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The New York City Model: Essentials For Effective Campaign Finance Regulation

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THE NEW YORK CITY MODEL: ESSENTIALS FOR EFFECTIVE CAMPAIGN FINANCE REGULATION

*Nicole A. Gordon**

In the interest of full disclosure, I think it should be made known that Judge Trager bears some responsibility for the state of campaign finance reform in New York City, as he was a member of the New York City Charter Revision Commission when this topic was under consideration. It is therefore a double pleasure for me to be here today at the inaugural Public Policy Symposium established in his name.

I. "WILL ANYTHING WORK?"

From my point of view, the title of this forum, "Will Anything Work?" is somewhat ominous for two reasons. First, it probably accurately reflects the general sense of helplessness that the public feels in reaction to endless stories of scandal arising from the influence of private money on politics. It is not exactly a secret that the federal system has collapsed, and the daily barrage of revelations has an almost numbing effect, leaving people with the feeling that the situation is hopeless.¹

Second, I think the title fails to convey the fact that there are actual success stories in the field of campaign finance regulation.

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¹ See, e.g., Francis X. Clines, *Bipartisan Voter Rebellion Against Big Money in Maine Is Expected to Succeed*, N.Y. TIMES, Nov. 2, 1996, at A10 (discussing a Maine campaign finance regulation proposal and how national campaign finance scandals created the greatest opposition to the reform arising from the "seed of cynicism, that element of doubt in peoples' heads that the system is so bad that we actually can't do anything to fix it").

For example, there are approximately twenty jurisdictions around the country that have some form of public financing of campaigns and that, as far as I am aware, have not been the subject of pervasive scandal.² Today I would like to make you aware of the success story of New York City and suggest some elements of that success that might be imported into the national scene. I do not want to imply that we in New York City have all the answers to the public disgrace of this past presidential season, but I do think that because scandal is newsworthy and "good news" is not, the public has received a limited picture of the possibilities for controlling campaign finances.

II. NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM

Perhaps you will recall a series of scandals in New York City in the late 1980s relating to the Parking Violations Bureau.³ One result of those scandals was the suicide of Queens Borough President Donald Manes.⁴ In response to public dismay at the state

² Currently, twenty-three states provide some form of public financing for candidates. See EDWARD D. FEIGENBAUM & JAMES A. PALMER, CAMPAIGN FINANCE LAW 96: A SUMMARY OF STATE CAMPAIGN FINANCE LAWS WITH QUICK REFERENCE CHARTS Chart 4 (listing states with special tax or public financing provisions). These states include Alabama, Arizona, California, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Rhode Island, Utah, Virginia, and Wisconsin. *Id.*

³ In 1986, then United States Attorney Rudolph Giuliani was informed that contractors collecting overdue parking fines for the New York City Parking Violations Bureau were required to pay a five-percent kickback to the then Queens Borough President Donald Manes. Gary Spencer, *Top Court Refuses Appeal of Suspension of Dowd*, N.Y. L.J., Oct. 24, 1990, at 1. Those involved in the scheme included former Deputy Director of the Parking Violations Bureau Geoffrey G. Lindenauer, former Bronx Democratic leader Stanley M. Friedman, and former City Transportation Administrator Michael J. Lazar. Arnold H. Lubasch, *U.S. Says Manes Instigated Bribery Plan At City Agency*, N.Y. TIMES, May 23, 1986, at B1. See generally JACK NEWFIELD & WAYNE BARRETT, CITY FOR SALE: ED KOCH AND THE BETRAYAL OF NEW YORK (1989).

⁴ Manes stabbed himself after the public became aware of bribery and kickback schemes involving the New York City Parking Violations Bureau. Joseph P. Fried, *1980's Graft and 1990's Change: For Players in Scandal, Life*

of the New York City political scene, Mayor Koch pressed for various reforms beginning as early as 1986. Among these reforms was New York City's pioneer Campaign Finance Act⁵ that, with the support of Council Speaker Peter Vallone, passed the City Council after considerable debate.⁶ Curiously, the scandals that prompted passage of the Act were unrelated to the subject of campaign finance. Nonetheless, as Shakespeare wrote, "sweet are the uses of adversity."⁷ For its troubles, New York City ended up with the most comprehensive and progressive campaign finance reform program in the country at that time.

Appointed in 1988, the New York City Campaign Finance Board (the "Board") struggled to establish itself and the Campaign Finance Program (the "Program") in time for effective enforcement in the 1989 citywide elections. In record time, the Board succeeded in putting its operations in place, which included computerizing campaign finance data and making that data available to the public.⁸

Briefly, the Board has three mandates. First, it administers the Campaign Finance Program itself, which covers candidates who run for five local offices (mayor, public advocate, comptroller, borough president, and city councilmember).⁹ These candidates voluntarily choose to join the Program, which requires them to limit contributions and expenditures and to provide detailed disclosure of their campaign finances. After the information is received, it is then computerized and audited by the Board.¹⁰ In return for joining the Program and submitting to its requirements, these "participating"

is Far From the Same, N.Y. TIMES, Mar. 28, 1996, at B1.

⁵ N.Y.C. ADMIN. CODE §§ 3-701 to 3-715 (the "Campaign Finance Act") (N.Y. Legal Pub. Group 1996 & Supp. 1997).

⁶ The Campaign Finance Act is intended "to improve popular understanding of local issues, to increase participation in local elections by voters and candidates, to reduce improper influence on local officers by large campaign contributors and to enhance public confidence in local government." Local Law No. 8 of 1988 § 1 (uncodified sections) (on file with *Journal of Law and Policy*).

⁷ WILLIAM SHAKESPEARE, AS YOU LIKE IT act 2, sc. 1.

⁸ N.Y.C. ADMIN. CODE § 3-708(9).

⁹ *Id.* § 3-703(1)(b).

¹⁰ *Id.* §§ 3-708(9), 3-710.

candidates can qualify to receive matching public funds for contributions they have received, after they establish sufficient local support from New York City residents.¹¹

Second, as a result of a Charter Revision in 1988, the Board publishes a Voter Guide, which is mailed to every registered voter in New York City. The Guide includes photographs and statements provided by candidates for office, whether or not they have joined the Program. It also contains general voting information, as well as ballot information and "pro" and "con" statements for local initiatives.¹²

Finally, an additional mandate was recently given to the Board, to implement a requirement that citywide candidates who join the Program participate in debates.¹³

III. THE EFFECTS OF THE PROGRAM

After each election, the Board holds hearings and conducts analyses of its extensive database in order to evaluate how the Program worked during that election and to make recommendations for improvements in the Program. The Campaign Finance Board's studies have shown that the Program has demonstrably lowered the average size of contributions, increased the number of individuals contributing to campaigns, limited spending, evened the playing field among the competitive candidates, and given some candidates an opportunity to run an effective campaign despite the fact that they did not have access to monied sources.¹⁴ Some candidates in

¹¹ New York City matches every dollar, up to \$1,000, raised by a candidate from each New York City resident, subject to a maximum amount in public funds available for the office sought. *Id.* § 3-702(3).

¹² N.Y.C. CHARTER §§ 1052(b), 1053 (N.Y. Legal Pub. Group 1990 & Supp. 1997).

¹³ Local Law No. 90 of 1996.

¹⁴ For details of the Board's findings, see NEW YORK CITY CAMPAIGN FINANCE BOARD, ON THE ROAD TO REFORM: CAMPAIGN FINANCE IN THE 1993 NEW YORK CITY ELECTIONS (Sept. 1994); WINDOWS OF OPPORTUNITY: CAMPAIGN FINANCE REFORM AND THE NEW CITY COUNCIL (July 1992); DOLLARS AND DISCLOSURE: CAMPAIGN FINANCE REFORM IN NEW YORK CITY (Sept. 1990).

this latter category have even won elections.¹⁵ The last two mayoral campaigns have been the most competitive in memory, in part because of the existence of the Program. As a result of the Program, an unprecedented amount of information about candidates' campaign finances has been made available to the public and the press, including information about contributors' employers and occupations and information on intermediaries or "bundlers."¹⁶ For the first time, every voter in New York City has had a non-partisan source of information, the Voter Guide, that presents each candidate for municipal office on an equal footing.

I do not, however, want to gloss over the shortcomings of the Program. It has not solved, and it will never solve, all the ills that arise from the influence of private money on campaigns. It has been less successful at the City Council level than at the mayoral level. Other than to require disclosure of "bundling," which is a significant achievement, the Program does not address the influence that is potentially wielded by intermediaries who deliver large contributions on behalf of others.¹⁷ The Program has not eliminated the difficulty of regulating campaign finances in an arena that includes constitutionally protected independent spending.¹⁸ Yet, all in all, the Program has greatly reduced the role of large contributions in New York City races and, I believe, has itself greatly improved the local political culture.

¹⁵ See, e.g., *Testimony of Council Member-Elect Guillermo Linares Before the New York City Campaign Finance Board*, Dec. 11, 1991 (on file with *Journal of Law and Policy*) (explaining that, because of the Campaign Finance Program, Mr. Linares was able to run a successful campaign for city council against well-financed opponents including one person backed by a PAC, another by a Manhattan County organization, and a third who was independently wealthy).

¹⁶ A "bundler" is a person or entity that collects contributions from others and delivers these "bundled" contributions to a candidate. The New York City Administrative Code employs the term "intermediary." N.Y.C. ADMIN. CODE § 3-702(12).

¹⁷ See NEW YORK CITY CAMPAIGN FINANCE BOARD, BUNDLES OF TROUBLE?: A REPORT OF THE NEW YORK CITY CAMPAIGN FINANCE BOARD (1996).

¹⁸ See *Buckley v. Valeo*, 424 U.S. 1 (1976) (holding that independent campaign spending is protected by the First Amendment right to free speech).

IV. NECESSARY CONDITIONS FOR SUCCESSFUL CAMPAIGN FINANCE REFORM

Based on the Board's experience, I would identify the following conditions as necessary for successful campaign finance reform:

A. A Non-Partisan Enforcement Agency

Unlike many other regulatory agencies in the country, the New York City Campaign Finance Board is non-partisan.¹⁹ Other agencies that regulate campaign finances are bi-partisan, including the Federal Election Commission.²⁰ This fundamental distinction has made the difference between an agency that is simply a product of the existing political culture and an agency that can influence that culture. The non-partisan approach of the Campaign Finance Board is not only mandated by law, but it is also a fact of the life of the Board. This is a result of the consistent excellence of the appointments made to the Board and the dedication of its members throughout the Board's existence.²¹

The original members took their non-partisan charge seriously, and so has every member appointed to the Board to date. It is this

¹⁹ See N.Y.C. CHARTER § 1057 (requiring that the Board operate in a non-partisan manner).

²⁰ See 2 U.S.C. § 437c(a)(1) (1997) (requiring that of the six Presidential appointments to the eight member Federal Election Commission, no more than three may be from the same political party).

²¹ The original members of the Board included Joseph A. O'Hare, S.J. (President, Fordham University), James I. Lewis (Professor of History, City University of New York), Frank J. Macchiarola (current President, St. Francis College, former Chancellor of the New York City School System), Robert B. McKay (former Dean, New York University Law School), and Sonia Sotomayor (current District Court Judge for the Southern District of New York). The current members of the Board include Joseph A. O'Hare, S.J. (President, Fordham University), Martin S. Begun (Assoc. Dean & Vice President for External Affairs, New York University School of Medicine), Bill Green (former Congressman), James I. Lewis (Professor of History, City University of New York), and Vaughn C. Williams (Partner, Skadden, Arps, Slate, Meagher & Flom).

non-partisan approach that allowed the Board to take the serious step of assessing a \$320,000 penalty against the campaign of an incumbent mayor in 1993 during the height of a highly competitive campaign.²² Because of the vagaries of Board turnover, it so happened at the time that the Board did not include a single Republican member, and yet it assessed this penalty against the Democratic nominee for Mayor.²³

B. Meaningful Enforcement Powers

Without proper enforcement powers, no agency in this field can operate effectively. The New York City Campaign Finance Board has the power to conduct audits,²⁴ and it in fact audits every candidate in the Program. The Board can also issue subpoenas, conduct investigations, depose witnesses,²⁵ and bring civil enforcement actions.²⁶ The Board withholds public funds from candidates who are not in compliance with the requirements of the Program. In contrast, other agencies lack such enforcement powers. The Federal Election Commission, for example, does not have the power to perform random audits.²⁷ I strongly believe that this fact

²² David N. Dinkins' mayoral campaign was assessed the penalty because the campaign exceeded the spending limit for the 1993 Democratic Primary. See New York City Campaign Finance Board, *Preliminary Determination: Matter of David N. Dinkins 1993 Primary Election Expenditures*, ADMIN. PROC. No. 1993-9 (Oct. 3, 1993) (on file with *Journal of Law and Policy*).

²³ The five members of the Board serve staggered, five-year terms. The Mayor appoints two members who must be from different political parties, the City Council Speaker similarly appoints two members, and the Mayor, after consultation with the City Council Speaker, appoints the Chair, who may be from any political party. See N.Y.C. CHARTER § 1052(a)(1); N.Y.C. ADMIN. CODE § 3-708(1). At the time the penalty was assessed, the Board included three Democrats and one Liberal. There was one vacant seat.

²⁴ See N.Y.C. ADMIN. CODE § 3-710(1) (the Board has the power "to audit and examine all matters relating to the performance of its functions").

²⁵ See N.Y.C. CHARTER § 1052 (a)(5) (providing for broad investigatory powers); N.Y.C. ADMIN. CODE § 3-708(5) (same).

²⁶ N.Y.C. ADMIN. CODE § 3-711 (describing civil and criminal penalties available for violations of the Act).

²⁷ See 2 U.S.C. § 438(b) (1997) (stating that the Federal Election Commission possesses the power to "conduct audits and field investigations of any

alone raises serious questions about the reliability of the disclosure that is made to the Federal Election Commission. Without adequate enforcement powers, regulatory agencies are unable to ensure that candidates are in compliance with campaign finance laws.

C. Aggressive Enforcement Policy

Meaningful enforcement for many aspects of campaign finance reform must take place during the campaign season. If the Board did not take action during the campaign against certain kinds of potential violations, the public might not receive accurate and timely disclosure. (The New York City Campaign Finance Board does not seek a role in the electoral process, except to ensure that the requirements of the Campaign Finance Act are respected. The fact that the Board does take enforcement action during the campaign period often, however, leads to the inclusion of compliance issues in the political debate.) Furthermore, penalties for substantial violations of the Act may otherwise come too late to ensure the integrity of the election process. The Board is charged to publicize violations of the Act,²⁸ and, indeed, media attention to violations is a far more potent deterrent than any monetary penalty the Board might assess. Again, the Federal Election Commission does not take enforcement action during a campaign. This hampers its ability to be effective.

After an election, it is also important to follow through on the full audit process. One of the strongest enforcement messages sent to candidates in New York City was the recent set of indictments of transit police union officials, which received a great deal of press attention.²⁹ A routine post-election audit of the 1993 campaign of Ron Reale, who ran for municipal office while he was

political committee required to file a report" under the terms of the Act only when the committee in question has failed to meet certain threshold requirements established by the Commission).

²⁸ See N.Y.C. CHARTER § 1052 (a)(6); N.Y.C. ADMIN. CODE § 3-708(6).

²⁹ See, e.g., Matthew Purdy, *Grand Jury Seeks Financial Records from Police Union*, N.Y. TIMES, Feb. 7, 1997, at A3 (describing racketeering charges brought against transit police union officials and lawyers accused of paying kickbacks to union officials).

President of the Transit Police Benevolent Association, brought to light irregularities that the Board referred to the United States Attorney's Office for the Southern District of New York.³⁰ Some of the resulting indictments relate directly to the information on campaign finance matters provided by the Board.³¹ The remaining indictments, which are unrelated to campaign finances, arose in large part from the follow-up investigation conducted by the United States Attorney's Office on the Board's campaign finance information.

D. A Comprehensive Program of Reform

In order for meaningful reform to take place, it must be comprehensive. Every element of the New York City Campaign Finance Program contributes to its success. For example, the prospect of receiving public funds is a tremendous incentive for campaigns to comply with disclosure and other requirements of the Program—an incentive more powerful, I am sure, than the disincentive of possible penalties.

E. Operational Integrity

The Campaign Finance Board does everything it can to run an efficient office and to provide good service to its clients, the voters of the City of New York and municipal candidates. For example, the Board has developed possibly the most comprehensive computerization program for campaign finance data in the nation.

³⁰ Kevin Flynn & William K. Rashbaum, *Following Money Trail*, DAILY NEWS, Feb. 3, 1997, at 4 (discussing Ron Reale's campaign finance violations and his involvement with organized crime).

³¹ See Clifford J. Levy, *Finance Data Raised Doubts of City Board*, N.Y. TIMES, Jan. 26, 1997, at A5 (discussing the Campaign Finance Board's finding that 54 money orders made out to "Friends of Ron Reale" were "signed by different people, but many were sequentially numbered and issued on the same days by the same banks"); *Board's Audit of Ron Reale Uncovers Serious Campaign Finance Violations*, 3 CITYLAW 16 (1997) (discussing Campaign Finance Board's audit and United States Attorney Mary Jo White's investigation of Ron Reale).

The Board provides software to the candidates so that they can file disclosure statements with the agency on disk. The Board also provides access to a public computer terminal that anyone (even without computer expertise) can use to study current contribution data.³² The staff's commitment to operational excellence and fairness has been essential to the success of the Program.

F. Support of the Press and the Public

The New York City Campaign Finance Board has enjoyed extraordinary support from the press, government groups, and, indirectly, the public. This has had several effects. First, it has strongly influenced candidates to join the Program, when, in reality, many might prefer not to operate under its constraints. Second, it has driven candidates who declined to abide by government reforms out of the running.³³ Third, it has driven candidates to comply with the spirit, as well as with the letter, of the law.³⁴

Press and public support have also helped to maintain the Campaign Finance Board as a truly non-partisan Board. In 1993, outgoing Mayor Dinkins replaced the Board's Chairman, who was serving past his term, in what many perceived as retaliation for the

³² The Campaign Finance Board maintains computer records in a "user-friendly environment" for easy public access and study. Jodi Ackerman, *Computers Wanted for Election Records*, GANNETT NEWS SERVICE, Mar. 11, 1996, available in 1996 WL 4375844.

³³ For example, in 1993, mayoral candidate Andy Stein was forced to withdraw from the race, largely because of criticism of his lavish fundraising and spending. See Maurice Carroll & Mitch Gelman, *Andy Stein to Start from Scratch*, N.Y. NEWSDAY, June 3, 1993, at 3 (noting that Stein cited the "public[s] distaste" for his fundraising excesses to explain the failure of his campaign and that, in a subsequent campaign for the office of public advocate, Stein planned to follow city laws limiting campaign contributions and spending).

³⁴ For example, prior to any Board action, the campaign of mayoral candidate David Dinkins decided to absorb expenditures made by the Democratic Party that the campaign and the party had argued should be considered "independent" and not attributable to the campaign's spending limit. See William Bunch, *Dinkins Will Pay It Back*, N.Y. NEWSDAY, Oct. 20, 1993, at 7 (stating that the Dinkins campaign paid back \$226,031 to the Democratic Committee just twenty-four hours before the Campaign Finance Board was to rule on the campaign's claim that the expenditures should not be charged to the campaign).

Board's assessment of a large penalty against his campaign.³⁵ In what may be an unprecedented event in New York City history, the Chairman of the Board, Father Joseph A. O'Hare, S.J., President of Fordham University, was reappointed after public outcry forced the new Chairman to resign.³⁶ The lesson of that incident should be clear: worthy, prompt appointments are essential to the integrity of New York City's Program.

Finally, press and public support have helped protect the Campaign Finance Board from possible efforts to dilute its effectiveness through budget cuts or retrogressive changes in the law. The Campaign Finance Board relies significantly on its public reputation to maintain its effectiveness in these respects.

G. Continual Refinement of the Program

A vital aspect of the New York City Program is a mandate for the Board to review the operation of the Program after each election (every four years) and to report to the Mayor and the City Council with recommendations for change.³⁷ The reality is that any reform will have loopholes, and campaigns will "push the envelope" in their pursuit of success. Laws and regulations must be continually refined to anticipate ways in which candidates may subvert the purpose of reform and to address ways in which campaigns have learned to evade the system. In New York City, we have seen several aspects of our local law strengthened, often at the

³⁵ See *supra* note 22 and accompanying text. The Campaign Finance Act provides that Board members may not be dismissed "except for cause and upon notice and hearing." See N.Y.C. CHARTER § 1052(4); N.Y.C. ADMIN. CODE § 3-708(4). Chairman O'Hare's term had expired in March 1993, and Mayor Dinkins had neither re-appointed Chairman O'Hare nor appointed a successor as of the end of December 1993. The Chairman was therefore continuing to serve as a holdover, as contemplated by the N.Y. PUB. OFF. LAW § 5 (McKinney 1988). Had appointments been made in a timely manner, it would not have been possible for the Mayor to replace a sitting Board member.

³⁶ See Maurice Carroll, *Campaign Finance Chief Un-Fired*, N.Y. NEWSDAY, Jan. 11, 1994, at 16 (crediting Giuliani with mobilizing the public outcry, but noting that, upon reappointment, O'Hare promptly promised to investigate the Giuliani campaign for alleged violations of the Campaign Finance Act).

³⁷ N.Y.C. ADMIN. CODE § 3-713.

Board's urging.³⁸ More recently, the Board has recommended a number of additional changes that have not been acted upon. The Board is, however, continuing to press for these changes both at the State and City levels.

At the State level, the Board seeks legislation that would require non-participating candidates to abide by the City Campaign Finance Act disclosure requirements and contribution limits. If all candidates were subject to the Campaign Finance Act's requirements, the public could compare the same computerized information for candidates running for the same offices. In addition, equal contribution limits would further reduce the influence of large monied interests and would further "level the playing field."

At the City level, the Board urges a number of reforms that are intended, among other things, to enhance the value of public matching funds, to create greater incentives for candidates to join the Program, and to give candidates in the Program greater protection against high-spending non-participants.³⁹

CONCLUSION

I believe that New York City's reform, while successful, might in the long run prove fragile. It is grounded in good law, but that law must be revised continually for the better. Fortunately, the Campaign Finance Act has been administered by a committed and highly competent Board. Appointing authorities could, however, select members in the future who are less committed to the purposes of the law. The Program has been successful in three citywide elections, but without constant reinforcement through legislative change, that success may fade. For continued success, we must rely heavily on the good faith of many players in the political scene. Finally, as a bellwether, the Program has created a hopeful point of reference, but public cynicism can overwhelm all good will and good work.

The focus of the national press on shortcomings of the federal system is necessary and useful, but it fails to alert the public to the

³⁸ See ON THE ROAD TO REFORM, VOL. I, *supra* note 14, at 129.

³⁹ See ON THE ROAD TO REFORM, VOL. I, *supra* note 14, at 121-32.

lesser drama of success stories, of which New York City is only one. This is a source of continuing frustration for the Campaign Finance Board, and I think it is also a disservice to our disillusioned electorate.

More recently, however, efforts are being made around the country to address the urgent need to repair our democratic process. For the first time, the academic community is engaged in a significant discussion of campaign finance reform, not only with reference to the First Amendment, but also with reference to our society's commitment to the principle of "one person, one vote" in a meaningfully representative government.⁴⁰ Foundations are funding efforts to address campaign finance reform, and this conference is itself evidence that there exist constituencies interested not only in scandals, but in identifying concrete ways to safeguard our democracy.

I take this conference as an investment in a positive answer to the question "Will Anything Work?" I hope I have conveyed to you that some reforms are working, and I hope you will be part of an effort to convey to the public that the situation, even at the federal level, is not hopeless.

⁴⁰ Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994); Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 YALE L. & POL'Y REV. 273 (1993).

