77,515
Ramirez	47	0	0	0.0	25,250
Reale	7	0	0	0.0	1,330

Candidate/ Office	No. of Intermediaries	No. of Bundles over \$6,500	Total Contributions in Bundles over \$6,500	Percent of Intermediated Contributions in Bundles over \$6,500	Total Amount Bundled
Public Advocate/ Total	120	8	166,259	57.4	289,585
Comptroller: Badillo	32	2	21,900	33.7	65,050
Hevesi	56	12	167,945	74.5	225,440
Holtzman	17	5	63,445	63.2	100,320
Comptroller/ Total	105	19	253,290	64.8	390,810
All City-wide/ Total	579	158	3,327,689	82.3	4,042,516

Among city-wide candidates in the 1993 elections, over eighty percent of the amount reported to have been delivered by intermediaries was in bundles that exceeded the amount of the contribution limit. The percentage of "over-the-limit" bundles was highest for the incumbent mayor seeking re-election, Dinkins (92.5%), followed by the three winning city-wide candidates, Giuliani (75.1%), Hevesi (74.5%), and Green (74.5%). Putting together large bundles in excess of the contribution limit appears to have been a major component of the intermediaries' efforts for city-wide candidates in the 1993 elections.

Some might argue that "over-the-limit" bundles, without more, is an indication that bundling *per se* poses a threat to the integrity of contribution limits. But consideration should also be given to the size and source of the contributions bundled to gauge whether intermediaries have served primarily as conduits for "big money" or for "grass roots" giving. The following section examines this issue.

PUBLIC MATCHING FUNDS FOR INTERMEDIATED CONTRIBUTIONS

Under the Act, candidates demonstrating a threshold level of contributions from City residents may receive public funds that match the contributions of individual residents, including those given through intermediaries, up to \$1,000 per contributor. The Act does not make distinctions between matching intermediated and direct contributions.

The Act was intended to encourage these small contributions from individuals living in New York City. The following figures explore the relationship between intermediation and this legislative goal.

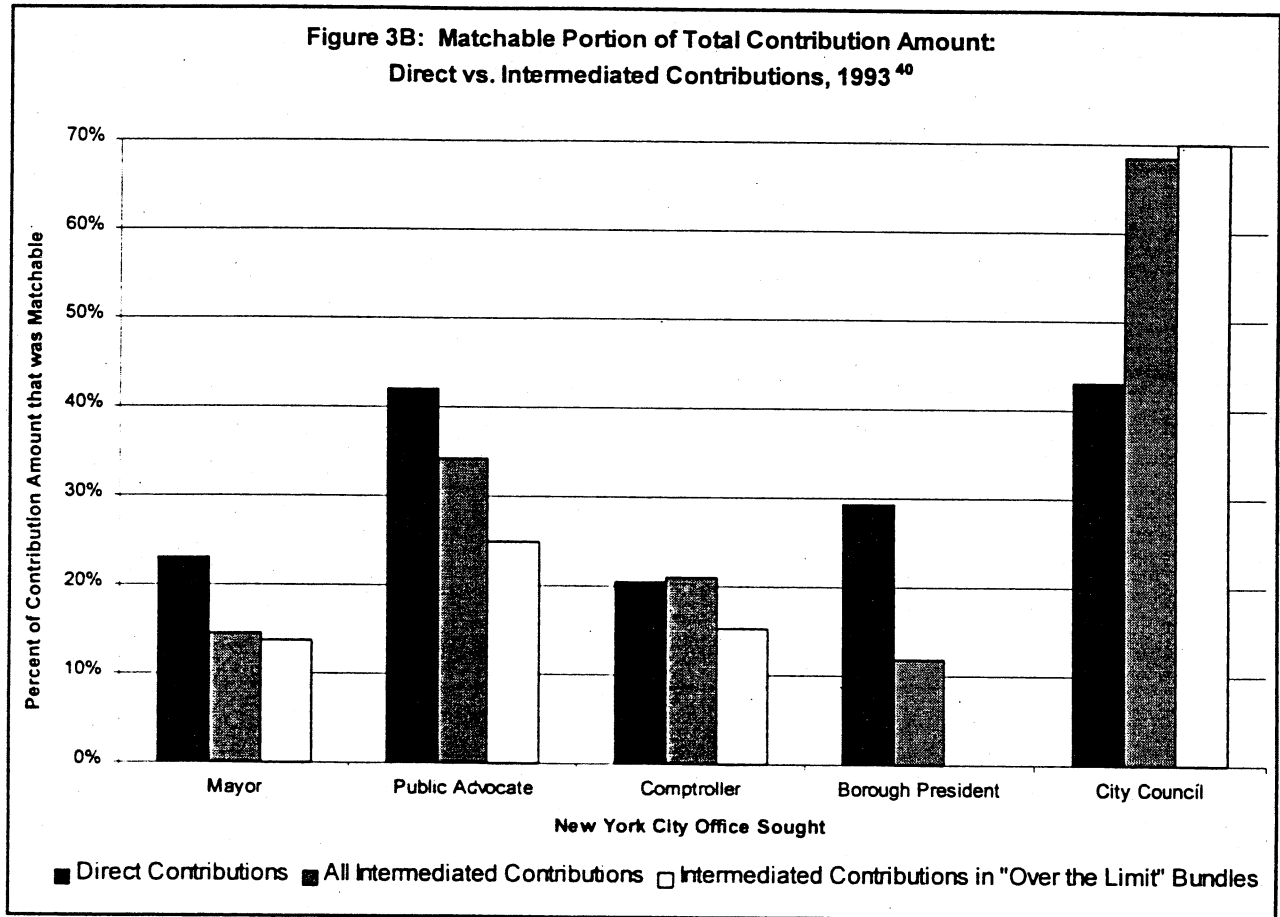
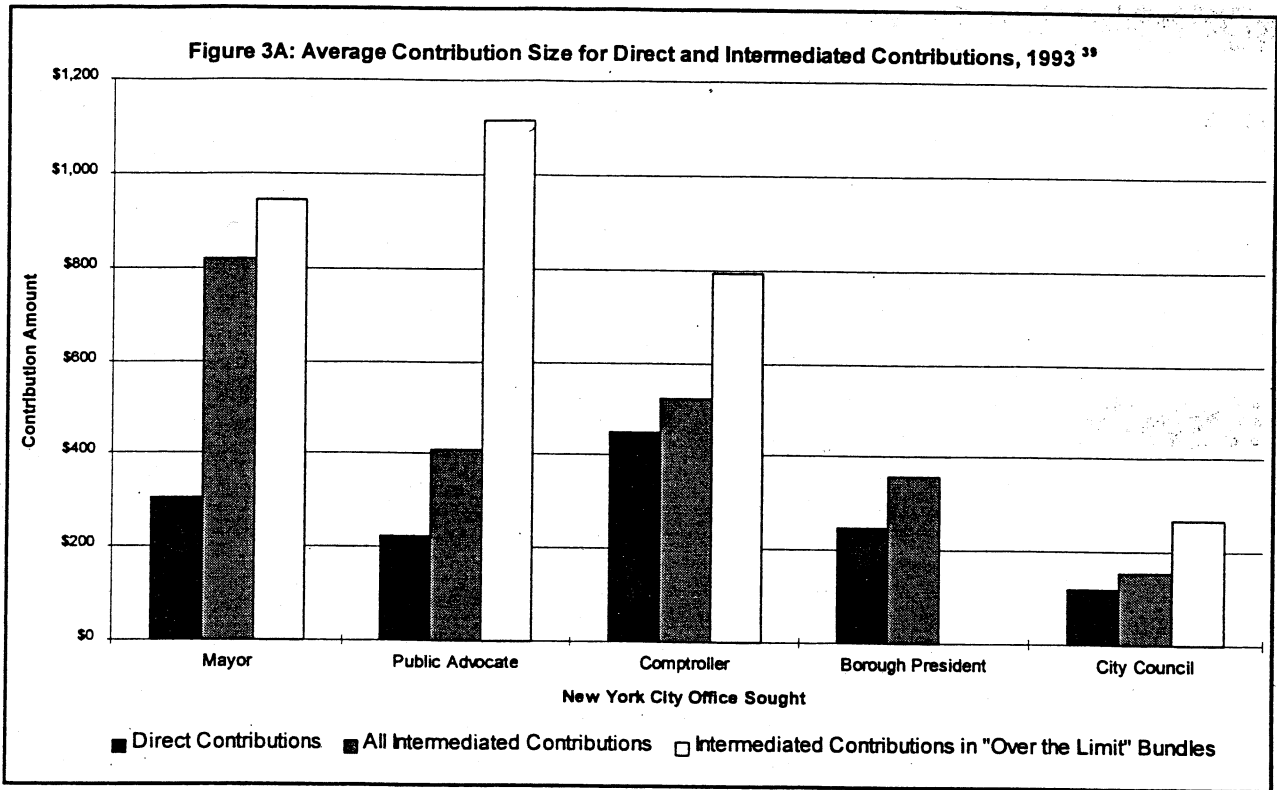


Figure 3A shows that, at every level, intermediated contributions were larger than direct contributions and that contributions in bundles that exceed the amount of the contribution limit were larger than other intermediated contributions. Figure 3B indicates that, in general, intermediated contributions were less likely to be matchable with public funds (and thus more likely to be from non-matchable sources: organizations, individuals living outside of New York City, and in amounts exceeding \$1,000) and that the matchable contribution portion is even less for contributions delivered in bundles that exceed the amount of the contribution limit.

It is thus clear that, in 1993, intermediaries, and especially delivery in a bundle that exceeded the contribution limit, had a negative correlation with small contributions from individuals living in New York City -- the very kind of "grass roots" giving the Act was intended to promote.

Is it in the public's interest to make intermediated contributions as valuable for the purpose of receiving public matching funds as direct contributions? In the most extreme cases, paying public funds to match contributions raised because an intermediary has pressured others to contribute, for example, certainly runs counter to another basic goal of the Act: promoting fair competition in City elections. And this is true even if the candidate had no knowledge of the circumstances in which the intermediary obtained the contributor's contribution.

The Act places responsibility for compliance exclusively on participating candidates. Because contributors and intermediaries are not directly responsible for compliance, abuses between them can be especially difficult for the Board, the public, and even the candidates to detect.

A prohibition against matching claims on intermediated contributions would, however, probably result in less reporting of intermediaries.

Disguising the true source of a contribution is also a possible abuse, especially where intermediaries are reported to be delivering contributions in cash.⁴¹ To date, this concern appears to be largely theoretical. Only a very small proportion (1.5%) of intermediated contributions reported for the 1993 elections were not in the form of checks, of which an even smaller proportion (0.5%) was claimed to be matchable.

COST OF FUND RAISING

Another aspect of fund raising by intermediaries is its efficiency and low cost to a campaign.⁴² For example, the two leading mayoral candidates in the 1993 elections reported raising direct contributions at a rate of \$5.33 for every dollar they reported spending on fund raising.⁴³ The fund raising efficiency of the intermediaries for these campaigns appears to have been much higher: \$185.58 in intermediated contributions were raised for each dollar reported to have been spent by or paid to an intermediary among the ten who delivered the largest amounts for each of these campaigns.⁴⁴

It is likely that the intermediaries' fund raising costs are lower because intermediaries are

targeting contributors with whom they have established relationships and common interests, and to whom they likely have easy access. This makes intermediaries' requests for contributions a comparatively "easy sell." It follows that any costs incurred by an intermediary in writing letters or making telephone calls are certainly much less than what a campaign might pay for fund raising advertisements or events it would need to raise comparable amounts. A campaign's attraction to and reliance on fund raising by intermediaries may increase to the extent it wishes to reduce fund raising costs in order to free funds for other productive expenditures. Thus, the Act's spending limits, as well as its contribution limits, may have an unintended consequence of increasing the importance of intermediaries for participating candidates.

Does the efficiency of intermediaries as fund raisers serve to undermine fair competition? On the one hand, a campaign's resort to fund raising through intermediaries is no different from its use of volunteers for other campaign functions. The more a candidate can successfully rely on volunteers instead of paid services, the bigger its competitive advantage, especially in a campaign subject to contribution and spending limits. The advantage a campaign may gain because it attracts more volunteers or uses them in a manner that reduces its expenditures can hardly be called unfair.⁴⁵

The counter point is that intermediaries, by virtue of their active role in the "money chase" and the potential for undue influence that that entails, may be so qualitatively different from other volunteers that they actually threaten the integrity of contribution and spending limits.

RECOMMENDATIONS

Disclosure

1. The Board has recommended State legislation that would subject non-participating candidates for mayor, public advocate, comptroller, borough president, and City Council to the same disclosure requirements applicable to participating candidates under the Act, including the disclosure of intermediaries.⁴⁶

2. In addition, the Board has recommended that the Act should be amended to broaden the definition of "intermediary." Previously, the Board has recommended that this term encompass persons and entities known by the candidate to have "successfully solicited" contributions.⁴⁷ This new solicitation test should supplement, not replace, the current trigger of delivery. Moreover, solicitation should be broadly understood as any successful effort known to the candidate to collect, direct, coordinate, or organize the giving of contributions to the candidate.⁴⁸

3. The Board intends to develop reporting instructions to clarify the records that participating candidates must keep to demonstrate their "good faith effort" to ascertain the intermediary for each contribution exceeding \$99 and to comply with the intermediary disclosure requirements.

Contribution Limits

Imposing limits on the amount that may be bundled or prohibiting claims for public funds to match intermediated contributions may serve only to push this activity underground. Moreover, such restrictions are questionable as public policy given the variety of contexts in which intermediation may take place. The Board therefore does not recommend limiting the amount an intermediary may bring to a campaign.

Sanctions Against Abuses in Fund Raising and Safeguarding Public Matching Funds

State law should make clear that persons and entities may not use coercion, promise of reward, or unreported reimbursement in raising contributions for candidates. The law should impose criminal penalties in all situations in which such abuses take place, and it should also specifically refer to the relationships where the potential for this kind of abuse may be greatest, such as between employer and employee, between landlord and tenant, and among partners.⁴⁸

The need for this change is underscored by the provision of public funds in amounts that match contributions from individual New York City residents. The matching funds that are intended to echo the contributors' donative intent and the support the candidate has demonstrated among the City's population must not become a spur to abuses in fund raising.

Costs Intermediaries Incur in Raising Funds

The Board will emphasize in its reporting instructions that participating candidates must report fund raising costs incurred by an intermediary as in-kind contributions, subject to both the contribution and spending limits of the Act, unless these costs are reimbursed by the campaign, in which case the reimbursement must be reported as a contribution refund.

CONCLUSION; REQUEST FOR PUBLIC COMMENT

The Board wishes to encourage discussion and comment about this report and its recommendations. The Board will consider all comments it receives carefully before making additional proposals for State or City legislation.

Please address comments on this Report to:

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New York, NY 10006

The Board would greatly appreciate receiving comments before September 1, 1996.

ENDNOTES

1. James McKinley, "Steering Around the Campaign Finance Law," *The New York Times*, December 26, 1993, p. B3.
2. Written testimony of Lawrence A. Mandelker, dated December 13, 1993, on file with the Campaign Finance Board. See Hearings before the New York City Campaign Finance Board, December 8-9, 1993, pp. W53-54.
3. Candidates for mayor, public advocate, comptroller, borough president, and City Council member who join the New York City 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. In 1993, the contribution limit for the primary and general elections combined was \$6,500 for participating candidates for mayor, public advocate, and comptroller; \$5,000 for participating candidates for borough president; and \$3,000 for participating candidates for City Council member.
4. See, e.g., Charles V. Bagli, "Block Barons Gamble On Giuliani As Wall Street Hedges Its Bets," *The New York Observer*, October 3, 1993, p. 1; William Bunch, "Liquor Execs Toast Dinkins," *New York Newsday*, October 8, 1993, p. 4; James C. McKinley Jr., "Giuliani Achieves Fund-Raising Success," *The New York Times*, October 19, 1993, p. B3; Mark Mooney, "Lots of OTBucks for Dinkins," *Daily News*, October 23, 1993, p. 4; James C. McKinley Jr., "Dinkins Retains Financing From Groups of 4 Years Ago," *The New York Times*, October 29, 1993, p. B3; Shaun Assael & Wayne Barrett, "Giuliani's Dubious Donors; From the PBA to an SRO king," *The Village Voice*, November 2, 1993, p. 37.
5. Tom Robbins and Mark Mooney, "A 'Bundle' of Support for Dave, Rudy," *Daily News*, October 22, 1993, p. 6.
6. Frank Lynn, "Campaign Law Fails to Rein in Gifts and Costs," *The New York Times*, July 12, 1989, p. B1.
7. MSRB Rule G-37 (Political Contributions and Prohibitions on Municipal Securities Business), MSRB Manual - General Rules (CCH) ¶3681 (Oct. 1, 1995). The prohibition does not apply if the only contributions to officials are by municipal finance professionals entitled to vote for those officials and the professional's contributions do not exceed \$250 per official per election. This rule also expressly bars these individuals and entities from soliciting or coordinating contributions to officials of issuers with which the individual or entity is doing or seeking to do municipal securities business.

The rule was upheld in Blount v. SEC, 61 F.3d 938, 943-947 (D.C. Cir. 1995) (concluding (1) Rule G-37 materially advances the compelling interests asserted by the SEC, namely preventing fraud and corruption and (2) the regulation is narrowly tailored, as it constrains relations only between municipal finance employees and officials who might influence the award of contracts), cert. denied, 64 U.S.L.W. 3656 (U.S. April 1, 1996).
8. Joe Calderone, "Landlord Nailed," *New York Newsday*, April 25, 1995, p. A5; Alison Mitchell, "Fund-Raiser For the G.O.P. Is Indicted," *The New York Times*, April 25, 1995, p. B3.
9. The accuracy of the empirical data produced using the Board's computerized Campaign Finance Information System (CFIS) is limited to the extent that actual activity may deviate from disclosed activity. It is likely that intermediary activity is under reported and that the data analyzed in this report are therefore understated. Additionally, because New York State Election Law does not require disclosure of intermediaries, the data

reviewed in this report are limited to activity disclosed by Program participants.

To minimize misleading reports of intermediaries, Board rules adopted in 1992 exempted certain persons from intermediary disclosure requirements. In 1993, shortly after joining the Program, participating candidates identified those "fundraising agents" who either had delivered or would be delivering contributions to the participant rather than listing them in disclosure statements as intermediaries for particular contributions. Fundraising agents are full time campaign workers, commercial fund raising firms retained by the campaign, and certain individuals expressly authorized by the campaign to do fund raising. The sense of the rule is to identify separately persons performing fund raising for compensation, as full time volunteers, or because of specific duties within a campaign organization. This rule was revised in 1995 to require that the list of fundraising agents be submitted with the campaign's disclosure statements. See Campaign Finance Board Rule 3-03(c)(7)(ii).

To some degree the intermediary data analyzed are also overstated. While the Act is not intended to require the disclosure of certain "negligible" intermediaries, such as the hosts of small house parties and the professional and other fundraising agents serving a campaign, it appears that campaigns may not have taken full advantage of the legal exceptions to full disclosure. For example, in 1993, ten individuals reported to be fundraising agents were also reported to be intermediaries. Moreover, in 1993, 97 of the 354 intermediaries for mayoral candidates were reported to have delivered their own contributions in 138 instances; among non-mayoral campaigns, 35 of 364 intermediaries were reported to have delivered their own contributions 40 times. The data analyzed in this report were not modified to exclude these apparent errors in disclosure.

The data for participating candidates in the 1993 elections are as of August 1995. The contribution totals shown are net of contribution refunds and do not include unitemized contributions. Totals were aggregated by contributor or intermediary name based on exact or likely name matches.

10. Administrative Code 3-702(12) (emphasis added). This provision also makes clear that certain relatives of the contributor are not considered to be intermediaries.
11. See, e.g., Walter Fee, "Donor Ties That Bond," *New York Newsday*, September 20, 1993, p. 7. Indeed, some have described "closely timed giving from a single source," without reference to intermediation, as "bundling." See Phil Kuntz, "Landfill Firm's Workers Gave \$50,000 To Dole Campaign Just Before Key Bill," *The Wall Street Journal*, April 25, 1996, p. A22.

There is also a number of other circumstances in which persons or entities, not treated as intermediaries under the law, can be said to mediate financial support for a candidate. Political action committees, political committees authorized by other candidates, and political party committees may receive funds from which they in turn make contributions to participating candidates, subject to the contribution limits of the Act, or make independent expenditures for those participating candidates, which are not subject to the Act's limits. See New York City Campaign Finance Board, *Party Favors* (January 1995), for a discussion of political party spending on behalf of participating candidates. When the funds contributed to the political committee have been "earmarked" for an ultimate recipient, the contribution will be attributed to both the original contributor and to the political committee making the contribution. Campaign Finance Board Rule 1-04(j).

Even endorsements can be used to target contributions to a particular candidate. For example, an organization may inform its dues-paying members of the candidates it is supporting, together with information, such as campaign addresses or telephone numbers, that facilitates the making of contributions, regardless whether the organization expressly solicits contributions for the candidate.

12. Candidates benefit not only from the actual funds given through intermediaries, but also from the broadening of the contributor network made available for the candidate's future fund raising efforts. Intermediaries may

bring in financial and volunteer support -- and votes -- that the candidate might not otherwise reach, especially given the "constraints" of contribution and spending limits.

13. See Local Law No. 69 of 1990 §3, amending Administrative Code §3-703(6).
14. See also Campaign Finance Board Rule 3-03(c)(7)(i). In addition, under both the Act and State law "the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by an individual...on the individual's residential premises for candidate-related activities [are not contributions] to the extent such services do not exceed [\$500] in value." Administrative Code §3-702(8); New York Election Law §14-100(9).
15. Emily's List collects contributions for Democratic women candidates who support abortion rights. ("Emily" stands for "Early Money is Like Yeast.") It has been prominent among intermediaries in recent federal elections. See Jon Friedman, "The Founding Mother," *The New York Times Magazine*, May 2, 1993, p. 50; Susan Hirschmann, "Emily's List: Chics with Checks," *The American Spectator*, April 1993, p. 20.
16. Under the City's Conflicts of Interest Law, City officials may not "coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in a political campaign," "compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function," or "compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution." New York City Charter §2604(b)(9),(11). See also New York Election Law §17-156.
17. See New York Election Law §14-120. Although no cases have been reported under this provision, the Board has been confronted with this kind of abuse on a number of occasions, none of which involved an intermediary within the meaning of the Act.

In 1992, following a criminal investigation by the New York County District Attorney, the law firm of Parker Chapin Flattau & Klimpl paid \$150,000 to the City of New York, in lieu of a civil fine, for violating the Campaign Finance Act. The firm had disguised a \$22,000 partnership contribution it had made to the 1989 Dinkins campaign as separate personal contributions by nine of its partners. These partners had endorsed over to the campaign checks issued to them from the firm's bank account and were subsequently reimbursed by the firm.

Another case was that of Ann English, who ran for City Council in 1991. Following an investigation by a special district attorney for Kings County, her campaign committee was required to repay all public matching funds it had received (\$34,723), when it was determined that several tenants of buildings owned by her real estate company "contributed" almost \$2,000 to her campaign in lieu of making rent payments. In addition, English paid an \$8,000 civil penalty to the Board.

18. Quoted in Robbins and Mooney, *supra* note 5.
19. See Hearings before the New York City Campaign Finance Board, December 1993, *supra* note 2, pp. W29-30.
20. Ibid., p. 114 (testimony of Gene Russianoff, Senior Attorney, New York Public Interest Research Group).
21. Ibid., p. W54 (written testimony of Lawrence A. Mandelker).
22. Administrative Code §3-703(6). The Campaign Finance Board does investigative checks to determine whether campaigns are complying with this provision.

23. Disclosure requirements in other jurisdictions are different. Massachusetts, Tennessee, Wisconsin, and the Federal Election Commission each require intermediaries to file reports disclosing bundled contributions. *See* Mass. Gen. L. ch. 55, §10A(b); Tenn. Code Ann. §2-10-303(c); Wisc. Stat. Ann. §11.01(1-3); 11 C.F.R. §110.6(c)(1)(iv). Minnesota requires an individual who “directly solicits and causes others to make contributions” of more than \$5,000 in a calendar year to file a report. Minn. Stat. §10A.20(14). Moreover, Wisconsin and the Federal Election Commission also require candidates to report the intermediary for contributions received. *See* 11 C.F.R. §110.6(c)(2).
24. Campaign Finance Board Rule 4-02(b).
25. Daniel Wise, “Lawyers’ Donations Vital to Mayoral Race,” *New York Law Journal*, October 29, 1993, p. 4.
26. *See* Campaign Finance Board Rule 3-03(c)(7)(iii).
27. Compare New York Election Law §§14-102, 14-104 with Administrative Code §3-703(6).
28. New York City Campaign Finance Board, Dollars and Disclosure: Campaign Finance Reform in New York City (September 1990) at p. 72 - 73 and Appendix C. The total contributed excludes unitemized contributions and is net of contribution refunds.
29. Although the decrease may to some degree be attributable to changes in disclosure requirements since 1989, the higher 1989 figure is also understated because of the inclusion of “pre-effective date” contributions in the 1989 totals. The Campaign Finance Act became law on February 29, 1988, in the third year of the four-year City election cycle. Because it would have been more difficult for campaigns to meet the new detailed disclosure requirements for contributions received before the law took effect, the Board made a distinction between the measures campaigns would have to take in meeting the “good faith effort” standard for pre-effective date contributions and for post-effective date contributions. *See* Campaign Finance Board Advisory Opinions Nos. 1989-17 (April 6, 1989) and 1989-31 (July 12, 1989).

The understatement may also reflect the fact that none of the candidates for City Council president (now “public advocate”) joined the Program in 1989.
30. The common employers listed are those reported to have employed at least five of the contributors, or at least 30 percent of the contributors, in the bundle. Because of unreported contributor employment and occupation information, this table is very likely to be under-inclusive. In most cases the total amounts shown also include contributions given by persons other than those associated with the common employer. Occupations and businesses that are common within a number of these “bundles” include banking and financial concerns, check cashing, construction, law firms, bus and taxicab companies, and liquor businesses.
31. Because of unreported contributor employment and occupation information, this table is very likely to be under-inclusive. In addition, the totals shown reflect common sense judgments about variations in the reporting of the same employer’s name and spelling errors. The following reported employers have been omitted: the candidate’s campaign committee, New York City, and self-employed.
32. In the case of Dinkins: Merrill Lynch includes Merrill Lynch & Co. and Merrill Lynch Capital Markets; Bear Stearns includes Bear Stearns & Co. and Bear Stearns & Co. PAC; Lehman Brothers/Shearson Lehman includes Shearson and Shearson Lehman Brothers; Goldman Sachs includes Goldman Sachs & Co. and Goldman Sachs International; the Board of Education includes public schools reported by school number; Atlantic Records includes Atlantic Recording Inc.; Off Track Betting Corp. includes NYC Off Track Betting Corp., NYC OTB, OTB, and Off Track Betting; J.P. Morgan includes J. P. Morgan & Co.; and City University of New York includes various CUNY schools.

In the case of Giuliani: Merrill Lynch includes Merrill Lynch & Co., Merrill Lynch Capital Markets, Merrill Lynch Hubbard, and Merrill Lynch International; Bear Stearns includes Bear Stearns & Co. and Bear, Stearns Securities Corp.; Lehman Brothers/Shearson Lehman includes Shearson Assets and Shearson Lehman Brothers; and R.W. Pressprich includes R.W. Pressprich & Co.

In the case of Holtzman: Bear Stearns includes Bear Stearns & Co.; Lehman Brothers/Shearson Lehman includes Shearson Lehman Brothers and Shearson Lehman Hutton; Prudential includes Prudential Bache and Prudential Securities; W.R. Lazard includes W.R. Lazard & Co. and W.R. Lazard, Laidlaw & Mead; J.P. Morgan includes J.P. Morgan & Co. and J.P. Morgan Securities; and Goldman Sachs includes Goldman Sachs & Co. and Goldman Sachs Int. Corp.

33. The pattern is similar in the case of Bear Stearns, the second highest contributor employer for both Dinkins and Giuliani, as noted in Table 4. Contributions by this corporation, its political action committee, and its employees totalled \$88,909 to Dinkins and \$63,888 to Giuliani. Intermediated contributions made up \$20,050 (22.6%) of this total for Dinkins and \$3,200 (5.0%) of this total for Giuliani. The amount accounted for by intermediaries reported to be employed by Bear Stearns delivering contributions from reported Bear Stearns employees was \$6,650, or 7.5% of the total, for Dinkins and \$2,000, or 3.1% of the total, for Giuliani.
34. These data are limited to contributions from individuals of \$100 or more reported by those city-wide candidates who reported intermediated contributions totalling at least \$50,000. The total number of contributors to each candidate varied widely:

Candidate	No. of Direct Contributors of \$100 or More	No. of Intermediated Contributors of \$100 or More
Dinkins	7,865	1,365
Giuliani	7,814	925
Green	1,818	116
Halperin	514	95
Badillo	1,212	68
Hevesi	1,659	222
Holtzman	952	119

35. In the 1993 elections, campaigns also often neglected to disclose employment information for the intermediaries themselves. The employer was not disclosed for 98 of the 342 individual intermediary names reported by the mayoral candidates and for 40 of the 242 individual intermediary names reported by candidates for other offices.
36. Massachusetts and Minnesota each restrict the amount of money that an intermediary may bundle. Under Massachusetts law, in specified instances contributions through "regulated intermediaries" (which include political action committees, legislative and executive agents, lobbying organizations, and persons responsible for "pooled" contributions from corporate employees and officers) are treated as being from both the person making the contribution and the intermediary. Mass. Gen. L. ch. 55, §10A(b). Similarly, under Minnesota law, contributions delivered to a candidate are considered a contribution from the bundler as well as from the original donor, except when the delivery is made by a member of the candidate's principal campaign committee

or by the spouse of the contributor. Minn. Stat. §10A.27(1). Research did not reveal any litigation in either Massachusetts or Minnesota regarding the constitutionality of placing limits on bundling by intermediaries.

37. The contribution limit for comptroller candidates who were in a runoff primary election, Hevesi and Holtzman, was raised to \$9,750, pursuant to the Act.
38. This table does not include contributions made by the intermediaries themselves, except to the extent that these contributions were also reported as having been delivered by that intermediary. It is thus under-inclusive and does not show every instance in which the contributions the intermediary made and the contributions the intermediary delivered total more than \$6,500.
39. "Over the limit" bundle means that the aggregate amount delivered by the intermediary exceeded the contribution limit generally applicable to the office sought: \$6,500 for candidates for mayor, public advocate, and comptroller; \$5,000 for candidates for borough president; and \$3,000 for candidates for City Council. No borough president candidate reported an intermediary to have delivered more than \$5,000. The median contribution for each office is set forth in the following table:

Office	Direct Contributions	All Intermediated Contributions	Intermediated Contributions in "Over-the-Limit" Bundles
Mayor	\$ 60	\$250	\$ 350
Public Advocate	50	100	1,000
Comptroller	100	250	500
Borough President	100	250	0
City Council	50	50	100

40. These percentages reflect the legal requirement that the matchable portion of a contribution may not exceed \$1,000 per contributor. Thus, for contributors giving more than \$1,000, the percentage is the result of the ratio of the matchable portion (no more than \$1,000) over the total amount given by the contributor.
41. Participating candidates must keep records of cash contributions which include the contributor's signature. Campaign Finance Board Rule 4-01(b)(3). In 1995, this rule was extended to contributions in the form of money orders.
42. The costs intermediaries incur in raising funds for a campaign would be in-kind contributions to and expenditures by the campaign (subject to the limits of the Act), unless these costs are reimbursed by the campaign. There are two applicable exemptions for costs not exceeding \$500: those incurred in the intermediary's home and the intermediary's travel expenses. See Administrative Code §3-702(8)(ii), (iii). In-kind contributions and reimbursements by the campaign must be reported in disclosure statements filed with the Board.
43. The Dinkins campaign reported receiving \$7,920,150 in direct contributions and making fund raising expenditures totalling \$1,732,284, whereas the Giuliani campaign reported direct contributions of \$7,009,839 and \$1,067,326 in fund raising expenditures. The Campaign Finance Board expenditure disclosure forms have a separate "purpose code" for fund raising expenses. These two campaigns may have made different decisions about the expenditures they chose to classify as "fund raising." See Campaign Finance Board, 1993 Campaign Finance Handbook (December 1992), p. 91 (describing expenditures covered by the fund raising expense

code).

44. The "top ten" Dinkins intermediaries delivered a total of \$888,652; the Giuliani top ten totalled \$411,556. The total amount delivered by these 20 intermediaries is \$1,300,208, or 38.7% of the total intermediated contributions reported by these two campaigns. Only three of these 20 intermediaries were reported to have spent any funds on behalf of the relevant campaign, other than by making monetary contributions. The total amount they spent was \$7,006.

This analysis is likely to understate the efficiency of intermediaries as fund raisers because the intermediary outlay total includes all the following transactions to the extent they were reported: in-kind contributions by the intermediary (excluding contributions refunded), payments to the intermediary, bills from the intermediary that are outstanding or that have been forgiven, and expenditure refunds to the intermediary, regardless whether the outlays had any relationship to raising the contributions the intermediary delivered. On the other hand, the intermediaries' efficiency may be overstated to the extent the \$500 exemption for in-home expenses, *supra* notes 14 and 42, was applicable to the intermediaries' efforts and the possibility that the campaigns did not report every fund raising expenditure that was an in-kind contribution made by an intermediary.

45. The Act expressly encourages volunteerism and "grass roots" activity by exempting from the definition of "contribution" the value of services provided without compensation by volunteers and, as noted above, campaign costs incurred by an individual at home that do not exceed \$500. Administrative Code §3-702(8)(i), (ii). As noted in the text accompanying note 14, *supra*, the latter is also part of the standard for exempting certain "house parties" from the intermediary disclosure requirement.

46. See New York City Campaign Finance Board, On the Road to Reform: Campaign Finance in the 1993 New York City Elections (September 1994), at p. 131. This proposal has been introduced in the New York State Legislature by Assemblyman Eric Vitaliano (A. 4724-A) and Senator Roy Goodman (S. 5053).

The absence of a State Election Law disclosure requirement for intermediaries is also notable in connection with the recent arrest for trespassing of two reporters attempting to see who was attending a political party fundraising event. See Joyce Purnick, "Raising Funds By Arresting Journalists," *The New York Times*, May 1, 1996, p. B1.

47. On The Road to Reform, *supra* note 46, p. 130. The Board forwarded draft legislation containing this proposal to Mayor Rudolph Giuliani and City Council Speaker Peter Vallone on April 5, 1995. To date, the bill has not been introduced in the City Council.
48. Massachusetts defines contributions "made through an intermediary or conduit" more broadly than existing New York City law. See Mass. Gen. L. ch. 55, §10A(c)(1) (defining this phrase as contributions "delivered" to a candidate or the committee and contributions made "in a manner that identifies in writing the person who arranged the making of the contribution").
49. Compare New York Election Law §§17-102(7), (9); 17-142; 17-144; 17-150; 17-154 (imposing criminal sanctions for use of coercion and promise of reward to influence voting).