

# Dead on Arrival?

## Breathing Life Into Suffolk County's New Campaign Finance Reforms



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*a report by the*  
**Center for Governmental Studies**

**Paul Ryan, Project Director**  
10951 West Pico Blvd., Suite 120  
Los Angeles, CA 90064  
Tel: 310-470-6590 · Fax: 310-475-3752  
[www.cgs.org](http://www.cgs.org)

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# Foreword

This report by the Center for Governmental Studies is the result of a six month study of campaign finance laws and practices in Suffolk County. The report draws on a detailed textual analysis of Suffolk County's new law, interviews with government administrators and political experts, relevant literature, experience from other jurisdictions and constitutional law court decisions.

This report on Suffolk County is the third in the series of reports, "Public Financing in America," by the Center for Governmental Studies. The first two reports in the series focused on public financing programs in Los Angeles and San Francisco. The series will examine partial public financing programs as well as "clean money" full public financing laws. Jurisdictions under study for this series include, among others, the cities of New York, Long Beach and Tucson, as well as the states of Arizona, Maine, Vermont, New Jersey, Minnesota and Wisconsin.

The Center has issued a number of reports on campaign financing. Its first report, *The New Gold Rush: Financing California's Legislative Campaigns* (1985), examined problems of campaign financing in the California State Legislature and drafted two model laws to remedy them. The 353-page report served as the model for California's statewide Proposition 68 in the June 1988 election. The Center's second report, an *Update to the New Gold Rush*, was published in 1987.

The Center's third report, *Money and Politics in the Golden State: Financing California's Local Elections* (1989), focused on campaign financing in California city and county elections. These reports were the basis for the Los Angeles City campaign finance ordinance that was the subject of the report published by the Center last year, *Eleven Years of Reform: Many Successes—More to be Done, Campaign Financing in the City of Los Angeles* (2001). The Center's most recent report, *On the Brink of Clean: Launching San Francisco's New Campaign Finance Reforms*, led to the immediate introduction of reform legislation by San Francisco Supervisor Mark Leno. Local campaign finance laws throughout the nation have been based on the Center's work, including the laws of Los Angeles County, Long Beach, Oakland, Miami-Dade County, Florida, and Suffolk County, New York—the subject of this report.

The Center wishes to thank its Project Director, Paul Ryan, who prepared this report. The Center's President, Bob Stern, and Vice Chairman and CEO, Tracy Westen, supervised the study. Rebecca Schwaner designed the cover. The Center is grateful for the time and assistance of the Suffolk County Campaign Finance Board and Lee Lutz, the board's Executive Director, who provided information for the preparation of this report. The Center also thanks Carnegie Corporation of New York, which funded this study. The views in the study do not necessarily reflect the opinions of this foundation, and it does not take any responsibility for any of the statements or views in the report.

## Executive Summary

Suffolk County's new campaign finance law, designed to create the first publicly financed elections in county history, is scheduled for its first trial in September 2002. The new law was the result of more than five years of political struggle by a coalition of Suffolk County campaign finance reform advocates.

Voter approval of the 1998 campaign finance reform measure, however, was a hollow victory. The measure requires candidates to accept its provisions in exchange for public campaign financing. Yet the source of public financing is voluntary contributions from property tax payers. Not surprisingly, donations to date have fallen far short of projected candidate needs. Suffolk County's new campaign finance reform lacks a critical element—a guaranteed source of funding—without which the county's new law may be dead on arrival.

Based on six months of study, including detailed legal analysis and interviews with government administrators and political experts, the Center for Governmental Studies ("CGS") proposes a series of reforms to Suffolk County's new law to make it operate as effectively as comparable laws in other jurisdictions. The Center's core recommendation is to urge the Suffolk County legislature to fund the program adequately. CGS also recommends that the county legislature close a number of significant loopholes in the county's existing law.

New York state law prohibits Suffolk County from enacting mandatory campaign finance laws. It does allow Suffolk County, however, to adopt campaign finance laws which candidates may accept voluntarily. If adequately funded, Suffolk County's partial public financing program would serve as the necessary incentive for candidates to accept the county's voluntary contribution and spending limits in exchange for public funds.

Public financing would provide qualifying candidates with the ability to wage competitive campaigns without excessive dependence on large donors. It would enable elected officials to spend less time fundraising and more time addressing official county business. It would slow the campaign spending arms race. It would amplify the political voice of individuals unable to make large campaign contributions and increase the representation of traditionally under-represented communities.

In addition to the lack of adequate program funding, this report also recommends that both Suffolk County and New York state law be amended to close loopholes which threaten the objectives of reform. It recommends that candidates receiving public financing be required to submit their contribution and expenditure reports in an electronic format. This will speed up public access to the information and make program administration more efficient. This report also recommends that New York state law be amended to strengthen state disclosure requirements and empower local governments to enact their own binding campaign finance laws. Finally, program qualification thresholds and public financing amounts should be adjusted annually for changes in the cost of living.

## I. Introduction

Suffolk County campaign finance reform advocates have fought for public campaign financing since the early 1990s. Though reform advocates seemed to win a major victory in 1998, when voters approved the county's public financing program, the victory was more apparent than real. The county's public financing program lacked a critical element: a dependable source of funds.

A majority of Suffolk County's elected officials resisted these reform efforts, insisting that the ballot language of earlier measures spotlight the use of tax dollars to fund politicians' campaigns. These measures all failed. The successful 1998 measure was the only public financing measure not to mention taxes in its ballot title. Voters approved the measure by nearly a 2-to-1 margin. Unfortunately, the county legislators who placed the approved measure on the ballot failed to include a reliable funding mechanism.

Suffolk County's severely under-funded public financing program will be implemented for the first time in the 2002 comptroller election. The program may be dead on arrival. But adequate funding would breathe life into the program for future elections. Suffolk's is the *only* local government public financing program in the United States to rely exclusively on voluntary contributions for funding. The other twelve local government programs across the country rely on a variety of more reliable funding mechanisms.<sup>1</sup> Without adequate and reliable funding, Suffolk's program will have none of the beneficial effects of public financing programs in other jurisdictions, including the highly successful New York City program on which Suffolk's was modeled.

Public financing programs hold great potential to improve democracy in Suffolk County. Similar programs in New York City, Los Angeles, Tucson and elsewhere have decreased the reliance of candidates on wealthy special interest contributors. They have enabled qualified candidates who lack access to wealthy donors to run competitive campaigns and increased political representation of low-income communities and communities of color. Public financing has provided candidates with a necessary incentive to accept spending limits voluntarily.<sup>2</sup> Spending limits, in turn, help level the playing field between candidates with varying access to wealth.

Unlike public financing programs in other states, Suffolk County's public financing program is particularly important because *all* of Suffolk's campaign finance regulations hinge on its success—not just the spending limits. New York state law prohibits local governments from enacting binding campaign finance laws.<sup>3</sup> Consequently, *all* of Suffolk County's campaign finance regulations apply only to candidates who voluntarily agree to comply with them. Candidates will only do so if the incentives for compliance outweigh its burdens. Without a high rate of voluntary participation in the public financing program, campaign financing in Suffolk County is practically unregulated.

Local public financing in the State of New York is unique. In other states, every candidate running for local office is bound by the same contribution limits, regardless of

the candidate's participation in a public financing program. In Suffolk County, only candidates participating in the public financing program are bound by Suffolk's contribution limits.

New York state contribution limits for local government candidates are among the highest in the nation. Under state law, for example, a candidate for Suffolk County comptroller may accept contributions of \$100,000 from relatives and \$42,962 from non-relatives. In contrast, comptroller candidates participating in Suffolk's public financing program may not accept contributions greater than \$1,500 from any source.

Contribution limits reduce the political influence any single individual or interest group can exert over an elected official. This reduction in undue influence increases the responsiveness of elected officials to constituent needs and increases the public's faith in the political process.

Adequate funding of Suffolk County's public financing program is critical to the success of the entire program. Without adequate funding, participation in the program will be a terrible gamble for candidates. Participating candidates will be bound by spending limits and low contribution limits but will receive nothing in return for these burdens. Without a high level of candidate participation, Suffolk County loses the advantages of *all* of its campaign finance regulations: contribution limits, spending limits, public financing and electronic disclosure of campaign finance information. Suffolk County must fund its public financing program adequately or lose all the benefits of its new campaign finance law.

Part I of this report explores the history of campaign finance reform in Suffolk County. Part II analyzes the existing law. Part III provides an extensive list of recommendations by the Center for Governmental Studies to strengthen Suffolk County's public financing program before its first full-scale implementation in the 2003 county executive and county legislature elections.

## **II. Background and Summary of the Law**

### **A. Backdrop to Reform**

Suffolk County, home to approximately 1.4 million residents, is the largest county in New York state outside of New York City.<sup>4</sup> Suffolk County includes ten self-governing towns which, in turn, contain 31 incorporated villages.<sup>5</sup> In addition to electing town and village government officials, Suffolk County voters elect a county executive, an 18 member county legislature, a county comptroller, a county treasurer, a district attorney, a county clerk and sheriff. County officials are elected through two-stage partisan elections—a party primary followed by a general election.

Suffolk County has eight active political parties. New York state law allows "fusion voting," a type of voting system not well known in the United States. Under fusion voting, a single candidate may appear on the general election ballot multiple times



as the nominee of multiple parties. The votes a candidate receives from different ballot lines are “fused” (or added) together to determine the candidate’s vote total. Fusion voting systems facilitate the growth of minor parties by allowing minor parties to endorse major party candidates and to demonstrate the importance of the minor party to the major party candidate’s vote total. A progressive minor party’s (e.g., Green Party’s) ability to endorse a Democrat, for example, allows more voters to vote on the minor party’s ballot line without fear of “spoiling” an election. Furthermore, the potential for such a cross-party endorsement may lead the Democratic Party to nominate a more progressive candidate with hopes of gaining the minor party’s endorsement. As a minor party grows, it may also choose to run its own candidates.

Efforts to enact a system of partial public campaign financing for county government elections date back to the early 1990s, when a coalition of grassroots organizations began lobbying the county legislature. The coalition included Common Cause, Ross Perot’s United We Stand and Tax-PAC—Suffolk’s most ardent anti-tax group, which had never before supported a tax expenditure but did support the use of tax dollars to publicly finance elections.<sup>6</sup>

In 1993, Democratic County Legislator Steven Levy and Republican County Legislator Michael Caracciolo co-sponsored the effort to have a public campaign financing measure placed on the ballot for voter approval. In order to gain the necessary legislative votes to place the measure on the ballot, the co-sponsors were forced to agree to change the wording of the initial public financing proposal.<sup>7</sup> In the words of *Newsday* staff writer Rick Brand, “County Executive Robert Gaffney, with backing from 10 of 11 lawmakers in the Republican-Conservative caucus, proposed revised ballot phrasing that would hammer home repeatedly that the public financing of county political races would be ‘taxpayer-financed . . . out of Suffolk County tax revenues, including property taxes.’”<sup>8</sup>

Although most county regulations require taxpayer expenditures, county legislators reserve the use of ballot language stressing this fact for measures they oppose. The measure’s sponsor, legislator Steven Levy, protested that Republican legislators “want to see this [measure] reach the ballot box dead on arrival.”<sup>9</sup> The measure was defeated in November 1993.<sup>10</sup>

In 1994, a scandal erupted around an apparent county “sweetheart” contract to lease 1,700 cars from a Maryland-based company. The contract would have wasted millions of taxpayer dollars. Republican County Executive Robert Gaffney was implicated in the scandal for negotiating the contract through a consulting firm owned by former State Republican Chairman Patrick Barrett. A seven-month probe of the controversy by special counsel appointed by the county legislature ended with “charges of political favoritism and recommendations for additional investigations into possible forgery, perjury and the leaking of a confidential purchasing document to assist a connected vendor.”<sup>11</sup>

Gaffney's budget director, Robert Maimoni, told the county legislature's special counsel during her seven-month probe into the incident:

It's just like you live through this stuff on a daily basis and you watch the pettiness go on and . . . if the public at large knew what the hell went on in government, they'd start tar [*sic*] and feathering everybody, elected officials first . . . .<sup>12</sup>

Three separate investigations of the car-lease scandal were conducted, one by the county legislature, one by a grand jury and one by the state criminal justice department. Though the investigations confirmed that the actions of numerous county officials were "open to question," there was insufficient evidence to pursue criminal prosecutions.<sup>13</sup>

Suffolk community activists capitalized on the car-lease scandal and again began building momentum for campaign finance reform. By 1998, reformers had garnered enough support in the county legislature to force authorization of another public financing ballot measure. Many believe that County Executive Gaffney would have vetoed the legislature's decision to place the public financing measure on the ballot had he not been heading into an election year still smarting from the car-lease scandal. Gaffney had already used what little political capital he had to veto the legislature's referendum on the controversial acquisition of a private power utility company by the public Long Island Power Authority.<sup>14</sup> Gaffney signed the legislature's bill to place the public financing measure on the ballot. In November 1998, Suffolk County voters approved the public financing ballot measure by nearly a 2-to-1 margin.

The public financing measure approved by 64 percent of the voters in 1998 was substantially weaker than the measure voters rejected in 1993. Whereas the 1993 measure called for program funding through an annual allocation from the county general fund, the 1998 measure contained the weakest funding mechanism of any public financing program in the United States. The new law asks county property owners to make a voluntary contribution to a public financing fund at the same time as they pay their property taxes. According to Suffolk County Campaign Finance Board Executive Director Lee Lutz, "We're sending out a solicitation in the worst possible format to probably a minority of the residents of Suffolk County. We don't reach most people."<sup>15</sup>

Several flaws in the property tax bill solicitation funding mechanism are obvious. Only property owners are sent the request for voluntary donations. Renters, although also voters, are not asked. Furthermore, the tax bills of many property owners are opened by either an accountant or a mortgagor (*i.e.*, bank). Lastly, a voter who does receive a property tax bill—possibly the most hated piece of mail in the United States—is unlikely to be in a generous mood. Singling out property tax payers to fund the program seems unfair. Suffolk County's largest source of revenue, for example, is the 8.5% sales tax (divided nearly evenly with the state), which is paid by all county residents. The burden of funding the program should be distributed more evenly among county residents. Unless corrected, this funding mechanism will prove to be the fatal flaw in Suffolk's public financing program.

In 1999, less than one year after voters approved Suffolk's public financing program, County Legislator Steven Levy—original sponsor of the 1993 public financing legislation—introduced a bill to correct the program's flawed funding mechanism. The new law would have provided direct funding from the county's budget to supplement the meager tax bill donation funding mechanism of the 1998 law.<sup>16</sup> Again, a battle over the measure's wording ensued. Supporters and opponents of the public financing program debated whether to include "taxes" in the ballot measure's title, an emphasis typically reserved for measures the legislature opposes. Both sides finally agreed to ballot language indicating that taxpayer money would be used if voluntary donations were insufficient.<sup>17</sup> Despite strong support from community groups such as the League of Women Voters, Common Cause and Tax-PAC, voters rejected the measure in November 1999.

The Suffolk County Campaign Finance Board's most recent effort to improve the program's funding mechanism died in a county legislative committee in April 2002. The so-called "Vendor Bill" would have imposed a fee on all vendors holding contracts with Suffolk County and used that revenue to fund the county's public financing program.

Suffolk's public financing program is scheduled to be implemented for the first time in the fall 2002 election for county comptroller. As of April 2002, less than \$24,000 had been collected in voluntary contributions to the Suffolk County Campaign Finance Fund. This amount falls far short of the funding level contemplated by the program's architects. A single comptroller candidate who qualifies for public financing in the primary election is entitled to receive \$70,000 in public funds.

## **B. Current Law**

Suffolk County's public campaign financing ballot measure, approved by voters in 1998, created a Suffolk County Campaign Finance Board to administer the program. The ballot measure also created a fairly comprehensive system of campaign finance regulation, including spending limits, contribution limits, increased disclosure and limits on when campaign funds may be raised. These regulations, including the contribution limits, only apply to candidates who voluntarily agree to participate in the program.

New York state law differs substantially from every other state in which local jurisdiction public financing programs exist. In other states, all candidates for local office must abide by the local government's contribution limits, disclosure laws and most other campaign finance regulations, regardless of whether the candidate decides to participate in the local public financing program. The only major additional restriction imposed on a candidate accepting public financing in most jurisdictions is a spending limit.

In Suffolk County, a candidate who decides to participate in the public financing program is bound not only by spending limits, but also by lower contribution limits and a host of other restrictions that do not bind nonparticipating candidates. Consequently,

Suffolk’s public financing program contains significant disincentives for participation—making it all the more important that the incentive of public financing be generous and reliable. Without adequate and reliable funding, Suffolk’s program is all “stick” and no “carrot.”

The Campaign Finance Board was established shortly after passage of the law. The board’s purpose is to advance the goals of the program, articulated in the ballot measure itself:

- Improve governmental ethics by means of a voluntary system of public financing of county election campaigns.
- Improve popular understanding of local issues.
- Increase participation in local elections by voters and candidates.
- Reduce improper influence on county officials by large campaign contributors.
- Enhance public confidence in county government.<sup>18</sup>

The board published its first statutorily-mandated quadrennial report in May 2001, containing a comprehensive analysis of the program’s weaknesses and recommendations to strengthen it. The board has also adopted implementing rules and regulations as authorized by the ballot measure. While public financing will first be available to candidates for the office of comptroller in the fall of 2002, the first large-scale implementation of the program will occur in 2003, when the county executive and 18 seat county legislature will be elected.

### ***1. Matching Funds Program***

#### ***a. Offices Covered***

Public financing is available to candidates for the Suffolk County legislature, county executive, county comptroller, county treasurer or district attorney in a primary or general election.<sup>19</sup> Public financing is not available to candidates for the offices of county clerk or sheriff.

#### ***b. Funding the Program***

The public financing ballot measure established the “Suffolk County Campaign Finance Fund.” The charter specifically provides that no county tax revenue may be appropriated to the Campaign Finance Fund.<sup>20</sup> The ballot measure directed the Campaign Finance Board to explore the viability of using a property tax bill check-off system to fund the program, analogous to that used to fund the federal government’s presidential election public financing program. The Campaign Finance Board determined that altering the tax bill to incorporate a check-off would require an unattainable change in state law. The board opted, instead, to stuff each property tax bill with a solicitation envelope for voluntary donations to the Campaign Finance Fund.<sup>21</sup>

***c. Written Certification***

In order to be eligible for public financing, a candidate must file a written certification with the Campaign Finance Board stating the candidate's agreement to comply with all terms and conditions of the public financing program. The written certification must be filed by the candidate within 10 days of forming a political committee, or April 1 of the election year, whichever occurs first.<sup>22</sup>

A candidate who files a written certification of compliance with the provisions of the public financing program for a primary election is bound by those provisions for the general election and any other election to the same office held in the same calendar year.<sup>23</sup> Likewise, a candidate in a contested primary who does not file a written certification of compliance for the primary election is ineligible to receive public financing for any other election to the same office held in the same calendar year.<sup>24</sup>

***d. Contribution Limits for Participating Candidates***

In order to be eligible to receive public financing, Suffolk County candidates must abide by contribution limits substantially lower than state limits that bind candidates who do not participate in the county's public financing program. The relatively simple county contribution limits, as well as the complex system of state contribution limits, are detailed in section II(B)(2) below.

***e. Fundraising Time Restrictions***

Participating candidates are prohibited from raising funds during November and December of an election year.<sup>25</sup> Given the fact that Suffolk County primary elections are held in September and general elections are held in the first week of November, the purpose of this fundraising time restriction is unclear.

***f. Candidate Personal Wealth Expenditures***

In order to be eligible to receive public financing, a candidate must agree not to use personal funds in excess of the applicable contribution limit (noted in section II(B)(2)(a) below) for campaign purposes.<sup>26</sup>

***g. Prohibition on Contributions from PACs, Lobbyists or Firms Doing Business With the County***

All Suffolk County candidates are prohibited from receiving contributions from lobbyists.<sup>27</sup> The public financing program extends this ban to others. In order to be eligible to receive public financing, a candidate must agree not to accept contributions from political action committees, lobbyists or firms doing business or proposing to do business with Suffolk County.<sup>28</sup> This provision prohibits municipal unions from contributing to these participating candidates through political committees. Although the language of this charter section imposes the contribution ban only on candidates in a general election, the Campaign Finance Board's rules corrected the drafting error and impose the ban on candidates in both primary and general elections.<sup>29</sup>

### ***h. Fundraising Threshold***

In order to be eligible for public financing, a candidate must raise the following amount in contributions of \$10 to \$500 made by individuals who reside in Suffolk County.<sup>30</sup>

- County Executive: 500 contributions totaling \$75,000
- Other Countywide Offices: 300 contributions totaling \$30,000
- County Legislature: 50 contributions totaling \$5,000

Furthermore, in order to be eligible to receive public financing, a candidate must raise at least \$5,000 by August 15 of the election year.<sup>31</sup> Any candidate who meets the fundraising threshold for a primary election is considered to have met the threshold for such office in any other election held in the same calendar year.<sup>32</sup>

### ***i. Spending Limits***

Candidates accepting spending limits must abide by them even if they do not qualify to receive public financing. The following spending limits apply to candidate expenditures during the calendar year of the election. Additional limits (listed below) apply to candidate spending in the calendar year preceding the election year. These limits are adjusted once every four years for changes in the cost of living.<sup>33</sup>

- County Executive: \$313,000 (primary); \$522,000 (general)
- Other Countywide Offices: \$104,000 (primary); \$209,000 (general)
- County Legislature: \$16,000 (primary); \$31,000 (general)

In addition to the primary election spending limits noted above, which apply only to candidate expenditures made after January 1 of the election year, candidate spending in the year prior to the election year is limited to the following amounts.<sup>34</sup>

- County Executive: \$300,000
- Other Countywide Offices: \$30,000
- County Legislature: \$10,000

Candidate expenditures for legal services, accounting services and other professional services made for the purpose of complying with Suffolk County's campaign finance laws and state election laws are not subject to the spending limits.<sup>35</sup>

### ***j. Public Matching Funds***

In order to be eligible to receive public financing a candidate must be opposed.<sup>36</sup> Candidates who meet all of the eligibility requirements receive the following amounts of public financing for a single election.<sup>37</sup> A primary election and a general election are two separate elections. Qualifying candidates may receive the following amounts of public funds for each of the two elections.

- County Executive: \$200,000

- Other Countywide Offices: \$70,000
- County Legislature: \$10,000

Public funds for the primary election may not be distributed to candidates earlier than two weeks after the candidacy petition filing deadline.<sup>38</sup>

***k. Lifting the Spending Limits***

If a nonparticipating candidate spends in excess of half of the election year spending limit that applies to a participating candidate in the race, then the spending limit is eliminated for the participating candidate.<sup>39</sup> However, a participating candidate is bound by the pre-election year spending limit regardless of how much a nonparticipating opponent spends.

***2. County and State Contribution Limits***

New York state law limits contributions to *all* candidates running for public office in the state. Suffolk County only limits contributions to candidates participating in its public financing program. Suffolk County’s limits are lower than state limits in nearly every instance. There are a few circumstances, however, when the state’s complex formula for determining the contribution limit yields a limit lower than the county’s contribution limit.<sup>40</sup> Under such circumstances, a Suffolk County candidate must abide by the lower state limit regardless of whether the candidate chooses to participate in the public financing program. In races where the county’s limit is lower, candidates choosing to participate in the public financing program must abide by the county’s lower limit, while nonparticipants are bound only by the state’s higher limit.

***a. County Limits on Contributions to Participating Candidates***

Participating candidates may not accept contributions that exceed the following amounts per election.<sup>41</sup> A primary election and a general election are two separate elections. These amounts reflect adjustments made in 2000 for changes in the cost of living. Beginning in 2000, the limits will be adjusted once every four years.<sup>42</sup>

- County Executive: \$2,550 per election
- Other Countywide Offices: \$1,500 per election
- County Legislature: \$1,000 per election

All candidates and elected officials, regardless of their participation in the public financing program, are prohibited from accepting contributions from lobbyists. There is an exception to this prohibition. Labor unions engaged in lobbying activities may make in-kind contributions to (*i.e.*, expenditures coordinated with) candidates for the purpose of communicating with their members.<sup>43</sup>

***b. Comparing Suffolk County and New York State Contribution Limits***

The State of New York distinguishes between contributions from a candidate’s relatives and non-relatives. State limits on contributions to candidates from relatives are

higher than Suffolk County’s limits under every circumstance. State limits on contributions to candidates from non-relatives are higher than Suffolk County’s limits in nearly every circumstances.

The state’s primary election limit on contributions from non-relatives to minor party candidates for countywide office is \$1,000. Suffolk County law authorizes contributions of \$2,500 for county executive candidates and \$1,500 for candidates to other countywide offices in any election. In this instance, the lower state limit supercedes the county limit for all minor party primary election candidates. **Figure 1** compares county and state general election contribution limits.

**Figure 1**

<b>Comparison of County Law and State Law General Election Contribution Limits</b>			
	<b>County Limits on General Election Contributions</b>	<b>State Limits on General Election Contributions from <i>Non-Relatives</i></b>	<b>State Limits on General Election Contributions from <i>Relatives</i></b>
<b>County Executive</b>	\$2,550	\$42,962	\$100,000
<b>Other Countywide Offices</b>	\$1,500	\$42,962	\$100,000
<b>County Legislature</b>	\$1,000	\$2,387 <sup>44</sup>	\$11,934

*c. State Limits on Contributions to Candidates from Non-Relatives*

State law contribution limits are based on the number of registered voters in a district and, consequently, vary based on the office sought by the candidate. A candidate is permitted to receive larger contributions from relatives than from non-relatives. The state law formulas for limits on contributions to Suffolk County candidates from non-relatives are as follows.<sup>45</sup>

- Party Nominating Elections (Primary and Primary Runoff Elections): the number of active registered voters in the candidate’s party in the district multiplied by \$0.05.
- General Elections: the total number of active registered voters in the district multiplied by \$0.05.
- However, under no circumstance shall the contribution limit be less than \$1,000, nor more than \$50,000.

As a result of this combination of statutory formulas with statutory minimum and maximum limits, the state has created a confusing regime of contribution limits. In



countywide office primaries, the contribution limit is determined by the formula for the major party candidates and by the statutory minimum limit for minor party candidates. In primary elections for the county legislature, the contribution limit is determined by the statutory minimum limit for all parties. In general elections, the limits are determined by formula. **Figure 2** displays approximate contribution limits based on April 2002 voter registration.

**Figure 2**

<b>State Law Limits on Contributions from Non-Relatives (2002)</b>				
	<b>Democratic Primary</b>	<b>Republican Primary</b>	<b>Minor Party Primary</b>	<b>General Election</b>
<b>Countywide Offices</b>	\$12,497	\$16,689	\$1,000	\$42,962
<b>County Legislature</b>	\$1,000	\$1,000	\$1,000	\$2,387 <sup>46</sup>

*d. State Limits on Contributions to Candidates from Relatives*

New York state law establishes higher limits on contributions from a candidate's relatives as compared to other persons. The state law formulas for limits on contributions to city candidates from any candidate's child, parent, grandparent, brother, sister, and the spouses of such relatives are as follows.<sup>47</sup>

- Party Primary Elections: the number of active registered voters in the candidate's party in the district multiplied by \$0.25.
- General Elections: the total number of active registered voters in the district multiplied by \$0.25.
- However, under no circumstance shall the contribution limit be less than \$1,250 nor more than \$100,000.

**Figure 3**

<b>State Law Limits on Contributions from Relatives (2002)</b>				
	<b>Democratic Primary</b>	<b>Republican Primary</b>	<b>Minor Party Primaries</b>	<b>General Election</b>
<b>Countywide Offices</b>	\$62,485	\$83,444	\$1,250-\$5,398	\$100,000
<b>County Legislature</b>	\$3,471	\$4,636	\$1,250	\$11,934

**Figure 3** lists approximate limits on contributions to Suffolk County candidates from their relatives based on April 2002 voter registration. The amounts listed for countywide

office minor party primaries denote the range of contribution limits that apply, depending on the voter enrollment of the particular party.

***e. State Limits on Contributions to and from Political Party Committees***

Under New York state law, a political party committee is excluded from the definition of “contributor” and is therefore not bound by state contribution limits.<sup>48</sup> A party committee may make unlimited contributions to the party’s candidates. State law includes a provision that purports to limit party spending on behalf of candidates. As a result of the U.S. Supreme Court decision in *Buckley v. Valeo*, striking down mandatory spending limits, the provision has never been enforced.<sup>49</sup>

Contributions by individuals to political parties are limited, although these limits are very high. In 2001, aggregate contributions to a political party by an individual were limited to \$76,500 per year.<sup>50</sup>

***f. State Limits on Contributions from Corporations***

New York state law prohibits corporations, except corporations organized or maintained for political purposes only, from making political contributions or expenditures in excess of \$5,000 in the aggregate to all candidates running for office in the state in any calendar year.<sup>51</sup> Each affiliated or subsidiary corporation, if a separate legal entity, has its own limit.<sup>52</sup>

***g. State Loan Restrictions***

Under New York State law, a loan made to a candidate or a non-party committee *not* in the regular course of the lender’s business is, to the extent not repaid by the date of the election, deemed a contribution.<sup>53</sup> A loan made to a candidate or a non-party committee *in* the regular course of the lender’s business is, to the extent not repaid by the date of the election, deemed a contribution by the obligor on the loan and by any other person endorsing, cosigning or otherwise providing security for the loan.<sup>54</sup>

***h. State Aggregate Limit on Contributions and Loans to Candidates and PACs***

No individual, other than the candidate and the candidate’s family members, may contribute or loan more than a total of \$150,000 in connection with the nomination or election of persons to state or local public office in any one calendar year. This aggregate limit only applies to such loans as are not repaid or discharged in the calendar year in which they are made.<sup>55</sup> The aggregate limit applies only to individuals.<sup>56</sup> Consequently, this provision limits the amount of money that an individual may contribute to a PAC, but there is no limit on the amount of money that one PAC may contribute to another PAC. The \$150,000 aggregate limit serves as the only limit on the size of contribution that an individual may make to a PAC.

### ***3. County Ban on Lobbyist Contributions***

Suffolk County adopted a law in 1996 banning campaign contributions from lobbyists to all candidates, whether they participate in the public financing program or not.<sup>57</sup> As noted above, the public financing law extends the ban by prohibiting participating candidates from accepting contributions from any political action committee or firm doing business with the county.

### ***4. Electronic Filing and Disclosure***

The public financing ballot measure adopted by voters charged the Suffolk County Campaign Finance Board with a duty to develop a computer database containing all information necessary for the proper administration of the public financing program.<sup>58</sup> The board's executive director, Lee Lutz, has worked closely with the Westchester, N.Y. county government, the New York City campaign finance board, and the New York State Board of Elections to develop a searchable computer database. The Suffolk County Campaign Finance Board was able to obtain software from Westchester County, which the Suffolk County department of Information Systems has been fine-tuning to meet Suffolk's needs. The database is not yet operational. Unlike most jurisdictions that develop electronic campaign finance databases, Suffolk County has no requirement that candidates submit campaign finance reports in an electronic format. A bill is currently pending before the county legislature to mandate electronic filing by all county candidates and all political committees supporting them.<sup>59</sup> The fate of this bill is uncertain.

### ***5. Suffolk County Campaign Finance Board***

The public financing ballot measure approved by voters in 1998 created the Suffolk County Campaign Finance Board. The board is composed of five members appointed by the county executive and the county legislature who serve without compensation. The board employs one full-time staff, executive director Lee Lutz. Board members serve staggered five-year terms.<sup>60</sup> The board is charged with the administration and enforcement of the county's campaign finance laws. The board's duties include:

- Administration of the public financing program.
- Rendering advisory opinions related to the campaign finance law.
- Promulgating rules and regulations for administration of the public financing program.
- Receipt of campaign finance disclosure forms from candidates who voluntarily agree to participate in the public financing program. (The county board of elections is the filing agency for nonparticipating candidates.)
- Auditing candidates' disclosure reports to ensure compliance with the campaign finance law.
- Conducting investigations of alleged violations of the campaign finance law, including use of its subpoena power when necessary.

- Developing an educational program for city officials, candidates and the general public regarding the county's campaign finance laws.
- Creating and administering a computer database of county candidate disclosure reports of contributions and expenditures.<sup>61</sup>

Furthermore, the board must review and evaluate the public financing program and submit a report to the county executive and county legislature at least once every four years. The report must include information regarding candidate participation and public funds disbursement. The report must also contain a thorough analysis of the impact of the public financing program on county elections and recommendations to improve the program.<sup>62</sup>

The board published its first quadrennial report in May 2001. The board made a series of strong recommendations to strengthen program funding, program scope and electronic filing. The board also recommended adjustments to the program's qualification thresholds, spending limits and public funding levels. The county legislature has not acted on any of the board's recommendations to date. The board's recommendations are described below, along with this report's recommendations to strengthen the program.

### **III. Recommendations**

Suffolk County's public financing program will be implemented for the first time in the fall 2002 race for comptroller. The program will see its first full-scale implementation in 2003, when the 18 member county legislature and the county executive will be elected. Preliminary analysis suggests twelve recommendations that would substantially strengthen the program.

The Suffolk County Campaign Finance Board published its own set of recommendations in its 2001 quadrennial report. This report supports most of the board's recommendations and makes a number of additional recommendations.

Suffolk County has failed to fund its public financing program adequately. Without sufficient funding, the program will fail. A number of other changes to the program should be made in the areas of campaign finance disclosure, fundraising and campaign spending.

We also recommend significant changes to New York state law. Local government jurisdictions should be empowered to implement campaign finance regulations that bind all local candidates, regardless of whether they choose to participate in voluntary public financing programs. These changes would be particularly important in Suffolk County, where program participation rates are likely to be low or nonexistent due to lack of adequate funding. These and other recommended reforms are detailed below.

In recent years, Suffolk County’s executive and legislature have opposed significant public financing reform proposals. According to Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, “Frankly, without a change in the political wind in Suffolk County, nothing that we want is going to happen.”<sup>63</sup>

Only two options exist for reform. Either Suffolk County legislators must authorize reform legislation to be placed on the ballot—an unlikely occurrence given the legislature’s past resistance to reform—or county residents must place an initiative on the ballot.

Suffolk County voters are the only voters in New York state with the power to amend their charter through a voter initiated ballot measure. Though the initiative process has only been used successfully once in Suffolk County, it remains a viable option.<sup>64</sup> Under the Suffolk County Charter, the sponsor of an initiative must gather the signatures of 2.5% of county residents who voted in the last gubernatorial election within each of the county’s ten townships.<sup>65</sup> According to New York State Board of Election statistics, initiative sponsors would have to gather approximately 9,433 registered voter signatures to qualify the initiative for the ballot.<sup>66</sup> A voter initiated ballot measure must be approved by a majority of voters casting ballots in the election.<sup>67</sup> This direct initiative process would enable campaign finance reformers to draft a public financing measure, avoiding the discriminatory treatment given by the county legislature to the wording of previous reform measures.<sup>68</sup>

## **A. Public Financing**

### ***1. Guarantee Program Funding***

Suffolk County’s public financing program appears designed to fail. Its fatal flaw is the absence of a reliable funding mechanism. The Suffolk County program relies entirely on voluntary contributions from the public. The particular method of solicitation is perhaps the least effective method possible—a solicitation included in the annual property tax bill.

There are a number of serious problems with this funding mechanism. Only property tax payers, not the rest of the county’s residents, are asked to make donations to fund the program. Most county voters never receive a property tax bill. The tax bills of many property owners are opened by either an accountant or a mortgagor (*i.e.*, bank). Many voters are renters, not property owners, and thus receive no property tax bill. And a voter who does receive a property tax bill is unlikely to be in a generous mood.

Singling out property tax payers to fund the program seems unfair. Suffolk County has many sources of revenue besides the property tax—including the sales tax, various user fees, and traffic and other fines.<sup>69</sup> The burden of funding the program should be distributed more evenly among county residents.

Town tax collectors receive no compensation for this county government requirement to include the solicitation with tax bills. Stuffing more than 500,000

envelopes with a solicitation envelope requires substantial labor and postage. Consequently, town tax collectors have sharply criticized this unfunded mandate and an association of Suffolk County tax collectors has threatened a lawsuit against the county.<sup>70</sup> Not surprisingly, tax collectors in three (out of ten) towns refused to include the solicitation in tax bills sent out in December 2001.<sup>71</sup>

After two years of solicitations, the funding mechanism has generated less than \$24,000 from fewer than 1,200 contributors.<sup>72</sup> The board has also received insults enclosed in the little green solicitation envelopes. According to a newspaper account, one “taxpayer made a protest in a way that recalls the Boston Tea Party—sending the county a tea bag instead of a donation.”<sup>73</sup>

Suffolk’s is the *only* local government public financing program in the United States to rely exclusively on voluntary contributions for funding. Other programs rely on a variety of more reliable funding mechanisms.<sup>74</sup> The Los Angeles City Charter mandates an allocation of \$2 million per year to a public financing trust fund as part of the city budget. New York City’s charter requires the mayor to include the Campaign Finance Board’s funding request in the executive budget without adjustment. Other local government public financing laws require the jurisdictions’ legislative bodies to allocate the amount of funding necessary to run the program.

The looming failure of Suffolk County’s program is no surprise. Voluntary contributions are an ineffective means of funding government programs. The Suffolk County Department of Fire, Rescue and Emergency Services does not rely on voluntary contributions. Even the most popular government programs cannot depend on voluntary contributions.

Voters often vote “no” when asked through ballot measures to approve tax increases. Elected officials know that ballot measure language emphasizing tax increases will jeopardize any measure. This is precisely what happened with the failed 1999 ballot measure to secure program funding. The insistence by county legislators that ballot language refer specifically to taxes guaranteed failure of the measure before a single vote had been cast.

Opponents of the public financing program claim that full funding will break the county budget. The Campaign Finance Board estimates that the program, if adequately funded, would cost an average of \$547,000 per year.<sup>75</sup> (This estimate assumes a substantial increase in the number of candidates running for office as a result of the availability of public funds.) In all likelihood, a fully-funded program would cost substantially less. Nonetheless, \$547,000 represents less than three-thousandths of one percent (.0025%) of the county’s 2002 adopted budget of \$2.18 billion.<sup>76</sup> Furthermore, \$547,000 amounts to only 39¢ per county resident or 64¢ per registered voter.<sup>77</sup> Three-thousandths of one percent of the county budget—39¢ per county resident—is a small price to pay.

We recommend the Suffolk County Charter be amended to provide an initial appropriation of \$1.5 million from the county's general fund, followed by an appropriation of \$600,000 per year into the Suffolk County Campaign Finance Fund, with the balance of the Fund never to exceed \$2 million. The appropriation should be adjusted annually for changes in the cost of living.

## ***2. Expand Public Financing to Include County Clerk and Sheriff***

Public financing is currently available to candidates for all county offices except county clerk and sheriff. We recommend that Suffolk County expand its program to cover all Suffolk County elective offices. In the event that the county charter is amended to fund the program adequately, the program should include the offices of county clerk and sheriff.

## ***3. Adjust Public Funding Amounts***

Candidates who meet all program eligibility requirements receive a block grant of public funds that varies according to the office sought by the candidate. **Figure 4** (p. 18) lists the grant amounts, along with the percentage of the total spending limits that the grants represent. **Figure 4** also lists the grants as percentages of the revised spending limits proposed by CGS in Recommendation No. 5 (p. 19). Wide variations exist in the size of public funding grants relative to spending limits. The variations are particularly dramatic with regard to our recommended spending limits. We recommended that the size of the public funding grants be adjusted to reflect a uniform percentage of the spending limits.

The public financing program approved by voters in 1998 provided for the distribution of the same size public funding grant regardless of whether the candidate was participating in a primary or a general election. Spending limits for the primary election, however, are only half of the general election limits. Consequently, the public funding grant in a primary election is twice the size of general election grant relative to the spending limit.

Suffolk County primary elections are rarely contested or competitive. It makes little sense that primary election candidates receive approximately 65% of the spending limit in public funds, while general election candidates receive only 35% of the spending limit in public funds. No other local government jurisdiction offers candidates a higher percentage of the spending limit in public funds in a primary election than in a general election. Eight out of twelve local government jurisdictions with public financing programs (not including Suffolk County) offer candidates at least 50% of the spending limit in public funds.<sup>78</sup>

We recommend that Suffolk County offer all candidates 50% of the spending limit in public funds, regardless of whether the candidate is in a primary or a general election or the nature of the office sought. **Figure 5** (p. 18) displays our recommended public financing grant amounts for current spending limits, as well as for our recommended spending limits.

**Figure 4**

<b>Public Funds as a Percentage of Spending Limit</b>					
	<b>Public Funds Grant Amount Per Election</b>	<b>% of Primary Election Spending Limit (Spending Limit)</b>	<b>% of General Election Spending Limit (Spending Limit)</b>	<b>% of Recommended Primary Election Spending Limit (Spending Limit)</b>	<b>% of Recommended General Election Spending Limit (Spending Limit)</b>
<b>County Executive</b>	\$200,000	64% (\$313,000)	38% (\$522,000)	44% (\$450,000)	22% (\$900,000)
<b>District Attorney</b>	\$70,000	67% (\$104,000)	33% (\$209,000)	70% (\$100,000)	35% (\$200,000)
<b>County Comptroller or Treasurer</b>	\$70,000	67% (\$104,000)	33% (\$209,000)	140% (\$50,000)	70% (\$100,000)
<b>County Legislature</b>	\$10,000	63% (\$16,000)	32% (\$31,000)	44% (\$22,500)	22% (\$45,000)

**Figure 5**

<b>Recommended Public Funding Grant Amounts</b>					
	<b>Current Public Funds Grant Amount Per Election</b>	<b>Recommended Public Funding Under Current Primary Spending Limit</b>	<b>Recommended Public Funding Under Current General Election Spending Limit</b>	<b>Public Funding Under Recommended Primary Election Spending Limit</b>	<b>Public Funding Under Recommended General Election Spending Limit</b>
<b>County Executive</b>	\$200,000	\$156,500	\$261,000	\$225,000	\$450,000
<b>District Attorney</b>	\$70,000	\$52,000	\$104,500	\$50,000	\$100,000
<b>County Treasurer and Comptroller</b>	\$70,000	\$52,000	\$104,500	\$25,000	\$50,000
<b>County Legislature</b>	\$10,000	\$8,000	\$15,500	\$11,250	\$22,500



#### ***4. Adjust Qualification Thresholds and Public Funding Amounts for Changes in the Cost of Living***

Suffolk County's contribution and spending limits are adjusted once every four years for changes in the cost of living.<sup>79</sup> The cost of living adjustment is intended to mitigate the effects of inflation or deflation of the economy over time, which dramatically impact the real value of the dollar amounts specified in a campaign finance law. For example, the Federal Election Campaign Act ("FECA") passed by Congress in 1974 contained a \$1,000 contribution limit with no periodic adjustment for inflation. The \$1,000 limit is still enforced today and due to inflation is worth approximately \$300 in 1974 dollars. The FECA contribution limit has effectively been reduced to one-third of its intended size in just 28 years. Congress recently increased the contribution limit from \$1,000 to \$2,000 in the McCain-Feingold legislation. This increase will take effect following the November 2002 federal elections.

Suffolk County's contribution and spending limits have already been adjusted upward to reflect a change in the cost of living since the law was passed in 1998. We strongly recommend that the amounts of public financing available to candidates, as well as the public financing qualification thresholds, also be adjusted for changes in the cost of living. The amounts of public funds available to candidates and the qualification thresholds were originally determined in relationship to total campaign spending. The amounts of public funds available to candidate must be adjusted to prevent the public funding from becoming an ever smaller portion of total campaign spending. The qualification thresholds must be adjusted to prevent the thresholds from becoming increasingly easy to meet. The adjustments should be made at the same time contribution and spending limits are adjusted.

## **B. Fundraising and Spending**

#### ***5. Adjust Spending Limits to Reflect Previous Electoral Activity***

Voluntary spending limits serve a number of important purposes. Spending limits can reduce the ability of candidates with access to a large number of wealthy contributors to outspend candidates with limited economic resources. A reduction in the wealth advantage encourages a more diverse pool of candidates and broadens representation of the general population. Limited campaign spending also reduces the potential for actual or apparent corruption when candidates engaged in a fundraising arms race are pressured to accept contributions from any source that will give. Lastly, spending limits reduce the amount of time that officeholders spend raising campaign funds rather than attending to government business or presenting their positions to voters.

Determination of an appropriate spending limit necessarily involves balancing the desire to limit fundraising and spending with the need to facilitate robust communication between candidates and voters. Communication costs money in today's world of media-based campaigning. Setting spending limits too low reduces communication between candidates and voters, hardly a desirable outcome. Because spending limits may only be

enforced against candidates who voluntarily agree to them, limits must be high enough not to dissuade serious candidates from participating in the public financing program.

The Campaign Finance Board conducted a thorough analysis of Suffolk's general election spending limits for its first quadrennial report to the county executive and county legislature. The board based its analysis on the amount of money spent by Suffolk County candidates in the 1991, 1995, 1997, 1998 and 1999 general elections. The board recommended significant adjustments to the general election spending limits.

The board found that four candidacies in the last three elections for county executive spent nearly double the law's current general election spending limit of \$522,000. Most notable is a 1991 challenger who spent more than \$800,000 to defeat an incumbent who spent \$1.2 million.<sup>80</sup> The board recommended an increase in the spending limit from \$522,000 to \$900,000. We likewise view this increase as necessary to reflect realistic campaign spending levels and attract serious candidates to the public financing program.

The board found that candidates for offices of district attorney, treasurer and comptroller spent far less than the current general election spending limit of \$209,000 in the 1997 and 1998 elections. Campaign spending by incumbents averaged \$75,565, while only one serious challenger ran for office and spent \$45,822.<sup>81</sup> We agree with the Campaign Finance Board's recommendation that the spending limit for the offices of treasurer and comptroller be reduced from \$209,000 to \$100,000 in the general election.

The board also recommended in its May 2001 report that the spending limit for the office of district attorney be reduced from \$209,000 to \$100,000 in the general election. This recommendation was made without the benefit of candidate spending data from the November 2001 election. The office of district attorney was an open-seat race in 2001 with no incumbent running. The winner spent approximately \$184,000, while the second place finisher spent more than \$300,000.<sup>82</sup> The Suffolk County district attorney is a high-profile official, second only to the county executive. Campaigning in an open seat district attorney election is a costly endeavor. We recommend that the spending limits for district attorney elections be set at \$100,000 in the primary and \$200,000 in the general election to reflect the realities of campaign costs.

Finally, the board found in the 1999 county legislature elections, incumbents spent on average 40% more than the current \$31,000 limit in the general election. This figure suggests that few incumbents would agree to the current \$31,000 limit for the 2003 elections. The average challenger spent \$21,247 in 1999, with three challengers spending \$36,357, \$43,905 and \$54,390, respectively.<sup>83</sup> We agree with the Campaign Finance Board's recommendation to increase the general election spending limit for the office of county legislator from \$31,000 to \$45,000.

The Campaign Finance Board did not analyze the appropriateness of Suffolk County's primary election spending limits in its report. Suffolk County's primary elections are rarely competitive. Candidates often run uncontested. Consequently,

sufficient data does not exist to evaluate the current primary election spending limits on the basis of prior election experience. Nonetheless, we recommend that the primary election spending limits be adjusted along with the general election limits to maintain a relationship between the limits that remains proportionally similar to the original spending limits.

The original primary election spending limit approved by voters in 1998 for the office of county executive was 60% of the general election limit. All other primary election spending limits were 50% of the original general election limits. We recommend that all primary election spending limits be adjusted to 50% of our recommended general election limits. **Figure 6** contains the current primary and general election spending limits along side our recommended adjusted limits.

**Figure 6**

<b>Current and Recommended Spending Limits</b>				
	<b>Current Primary Election Spending Limit</b>	<b>Current General Election Spending Limit</b>	<b>Recommended Primary Election Spending Limit</b>	<b>Recommended General Election Spending Limit</b>
<b>County Executive</b>	\$313,000	\$522,000	\$450,000	\$900,000
<b>District Attorney</b>	\$104,000	\$209,000	\$100,000	\$200,000
<b>County Treasurer and Comptroller</b>	\$104,000	\$209,000	\$50,000	\$100,000
<b>County Legislature</b>	\$16,000	\$31,000	\$22,500	\$45,000

***6. Increase High Spending Opponent Trigger to 100% of the Spending Limit***

To attain high levels of candidate participation, public financing programs typically release a participating candidate from the spending limit when such a candidate faces a high spending nonparticipating opponent. Suffolk County’s program releases a participating candidate from the spending limit if a nonparticipating opponent spends more than 50% of the spending limit.<sup>84</sup> This type of provision is often referred to as a “high spending opponent trigger,” because high spending by a nonparticipant triggers the elimination of the spending limit for the participating candidate.

A primary goal of public financing programs is to limit candidate spending by providing an incentive—public funds—to candidates who voluntarily abide by spending

limits. Under Suffolk's current law, this goal is sacrificed any time a nonparticipant's spending exceeds 50% of the limit. Under the current system, it is quite possible that a publicly financed candidate for county executive would spend the maximum allowed in the general election, \$522,000. If a nonparticipating candidate spent \$262,000, the participating candidate would be released from the spending limit. This makes little sense given the program's goal of limiting spending by candidates who accept public funds. The trigger threshold of 50% of the spending limit is too low. We recommend that the spending limit remain in effect for participating candidates until a nonparticipant exceeds 100% of the spending limit.

Raising the trigger threshold to 100% would ensure that the spending limit remained intact until a participating candidate faced a truly high spending opponent. Furthermore, raising the trigger threshold to 100% will not discourage candidate participation in the program. Candidates are not limited in the amount of money they may raise. A participating candidate could raise funds in preparation for the elimination of the spending limit. In fact, candidates in jurisdictions with public financing programs often do raise funds in excess of the spending limit when they believe the spending limit will be eliminated due to a high spending opponent. In the event that the nonparticipant does not exceed the spending limit, the participating candidate would contribute excess campaign funds to the public financing program or return excess funds to contributors.

#### ***7. Do Not Exempt Legal Expenses for Ballot Access Challenges from Spending Limits***

Expenditures by participating candidates for legal services, accounting services and other professional services made for the purpose of complying with Suffolk County's campaign finance laws and state election laws are not subject to the spending limits.<sup>85</sup> The charter expressly includes expenses to *defend* the validity of candidate nomination petitions, but is silent on whether this spending exemption includes expenses to *challenge* the validity of nomination petitions. The Campaign Finance Board has yet to determine if the exemption includes petition challenges.<sup>86</sup>

We recommend that the compliance cost exemption not be interpreted to include legal costs associated with affirmative challenges to the validity of nomination petitions. Challenges to the validity of petitions is a common tactic employed by well-financed candidates throughout the State of New York to deny opponents' ballot access. Exempting legal expenses related to petition challenges from the spending limit will only encourage this practice.

New York City's public financing program does exempt legal expenses related to petition challenges from spending limits. New York City candidates interviewed by CGS have reported that publicly financed candidates with access to wealthy donors abuse this compliance cost loophole. Such candidates raise money well in excess of the spending limit for the sole purpose of tying opponents up in court with petition challenges. Candidates in New York City and Suffolk County do not become eligible to receive public funds until they are certified to appear on the ballot. The more time a candidate spends defending nomination petitions in court, the longer it takes the candidate to access

public funds and mount a campaign. This is particularly true for candidates who lack access to wealthy campaign contributors—precisely the candidates intended to benefit from a public financing program. In the worst case scenario, a candidate may exhaust his or her campaign resources simply trying to defend their access to the ballot.

Campaign expenditures to challenge the validity of nomination petitions should not be exempt from a candidate’s spending limit. Otherwise, candidates with unlimited financial resources may use those resources to thwart the objectives of the public financing program.

## **C. Disclosure**

### ***8. Require Participating Candidates to Submit Campaign Finance Reports in an Electronic Format***

The Suffolk County Charter requires the Campaign finance Board to develop a computer database containing all information necessary for proper administration of the public financing program.<sup>87</sup> Development of this database is underway. The database will provide journalists, academic researchers and members of the public with detailed information regarding candidate contributions and expenditures. Unlike most jurisdictions that develop electronic campaign finance databases, however, Suffolk County has no requirement that candidates submit campaign finance reports in an electronic format. A bill currently pending before the county legislature would require electronic filing by all county candidates and all political committees supporting them.<sup>88</sup>

We recommend that Suffolk County require all participating candidates to submit campaign finance reports in an electronic format prescribed by the board. Without such a requirement, the charter mandate to use an electronic database will impose a severe burden on the limited resources of the Campaign Finance Board. The needless inefficiency of double data entry occurs when candidates use a computer to compile campaign finance information, then print and submit paper campaign finance reports, which are then reentered into a computer database by a government employee at taxpayer expense. An electronic filing requirement for participating candidates avoids this inefficiency. Members of the public will also have near immediate access to vital campaign finance information, increasing transparency of the electoral process.

## **D. Campaign Finance Board**

### ***9. Grant Campaign Finance Board Authority to Place Measures on Ballot***

The Campaign Finance Board should be granted the authority to place campaign finance related ordinances and charter amendments directly before county voters for approval in the form a ballot measure without approval by the county legislature or executive. A majority vote by board members should be sufficient to place an ordinance on the ballot, while a unanimous vote by board members should be required to place a charter amendment on the ballot. Such authority to place measures on the ballot is particularly important in the area of campaign finance, where conflicts of interest often

lead legislators to undermine campaign finance reforms and the independence of government campaign finance regulators.

The 1999 Suffolk County measure placed on the ballot by the county legislature to secure a source of funds for the public financing program, for example, was sabotaged by legislators who demanded the use of ballot language emphasizing the use of taxes. A Campaign Finance Board with the power to place measures on the ballot could have given voters a chance to secure program funding without dooming the measure from the outset with language that guaranteed voter rejection.

Suffolk County would not be the first jurisdiction to empower an agency that administers a public financing program to place measures on the ballot. The San Francisco charter authorizes the Ethics Commission to place ordinances directly before voters for approval in the form of a ballot measure, without prior approval by the mayor or board of supervisors.<sup>89</sup> This authority has proven extremely valuable. The commission used this ballot measure authority to place a public financing ordinance before the voters in 2000. In the words of Ethics Commission Executive Director Ginny Vida,

Putting Prop. O on the ballot was a significant step for San Francisco. Something that gets a little lost in the history here is that the commission initially went to the board of supervisors with this proposal and it was voted down ten to one. It was only then that the commission decided to place this on the ballot. The commission's authority to place measures on the ballot is extremely important. I don't think that San Francisco would have public financing if it weren't for that authority. It gives the commission some independence that it otherwise wouldn't have in the legislative process.<sup>90</sup>

## **E. New York State Law**

### ***10. Authorize Counties and Cities to Adopt Campaign Finance Laws that Bind All Candidates***

The New York State Constitution prohibits local governments from enacting laws that are “inconsistent” with general state laws.<sup>91</sup> A local law is inconsistent with state law when it prohibits what a state law permits, or permits what a state law prohibits.<sup>92</sup> Local jurisdictions in New York state lack the authority to enact campaign finance laws that bind all candidates.

Suffolk County's public financing programs is permissible under state law because it is completely voluntary—it does not prohibit any activity state law permits, nor permit any activity state law prohibits. Suffolk County's program gives candidates an opportunity to comply with a host of campaign finance regulations more strict than state regulations in exchange for public campaign financing.

New York is unique among states with local government public financing programs. In other states, such as California, local governments have the authority to enact campaign finance laws that bind all candidates running for local office. In Los Angeles, for example, a candidate for local office is bound by the city's contribution limit regardless of whether he or she participates in the city's public financing program. In contrast, a candidate for Suffolk County office must abide by the county's contribution limit only if the candidate participates in the public financing program. Otherwise, the Suffolk County candidate is bound only by the state's much higher contribution limit. Without high levels of candidate participation in the public financing program, Suffolk County voters lose not only the benefits of public financing and spending limits but also the benefits of low contribution limits.

In most jurisdictions, the benefits of participating in a public financing program outweigh its burdens. In Suffolk County, the uncertainty of public funding clearly fails to outweigh the burden of low contribution limits. The combination of low contribution limits and uncertain funding creates a significant disincentive for candidate participation.

We recommend that the New York State Legislature enact legislation to allow local governments to adopt campaign finance and election laws that bind all candidates for local office. In addition to contribution limits, Suffolk County voters would benefit tremendously from a local law requiring all candidates to file campaign finance reports in an electronic format. An electronic filing requirement would enable the Campaign Finance Board to administer the public financing program efficiently and effectively. An electronic filing requirement would also enable Suffolk County voters to easily access campaign finance information for all candidates before an election, in order to better inform voter decisions.

The empowerment of local governments to enact binding campaign finance laws would enable Suffolk County to limit the time period in which candidates can raise funds. Officeholders may currently engage in fundraising activities year round, regardless of the proximity of the next election. At least two problems stem from year round fundraising. First, elected officials devote considerable time to fundraising—time that would better be spent doing government business. Second, elected officials typically raise funds from donors with business pending before the official. Such full-time fundraising understandably erodes public confidence in government and raises the spectre of corruption. Many jurisdictions limit the time period in which candidates may raise funds. In Los Angeles, for example, a city council candidate is prohibited from raising funds more than eighteen months before the primary election.

### ***11. Lengthen Candidate Filing Period to Allow Local Jurisdictions to Disburse Public Funds Earlier***

A Suffolk County candidate meeting all public financing program requirements may not receive a grant of public funds until two weeks after the candidate filing deadline at the earliest. The period in which candidates may file petitions for candidacy is established by state law and typically begins just nine weeks before an election. The 2002 Suffolk County primary is scheduled for September 10. State law requires

candidates to file petitions for candidacy between July 8 and July 11. Consequently, the earliest a candidate could receive public funds is July 25, two weeks after the candidate filing deadline and less than seven weeks before the primary election.

The potential for public financing to increase electoral competitiveness is diminished by the late distribution of public funds. Candidates need more than seven weeks to mount a competitive campaign. Other jurisdictions make public funds available to candidates much earlier in the election cycle. Candidates in Los Angeles, for example, may receive public funds nearly one year before the primary election.

New York state law establishes the start and end date for filing candidacy petitions. Suffolk County is unable to distribute public funds until a candidate is certified to appear on the ballot. New York candidates frequently challenge the validity of opponents' candidacy petitions, taking advantage of the state's infamous ballot access laws. In the typical scenario, a candidate with a political party's endorsement challenges the petitions of a primary election opponent in court. The challenged candidate often lacks financial and legal resources enjoyed by the party's anointed candidate, forcing the challenged candidate to abandon his or her campaign to avoid a costly legal battle. As a result, candidates who have campaigned for months are sometimes excluded from the ballot just weeks before the election. There is no way for the Suffolk County Campaign Finance Board to determine if a participating candidate will face opposition and thus be eligible for public financing prior to the resolution of legal battles stemming from the ballot qualification procedure.

We recommend that the New York State Legislature extend the candidate filing period to begin at least six months before the election. The deadline for filing candidacy petitions needs no adjustment. Allowing candidates to submit candidacy petitions earlier is most critical. An earlier start to the filing period would give candidates more time to resolve legal battles, establishing which candidates will appear on the ballot months rather than weeks before the election. The Campaign Finance Board could then distribute public funds, giving publicly financed candidates ample time to wage competitive campaigns.

## ***12. Strengthen Independent Expenditure Reporting Requirements***

Independent campaign spending activity is increasing at every level of government from coast to coast. Independent spending in the City of Los Angeles' 2001 elections exceeded \$3 million, shattering the previous independent spending record of \$323,000. When asked if independent campaign spending has played a significant role in past Suffolk County elections, Campaign Finance Board Executive Director Lee Lutz replied,

We don't know. Enforcement of the procedures and requirements [by the Board of Elections] is, as far as I'm concerned, nil. The glaring lack of enforcement of the rules makes it near impossible to know where all the money came from, who spent all the money and what independent entities were involved.<sup>93</sup>



The inability to determine whether significant independent expenditures are being made has two roots: weak existing laws and lax enforcement of those laws. Under current state law, no separate reporting form for independent expenditures exists. A political committee must report each expenditure of \$50 or more on “Schedule F” of the disclosure statement required by the Board of Elections. “Schedule F” does not require a political committee to report the name of the candidate supported or opposed by the expenditure. Political committees must also file a “Summary of Receipts / Expenditures,” which does include a section for expense allocation. Committees are instructed to report “total costs expended on behalf of particular candidates for a particular election campaign.”<sup>94</sup> This expense allocation schedule has the potential to capture details of independent expenditures supporting candidates, but not independent expenditures opposing candidates.

This lack of comprehensive independent expenditure reporting could pose a significant problem for Suffolk County’s public financing program. The public financing law should include provisions to address independent spending should it occur—a trigger that would eliminate spending limits for a participating candidate whose opponent benefits from independent expenditures that exceed the candidate spending limit.

An independent expenditure trigger provision would be impossible for the Campaign Finance Board to enforce without strengthened state disclosure laws. In order to enforce a trigger provision, the Campaign Finance Board must learn in a timely fashion who made an independent expenditure, how much was spent and which candidate was supported or opposed by the expenditure. Under current reporting requirements, even with effective enforcement, the Campaign Finance Board would learn which candidates were *supported* by independent expenditures but not which candidates were *opposed* by independent expenditures. Disclosure of details regarding independent expenditures can be avoided altogether through use of expenditures that oppose rather than support candidates.

We recommend that state law be amended to require comprehensive reporting of independent expenditures. A separate reporting schedule for independent expenditures should be incorporated into the state’s disclosure statement, requiring any person or organization making independent expenditures to report the date of the expenditure and the dollar amount of the expenditure. The independent expenditure reporting schedule should contain a statement, signed under penalty of perjury, indicating which candidate the expenditure was intended to support or oppose. Furthermore, independent expenditures of \$1,000 or more made between the closing date for the last reporting period before an election and the election should be required to be reported electronically within 24 hours.

## Notes

<sup>1</sup> See CENTER FOR GOVERNMENTAL STUDIES, “Public Financing in Local Jurisdictions” Chart (2002) <<http://www.cgs.org>>.

<sup>2</sup> The U.S. Supreme Court ruled in *Buckley v. Valeo*, 424 U.S. 1 (1976), that a mandatory spending limit is an unconstitutional violation of a candidate’s First Amendment rights. The Court noted, however, that public financing could be used as an incentive for candidates to agree to spending limits voluntarily. 424 U.S. at 57 n.65.

<sup>3</sup> For a detailed analysis of the intersection between New York state law, municipal home rule authority and campaign finance reform, see Jeffrey D. Friedlander et al., *A Symposium on Ethics in Government: The New York City Campaign Finance Act*, 16 Hofstra L. Rev. 345 (1988). The actual language of the constitution does not prohibit local government action. Instead, the constitution empowers local governments to enact laws *not inconsistent with* the constitution or state general law. N.Y. CONST. art. IX, §§ 2(c), 3(d)(1). See also N.Y. Municipal Home Rule Law §§ 2(5), 10(1). A local law is inconsistent with state general law when it prohibits what a general law permits or permits what a general law prohibits. See *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 234 N.Y.S.2d 862, 864-65 (1st Dep’t 1962) (invalidating city minimum wage law which set a rate higher than that set in the state minimum wage law), *aff’d* 239 N.Y.S.2d 128 (1963).

<sup>4</sup> While cities are typically smaller geographic entities than counties, New York City is composed of five counties. New York City’s five counties correspond with its five boroughs, but three of the five have different county names than borough names. The five counties of New York City are New York County (a.k.a. Manhattan), Richmond (a.k.a. Staten Island), Kings (a.k.a. Brooklyn), Queens and the Bronx. Suffolk County is larger than Richmond and the Bronx. According to the U.S. Census Bureau, the population of Suffolk County in 2000 was 1,419,369. See U.S. Census Bureau, *American Factfinder* (visited April 15, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

<sup>5</sup> LEAGUE OF WOMEN VOTERS OF SUFFOLK COUNTY, THIS IS SUFFOLK COUNTY 5-6 (2001).

<sup>6</sup> Andrew Greenblatt, *Suffolk Pols Stacked the Deck Against Reform*, NEWSDAY, November 11, 1993.

<sup>7</sup> Rick Brand, *Suffolk Weighs Campaign Reforms*, NEWSDAY, June 9, 1993.

<sup>8</sup> Rick Brand, *Shaping the Ballot Question; GOP Plans Word Change on Campaign Finance to Hammer at Tax Angle*, NEWSDAY, July 23, 1993.

<sup>9</sup> *Id.*

<sup>10</sup> Andrew Greenblatt, Editorial, *Suffolk Pols Stacked the Deck Against Reform*, NEWSDAY, November 11, 1993.

<sup>11</sup> John McDonald, *Car-Lease Probe Ends: Favoritism, Intimidation Alleged by Special Counsel*, NEWSDAY, May 23, 1995. See also Michael Arena, *Car-Probe Panel’s Chief Quits, Bids Unit Disband*, NEWSDAY, August 10, 1995.

<sup>12</sup> John McDonald, *Car-Lease Probe Ends: Favoritism, Intimidation Alleged by Special Counsel*, NEWSDAY, May 23, 1995. See also Michael Arena, *Car-Probe Panel’s Chief Quits, Bids Unit Disband*, NEWSDAY, August 10, 1995.

<sup>13</sup> Steve Wick, *Catterson Dispute Lingers: Not Everyone Convinced by Report Exonerating Him*, NEWSDAY, November 28, 1995.

<sup>14</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, Dec. 10, 2001.

<sup>15</sup> *Id.*

<sup>16</sup> According to an April 17, 2002, interview with Campaign Finance Board Executive Director Lee Lutz, after the insertion of the solicitation into tax bills two years in a row, the funding mechanism has generated less than \$24,000.

<sup>17</sup> Victor Chen, *Campaign Funding Bill Rejected: Proposal Called for Tax Use in Local Races*, NEWSDAY, August 17, 1999. See also Victor Chen, *Campaign-Finance Referendum*, NEWSDAY, August 25, 1999.

<sup>18</sup> Suffolk County, N.Y., Charter art. XLI (2001).

<sup>19</sup> *Id.* at § C41-2(A)(2).

<sup>20</sup> *Id.* at § C41-8(C).

<sup>21</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, May 29, 2002.

<sup>22</sup> Suffolk County, N.Y., Charter art. XLI, § C41-2(A)(3) (2001).

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<sup>23</sup> *Id.* at § C41-2(B).

<sup>24</sup> *Id.* at § C41-2(C).

<sup>25</sup> *Id.* at § C41-2(H).

<sup>26</sup> *Id.* at § C41-2(A)(8).

<sup>27</sup> Suffolk County, N.Y., Charter art. XXXIX, § C39-2 (2001).

<sup>28</sup> Suffolk County, N.Y., Charter art. XLI, § C41-2(G) (2001).

<sup>29</sup> Suffolk County, N.Y., Campaign Finance Board Rules Part II(A)(4) (2002).

<sup>30</sup> Suffolk County, N.Y., Charter art. XLI, § C41-2(A)(8)(a) (2001). *See also* Suffolk County, N.Y., Charter art. XLI, § C41-1 (2001) (definition of “threshold contribution”).

<sup>31</sup> Suffolk County, N.Y., Charter art. XLI, § C41-2(H) (2001).

<sup>32</sup> *Id.* at § C41-2(A)(8)(b).

<sup>33</sup> *Id.* at § C41-5(A).

<sup>34</sup> *Id.* at § C41-5(B).

<sup>35</sup> *Id.* at § C41-5(E).

<sup>36</sup> *Id.* at § C41-2(D).

<sup>37</sup> *Id.* at § C41-4(C). The amount of public financing that a candidate receives is equal to twice the amount of the fundraising qualification threshold, plus an additional \$50,000 in the case of a candidate for county executive, or an additional \$10,000 in the case of a candidate for other countywide office.

<sup>38</sup> *Id.* at § C41-8(E).

<sup>39</sup> *Id.* at § C41-5(D).

<sup>40</sup> For example, state law limits contributions from non-relatives to a countywide office candidate in a minor party primary to \$1,000. Suffolk County law allows a primary election candidate for county executive to accept contributions of \$2,550. Suffolk County law allows a primary election candidate for any other countywide office to accept contributions of \$1,500. With regard to minor party countywide primaries, New York state law supersedes Suffolk County law and the contribution limit is \$1,000.

<sup>41</sup> Suffolk County, N.Y., Charter art. XLI, § C41-2(A)(6) (2001).

<sup>42</sup> *Id.* at § C41-2(F).

<sup>43</sup> Suffolk County, N.Y., Charter art. XXXIX, §§ C39-1 (definitions of “contribution or expenditure,” “lobbying or lobbying activity” and “lobbyist”), C39-2 (2001).

<sup>44</sup> This is an approximate figure based on the average number of registered voters in each of the eighteen county legislative districts, as opposed to the actual number of voters per district. Electoral districts must be roughly equal in population size, but not necessarily equal in the number of registered voters. For this reason, actual contribution limits in the eighteen different districts vary.

<sup>45</sup> N.Y. Elec. Law § 14-114(1)(b) (2001). The full text of the State of New York’s elections laws can be found at the Board of Elections website <<http://www.elections.state.ny.us/download/law/elaw.pdf>> (visited Dec. 21, 2001).

<sup>46</sup> This is an approximate figure based on the average number of registered voters in each of the eighteen county legislative districts, as opposed to the actual number of voters per district. Electoral districts must be roughly equal in population size, but not necessarily equal in the number of registered voters. For this reason, actual contribution limits in the eighteen different districts vary.

<sup>47</sup> N.Y. Elec. Law § 14-114(1)(b) (2001).

<sup>48</sup> *Id.* at § 14-114(3).

<sup>49</sup> The language of the statute states that during the 12 month period prior to a general election, a party committee may not spend more than the greater of \$500 or \$0.01 per registered voter in the district in which the committee is organized in support of candidates running for office. *See id.* at § 14-114(5).

<sup>50</sup> The statutory limit is \$62,500, plus an adjustment for changes in the cost of living. *See id.* at § 14-114(10).

<sup>51</sup> *Id.* at § 14-116.

<sup>52</sup> *See* N.Y. State Board of Elections Memorandum “Contributions and Receipt Limitations” <<http://www.elections.state.ny.us/finance/climit.htm>> (visited Dec. 20, 2001).

<sup>53</sup> N.Y. Elec. Law § 14-114(6)(a) (2001).

<sup>54</sup> *Id.* at § 14-114(6)(b).

<sup>55</sup> *Id.* at § 14-114(8).

<sup>56</sup> *See* N.Y. State Board of Elections Memorandum “Contributions and Receipt Limitations” <<http://www.elections.state.ny.us/finance/climit.htm>> (visited Dec. 20, 2001).

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<sup>57</sup> Suffolk County, N.Y., Charter art. XXXIX, § C39-2 (2001). *See also* Rick Brand, *Gaffney Vetoes Measures*, NEWSDAY, January 19, 1996.

<sup>58</sup> Suffolk County, N.Y., Charter art. XLI, § C41-7(H) (2001).

<sup>59</sup> *See* Suffolk County Legislature Introduced Resolution #1391-2002.

<sup>60</sup> Suffolk County, N.Y., Charter art. XLI, § C41-7(A) (2001).

<sup>61</sup> *Id.* at §§ C41-7, C41-9.

<sup>62</sup> *Id.* at § C41-12 (2001).

<sup>63</sup> Interview with Lee Lutz, *supra* note 14.

<sup>64</sup> *Id.*

<sup>65</sup> Suffolk County, N.Y., Charter art. VII, § C7-3(A) (2001).

<sup>66</sup> According to the N.Y. State Board of Elections, 377,312 Suffolk County voters cast ballots in the Nov. 3, 1998 governors election. *See* NYS Board of Elections Governor Election Returns Nov. 3, 1998 (visited May 29, 2002) <<http://www.elections.state.ny.us/elections/1998/GOVWEB.pdf>>.

<sup>67</sup> Suffolk County, N.Y., Charter art. VII, § C7-3(E) (2001).

<sup>68</sup> In March 2002, Governor George Pataki proposed a constitutional amendment (New York State Senate bill S7306 / New York State Assembly bill A06925) that would empower voters throughout the state to enact and amend laws through initiative and referendum. Under the governor's proposal, Suffolk County ballot measure proponents would be required to gather the signatures of 5% of county residents who voted in the last gubernatorial election—twice the county's current requirement of 2.5%. The state law would likely supersede the county law, increasing the difficulty of qualifying a voter initiative for the ballot.

Pataki's bill passed the New York State Senate on April 29, 2002. The bill was immediately delivered to the New York State Assembly, sponsored by Assemblyman Steve Levy. Levy is the former Suffolk County legislator who struggled for years in support of public financing in Suffolk County, eventually garnering the necessary legislative votes to place the successful 1998 public financing measure on the county ballot. The leadership of the state assembly is reported to oppose the initiative proposal, making it unlikely that the assembly will approve the constitutional amendment in 2002. *See* Karen DeWitt, *Senate GOP and Dems Agree on Initiative and Referendum*, NY CITIZENS: A SERVICE OF THE NEW YORK STATE PUBLIC TELEVISION STATIONS, May 3, 2002 (visited May 29, 2002) <<http://nycitizens.org/2002/news/0503-1.html>>.

The future of the governor's proposal is uncertain. Suffolk County campaign finance reformers should give serious consideration to organizing an initiative campaign under current county law, before initiative qualification is made even more difficult.

<sup>69</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, May 29, 2002.

<sup>70</sup> Emi Endo and Alfonso Castillo, *Suffolk Tax Bills to Carry Extra Plea: Donations to Fund County Campaigns*, NEWSDAY, December 5, 2000.

<sup>71</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, Apr. 22, 2002.

<sup>72</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, Apr. 17, 2002.

<sup>73</sup> Editorial, *Fund Raiser Falls Flat*, NEWSDAY, December 21, 2000.

<sup>74</sup> *See* CENTER FOR GOVERNMENTAL STUDIES, "Public Financing in Local Jurisdictions" Chart (2002) <<http://www.cgs.org>>.

<sup>75</sup> SUFFOLK COUNTY CAMPAIGN FINANCE BOARD, REPORT TO THE COUNTY EXECUTIVE AND COUNTY LEGISLATURE 17 (2001).

<sup>76</sup> Source of Budget Data: Interview with Allen Kovesdy, Assistant Budget Director in the Suffolk County Executive Budget Office, Apr. 19, 2002. Suffolk County's adopted 2002 capital budget is \$108,652,553. Suffolk County's adopted 2002 operating budget is \$2,068,088,732. The total adopted budget is \$2,176,741,285.

<sup>77</sup> According to the U.S. Census Bureau, the population of Suffolk County in 2000 was 1,419,369. *See* U.S. Census Bureau, *American Factfinder* (visited April 15, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>. According to the N.Y. State Board of Elections, Suffolk County is home to 859,238 registered voters. *See* N.Y. State Board of Elections voter enrollment figures for April 1, 2002 (visited May 5, 2002) <<http://www.elections.state.ny.us/report-output/52088140.htm>>.

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- <sup>78</sup> See CENTER FOR GOVERNMENTAL STUDIES CHART “Public Financing in Local Jurisdictions” (2002) <<http://www.cgs.org>>.
- <sup>79</sup> Suffolk County, N.Y., Charter art. XLI, §§ C41-5(A), C41-2(F) (2001).
- <sup>80</sup> SUFFOLK COUNTY CAMPAIGN FINANCE BOARD, REPORT TO THE COUNTY EXECUTIVE AND COUNTY LEGISLATURE 9 (2001).
- <sup>81</sup> *Id.*
- <sup>82</sup> SUFFOLK COUNTY CAMPAIGN FINANCE BOARD, COUNTY CANDIDATE CAMPAIGN FINANCIAL REPORT, Table 2 (2002) (visited June 4, 2002) <<http://www.co.suffolk.ny.us/webtemp3.cfm?dept=38&id=1656>>.
- <sup>83</sup> SUFFOLK COUNTY CAMPAIGN FINANCE BOARD, REPORT TO THE COUNTY EXECUTIVE AND COUNTY LEGISLATURE 10, 19 (2001).
- <sup>84</sup> Suffolk County, N.Y., Charter art. XLI, § C41-5(D) (2001).
- <sup>85</sup> *Id.* at § C41-5(E).
- <sup>86</sup> Interview with Lee Lutz, Executive Director of the Suffolk County Campaign Finance Board, Apr. 12, 2002.
- <sup>87</sup> Suffolk County, N.Y., Charter art. XLI, § C41-7(H) (2001).
- <sup>88</sup> See Suffolk County Legislature Introduced Resolution #1391-2002.
- <sup>89</sup> San Francisco, Cal., Charter § 15.102 (2001).
- <sup>90</sup> Interview with Virginia Vida, Executive Director of the San Francisco Ethics Commission, Nov. 20, 2001.
- <sup>91</sup> For an impressive, detailed analysis of the intersection between New York state law, municipal home rule authority and campaign finance reform, see Jeffrey D. Friedlander et al., *A Symposium on Ethics in Government: The New York City Campaign Finance Act*, 16 Hofstra L. Rev. 345 (1988). The actual language of the constitution does not prohibit local government action. Instead, the constitution empowers local governments to enact laws *not inconsistent with* the constitution or state general law. N.Y. CONST. art. IX, §§ 2(c), 3(d)(1). See also N.Y. Municipal Home Rule Law §§ 2(5), 10(1).
- <sup>92</sup> See Wholesale Laundry Bd. of Trade, Inc. v. City of New York, 234 N.Y.S.2d 862, 864-65 (1st Dep’t 1962) (invalidating city minimum wage law which set a rate higher than that set in the state minimum wage law), *aff’d* 239 N.Y.S.2d 128 (1963).
- <sup>93</sup> Interview with Lee Lutz, *supra* note 14.
- <sup>94</sup> For detailed instructions on New York state reporting requirements, see NEW YORK STATE BOARD OF ELECTIONS, HANDBOOK OF INSTRUCTIONS FOR CAMPAIGN FINANCIAL DISCLOSURE (2001). The allocation schedule is found as section 9i of the “Summary of Receipts / Expenditures” with instructions for its completion on p. 55 of the handbook.