

Marc Crawford Leavitt's Statement to the NYC Campaign Finance Board – 12/1/09

My name is Marc Crawford Leavitt. I am a homeowner in Sunnyside, Queens, a civic activist, and a partner of the lawfirm of Leavitt, Kerson & Duane.

I was a candidate for Queens Borough President in the September 15th Democratic Primary, and I received over 12,000 votes.

I was the only candidate in the entire city in a jurisdiction bigger than a council district who ran in the primary election against an incumbent.

The point of my testimony is to highlight why so few qualified citizens are willing to run for major public office. Also, I will propose a solution that will encourage civic involvement both by the voting (or perhaps in this year's case I should say the non-voting) public and by potential candidates who are not career politicians.

Queens has a population greater than that of 16 states. Despite the fact that I was a bona fide candidate who raised over \$100,000 from over 500 contributors, and that I was the first in my race to qualify for matching funds (and actually received about \$300,000), my candidacy was totally ignored by all of the city-wide newspapers, New York 1 TV and WNYC radio. Even the Citizens Union, somewhat hypocritically because that organization is supposed to stand for good government, did not review the candidates for Borough President of Queens. On primary night, the vote totals were not visible on any station.

There is a reason. I had no chance of winning.

It is a sad reality of our current political process that a candidate cannot be taken seriously for major office (and I put the nominal leader of a county with over 2 million people in that category) unless he or she is either a multi-millionaire, a celebrity or a heredity politician. Gov. Schwarzenegger of California is all three.

Although the purpose of the NYC Campaign Finance Board is to encourage citizens to become involved in the electoral process, the way the CFB currently functions there it is no possibility for an insurgent to beat an incumbent in a borough or city-wide primary.

There are two reasons:

1. Timing
2. Structural bias in favor of incumbents.

1. Timing is the more significant reason, because a candidate doesn't know for sure that he or she will get matching funds until about 5 or 6 weeks before the election. The media, the unions, prospective contributors, and the public don't have an opportunity to seriously consider an insurgent candidate until it's too late. Overwhelmingly, they create a self-fulfilling prophecy that the insurgent doesn't have a chance. They're right.

There is a solution.

- Prime-time TV-slots should be purchased by the City and made available at no charge to bona fide candidates before the petition process for Borough-wide and City wide positions.

Without this, an insurgent is simply not taken seriously at a sufficiently early point to build popular support and recognition. I would point out that even Mayor Bloomberg with his mega-bucks ran in 2001 in the November general election, not a September primary.

On June 21, 2007, this proposal was part of my remarks presented the City Council's Government Operations Committee (copy attached).

I know there is tremendous concern that public funds should not be distributed to candidates before they have qualified to be on the ballot. Fine. Free prime-time TV slots paid for by the City is not mutually exclusive with that concern. At worst, public funds would be spent to educate the public about potential candidates who might not achieve ballot status. Some smaller portion of the current contribution thresholds could apply to determine the bona fides of potential candidates for the purpose of giving them free TV time.

Currently, the CFB spends funds to allow candidates to create video-voter statements. Unfortunately, they are rarely seen because they are only aired on Public Access channels and only during the two weeks before the September primary. These statements should be made and aired during the month of May, and the City should pay to broadcast them on prime-TV. The cost would be relatively small.

- Also, there should be mandatory publicized debates for borough-wide candidates, not just city-wide ones.

2. The second problem is that current CFB rules allow incumbents tremendous advantages.

These advantages include getting on the ballot and staying on it. The CFB does not accurately recognize the free petition and legal resources incumbents get from the county organizations. To say that these resources are based on voluntary effort is indeed bogus. Not only must insurgents pay substantial legal fees in order to deal with New York's arcane petitioning process, they must spend substantial effort and funds to collect more than double the officially required number of signatures in order to withstand a potential petition challenge. The full value of the legal services received by incumbents in this process is virtually ignored by the CFB. This is structurally unfair.

As an insurgent, not only did I have to spend substantial funds to obtain sufficient petition signatures, I had to spend substantial legal fees to try to remove another insurgent candidate from the ballot I who I deemed not to be bona fide. I never met him, he never campaigned anywhere to my knowledge, and his petitions (among other improprieties) included at least four (4) dead people whose petitions were witnessed by three (3) different petition gatherers, seventeen (17) of whom we subpoenaed to come to court. The worthy judge hearing our petition challenge not only refused to make a

negative inference from the fact that not one of the 17 showed up in court, he made numerous rulings of marginal validity so as to maintain this candidate. Essentially, the judge ruled that although this other candidate's petitions contained considerable fraud, there was not enough fraud to remove him from the ballot, thereby diluting my chances of competing one on one against an incumbent.

But back to the CFB.

In the spring, the Queens Courier published a multi-page "tribute" to my opponent, the incumbent. For the CFB to allow this, and not consider it an impermissible corporate contribution, was a travesty.

Instead, in a weird irony, my campaign almost did not receive full matching funds because on August 3rd I did not realize my campaign was required to file a Statement of Necessity because my incumbent opponent had not yet raised a sufficient amount of funds. Absurdly, this triggered a CFB rule where I as an insurgent might not have truly needed full matching funds in challenging an incumbent. At 4pm that afternoon, I literally almost had a heart attack because of the need to meet this ridiculous deadline, which my diligent campaign treasurer became aware of by at the last minute.

But the greater problem the CFB timetable currently ignores is the skepticism factor. The media and potential contributors don't perceive a candidate as real until they are visible on TV, and they don't pay serious attention when they have to worry about whether or not a candidate will survive a ballot challenge. My proposal for prime-time TV slots would go a long way toward addressing this pervasive and antidemocratic realpolitik reality. And it would do so without giving a nickel to a candidate before he or she is qualified to be on the ballot.

I do not expect to run again for public office. The only time I ran before was 29 years ago when I served as an unpaid community school board member. Thirty-five years ago I was a member of the City Club of New York, a now dormant non-partisan good government organization. Distinguished Club members like Sidney Dean and Sol Hoberman were among those who first recommended the ballot information brochure and the concept of public campaign finance matching funds. As with many City Club initiatives, it took many years before it became a reality as now administered by the CFB.

Everyone knows there's too much money involved in the campaign process and in government. The current public cynicism with giveaways to big banks and corporations is a result. NYC via the CFB has made great strides to improve the process. Other states like Arizona, Maine and Connecticut have gone further by creating what I consider to be better systems that fully fund campaigns. While we must respect the first amendment right of the super-rich to spend what they want to, and while money will always be the mother's milk of politics, we can encourage more well-intentioned citizens to run for public office and nurture a more informed public by adding free prime-time TV access to the electoral process before the petitioning period.

Thank you.

**REMARKS of
MARC CRAWFORD LEAVITT at the 6/21/07 Hearing of the
City Council of NY Government Operations Committee
Regarding "Clean Money, Clean Elections" legislation**

Good afternoon. My name is Marc Crawford Leavitt. I am a homeowner in Queens, a lawyer, and a citizen who volunteers with several civic, social service and academic organizations. I am also a political satirist. One of my parodies to the tune of "I Write the Songs," popularized by Barry Manilow, starts:

*I've been alive forever, and I wrote the very first laws.
I have the might and the power to enforce them
I AM MONEY, AND I WRITE THE LAWS!*

Another of my satires about the 2001 mayoral election is not intended to specifically criticize our Mayor, who I generally feel has been doing a very good job, but to deplore the current national reality where it seems that to run credibly for high office you have to be a multi-millionaire, a celebrity, or a hereditary politician (and Arnold Schwarzeneger is all 3!). It parodies "A Hundred Bottles of Beer on the Wall...":

*A hundred dollars per vote at the polls, a hundred dollars per vote,
To make sure the Democrats happen to fall, a hundred dollars per vote at the polls...*
(spoken: Keep singing for four more years).

In my law firm of Leavitt, Kerson & Duane (that's John Duane, brother of Tom), four of our current or former members have held elective office, and I myself served a 3-year sentence on Community School Board 30 in Queens from 1980 to 1983. Our service to clients does not include being paid as lobbyists. In the early 1980s, I was part of team of pro-bono attorneys in a federal civil rights ballot access case representing an insurgent candidate against the Donald Manes political machine and the powers-that-be (*Weiss et al v. Feigenbaum, Manes, etc al, 558 F. Supp 265, EDNY 1982*). The Aaron Weiss case exposed many wrongful practices that were impediments to democratic elections and improved the ballot access process.

I have also been a Trustee of the City Club of New York, the esteemed non-partisan good government group responsible for numerous initiatives over the decades which we now take for granted, such as the ballot brochure mailed to all voters listing each candidate and their qualifications (which deserves much broader distribution). Back in the 70s, public campaign matching funds was just an idea discussed at the Club's own Governmental Operations Committee led by the late Saul Hoberman and Sidney Dean.

But now we are in the 21st century. Money is still the mother's milk of politics, but media and communications plays a bigger part than ever. Our City has the most aggressive matching funds program the nation, and that's terrific. The Clean Money, Clean Elections system is the next generation of improving our democratic system, and I support the concept. I also ask the committee to consider further steps. New York City cannot mandate free public TV time. The argument that the airwaves belong to the public and therefore should be used on some regular basis to be available both for public service and to help voters decide among candidates is obviously a national issue. But the City Council could lead the way with an advocacy statement for our congressional delegation and two innovative concepts:

- 1. Free print ads on mass transit vehicles for bona fide candidates.**
- 2. Prime-time TV purchased by the City and made available at no charge in regularly scheduled time slots to bona fide candidates.**

Here's some brief arithmetic on how it might work. 51 Councilmembers + the Mayor, Comptroller and Public Advocate + 5 Boro Presidents + 5 District Attorneys = 64 offices. Assume 5 primary candidates for each office = 320. Assume each candidate gets two 5-minute time slots for a total of 3,200 minutes or about 54 hours. Divide that into the 6 weeks prior to the election for 9 hours each week, 3 hours on each on three weekday nights on different TV channels. Fine-tuning of the program could save money by boro-specific broadcasts on cable TV. Provide a free technical crew to help candidates produce their time slots and mass transit ads. Advertise the TV time slots to the public so the citizenry gets used to the idea of consistently scheduled election information as the years go by.

Duplicate the process for the general election assuming only two candidates for each of 64 offices, so we need only 1,280 minutes or about 22 hours.

I don't know the cost of 76 hours of TV time per election cycle, but I am certain that the result would be major improvements in the awareness and involvement of our citizens and in the democratic process in general. Thank you.

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