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Cover Page Footnote

The authors would like to acknowledge the assistance of Laurence Laufer, Counsel to the Executive Director of the Campaign Finance Board, and Adam Becker, policy analyst at the Board, in the preparation of this article.

THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM: A REFORM THAT IS WORKING

*Nicole A. Gordon** and *Hyla Pottharst Wagner***

I. Introduction

The Watergate break-in brought political campaign finance abuses into the national spotlight in the early 1970s, and the recent "Keating Five" savings and loans campaign contributions scandal is a vivid reminder that these abuses have not been addressed satisfactorily. While few people dispute the necessity for campaign finance reform, the direction that reform should take has been the subject of controversy at all levels of government. It is easy to overstate what campaign finance reform can realistically achieve. It is also easy to understate the urgent need for reform, and the link between that reform and the extent to which elected officials can independently approach the substantive issues before them.

Some people argue that during a severe fiscal crisis, campaign finance reform is an unnecessary luxury. Our entire system of government, however, is predicated upon democratic elections. We would never forego our costly administrative system of elections, even when government funds are scarce. Campaign finance programs, such as New York City's, limit the influence of private money on candidates and come at a relatively modest cost to taxpayers. (New York's Program also substantially increases the information available to voters concerning the sources of candidates' campaign finances.) Campaign finance reform programs, thus, increase the extent to which elections are truly competitive. During a fiscal crisis, we therefore have an even greater need for campaign finance reform and the meaningful democratic elections that reform fosters to ensure that voters generally, rather than special interests, dictate how scarce resources should be allocated. Reform is also necessary to give voters the confidence that

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their elected officials represent them, and not just wealthy donors, particularly in a time of crisis.

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

We recognize there are many problems in New York City. We are well aware of the present fiscal crisis. I would propose that at the heart of these problems, however, is a political crisis, and the true solution to our problems will come when the citizens of New York have a sense of ownership of the City. Without this sense of ownership, no amount of technical advice or high-powered consultants will solve the City's problems. . . . [The Program's] reforms, less money, more information, wider participation, [and] a better informed electorate are intended to give the citizens of New York City a sense of owning this City.¹

Former Corporation Counsel for the City of New York, Frederick A. O. Schwarz, Jr., has urged that the people, directly and through the popularly elected branches of government, must now actively protect and strengthen the constitutional values of liberty, fairness, and equality for all citizens, especially for minorities, because the current Supreme Court will not be in the vanguard of defending these values.² He has cited the current campaign finance system as in need of reform, observing that "[t]he weak in society are by definition not protected by political action committees and thousand dollar donors. . . . Where elected officials are dependent upon narrow financial interests, . . . they must worry unduly about the short-term interests of powerful constituents," rather than about longer-term problems affecting all the people, such as urban decay and environmental preservation.³

By instituting a campaign finance reform program in New York City, we are attempting to close the gap between the idealism that promotes reform and the actual practicality of implementing administrative mechanisms to diminish the influence of money on campaigns. To what degree can this be achieved? To what extent, after all, can the public expect legislators to ignore their own interests and to enact laws that promote genuine competition? In a time of fiscal crisis,

1. *Hearings Before the New York City Campaign Finance Board* at 7 (Dec. 11-12, 1991) [hereinafter *CFB 1991 Hearings*] (statement of Chairman Joseph A. O'Hare, S.J.). The hearings held by the Campaign Finance Board following the 1989 and 1991 elections are part of its mandated post-election review of the Program. See NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, § 3-713 (1990).

2. Frederick A.O. Schwarz, Jr., *The Constitution Outside the Courts. The 44th Benjamin N. Cardozo Lecture* (Dec. 5, 1991), in 47 RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 9 (Jan.-Feb. 1992).

3. *Id.* at 35.

what are the concrete benefits that justify the expenditure of public tax dollars on candidates' political campaigns?

This essay attempts to answer some of these questions by describing the specific experience of one local program that appears to be working. Campaign finance reform alone cannot provide the entire mechanism for establishing truly popular democracy and for vesting ownership, or at least some sense of it, in the voting public. Reform, however, can bring concrete, measurable benefits to our political system. The New York City Program is evidence of how campaign reform significantly diminishes the influence of special interests on elected officials and makes our elective process far more competitive and democratic.

II. The New York City Campaign Finance Program

During the mid-1980s, a series of corruption scandals, involving the Wedtech Corporation, Brooklyn Navy Yard contracts, and the New York City Parking Violations Bureau, were exposed in New York City government, adding impetus to an already growing movement for campaign finance reform. Although none of the local scandals was directly related to campaign finance abuses, public attention focused on issues of conflicts of interest and improper influence on elected officials. In 1986, Governor Mario M. Cuomo and Mayor Edward I. Koch established the State-City Commission on Integrity in Government (the "Sovern Commission") and charged it to make recommendations to prevent corrupt practices and conflicts of interest in government. Chaired by Michael I. Sovern, President of Columbia University, the Commission recommended public financing of state and local elections as its top priority. The Commission reported that "candidates in New York elections frequently collect and spend grossly excessive amounts of money on campaigns The huge sums involved create vast opportunities for abuse, influence peddling and other improprieties."⁴ As former United States Attorney and mayoral candidate Rudolph Giuliani stated, "[I]t is demonstrable that . . . very, very often over the last ten to fifteen years . . . public officials in New York City were incapable of making decisions in the public interest because of the effects of money and the huge amounts donated by some."⁵

The New York State Commission on Government Integrity,

4. STATE-CITY COMM'N ON INTEGRITY IN GOV'T, REPORT ON A BILL ON CAMPAIGN FINANCING AND PUBLIC FUNDING OF ELECTION CAMPAIGNS 2 (1986) [hereinafter SOVERN COMMISSION REPORT].

5. *CFB 1991 Hearings*, *supra* note 1, at 63 (testimony of Rudolph Giuliani).

headed by Fordham Law School Dean John D. Feerick (the "Feerick Commission") and created by Governor Mario Cuomo in response to recommendations of the Sovern Commission, investigated fundraising practices of elected officials in New York State. The Feerick Commission found that the tremendous cost of modern campaigns pressures office-holders to solicit funds during their entire terms of office, and the vast majority of contributions come from a small group of wealthy contributors, many of whom have special interests to promote or engage in business with the government. The Commission also found that elected officials and their staffs frequently blur the distinctions between official duties and fundraising activities, and financial disclosure is so ineffective under New York State law that the contribution process is effectively hidden from the press and the public.⁶

Facing inaction at the state level, the New York City Council enacted and then Mayor Koch signed into law the New York City Campaign Finance Act in February of 1988.⁷ The Act established the New York City Campaign Finance Board ("Board") to administer a comprehensive system of limits on contributions, spending, and expanded disclosure of campaign finances for candidates for local office.⁸ In November of 1988, New York City voters overwhelmingly ratified changes in the City's Charter that established the Campaign Finance Board as a Charter agency. The Charter changes added to the Board's mandate the production of a Voter Guide for all local elections, containing information about municipal candidates and voting.⁹ All registered voters receive copies of this guide for both the primary and general elections.

New York City's Campaign Finance Program makes public funding directly available to candidates for the offices of mayor, City

6. NEW YORK STATE COMM'N ON GOV'T INTEGRITY, *THE MIDAS TOUCH: CAMPAIGN FINANCE PRACTICES OF STATEWIDE OFFICEHOLDERS* (June 1989) [hereinafter *THE MIDAS TOUCH*].

7. NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, §§ 3-701-715 (1988), as amended by Local Law No. 4 of 1989 and Local Law No. 69 of 1990 (Supp. 1990). For a complete discussion of the history of the Campaign Finance Act, see Jeffrey D. Friedlander, Stephen E. Louis, & Laurence D. Laufer, *The New York City Campaign Finance Act*, 16 HOFSTRA L. REV. 345 (1988).

8. The Campaign Finance Board is an independent, non-partisan City agency. The current members of the Campaign Finance Board are Chairman Joseph A. O'Hare, S.J., President of Fordham University; James I. Lewis, Assistant Professor of History at the City College of New York; Joseph Messina, Chairman of the Motor Vehicle Accident Indemnification Corporation; and Sonia Sotomayor, a member of the law firm of Pavia & Harcourt. At this writing, one vacancy exists on the Board for the position previously held by the late Robert B. McKay, professor and former Dean of New York University School of Law.

9. NEW YORK, N.Y., CITY CHARTER ch. 46, §§ 1051-57 (1990).

Council president, comptroller, borough president, and City Council member. The Program provides for reduced contribution and expenditure limits and greatly increased disclosure and scrutiny of candidates' campaign finances. Candidates who agree to join the voluntary Campaign Finance Program, in addition to limiting their campaign contributions and spending, must file detailed financial disclosure statements and submit themselves to audit by the Board.¹⁰ Candidates who join the Program can become eligible to receive public funds up to a maximum for each election.¹¹ In order to qualify to receive public funds, a candidate must be on the ballot and opposed by another candidate who is on the ballot. The candidate must also meet a threshold dollar amount and number of contributions from New York City residents in order to show a meaningful level of local support. After the candidate has reached the threshold, the Program matches, dollar for dollar, contributions of up to \$1,000 that the candidate receives from individuals residing in New York City including the contributions received to meet the threshold.

New York is one of only four cities in the country that have campaign finance reform programs providing public funding to candidates.¹² The Program is one of the most comprehensive and effective in the nation, and one of the largest, in terms of the number of candidates who participate and the amount of public funds distributed. Establishment of the Campaign Finance Program places New York City

10. The New York City Program is voluntary for two reasons. The Supreme Court held in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), that campaign spending limits can only be imposed in the context of a voluntary program that provides a benefit, such as public funds, to the candidate. Thus, there can be no imposition of spending limits at any level of government except as part of a voluntary program. In addition, because the New York City Program was established by local law, it may not conflict with state law. As a result, the imposition of contribution limits lower than those provided by state law and financial disclosure greater than that required by state law requires that the local program be voluntary.

11. The maximum amount of public funds that a participant may receive per election equals half the applicable spending limit for the office, as set forth in Tables 1 and 2 *supra* at 611, 617 (or \$40,000 for City Council). See NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, § 3-705(2).

12. Los Angeles, California, Seattle, Washington, and Tucson, Arizona are the other three cities that have established campaign finance programs. See LOS ANGELES, CAL., MUN. CODE § 49.7 (1990); LOS ANGELES, CAL., CITY CHARTER §§ 312-13 (1990); SEATTLE, WASH., MUN. CODE §§ 2.04.400-.470, 2.04.600-.630 (1991); TUCSON, ARIZ., CITY CHARTER ch. 16 (1991). Two counties, Sacramento County, California and King County, Washington, have also adopted public funding programs. See SACRAMENTO COUNTY, CAL., CODE tit. 2, ch. 2.115.100-.830 (1987); King County, Wash., Ordinance 8970 (May 22, 1989). See generally HERBERT E. ALEXANDER & MICHAEL C. WALKER, PUBLIC FINANCING OF LOCAL ELECTIONS: A DATA BOOK ON PUBLIC FUNDING IN FOUR CITIES AND TWO COUNTIES (1990).

in the forefront of campaign finance reform, even though New York State's campaign finance laws fall well behind the rest of the country in curbing the potential for abuse.

The Campaign Finance Act's contribution limits, which are markedly lower than those provided for by New York State law, are designed to diminish the reality and perception that large contributors can buy influence or access to elected officials. The spending ceilings are meant to "level the playing field," giving all candidates a fair chance to compete for office. The Act's detailed disclosure requirements ensure that participating candidates' campaign finances are readily available for the public to examine, understand, and evaluate. And the public funds provided by the Act allow serious candidates, who do not have personal wealth or wealthy connections, to wage competitive campaigns for office.

Thus, through administration of the Program and publication of the Voter Guide, the Board reduces the role of money and increases the amount of useful information available to voters in City elections. Campaign Finance Board Chairman Joseph A. O'Hare sums up the Program's reforms as "less money, more information." Tested now in two election cycles, the New York City Campaign Finance Program is off to a highly successful start.

III. Contributions and Expenditures — "Less Money"

A. The 1989 Elections

The Program was first implemented in 1989, when all offices covered by the Program — mayor, City Council president, comptroller, borough president, and City Council — were up for election. Working against the clock, the Campaign Finance Board established a mechanism to administer the Program and to distribute the Voter Guide within six months. In that period, the Board, among other things, created disclosure forms and instructions for candidates, issued rules to implement the Act, set up a computerized information system, and made extensive efforts to inform potential candidates about the Program. During the 1989 elections, fifty-seven candidates, including all but one of the major mayoral and all the major comptroller candidates, joined the Program.¹³ The participants in 1989 agreed to abide by the contribution and spending limits set forth in Table 1 below.

13. Nine of the prospective candidates who joined the Program ultimately did not run for office.

TABLE 1
CAMPAIGN FINANCE PROGRAM
1989 CONTRIBUTION AND SPENDING LIMITS¹⁴
(PER ELECTION)

| Office | Contribution Limit* | Spending Limit* | Fundraising Allowance* |
|-------------------------|------------------------|--------------------|---------------------------|
| Mayor: | \$3,000 | \$3,000,000 | \$600,000 |
| City Council President: | 3,000 | 1,750,000 | 350,000 |
| Comptroller: | 3,000 | 1,750,000 | 350,000 |
| Borough President: | 2,500 | 625,000 | 125,000 |
| City Council: | 2,000 | 60,000 | 20,000 |

* These limits and allowances were applied separately in the primary and general elections. The fundraising allowance essentially functioned as an addition to the spending limit.

The mayoral race in 1989 was the most competitive since the turn of the century. Five major mayoral candidates — Democrats David Dinkins, Harrison Goldin, Edward Koch, and Richard Ravitch, and Republican Rudolph Giuliani — joined the Campaign Finance Program and agreed to abide by its contribution limits of \$3,000 and spending limits of \$3.6 million per election. Ronald Lauder, who spent \$13.7 million, \$13 million of which was his own money,¹⁵ did not join the Program, and as a result triggered the increased matching funds bonus provided by law for the participating mayoral candidate in the Republican primary election.¹⁶ The four major comptroller candidates joined the Program, as did six borough president candidates and thirty-three City Council candidates. Neither incumbent City Council President Andrew Stein nor any other candidate for that office joined the Program.

The most dramatic impacts of the Campaign Finance Program in the 1989 elections were a marked reduction in the size of contribu-

14. Under the Act, an additional spending limit and fundraising allowance applied in 1988. For a more detailed description of the contribution and spending limits in effect in the 1989 elections, see NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, §§ 3-701-714 (1989), amended by Local Law No. 69 (1990).

15. Financial disclosure statement dated January 15, 1990, filed by Ronald Lauder's campaign with the New York City Board of Elections.

16. When a candidate participating in the Program faces a high-spending opponent who is not in the Program, the Act provides that the participant may receive public matching funds at a two-for-one rate (up to the same maximum amount of public funds), and the spending limits for the participant are removed. To trigger the bonus, the non-participating opponent must raise or spend over one-half the applicable spending limit for the office (or \$30,000 for Council candidates). See NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, § 3-706(3).

tions that participating city-wide candidates could accept and a substantial increase in the number of contributors to candidates for office compared with previous elections. Participating mayoral candidates could accept \$3,000 from a contributor each for the primary and general elections, totalling \$6,000 for the 1989 campaign. In contrast, non-participating candidates could receive up to \$50,000 for the primary and \$50,000 for the general election for a total of \$100,000 per contributor for the 1989 campaigns, under the extraordinarily high state law contribution limits. An examination of the contributions received by two 1989 mayoral candidates, Edward Koch and Harrison Goldin, who participated in the Campaign Finance Program in 1989 and were also candidates for city-wide office in the 1985 elections, shows the sharp reduction in the size of contributions collected by mayoral candidates after the Act took effect.¹⁷ In addition to reducing the size of contributions city-wide candidates received, the Act "democratized" the candidates' financial support by encouraging them to collect smaller contributions from a broader base of contributors.¹⁸ The Program promotes grassroots fundraising because it only matches contributions from individual City residents of up to \$1,000 per campaign. It does not match contributions from corporations, political action committees, unions, or other organizations. Rudolph Giuliani commented that the Program forced him to reach out to many more contributors — 11,000 or 12,000 — than he would have if he were raising larger amounts, and he believed this had a positive political effect on his campaign.¹⁹ Council member C. Virginia Fields, newly elected in 1989, told people as she campaigned, "Your \$10, your \$20, or \$25 . . . will be helpful in terms of acquiring matching funds," and this made them more willing to contribute.²⁰ This increase in the number of people contributing to and involved in City campaigns is one of the main purposes of the Program.

The Campaign Finance Program's spending limits effectively controlled campaign spending and helped level the playing field among participating mayoral candidates in the 1989 elections. Under the

17. See NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE: CAMPAIGN FINANCE REFORM IN NEW YORK CITY 53-55 (Sept. 1990) [hereinafter DOLLARS AND DISCLOSURE]. In the period before the Campaign Finance Act took effect, over 20% of the total dollar amount of both Koch's and Goldin's monetary contributions were in amounts of over \$6,000. After the Act took effect, these campaigns had to observe a \$6,000 combined limit for the 1989 primary and general elections.

18. *Id.* at 47-55.

19. *CFB 1991 Hearings*, *supra* note 1, at 67 (testimony of Rudolph Giuliani).

20. *Hearings Before the New York City Campaign Finance Board* at 481-82 (Dec. 13-14, 1989) [hereinafter *CFB 1989 Hearings*] (testimony of Council member C. Virginia Fields).

Program, mayoral candidates were limited to spending \$3.6 million per election. This is in stark contrast to state law, which imposes no limits at all on campaign spending. In the highly contested 1989 elections, David Dinkins, Edward Koch, and Rudolph Giuliani all spent close to the Program's \$3.6 million limit in the Democratic and Republican primaries, and David Dinkins and Rudolph Giuliani spent close to the limit in the general election. The Act's spending limits reduced the variation in spending levels among mayoral candidates in the Program, compared with non-participant Ronald Lauder who alone spent more than three times the \$3.6 million limit just in the primary.²¹

In the first disbursement of public funds to candidates in New York City history, the Board distributed \$4.5 million to thirty-seven candidates during the 1989 elections. Mayoral candidates received about \$2.8 million of these funds, and comptroller, borough president, and City Council candidates shared the remainder.²²

In 1989, its first year of operation, the Program proved to be a substantial success, particularly in the city-wide races.²³ Following the 1989 elections, there was, however, concern that the Program was not as effective at the Council level as it had been at the city-wide level. Only about half of the incumbent Council members participated in the Program, despite the fact that the Council had approved the Campaign Finance Act by a vote of twenty-four to nine. The participation rate among Council candidates generally was lower than for other offices, and relatively less in public funds was distributed to their campaigns. Council campaigns, small operations often run by all-volunteer staff, had a more difficult time understanding the requirements of the new law and complying with its disclosure provisions.

B. Simplification of the Act Following the 1989 Elections

The Board undertook a thorough review of the law, rules, and administration of the Program after the 1989 elections and, in March 1990, proposed a series of reforms designed to simplify and improve the Program. Based on recommendations proposed by the Board, the Council adopted amendments to the Act in November 1990, that simplified the Program's recordkeeping and reporting requirements and increased the availability of public funds.²⁴ When signing Local Law No. 69, Mayor Dinkins stated:

21. See also DOLLARS AND DISCLOSURE, *supra* note 17, at 84-85.

22. *Id.* at App. J.

23. See *An Electoral Example for the Country*, N.Y. TIMES, Sept. 18, 1989, at A18.

24. New York, N.Y., Local Law No. 69 of 1990.

In its first test, during the 1989 local election campaign, the Act was a remarkable success. . . . Nevertheless, the complexity of the law resulted in lower than desired participation in the Campaign Finance Program, particularly by candidates in Council races. The bill before me today simplifies many of the requirements of the Act and enhances some of the benefits of participation in the Campaign Finance Program.²⁵

The Board also took substantial administrative steps to ease the burden on candidates.

Some of the most important legislative and administrative changes in the Program were: (i) matching all funds raised to meet the threshold for all offices and reducing the threshold that City Council campaigns must meet before receiving public funds from \$7,500 to \$5,000; (ii) consolidation and simplification of the "per election" contribution limits and separate spending limits for fundraising; (iii) creation by the Board of a new Candidate Services Unit to assist candidates throughout the campaign with questions about disclosure filings and the Program's requirements; (iv) redesign and simplification of the Board's disclosure forms and coordination with the Board of Elections to create a single form for contributions acceptable for filing at both agencies; and (v) simplification of the Program's recordkeeping requirements and rules. For the 1991 elections, Board staff also made extraordinary efforts to get the word out to potential candidates about the Program by addressing some eighty-five community boards, political clubs, and other community groups in the five boroughs. These changes proved instrumental in making the Program more attractive and effective for Council candidates.

C. Special Elections in 1990 and 1991

Three special elections occurred prior to the 1991 City Council elections. In May of 1990, two candidates participated in the Program in a special election for the 1st Council district on Staten Island, for which about \$6,000 in public funds was distributed. In February of 1991, five Program participants received a total of \$137,000 in a hotly contested special election in Brooklyn's 29th Council district.²⁶ Four prospective candidates joined the Program for a special election

25. Mayor David Dinkins, Statement by Mayor Dinkins at Public Hearing on Local Laws (Nov. 27, 1990).

26. Irene Van Slyke, a candidate in the Brooklyn special election, stated that "[i]f it was not for campaign finance, I would not have run . . . with public financing and double matching funds, because two candidates in that campaign did not participate in the Program, I was able to run a credible campaign and make people aware of my candidacy." *CFB 1991 Hearings, supra* note 1, at 48-49 (testimony of Irene Van Slyke).

in Queens' 22nd Council district held in April of 1991. Only one of these candidates, Karen Koslowitz, made it onto the ballot, however, and because she faced no opposition, no public funds were distributed. The special elections gave the Board and its new Candidate Services Unit²⁷ a chance to test the new rules, forms, and educational materials before the city-wide 1991 Council elections.

D. The 1991 Council Elections

In 1989, the United States Supreme Court held that the voting distribution within the Board of Estimate, then New York City's most powerful governing body, was unconstitutional as a violation of the principle of one person, one vote.²⁸ Mayor Koch had appointed a Charter Revision Commission, chaired first by Richard Ravitch and later by former Corporation Counsel, Frederick A. O. Schwarz, Jr., to recommend changes in the structure of City government. In November, 1989, New York City voters approved revisions in the City Charter proposed by the Commission, abolishing the Board of Estimate and expanding the powers of the City Council. The Charter Revision Commission had recommended increasing the size of the City Council from thirty-five to fifty-one members, among other reasons, to reflect better the racial and ethnic diversity of New York City.²⁹ The new City Charter provided that special elections for an expanded New York City Council would be held in the fall of 1991.³⁰ Using results from the 1990 census and working under an extremely tight deadline, the New York City Districting Commission issued its plan for the fifty-one new districts in June of 1991. In shaping the new Council boundaries, one of the Districting Commission's mandates was to attempt to expand the representation of minorities in City government.³¹

The 1991 elections for an expanded City Council provided greater opportunity for newcomers to the local political scene as a result of redistricting and the creation of sixteen new seats. When the districting plan was challenged in federal court, a three-judge panel expanded

27. The Candidate Services Unit was established in 1990 in response to candidates' requests and the Board's review of its procedures after the 1989 elections, to train and assist participants in meeting the requirements of the Program and receiving public funds.

28. *Board of Estimate v. Morris*, 489 U.S. 688 (1989).

29. See NEW YORK CITY CHARTER REVISION COMMISSION, SUMMARY OF PRELIMINARY PROPOSALS 1-2 (May 1989); NEW YORK CITY CHARTER REVISION COMMISSION, THE VOTER'S HANDBOOK ON CHARTER CHANGE 4 (Fall 1989).

30. NEW YORK, N.Y., CITY CHARTER ch. 52, § 1152(d)(9) (1990).

31. *Id.* at ch. 2-A, § 52(b).

this opportunity by reducing the number of petition signatures necessary to gain access to the ballot and allowing candidates to run in any district regardless of their places of residence.³² These elections tested the Program's potential effectiveness at the Council level. By giving more candidates a meaningful opportunity to run for office, the Campaign Finance Program complemented the goals of expanded representation of the Charter reforms and the Districting Commission. Dean Frank Macchiarola of the Cardozo School of Law, Chair of the Districting Commission and a former member of the Campaign Finance Board, confirmed that "the large number of candidates who contested for seats in the City Council election was in no small part due to the Program."³³

During the 1991 Council elections, the Program encouraged broader participation, fostered greater competition, and enabled dozens of serious candidates to run for office.

1. Program Participation in the 1991 Races

By the May 10 deadline, 256 individuals joined the Campaign Finance Program for the 1991 elections, agreeing to abide by the contribution and spending limits set forth in Table 2 below, and to adhere to the Board's detailed disclosure requirements. This number of participants far exceeded the Board's most optimistic projections, even anticipating a large candidate pool as a result of redistricting. Of the 256 individuals who joined the Program, 136 made it onto the ballot. Of a total of 239 candidates who were on the ballot in 1991, 136 candidates, or fifty-seven percent, were Campaign Finance Program participants. This is four times the number of candidates who were in the Program at the Council level in 1989, when there were thirty-three Council participants on the ballot. It also represents a dramatic increase in the number of participants as a percentage of all Council candidates on the ballot: from thirty-four percent in 1989 to fifty-seven percent in 1991.³⁴ It is likely that participation in the Program would have been even higher had the deadline for joining been later than May 10, because some candidates decided to run only after see-

32. Puerto Rican Legal Defense and Education Fund, Inc. v. City of New York, No. 91-2026 (E.D.N.Y. July 30, 1991) (order setting Council elections schedule). See generally Puerto Rican Legal Defense and Education Fund, Inc. v. City of New York, 769 F. Supp. 74 (E.D.N.Y. 1991), *appl. for injunction denied*, — U.S. —, 111 S.Ct. 2884, 115 L.Ed.2d 1049 (1991).

33. CFB 1991 Hearings, *supra* note 1, at 95 (testimony of Frank Macchiarola).

34. Council member Berman stated that the "increase in participation bodes well" for government and politics in the City of New York. *Id.* at 249 (testimony of Council member Herbert Berman).

ing the final district lines published in June.³⁵

TABLE 2
CAMPAIGN FINANCE PROGRAM
1991 CONTRIBUTION AND SPENDING LIMITS³⁶

| Office | Per Campaign Contribution Limit* | Per Election Spending Limit* |
|-------------------------|--|------------------------------------|
| Mayor: | \$6,500 | \$4,000,000 |
| City Council President: | 6,500 | 2,500,000 |
| Comptroller: | 6,500 | 2,500,000 |
| Borough President: | 5,000 | 900,000 |
| City Council: | 3,000 | 105,000 |

* The contribution limits that applied to the primary and general elections separately in 1989 (see Table 1) were increased slightly for inflation for most offices and consolidated into a single "per campaign" limit. The separate fundraising allowance that existed in 1989 was consolidated into the overall spending limit. These limits are currently in effect for the 1993 municipal elections.

The high degree of participation in the Program crossed over borough and party lines. Participation was high among candidates in all boroughs, with somewhat less participation in the Bronx. In addition, candidates representing all five of the major political parties — Democratic, Republican, Conservative, Right-to-Life, and Liberal — as well as Independents, participated. In 1991, the Program attracted high numbers of minority candidates.³⁷

35. The Campaign Finance Board proposed legislation providing that the deadline for joining the Program be moved from May 10 to June 10, 1991, but the proposed legislation was not acted upon. Numerous non-participants who responded to a post-election survey conducted by the Board stated that they did not find out about the Program or had not decided to run in time to join. See CAMPAIGN FINANCE BOARD, RESULTS OF POST-ELECTION SURVEY (1991) (Non-Participants Survey, question 2) [hereinafter CFB POST-ELECTION SURVEY], which was sent to all Council candidates in November of 1991.

36. Under the Act, an additional spending limit applied in 1990. For a more detailed description of the limits that applied in the 1991 elections, see NEW YORK, N.Y., ADMIN. CODE tit. 3, ch. 7, §§ 3-701-715 (1990).

37. Council member Una Clarke, the newly elected representative of Brooklyn's 40th district, stated that the Campaign Finance Board "provides a conduit for a larger number and more diversified group of persons, both economically and racially, to run an effective campaign and to win . . . I am evidence of that." CFB 1991 Hearings, *supra* note 1, at 347 (testimony of Council member Una Clarke).

Common Cause found that "New York City's campaign finance law . . . has demonstrably enabled women, minorities, and Republicans (all groups under-represented in New York City politics) to compete more effectively for public office." It observed that

Unfortunately, the rate of participation by incumbents was surprisingly the same as in 1989 — about fifty percent. The recent redistricting, coupled with the novelty of the Program, however, might explain this level of participation.³⁸ The Program's detailed disclosure requirements and its audits and scrutiny of candidates' campaign finances may be additional factors that have inhibited some incumbent Council members from joining. Greater participation by incumbent Council members in future elections would further the Program's goals of full campaign finance disclosure and would mean that bonus matching funds³⁹ are not triggered as often.

2. *Effect of the Program on Competitiveness in 1991 Races*

Many participants reported that the public funds the Board distributed in 1991 helped them run competitive races.⁴⁰ The Board distributed approximately \$2.5 million in public funds to 112 participants for the 1991 elections, compared with \$500,000 to twenty-five Council candidates in 1989. Council candidate Robert Miller, who ran a close primary race against incumbent Council member Noach Dear in Brooklyn's 44th district, called the infusion of public funds "an absolutely vital component to me mounting a credible campaign."⁴¹

The public funds distributed by the Board also helped neutralize the effect of political action committee (PAC), union, and other special-interest giving. The Feerick Commission found that businesses and individuals doing business with government are the major con-

"11 of 13 female candidates elected this year participated in the Campaign Finance Program . . . 10 of the 12 new minority members elected used public funding . . . [and all] 5 Republicans elected participated in the Program." New York State Common Cause: Campaign Finance Reform and the 1991 Elections (Nov. 6, 1991) (election news release).

38. Incumbent Council member Mary Pinkett, who joined the Program, commented that some incumbents may have chosen not to participate in the Program in 1991 because it was still very new and because "the redistricting process was . . . a traumatic experience. . . . This was a very important election. . . . Maybe there were too many changes for people to [join a new program] . . . that they felt might seriously affect their chances of winning an election." *CFB 1991 Hearings, supra* note 1, at 320-21 (testimony of Council member Mary Pinkett).

39. *See supra* note 16.

40. In moving testimony, Guillermo Linares, the first Dominican-American elected to the Council and the first Latino elected to represent northern Manhattan, stated, "I don't think I would be sitting here as a Council member-elect had it not been for over \$30,000 that I was able to obtain through this Program that allowed me to reach out to the voters. . . ." Council member Linares believes the Campaign Finance Program was "essential to [his] success as an independent community-based candidate" because unlike three of his opponents, he did not have the support of a political machine or county organization and is not independently wealthy. *CFB 1991 Hearings, supra* note 1, at 330-31, 337 (testimony of Council member Guillermo Linares).

41. *Id.* at 193-94 (testimony of Robert Miller).

tributors to campaigns in New York State.⁴² Another study found that real estate interests gave about \$3 million to New York City Board of Estimate members in the 1985 municipal elections, and that eight of the top ten contributors to Board of Estimate members in that election were major real estate developers.⁴³ Under the new Charter many of the Board of Estimate's former powers over land use and zoning have been transferred to the City Council. Increased contributions to Council candidates from real estate interests may therefore follow. The availability of public funds to offset organizational and special interest giving is important, as is clear from Campaign Finance Board data that show that organizations — corporations, political committees, unions, and partnerships — gave almost one-third of the total amount of contributions to participants in the 1989 and 1991 elections. Of the fifteen top contributors to all participating Council candidates in 1991, only one was an individual, and the rest were unions, PACs, and real-estate related interests.⁴⁴ Two PACs active in the 1991 elections, the Council Political Action Committee and the Majority Coalition, each spent about \$200,000 in these elections. The \$2.5 million in public funds provided to candidates by the Program effectively dilutes the impact of this special-interest giving. The Program, in effect, magnifies the significance of contributions from individuals living in New York City because it doubles their value to the candidate through matching funds. The Program does not match contributions from non-residents, corporations, PACs, unions, or other organizations.

Under the Program, contributions from organizations and individuals are subject to the same limits.⁴⁵ Contributions from affiliated donors, such as a corporation and its subsidiary, are aggregated and treated as if they were from a single contributor, unlike New York State law which allows multiple corporate affiliates to give separate contributions.⁴⁶

The Program's provision of public funds clearly fostered stiffer competition in Council races in both the challenged and the open

42. John D. Feerick, *Do We Really Want Ethical Government?* 64 N.Y. St. B.J. 8, 9 (1992).

43. New York State Senator Franz Leichter, Leichter Documents Close Relationship between Campaign Contributions and Board of Estimate Votes; Proposes Voter Referendum (Nov. 26, 1985) (press release).

44. Based on Campaign Finance Board data as of Nov. 29, 1991.

45. See Table 2, *supra* p. 617.

46. The federal system and many states flatly prohibit direct contributions to campaigns by corporations. There is no prohibition on corporate donations under New York State law, and local law, therefore, cannot prohibit these donations.

seats.⁴⁷ Many more candidates (sixty-four) ran for the nineteen challenged seats in this year's primary elections than ran in the 1989 or 1985 primary elections for challenged seats. Eight incumbent Council members who had no primary challenges in 1989 were faced by Program participants this year. In addition, winners' margins of victory in this year's Council elections were slimmer than in 1989.⁴⁸ The Program also generated increased competition in the open seats, where three-fourths of all the candidates running were participants. Many candidates surveyed said the existence of the Program was a contributing factor in their decisions to run for office.⁴⁹

A substantial majority of the Council members who took office in January 1992, — thirty-one out of fifty-one — participated in the Campaign Finance Program in 1991, compared with 1989 when nineteen of the thirty-five who were elected participated. Of the twenty-one individuals elected to the Council for the first time in 1991, eighteen participated in the Program. In a significant shift in New York City politics, Republicans won five seats in the 1991 Council elections. All five participated in the Campaign Finance Program, and each received over \$10,000 in public funds.

While the Program encourages candidates to run, it is designed to reward candidates with matching funds only if they are serious and able to demonstrate significant local support justifying the expenditure of public funds. Council candidates in 1991 had to raise a threshold amount of \$5,000 from at least fifty individual contributors before they could qualify for public funds. The threshold was reduced from \$7,500 in 1989, and although a few candidates believe the current \$5,000 threshold is still too high, it appears to have effectively prevented the distribution of public funds to non-competitive candidates. At the local, as well as the national level, it is important that the threshold remain low enough to encourage grass roots candidates, but high enough to screen out candidates who are not viable and seek

47. Newly-elected Council member Annette Robinson, who received almost \$19,000 in public funds, confirmed that the Campaign Finance Program "allows the serious candidates to run an effective campaign." *CFB 1991 Hearings*, *supra* note 1 at 357 (testimony of Council member Annette Robinson).

Another new Council member, Una Clarke, states, "Without the Board's support, I personally would not have been able to run or finance a campaign in a new district with the lowest voter registration in Brooklyn, which has a very large immigrant community and where contributions for campaigns are limited." *Id.* at 346 (testimony of Council member Una Clarke).

48. Winners, on average, had only 50% percent of the total vote per district in the primary and 76% of the total vote per district in the general election in 1991, compared with 63% for the primary and 86% for the general election in 1989.

49. CFB POST-ELECTION SURVEY, *supra* note 35 (Participant Survey, question 3).

public funds for quixotic campaigns.⁵⁰

Thus, in its second implementation, in the 1991 elections, the Program proved to be highly successful on the Council level, except with respect to the disappointing rate of participation by incumbent Council members, which remained relatively low at fifty percent, as in 1989. The Program encouraged more candidates to run for office, made the races more competitive, and assisted many first-time candidates in making a successful or viable run for office. Because the major goal of the Charter reforms and the Districting Commission in creating an expanded Council was to increase the presence of previously under-represented groups in New York City, the Program's role in enabling more individuals of all different backgrounds to participate in the elections and mount competitive campaigns was especially important in 1991.

IV. Campaign Finance Information and the Voter Guide — “More Information”

A. Campaign Finance Disclosure

The Campaign Finance Board has made available to the press and public unprecedented disclosure of participating candidates' campaign finances in both the 1989 and 1991 elections. The Board makes candidates' financial filings available to the press and public within twenty-four hours after they are filed. At the 1989 public hearings, Rudolph Giuliani emphasized that the primary purpose of campaign finance regulation is “disclosure so that the public, the press, and political opponents can . . . take a look at who in fact is financing a campaign, and therefore raise appropriate questions about — not just conflict of interest, but also where the balance of political power might lie should a certain person be elected or continue in public office.”⁵¹ The quality of campaign finance disclosure by candidates in New York City who join the Program is better than ever before. The campaign finance disclosure statements require extensive detailed information, including employer and intermediary⁵² information and other information not required on state forms. Campaign finance disclosure statements are also closely scrutinized, subject to audit, and computerized. All information filed by participants' campaigns is en-

50. See *CFB 1991 Hearings, supra* note 1, at 178 (testimony of Federal Election Commission Staff Director John Surina).

51. *CFB 1989 Hearings, supra* note 20, at 66 (testimony of Rudolph Giuliani).

52. Because individuals who solicit and deliver campaign contributions from others to a candidate also could have influence on that candidate, the Act requires disclosure of these intermediaries.

tered on the Board's computerized Campaign Finance Information System, a cornerstone of the Board's disclosure and enforcement efforts.

The Campaign Finance Board routinely produces computerized disclosure reports. Among these are alphabetical lists of contributors to each candidate and of contributors' employers. In 1989, the Board was able to produce these disclosure reports prior to the general election for candidates David Dinkins and Rudolph Giuliani and after the elections for all other candidates. In 1991, the Board issued reports for all Council candidates prior to the primary and general elections, as well as subsequent to the elections. In press releases during the elections and in its post-election reports, the Board provides summary figures and in-depth analyses of participants' campaign finance data, which is possible only because these data are computerized. The Board also makes the campaign finance data available on computer diskettes to those who want to perform their own analyses. In addition, through active auditing, withholding of public funds, and the imposition of fines, the Board puts teeth into the Act's campaign finance disclosure laws. By contrast, the Feerick Commission has characterized enforcement of state disclosure laws as "inadequate" and "ineffective."⁵³ Audits help to ensure that participants' disclosure statements are filed on time and accurately and that public funds are disbursed with confidence that candidates receiving them are maintaining adequate records to show entitlement to those funds.

B. The Voter Guide

Of perhaps the most visible benefit to the voters, the Board produces the *New York City Voter Guide* ("Guide") and mails it to all registered voters in the City. The Guide is a non-partisan, impartial forum that presents statements by the candidates and general information about how to register and vote. All candidates for the five covered offices, including those who do not participate in the Program, may submit statements to the Guide. Production of the Guide is an enormous undertaking because the Guide must be compiled, translated into Spanish, printed, and distributed within four to six weeks before both the primary and general elections. The Guide was mailed to between 4 and 5 million voters for the 1989 and 1991 elections, and a similar guide was produced for a Staten Island Council election held in November 1990. Over three-fourths of the candidates on the ballot in 1989 and 1991 submitted statements and were in-

53. THE MIDAS TOUCH, *supra* note 6, at 17.

cluded in the Guide. The Guide's reception by the public was resoundingly positive.⁵⁴

V. Preparing for the 1993 Elections

A. Maintaining a High Level of Participation in the Program

Probably the most important challenge in 1993, when both city-wide and Council offices will be up for election, is to maintain or increase the high rate of participation in the Program. Because participation in the Campaign Finance Program is voluntary, the concrete benefits of the reform promoted by the Program will only be fully realized if a solid majority of the candidates joins and supports the Program, and if pressure from the public and the press is brought to bear on candidates to do so. The press has already put substantial pressure on candidates to join. The nineteen City Council incumbents who did not join the Program in 1991, for example, appeared on a "Dishonor Roll" in one *New York Times* editorial.⁵⁵ Candidates' decisions whether to participate in the Program have been noted in editorial endorsements.⁵⁶

The increasing pressure by editorial boards and coverage by report-

54. "The Voter Guide was . . . a very valuable resource . . . and I was told that by voters on the street," stated Liz Abzug, a candidate for Manhattan's 3rd Council district in 1991. "It furthers the goal of the [Board] of encouraging campaigns where issues and ideas rather than money provide the backbone of the campaign." *CFB 1991 Hearings*, *supra* note 1, at 40 (testimony of Liz Abzug).

Commending the Board on the Guide, Council member Julia Harrison said that it "has stimulated considerably more interest in the elections. . . . People do read [the Guide] . . . and [it has] been extremely helpful." *Hearings Before the New York City Council Governmental Operations Committee* at 29 (Dec. 18, 1991) (statement of Council member Julia Harrison).

Marjorie Shea, a representative of the League of Women Voters, which has been in the business of producing facts for voters for years, stated that "[t]he fact that every registered voter in this City received a Voter Guide is a remarkable feat." *CFB 1991 Hearings*, *supra* note 1, at 164 (testimony of Marjorie Shea).

55. *Strong City Council, Strong Smell*, N.Y. TIMES, June 2, 1991, at E18. *See also Mr. Lauder's Money*, N.Y. TIMES, Feb. 8, 1989, at A26; *Campaign Cash: The Tide Turns*, N.Y. TIMES, July 16, 1989, at E22; *Campaign Financing: Where's the Council?*, THE DAILY NEWS, May 5, 1991, at 32; *Deadline for a Proud Reform*, N.Y. TIMES, May 9, 1991, at A24; *Sabotaging Campaign Reform*, THE RIVERDALE PRESS, May 23, 1991, at A14.

56. Many people, however, think the press should do even more. Council member Herbert Berman stated that candidates thought "the wrath of the press would come down on those who chose not to opt in . . ." Candidates should be concerned that "if I don't opt in, then I am challenging the *Times'* endorsement, *Newsday's* endorsement, *The News's* . . . , etc." *CFB 1991 Hearings*, *supra* note 1, at 253-54 (testimony of Council member Herbert Berman).

Former Mayor Edward Koch, former Corporation Counsel Victor A. Kovner, and Rudolph Giuliani agree that the press plays a vital role in persuading candidates to join

ers of the subject of campaign finance reform seems to reflect the fact that the public is also increasingly aware of and frustrated by the lax campaign finance laws that allow special interests, by making huge contributions, to dilute the meaning of the average citizen's vote. Thus, the press has already responded negatively to the fundraising practices of potential mayoral candidate Andrew Stein, who is raising funds in a manner entirely inconsistent with participation in the Program and its goals.⁵⁷ In response to a \$5,000-a-plate, \$50,000-a-table fundraising gala held by Andrew Stein that was expected to net approximately \$2 million, four city-wide newspapers immediately ran editorials or columns denouncing the large contributions he planned to accept, indicating that the Campaign Finance Program's lower limits have become so well accepted that there is an automatic reaction when a candidate blatantly disregards them.⁵⁸

Candidates who do not join the Program often argue that, in a time of fiscal crisis, they do not want to use the public's money for campaigns. This rationale rings hollow. Any candidate who participates in the Program may decline public money. Some participating candidates in both the 1989 and 1991 elections who abided by the Program's contribution and spending limits and disclosure requirements, chose not to take public funds, or returned unspent all the public funds they received. Refusing to join the Program, on the other hand, is a rejection of meaningful contribution and spending limits, increased public disclosure, and the steps toward levelling the playing field and the greater integrity in government that the New York City Program represents. Former Mayor Edward Koch called the candidates who justify their non-participation by saying that they do not want to spend public monies "charlatans."⁵⁹ A non-participant can, in fact, cost the public more if his or her unrestrained campaign spending triggers bonus matching funds provided by law for participants.

the Program and in unremittingly reminding the public who has and has not joined. *Id.* at 63, 48, 83-84 (testimony of Edward Koch, Victor A. Kovner, and Rudolph Giuliani).

Messrs. Koch and Giuliani specifically stated that newspapers should make participation in the Program a litmus test for editorial endorsement. *Id.* at 63, 83-84 (testimony of Edward Koch and Rudolph Giuliani).

57. Douglas Feiden, *What're Pals for? Stein Raising Big Bucks at Gala*, CRAIN'S N.Y. BUS., Jan. 6, 1992, at 1, 21.

58. *Andrew Stein's Interests*, N.Y. TIMES, Jan. 21, 1992, at A20; *Very Bad Habit: Stein's Style of Fundraising*, N.Y. NEWSDAY, Jan. 21, 1992, at 40; Joe Siegel, *\$1M in the Bank, Andy Snubs Matching Funds*, THE DAILY NEWS, Jan. 18, 1992, at 6; and Terry Golway, *Wise Guys*, N.Y. OBSERVER, Jan. 13, 1992, at 5. *But cf. Campaign Finance Mythology*, N.Y. POST, Jan. 22, 1992, at 18.

59. *CFB 1991 Hearings*, *supra* note 1, at 54-55 (testimony of Edward Koch).

At the same time, many participants in competitive races must be able to accept and use the public funds, especially in light of the additional fundraising and spending restrictions to which they have agreed. The acceptance by these candidates of public funds allows the average citizen, rather than special interests, to invest in, to "own," the candidates. In addition, public funding enables candidates who are not personally wealthy and do not have easy access to money to run for office. It is surely inconsistent with democratic ideals that wealth or the ability to spend vast sums should be a prerequisite for or an advantage in attaining elective office. Participating candidates are not wasting taxpayers' money. Instead, they are demonstrating and preserving their independence from undue influence and their commitment to representing the long-term interests of the electorate as a whole, rather than the short-term agenda of major contributors.

B. State Law Reform

"Lawless,"⁶⁰ "a disgrace,"⁶¹ "indefensible,"⁶² "no practical limit at all"⁶³; these are descriptions of the state law contribution limits that permit a single contributor to give up to \$50,000 per election to a mayoral candidate. In anticipation of the 1993 elections, the Board has supported reform of the state campaign finance law. The Board's experience over the past two elections demonstrates that there are dimensions of reform of city campaign financing that cannot be fully achieved under current state law. Candidates who choose not to participate in the Campaign Finance Program avoid the Program's contribution and spending limits, detailed public disclosure requirements, and the close scrutiny that apply to all participants, regardless whether they receive public funds. As noted above, a mayoral candidate running in 1993 may, under state law, receive contributions up to \$100,000 for the primary and general elections from a single contributor, while his or her participating opponents may accept only a total of \$6,500. In addition, a non-participant need not make the kind of detailed disclosure required of participants. All candidates should be subject at least to the same contribution limits and public disclosure requirements, so that they are equally accountable with respect to the

60. *Id.* at 65 (testimony of Rudolph Giuliani).

61. *Id.* at 282 (testimony of John D. Feerick).

62. *Id.* at 156 (testimony of Neal Rosenstein of the New York Public Interest Research Group).

63. SOVERN COMMISSION REPORT, *supra* note 4, at 2.

public's ability to evaluate the impact and source of their campaign finances.

For these reasons, the Board has proposed legislation that would require all candidates for the offices covered by the Act, whether or not they participate in the Campaign Finance Program, to: (i) abide by the same contribution limits contained in the Act instead of the extraordinarily high state contribution limits, and (ii) abide by the same public disclosure requirements and file financial disclosure reports with the Campaign Finance Board. In a statement supporting these proposals, Mayor David Dinkins stated:

The results of the 1989 and 1991 elections demonstrated that it is possible to run successful and effective campaigns within [the Program's] contribution limits. Clearly, the \$100,000 contributions allowed under state law have no place in city elections.⁶⁴

The proposed legislation has already received bipartisan support, including support from prospective mayoral candidate Rudolph Giuliani.

C. Further Refinement of the Campaign Finance Program

In anticipation of the 1993 elections, the Board intends to streamline further the rules and administration of the Program as much as possible without undermining the Board's ability to monitor compliance with the Campaign Finance Act. Although a majority of candidates and treasurers who responded to a post-election survey distributed by the Board found the recordkeeping and reporting requirements "reasonable,"⁶⁵ some continue to share a concern that there is an inordinate amount of time spent on paperwork.⁶⁶ The Board is dedicated to creating a Program that makes it as easy as possible for candidates to participate, while preserving the high standards of disclosure and scrutiny that make the Program meaningful for the public. To this end, the Board will seek to have all its disclo-

64. Mayor David N. Dinkins, Statement by Mayor Dinkins Announcing His Support of Campaign Finance Board Legislation (Mar. 20, 1992). See also *CFB 1991 Hearings*, *supra* note 1, at 31 (testimony of Corporation Counsel O. Peter Sherwood). Others who testified in support of the proposals at the 1991 hearings include former Corporation Counsel Victor A. Kovner, Edward Koch, Rudolph Giuliani, and Dean John D. Feerick. Although the New York State Legislature in May 1992 passed legislation (to be effective in 1994) that will limit contributions to city-wide candidates to a total of \$37,000 for the primary and general elections combined, the Board continues to support its more extensive proposals.

65. *CFB POST-ELECTION SURVEY*, *supra* note 35 (Participant Survey, question 11).

66. *CFB 1991 Hearings*, *supra* note 1, at 357 (testimony of Council member Annette Robinson).

sure forms (in addition to the monetary contributions schedule) accepted by the New York State Board of Elections so that candidates do not have to prepare different disclosure filings covering the same activity for each agency. To ease the paperwork burden, many candidates have also requested that the Board provide computer software for campaigns to prepare their disclosure reports. If its budget allows, the Board intends to do this. Ultimately, if participating candidates are able to file their disclosure reports electronically, it will be a considerable cost-saving for the administration of the Program, as well as for the candidates.

VI. Conclusion

Former Mayor Edward Koch and the City Council, under the leadership of then Majority Leader Peter F. Vallone, showed enormous political courage in passing a campaign finance reform act that is changing the way in which local candidates run their campaigns. The public has been extremely fortunate that two administrations have supported the Program since its enactment in 1988 and that the City Council has passed amendments that significantly improved the Program. These facts demonstrate that, in answer to one of the questions posed at the beginning of this essay, it is possible for elected officials to pass laws that further reform, even when those laws may not be maintaining a status quo familiar to incumbents.

Campaign finance agencies are unique in providing both oversight and scrutiny of the very elected officials who created the agencies and who control their annual budgets. The Campaign Finance Program — designed to benefit the public in the form of cleaner and more representative government — has no natural allies in elective office. For that reason, there is always the danger that it will be weakened by legislative action or budgetary reductions. The supporters of reform, including editorial boards and government reform groups, such as the New York Public Interest Research Group, Common Cause, the League of Women Voters, Citizens Union, the City Club of New York, and the Women's City Club of New York, have been persistent in their efforts, culminating in the adoption of campaign finance reform in New York City and helping to establish its credibility. It is part of the Board's mandate to continue, as these groups have, to educate the public about campaign finance reform, a complex subject that does not lend itself to simple sound bites, despite its importance to the average voter.

One of the greatest successes of the Campaign Finance Board in the past two election cycles is that it has balanced competing pressures

from the voting public, the candidates, the press, and good government groups, and, at the same time, remained above the political fray. All these groups have different expectations for the Campaign Finance Program and the Voter Guide, many of which are at odds. Some aspects of the Program that benefit the public, such as the Board's audits of campaigns and close scrutiny of disclosure statements, are a burden to the candidates. But as 1991 Council candidate Fred Teng stated, "It is tedious reporting, but I think . . . for good government it is worth the time."⁶⁷ Similarly, in the case of the Voter Guide, some candidates would like to impose restrictions on what their opponents can say in the Guide, but the public benefits from, and the First Amendment protects, uncensored political debate.

The Board has also succeeded in administering the Program in a manner that is neutral and even-handed in the treatment of all candidates, regardless of their affiliation and regardless whether they are incumbents or challengers. Designed to promote more competitive elections in general, the Program is not meant to assist any particular group of candidates over any other. The facts show that inherently it simply allows more candidates to compete more fairly and more effectively. The Board is aware that many external factors, such as constitutionally protected independent spending, fundraising ability, and staff resources, affect incumbents and challengers differently. This is a complex problem that will not be solved immediately and is largely outside the jurisdiction of the Board. The Board, however, continues to monitor these and other outside factors and to study ways in which to diminish disparities and advantages between candidates.

After two election cycles, nonetheless, it is increasingly clear that the "dollars devoted to public campaign finance are monies well spent" in New York City.⁶⁸ At its inception, the projection for the amount of public funds that might be distributed to candidates in the 1989 elections was \$28 million dollars. The actual amount of money distributed to candidates was about \$4.5 million dollars. In 1991, about \$2.5 million was distributed.⁶⁹

Indeed, the small amount invested in the Program could potentially lead to substantial savings if it helps create a climate in which the truly costly decisions in City administration, including land use, contracts, and franchises, can be made free of undue political influence or

67. *Id.* at 306 (testimony of Fred Teng).

68. *Id.* at 34 (testimony of Corporation Counsel O. Peter Sherwood).

69. Former Corporation Counsel Peter L. Zimroth observed that "[t]he amount of monies that we are talking about [for the Campaign Finance Program] are minuscule for the benefits that we are getting." *Id.* at 116 (testimony of Peter L. Zimroth).

conflicts of interest. On the congressional level, the cost of the persistent stalemate on campaign finance reform is readily apparent. A study prepared by Common Cause found that the savings and loan industry contributed \$11 million to members of Congress and political party committees during the 1980s, when Congress considered but rejected tighter regulation of the industry. The savings and loans, meanwhile, were engaged in activities that led to the bailout which is currently projected to cost the public \$300 billion, a tiny fraction of which would fully fund public financing of congressional elections for the foreseeable future.⁷⁰

We cannot expect fundamental and lasting reform of the City's political process to take place overnight. But already, the Program's effectiveness in the 1989 and 1991 elections has helped make the process by which City officials are elected more open, competitive, and fair. This has broad ramifications — it helps to ensure that all the citizens of New York City, not monied interests, control and benefit from the acts of elected officials. Campaign finance specialist Herbert Alexander suggests that the corrupting influence of large contributions is undoubtedly greater at the state and local levels than at the federal level because “more of the direct contracting of services is handled at the grassroots,” and the presence of a few dominant interests, such as real estate, in many municipalities “increases the chance that an official will become heavily dependent on such interests.”⁷¹ Thus, the concrete benefits to democratic elections described above more than justify the modest cost of reform at the local level, especially in a time of fiscal crisis.

A *Daily News* column observed, “[I]t will come as a revelation to most New York voters . . . that their political process has actually gotten better in the past two years. With surprisingly little public notice, the City has created its own campaign-finance law. . . . The law was in effect for the 1989 and 1991 municipal elections and it worked remarkably well.”⁷² Dean John D. Feerick said of the Program, “It's worked. It's worked, I think, beyond expectations.”⁷³ The gap between idealism and reality, even in the world of politics, can be and is

70. New York State Common Cause, *S&L Interests Invest More Than \$11 Million in Congressional Candidates and Party Committees During the 1980s*; Linder Family of Ohio Provides \$800,000; President Bush Receives Six \$100,000 S&L Soft-Money Contributions, According to Common Cause Study (June 29, 1990) (press release).

71. HERBERT E. ALEXANDER, *REFORM AND REALITY: THE FINANCING OF STATE AND LOCAL CAMPAIGNS* 22 (1991).

72. Robert W. Laird, *Can't Buck Campaign-Fund Reform*, *THE DAILY NEWS*, Dec. 26, 1991, at 37.

73. *CFB 1991 Hearings*, *supra* note 1, at 288 (testimony of John D. Feerick).

being narrowed. In the four years since it was passed, the Campaign Finance Act has become a model for the nation of local campaign finance reform that is working.