Poughkeepsie '85: A Case Study of Election Law Abuses

New York State Commission on Government Integrity

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Poughkeepsie '85:
A Case Study of Election Law Abuses

New York State Commission on Government Integrity
June 1990
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A Case Study of Election Law Abuses

State of New York
Commission on Government Integrity
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INTRODUCTION AND SUMMARY

The 1985 Town Board election campaign in Poughkeepsie, New York, provides a compelling case study demonstrating the need for sweeping reform of New York's campaign financing laws. This report contains the findings and conclusions of the Commission on Government Integrity's investigation of that campaign and the Commission's recommendations for reform of those laws.

This is one in a series of Commission reports of investigations into the "adequacy of New York's laws, regulations and procedures relating to campaign contributions and campaign expenditures."1 The Commission first called for sweeping reform of the State's campaign financing laws in a December, 1987 report. That report focused on undisputed expert opinion concerning the need to improve inadequate disclosure laws, reduce campaign contribution limits and establish a strong, independent enforcement agency.2 These recommendations were amplified in subsequent Commission reports on investigations into the campaign financing practices of statewide officeholders, state

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1 Executive Order No. 88.1, Paragraph II.5 (April 21, 1987).

legislators, and New York City officials. These reports described the harmful consequences of New York State's inadequate campaign financing laws and, by contrast, the beginnings of reform of New York City's laws.

The Commission's Poughkeepsie investigation goes one step further: it illustrates how the laws' inadequacies can be covertly manipulated to influence the outcome of an election.

The investigation had two major components, the 1985 Poughkeepsie election campaign itself and the New York State Board of Elections' subsequent investigation of that campaign. The Commission investigated the participation in the Poughkeepsie


4 The Commission was also directed to investigate weaknesses in the enforcement machinery. Pursuant to Executive Order No. 88.1, the Commission is directed to:

Investigate weaknesses in existing enforcement machinery for laws, regulations and procedures relating to unethical practices and determine whether such weaknesses create undue potential for corruption, favoritism, undue influence or abuse of official position or otherwise impair public confidence in the integrity of government.

Paragraph II.3.
campaign of partners in the Pyramid Companies, a Syracuse-based real estate development group, and three Albany-based political committees: the New York Republican State Committee, the New York Republican Federal Campaign Committee, and a political action committee, Building a Better New York. Pyramid partners and their relatives made several hundred thousand dollars in campaign contributions to these political committees which spent those funds in a successful effort to elect particular Town Board candidates who would support a zoning change Pyramid needed in order to build a large shopping mall in Poughkeepsie. Pyramid also spent directly hundreds of thousands of company dollars for services performed in Poughkeepsie, at least some of which were undertaken to assist the campaigns of candidates who supported Pyramid's proposed mall.

Pyramid's contributions to the political committees resulted in opponents of the Pyramid-sponsored candidates being outspent by almost 15 to 1. Yet, prior to the election, neither Poughkeepsie's voters nor the Pyramid-sponsored candidates themselves were made aware of Pyramid's involvement in the campaign. In fact, Poughkeepsie's voters would not have been able to ascertain information disclosing the extent of Pyramid's participation prior to election day because of Pyramid's secretive and deceptive campaign scheme and the faulty campaign finance disclosure laws in New York.
Thomas J. Spargo, an Albany-based lawyer, played a central role in Pyramid's Poughkeepsie campaign. He participated directly in formulating the campaign strategy, and, serving simultaneously as counsel to the Republican State Committee, treasurer to the Republican Federal Campaign Committee, originator and secretary of Building a Better New York, and private counsel to Pyramid, he coordinated the funneling of funds into Poughkeepsie.

The Commission also investigated the Board of Elections' own investigation of the campaign. The Board's fifteen-month investigation, which began in January 1986, is notable for its failures: the Board did not take certain basic investigative steps; the Board did not uncover important evidence; the Board relied on the uncorroborated, unsworn statements of Spargo; the Board failed to find a number of Election Law violations established by the evidence it collected; and the Board ultimately decided to close the matter without uncovering all the facts or making a referral to the appropriate law enforcement agency for further investigation.

This report is divided into two parts: the first sets forth the Commission's factual findings concerning the Poughkeepsie election and the Board of Elections' investigation; the second sets forth the Commission's conclusions and
recommendations for reform of New York State’s laws governing campaign financing, disclosure and enforcement.
I. Introduction And Summary

Pyramid actively, but secretly, participated in the 1985 Poughkeepsie Town Board election campaign in an effort to elect members to the board who were sympathetic to its plans to build a large shopping mall in Poughkeepsie. The campaign strategy was devised by Pyramid partners in consultation with their retained counsel, Thomas J. Spargo, the Town of Poughkeepsie Republican Chairman, William Paroli, and certain paid consultants. The strategy called for the financing of the campaigns of four particular Republican candidates by funneling contributions from Pyramid partners and their relatives through three political committees coordinated by Spargo: the Republican State Committee, the Republican Federal Campaign Committee, and Building a Better New York, a so-called unauthorized, multi-candidate committee. In addition, Pyramid itself paid campaign consultants directly to develop a campaign strategy in Poughkeepsie that would enable pro-mall candidates to be elected. A critical element of the strategy was to keep Pyramid’s involvement in the campaign hidden from both the Poughkeepsie voters and the supported candidates before the election, and Pyramid succeeded in doing so.
In fact, Pyramid and Spargo embarked on a massive litigation strategy in an effort to keep from public view Pyramid’s involvement in the 1985 election campaign. The

While the Commission reviewed documents provided by, and took individual, sworn testimony from virtually all of the other participants in the 1985 Poughkeepsie Town Board election and subsequent Board of Elections investigation, it did not receive such testimony from Spargo or from the participating Pyramid partners, Robert J. Congel, Bruce A. Kenan or Robert L. Ungerer. The Pyramid partners provided some but not all requested documents, and no testimony, before they sought court intervention to block the Commission’s inquiry of them. When their court challenge to the Commission’s subpoenas proved unsuccessful, New York State Comm’n on Government Integrity v. Congel, ___ N.Y.S.2d ___ (1st Dept., 36275N/36275NA, 1989), appeal dismissed, ___ N.Y. ___, February 8, 1990 (motion no. 81), they produced additional requested documents and preferred a limited form of cooperation but declined to waive their attorney-client privilege (particularly as to their dealings with Spargo, all of which were claimed to be with him as their counsel) or to testify individually under oath. When the Commission demanded their appearance to give testimony Pyramid responded with two additional frivolous court actions.

scheduled conclusion of this Commission's business requires that this report be issued without the conclusion of some parts of the litigation. Because Spargo and Pyramid did not avail themselves of the opportunity given them to present individual, sworn testimony on the matters contained in this report and presented in public hearings, where testimony was given or evidence found that pertained to Spargo's or Pyramid's actions the report judges that evidence to be true.

II. The 1985 Poughkeepsie Campaign

A. The Pyramid Companies

The Pyramid Company⁶ is a partnership headquartered in Syracuse, New York. It is an entity that handles the clerical work for different real estate development partnerships.⁷

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⁵(...continued)


⁶ This partnership and related partnerships are hereafter collectively referred to as "Pyramid".

J. Congel is the managing partner of Pyramid. Separate partnerships are formed to develop, build, or own particular shopping centers or malls. Various Pyramid partnerships have developed more than fifteen projects throughout upstate New York and New England and are in the process of developing eleven more. Pyramid's assets are estimated at $2 billion.

The Poughkeepsie mall -- "The Galleria" -- was built on land owned by the Poughkeepsie Galleria Company, Inc. ("PGI") whose president was Pyramid partner Robert L. Ungerer and whose secretary was Pyramid partner Bruce A. Kenan. Poughkeepsie Galleria Company ("PGC") was the project partnership for the

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8 Id. at 551.
9 Id. at 554.
11 The New York Times Magazine, April 1, 1990, p. 54, col. 3. For each project, Congel usually designates a "sponsor partner" who is put in charge of the project. An employee of the Pyramid Management Company, another separate partnership, markets and operates the facility as it nears the point of commencing operations. Deposition of Robert J. Congel at 553-54 supra note 7.
12 Amended Certificate of Incorporation of the Poughkeepsie Galleria, Inc., dated October 21, 1985 (amendment changed company name to Poughkeepsie Galleria Company, Inc.); Assignment of an Option by Dabil Enterprises, March 1, 1986. Ungerer had previously held an interest in an option to a portion of the land on which the Galleria was to be built. In 1986, Ungerer's former company, Albany-based Dabil Enterprises, Inc., sold the option to one of the Pyramid entities. Id.
Galleria. Congel, Kenan and Ungerer each were partners in PGC.\textsuperscript{13} As early as June 1984, Ungerer, the sponsor partner, began to act as the public spokesman in Poughkeepsie for the Galleria project.

B. The Zoning Problem Facing The Galleria

Pyramid faced a major obstacle to its plans to build the Galleria. The 109 acres on which it wanted to build was, with the exception of a small parcel, zoned for residential use, thus precluding construction of a mall.\textsuperscript{14}

Pyramid sought the required zoning change by first applying to the Poughkeepsie Town Board. As required by law, the Town Board referred the matter to the Dutchess County Department of Planning.\textsuperscript{15} On October 4, 1985 (approximately one month before the scheduled Poughkeepsie Town Board election) the County Department of Planning recommended that the Town of Poughkeepsie disapprove the zoning change application.\textsuperscript{16} The


\textsuperscript{14} Memorandum from Roger P. Akeley, Commissioner of Dutchess County Department of Planning, to Poughkeepsie Town Board dated October 4, 1985 at 1.

\textsuperscript{15} See N.Y. Gen. Mun. Law section 239m(1).

\textsuperscript{16} Memorandum from Roger P. Akeley, Commissioner of Dutchess County Department of Planning, to Poughkeepsie Town Board dated October 4, 1985 at 12.
Dutchess County Department of Planning concluded that a mall at the proposed site would be incompatible with the existing county and town master plans, would not represent a coherent approach to development, and would exacerbate existing traffic problems.  

Once the County Department of Planning disapproved, the zoning change could only be approved by the Poughkeepsie Town Board by a favorable vote of a supermajority -- "a majority plus one" -- or five of the seven Poughkeepsie Town Board members.

C. The Town Board Candidates' Positions On The Zoning Change Prior To The Election

The Poughkeepsie Town Board is comprised of a supervisor, who votes as a member of the board, and six board members, one from each of the town's six wards. Prior to the 1985 election, every candidate for one of these seven offices took a public position on Pyramid's proposed zoning change.

17 Id. at 3-5.

18 See N.Y. Gen. Mun. Law section 239m(1).

19 Poughkeepsie Journal, Oct. 28, 1985. Exhibit 1 to this report is a chart identifying the candidates in each ward, their party affiliation, and their pre-election position on the proposed zoning change. It also states the results of the election in each ward and the victor's subsequent vote on the zoning change. Public hearing I, Exhibit 1. (References in this format are to exhibits entered into the record at a public hearing of the Commission on January 26, 1988 in Albany, New York. References in the format "Public hearing II, Exhibit _" are to exhibits entered into the record at a public hearing of the Commission on October 25, 1988 in New York City.)
Based on these positions, Pyramid knew it was virtually assured of three of the five votes needed: In the Third and Fifth Wards, incumbents in favor of the zoning change were running unopposed; in the Fourth Ward, both party's candidates (Democratic incumbent Babiarz and Republican challenger DelSanto) favored the zoning change.20

However, the Galleria project faced serious opposition in the remaining four races. Two Democratic incumbents (Garrity in the First Ward and Pyrek in the Second Ward) were against the zoning change.21 Their Republican opponents (Darrow in the First and Banner in the Second) were undecided on the issue.22 In the Sixth Ward, the Republican incumbent (Pinckney) was undecided.23 However, Ungerer expressed a belief that Pinckney would support the zoning change.24 His Democratic challenger (Zeleznick) was against the zoning change.25 As for the candidates for Town Supervisor, the Democratic incumbent (Buchholz) had expressed

21 Id.
22 Id.
23 Id.
24 Public hearing I tr. at 124. (References in this format are to the pages of the transcript of a public hearing of the Commission on January 26, 1988 in Albany, New York. References in the format "Public hearing II tr." are to the pages of the transcript of a public hearing of the Commission on October 25, 1988 in New York City.)
opposition to the mall while her Republican challenger (Dwan) favored the change.

D. **Evolution of Pyramid’s Campaign Strategy**

During the summer of 1985, Pyramid representatives contacted Philip Friedman of Campaign Strategies, Inc., a consulting firm which assists candidates seeking elective office and also performs image-building services for corporate clients. Pyramid hired the firm to help with anticipated political and image problems that would arise in connection with the Poughkeepsie Galleria project.

At Friedman’s suggestion, during the fall of 1985, Pyramid hired Keenan Research and Consulting, Inc. to conduct focus group sessions and Penn & Schoen Associates, Inc. to conduct polls in Poughkeepsie. These focus groups and polls were designed to gauge Poughkeepsie residents’ attitudes toward

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26 Id.
27 Id.
28 Public hearing I tr. at 116.
29 Public hearing I tr. at 118.
30 The focus groups were discussion groups with between six and 12 local residents participating. Pyramid’s goal was to determine how residents felt about certain town-related issues and the upcoming campaign. Public hearing I tr. at 119-21.
31 Public hearing I tr. at 119-20.
the mall as well as the strengths and weaknesses of the candidates in the upcoming Town Board election.\textsuperscript{32} The results indicated that the residents were generally satisfied with their incumbent elected officials.\textsuperscript{33} However, there was also a discernible trend against Republican candidates, including those who were in favor of Pyramid's proposed mall.\textsuperscript{34}

In discussing the poll results with Congel, Kenan and Ungerer, Friedman suggested that the Republican candidates, four of whom had publicly announced their support for the mall, were likely to lose in the upcoming election.\textsuperscript{35} Shortly thereafter, those Pyramid partners informed Friedman that Pyramid had decided to take an active role in the Town Board election\textsuperscript{36} and that they were going to participate actively in what they referred to as a joint campaign effort with the New York Republican State Committee, a political action committee called Building a Better New York ("BBNY"), and possibly, the Town of Poughkeepsie Republican Committee.\textsuperscript{37}

\textsuperscript{32} Public hearing I tr. at 119.
\textsuperscript{33} Public hearing I tr. at 121, 123.
\textsuperscript{34} Public hearing I tr. at 121, 123-25.
\textsuperscript{35} Public hearing I tr. at 123-25.
\textsuperscript{36} Public hearing I tr. at 125-26.
\textsuperscript{37} Public hearing I tr. at 127-28. Ungerer had some discussions with William Paroli, its Chairman, concerning the qualifications and electability of certain local candidates. Public hearing I tr. at 128-29.
The polling showed that incumbent Supervisor Buchholz was virtually unbeatable.\(^{38}\) Pyramid therefore determined to focus on the First, Second, Fourth and Sixth Wards -- and to support Republican challengers Darrow, Banner and DelSanto\(^{39}\) and Republican incumbent Pinckney respectively -- in an effort to pick up the additional votes needed for the zoning change.\(^{40}\) The focus groups and polls also suggested two campaign themes that would appeal to residents likely to vote for those candidates: opposition to high taxes and emphasis on careful town planning.\(^{41}\)

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\(^{38}\) Public hearing I tr. at 18, 129-31.

\(^{39}\) DelSanto was given some Pyramid support at the insistence of Paroli. Public hearing I tr. at 133-34. However, because both candidates in that ward election favored the zoning change, DelSanto received much less Pyramid support than the other three. New York State Board of Elections Report of Investigation by Joseph A. Daddario, dated April 3, 1987 at 9 (Public hearing II, Exhibit 20); New York State Board of Elections Report of Investigation by Joseph A. Daddario, Allocation 1985 Campaign Expenses for Building A Better New York Committee ("BBNYC"), dated April 3, 1987 at 1 (Public hearing II, Exhibit 17); Memorandum from R. Tenenini to D. McCarthy dated April 3, 1987 at 15 (Public hearing II, Exhibit 18).

\(^{40}\) Public hearing I tr. at 132. While some Pyramid funds were spent to maximize the turnout of voters likely to vote for Republican candidates in general, Friedman testified that the increased Republican turnout was sought precisely to assist the four targeted candidates. Public hearing I tr. at 131-32. See also Exhibit 2. Exhibit 2 is a series of six campaign scheduling documents obtained from Pyramid. Reference is made in those documents to "three targeted wards".

\(^{41}\) Public hearing I tr. at 137, 139-41.
Friedman also advised Congel, Kenan and Ungerer to consult a lawyer to determine the extent to which Pyramid could legally participate in the town election campaign.\textsuperscript{42} Thereafter, one of the Pyramid partners indicated to Friedman that Pyramid had had some discussions with an election lawyer, Thomas J. Spargo, who Friedman knew to be counsel to the RSC.\textsuperscript{43}

The Pyramid representatives were not the only ones seeking Spargo’s assistance. William Paroli, the Town of Poughkeepsie Republican Chairman, spoke to Spargo in early fall to request financial assistance from the RSC for the upcoming campaign. Spargo agreed that the RSC would provide such assistance.\textsuperscript{44}

\textbf{E. The Campaign As Conceived And Executed By Pyramid, Spargo And Their Consultants}

The campaign plan was secretly financed by Pyramid (see section F. below) and conceived and coordinated primarily by Pyramid partners, Pyramid’s paid consultant, Campaign Strategies, and Pyramid’s lawyer, Spargo. Pyramid partners regularly

\textsuperscript{42} Public hearing I tr. at 126.

\textsuperscript{43} Public hearing I tr. at 127-28.

\textsuperscript{44} Public hearing I tr. at 67. By at least October 2, 1985, Spargo had also been retained as private counsel to Pyramid. Spargo private hearing, Exhibit 3. There is no evidence that Spargo ever disclosed that fact to Republican officials or candidates or to the consultants working on the Poughkeepsie campaign.
reviewed the plan with Campaign Strategies and approved its major elements. Kenan and, in particular, Ungerer communicated frequently with the various consultants working on the campaign, monitoring the campaign's progress and supervising many of the consultants' activities. Paroli was also kept informed.

The Pyramid campaign began in earnest one day early in October, 1985, when Spargo attended a series of strategy meetings in Poughkeepsie. During the day, he met with Ungerer, Richard Fife, (a political consultant recommended by Friedman) and Fred Pheiffer (a political consultant retained by Spargo on behalf of the RSC) at the Pyramid office in Poughkeepsie. They discussed the campaign as well as a meeting Spargo, Fife and Pheiffer were to have later that day with the Republican Town Board candidates and Poughkeepsie Republican officials. Later, Spargo attended a dinner meeting at a local restaurant to discuss the campaign and the candidates with Paroli, Fife, Pheiffer, Ann

45 Public hearing I tr. at 135, 144-45, 152-55.
46 Public hearing I tr. at 151; Fife tr. at 10, 17 (References in this format are to the pages of the private hearing transcript of the witness named).
47 Public hearing I tr. at 150; Fife tr. at 10-13, 16-17.
48 Public hearing I tr. at 144-45; Fife tr. at 2-3.
49 Pheiffer tr. at 3-5, 13.
50 Fife tr. at 8; Pheiffer tr. at 20-21.
51 Fife tr. at 8-9.
Wagler (then Chairwoman of the Dutchess County Conservative Party) and Earl Bruno (Paroli’s Vice-Chairman). 52

That evening, Spargo attended yet another meeting at the home of John Dwan, the Republican candidate for Town Supervisor, along with Paroli, Bruno, Wagler, Fife, Pheiffer and the six Republican candidates for the Town Board.53 Spargo chaired this meeting and introduced Fife and Pheiffer as consultants who were going to assist in the campaign.54 Spargo announced that the RSC considered Dutchess County, and particularly Poughkeepsie, a pivotal area between New York City and Albany and, for that reason, the RSC was going to handle the Poughkeepsie campaign.55 During the meeting with the candidates, neither Spargo nor anyone else mentioned the Galleria or Pyramid or the role Pyramid was playing in the campaign.56

52 Public hearing I tr. at 72-73; Fife tr. at 18-19.
53 Public hearing I tr. at 78-79.
54 Fife tr. at 19-21.
55 Public hearing I tr. at 104, 188, 191. Even though the Republican strategy was successful in 1985, Republican candidates received no RSC support in subsequent elections and many were voted out of office in 1987. Public hearing I tr. at 104-05.
56 Public hearing I tr. at 191. Neither did Spargo mention that he was by that time retained as private counsel for Pyramid. Public hearing I tr. at 191-92, 207.

At the conclusion of the meeting, Spargo distributed to the candidates books containing information on voter registration to be used to record pertinent information gathered during their door-to-door campaigning. He instructed the candidates that the books were to be given to Fife at the end of each day and that (continued...
Once the focus groups and polls enabled Pyramid to determine which races it should heavily finance and which issues should be emphasized -- lower taxes and better planning -- the consultants used two principal campaign techniques: distribution of vast amounts of literature and door-to-door campaigning.\(^{57}\) Both techniques were applied with two critical objectives in mind: to concentrate on the candidates in the pivotal races who were either undecided or in favor of the proposed mall\(^{58}\) and to avoid any mention of the mall or Pyramid's sponsorship of the candidates.\(^{59}\)

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\(^{56}\) (...continued) the information gathered would be used in follow-up letters to voters. Public hearing I tr. at 189.

\(^{57}\) Public hearing I tr. at 137, 145-47.

\(^{58}\) Public hearing I tr. at 131-32.

\(^{59}\) Public hearing I tr. at 139-41. Even after the election, when suspicions concerning Pyramid's involvement in the campaign were first being voiced in the media, Campaign Strategies was still aware of the need to quell those suspicions. In Friedman's post-election memorandum to Pyramid he stated:

> In Poughkeepsie, reporters already have more than an inkling of Pyramid's role in recent elections. The company must reposition itself and the mall as concerned members of the community rather than as alien precenses [sic] concerned only with economic gain.

Post-election Memorandum by Philip Friedman at 10 (Public hearing I, Exhibit 15).
Pyramid financed the distribution to voters in the pivotal wards of vast amounts of campaign literature, all fine-tuned to reflect the results of the polls. More than 80 different brochures and letters were targeted to voters in those wards during a campaign of approximately three weeks. As Friedman later stated:

Direct mail...[a]llowed us to create artificial issues. In letters and brochures we articulated for the voter concerns he might not have been able to articulate...The voter was unaware that he told us, through focus group discussions and responses to poll questions, what issues to present in our mailing.

Direct mail appears to have been the single most expensive element in the campaign plan.

The candidates themselves were kept in the dark both as to the source of the campaign funds and the contents of the campaign literature. At Ungerer's direction, Friedman never discussed the contents of the campaign literature with any of the candidates. Included among the literature mailed to local voters were personal letters, ostensibly signed by the candidates. In fact, this literature was paid for by Pyramid and produced and distributed by Pyramid's paid consultants --

60 Id. at 4.
61 Id. at 4-5.
62 See e.g., Public hearing I tr. at 194-96, 212.
63 Public hearing I tr. at 147-48.
64 Public hearing I tr. at 197-99, 213.
without the candidates' knowledge. The testimony before the Commission of Louis DelSanto, the Republican candidate in the Fourth Ward, is typical:

Q. As part of the mailings that you received, did you receive letters that went out over your name?
A. There is a letter with my name on it, yes.

Q. Have you seen either of these letters before you received them?
A. No.

Q. Had you approved their contents in any way?
A. No.

Q. Now one exhibit, Exhibit 7, is in the name of yours; is that correct?
A. That’s right.

Q. It’s addressed to a constituent, I assume in your ward?
A. Yes.

Q. And Exhibit 8 is a letter in the name of your wife, Lorraine DelSanto; is that right?
A. That’s correct.

Q. It speaks very highly of you?
A. Yes.

Q. Did you sign either of these letters?
A. No. But whoever signed them was the same person that signed both letters.

COMMISSIONER HYNES: It’s not your signature?
THE WITNESS: Nor my wife’s.

COMMISSIONER VANCE: Do you have any idea who forged your name?

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65 Public hearing I tr. at 137-38.
THE WITNESS: No....66

The door-to-door campaigning technique, which gained name recognition for the candidates and enabled them to make their points in a direct and personal way, was also engineered by Pyramid-paid consultants.67 The Republican candidates in the pivotal wards were coached by the consultants on how to present themselves and their message effectively during these visits.68 Like the direct mail effort, the door-to-door visits were made in the pivotal wards. Pickney and Darrow in particular were assisted by Fife and Pheiffer respectively.69

It was at the October meeting at Dwan's house that Fife first informed Sixth Ward candidate Pinckney that he was going to work daily on his campaign.70 Fife instructed Pinckney on door-to-door campaign style and suggested that he emphasize with the voters issues such as taxes, problems within the ward, parking and sewer drainage.71 Fife even accompanied Pinckney on his

66 Public hearing I tr. at 197-98. See also, Public hearing I tr. at 212-13.
67 Public hearing I tr. at 162-64.
68 Pheiffer tr. at 11, 13-14, 29.
69 Fife tr. at 27-28; Pheiffer tr. at 14-15.
70 Public hearing I tr. at 206; Fife tr. at 23.
71 Public hearing I tr. at 210.
daily door-to-door visits and recorded voter reactions in a black book.\textsuperscript{72}

Fife had additional campaign duties and contacts.\textsuperscript{73} He frequently discussed the progress of the campaign with Ungerer and, on two occasions, attended meetings with Ungerer and Paroli at which the campaign was discussed.\textsuperscript{74} Fife also met with Spargo regularly during the campaign and submitted invoices for his services to Spargo for payment.\textsuperscript{75}

Pheiffer\textsuperscript{76} gave similar help to First Ward candidate Darrow, assisting him in personalized campaign techniques, including door-to-door campaigning, letter writing, phone calls and speeches before various groups.\textsuperscript{77} In addition, he spoke with

\begin{itemize}
\item \textsuperscript{72} Public hearing I tr. at 208-09.
\item \textsuperscript{73} One of Fife's duties was to pick up the campaign literature from Campaign Strategies and deliver it to the Poughkeepsie post office for mailing. On occasion, he would show it to both Ungerer and Paroli. Fife tr. at 14-15, 25, 29-30.
\item \textsuperscript{74} Fife tr. at 9-12.
\item \textsuperscript{75} Fife tr. at 15-16, 33-34.
\item \textsuperscript{76} From 1977 to 1980, Pheiffer was Political Director and Executive Director of the Republican State Committee. During the fall of 1985, while Pheiffer was employed by the New York State Senate, Spargo sought his assistance for the Poughkeepsie campaign. Spargo told him that there was an opportunity for Republicans to recapture seats in Poughkeepsie. According to Pheiffer, Spargo did not mention that he (Spargo) had been retained as private counsel by Pyramid or that Pyramid was financing the campaign. Pheiffer tr. at 3-6.
\item \textsuperscript{77} Pheiffer tr. at 13-15.
\end{itemize}
Spargo regularly concerning the progress of the campaign and reported to Paroli. 78 He also informed Ur.,jerer by telephone about the progress of the campaign. 79

F. Pyramid's Financing Of The Campaign

The campaigns of Republican candidates in the First, Second, Sixth Wards and, to a lesser extent, the Fourth Ward were financed by large contributions from Pyramid partners and their relatives. They made their contributions to the three political committees coordinated by Spargo and the committees, in turn, made large expenditures for the benefit of the targeted Republican candidates. In addition, Pyramid made direct payments to consultants performing campaign-related services.

In evaluating the extent of Pyramid's involvement, it is important to note that the maximum allowable contribution under the New York Election Law from an individual to each Town Board candidate in 1985 was approximately $1,000 80 and that the total amount spent by all Democratic candidates in the Town Board election in Poughkeepsie that year was less than $22,000. 81

78 Pheiffer tr. at 16-17, 30.
79 Pheiffer tr. at 23.
80 Public hearing II tr. at 64.
81 Public hearing I tr. at 41.
1. Contributions By Pyramid-Related Individuals To The Three Political Committees

During 1985 and early 1986, 18 persons affiliated with Pyramid contributed $301,000 to the following political committees that participated in the Poughkeepsie election:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building a Better New York</td>
<td>$ 75,000</td>
</tr>
<tr>
<td>New York Republican State Committee</td>
<td>$126,000</td>
</tr>
<tr>
<td>New York Republican Federal Campaign Committee</td>
<td>$100,000</td>
</tr>
<tr>
<td></td>
<td>$301,000</td>
</tr>
</tbody>
</table>

The appended table reveals that, although many contributors gave more than $5,000, no single check exceeded that amount; that many contributors gave equal amounts to each of the three committees; that family members often gave the same amounts (e.g., the Hollingses, the Falcones and the Lugosches each gave $15,000 while the Leveens each gave $30,000); and that contributions totalling $115,000 were made before the November 5 election.

Throughout this section, reference is made to contributions from Pyramid-related individuals and disclosure of those contributions to the Board of Elections. The reference to "Pyramid-related individuals" is primarily to partners of one or more Pyramid partnerships or their spouses. In addition, one lawyer who had on occasion represented Pyramid, Michael Shanley, made three contributions totalling $15,000; Shanley is the only contributor considered a Pyramid-related individual who was not a partner or a spouse of a partner.

Also, there is no requirement under state law, unlike federal law or the New York City Campaign Finance Law, that the business affiliation of contributors be disclosed in filings with the Board of Elections. Therefore, the Commission was required to investigate to determine the affiliations of the various contributors.

Public hearing I, Exhibit 3; This exhibit, a table listing each of these contributions by contributor, date of contribution and recipient political committee, is annexed to this report as Exhibit 3.
election and contributions totalling $186,000 were made after the
election. The inference is overwhelming that these contributions
were not the product of individual decision-making, but rather
that they were coordinated.84

a. Building a Better New York ("BBNY")

BBNY was formed at Spargo's direction on October 18,
1985 as a political committee that was not authorized by any
particular candidate for office (a "non-authorized multi-
candidate committee", also referred to as a "political action
committee" or "PAC").85 When this committee was formed, Spargo
informed the Board of Elections in writing that it would support
"various local candidates in the counties of Albany, Onondaga,
Jefferson, Tompkins, Dutchess and Rockland and various statewide
and Republican candidates and committees."86 In fact, with the
exception of two $250 contributions to Albany County candidates,
all of the funds received by BBNY were expended on behalf of

84 BBNY maintained a checking account at a Key Bank branch
in Albany, which lists Spargo as secretary and Ruth Swan,
Spargo's personal secretary, as treasurer of BBNY. That account
was opened with an initial deposit in the form of Spargo's
personal $50 check. Depository Account Resolution and Signature
Card, both dated October 17, 1985. The inference is also strong
that the contributions, at the time they were being made, had
been earmarked for purposes of covering expenditures in the
Poughkeepsie campaign. See Exhibit 4.

85 New York State Board of Elections Forms SBE 181 and SBE
A06 received by the Board on October 18, 1985.

86 Committee Designation of Treasurer and Depository filed
with the New York State Board of Elections on October 18, 1985.
Public hearing II, Exhibit 21.
targeted candidates in the 1985 Poughkeepsie Town Board election.

The $75,000 Pyramid partners and their relatives contributed to BBNY, in the form of 15 checks of $5,000 each, was, according to filings with the Board of Elections, all that was contributed to that committee. Four of the checks were deposited to the BBNY account prior to the election and disclosed by BBNY in the required "24-hour notification filings" to the Board in Albany on November 1, 1985, four days prior to the election. Three of the checks were received prior to the election, but were not included in "24-hour notification filings." The remaining contributions were disclosed to the Board in Albany on December 3, 1985 (covering the filing period from October 22 through November 28) and January 14, 1986 (covering the filing period from November 28, 1985 through that date). No disclosure of any of the 15 contributions was made to the Dutchess County Board of Elections.88

87 The Election Law requires that all contributions of more than $1,000 received prior to the election, but after the last pre-election disclosure statement is required to be filed (in this case, on the 11th day prior to the election), must be reported to the Board within 24 hours after receipt. New York Election Law section 14-108.

88 Board of Elections regulations require that political committees which support candidates for town offices file disclosure statements with the county Board of Elections of the county in which the town is located. 9 N.Y.C.R.R. section 6200.1(c).
b. **New York Republican State Committee ("RSC")**

The $126,000 contributed by Pyramid-related individuals was in the form of 27 checks (25 in the amount of $5,000 and two in the amount of $500) to the RSC from 17 different individuals received between October 17, 1985 and March 12, 1986. Seven checks totalling $35,000 were deposited to the RSC "housekeeping account" and thus were not, and did not have to be, reported in disclosure filings to the Board of Elections.\(^8^9\)

Although six checks totalling $30,000 were deposited to the RSC account prior to Election Day, they were not reported to the Board until December 6, 1985. No disclosure of any of these contributions was made in Dutchess County.

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\(^8^9\) Under Election Law section 14-124 in effect at that time, the law’s disclosure requirements did not apply to "monies received and expenditures made by a party committee or constituted committee to maintain a permanent headquarters and staff and carry on ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates." At least in part in response to this Commission's investigation into this so-called housekeeping exemption from the disclosure requirements, the exemption was repealed. Subdivision 3 of the Laws of 1988, chapter 71, section 1, effective May 9, 1988.

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\(^9^0\) Reports of Receipts and Disbursements to the Federal Election Commission, dated January 29 and March 31, 1986.
Pyramid-related individuals contributed $100,000 in the form of 20 checks for $5,000 each, to the Federal Committee between October 29, 1985 and February 10, 1986. During that time, the Federal Committee received in contributions only $2,729 from all other sources.91

On January 29, 1986, Spargo filed with the Federal Election Commission ("FEC") a disclosure report for the Federal Committee covering the period July 1 through December 31, 1985. That report showed total contributions to that committee in the amount of $72,845.1992 without disclosing the source of the contributions, an omission Spargo acknowledged in a cover letter to the report to the FEC. On March 26, 1986, the FEC wrote to Spargo demanding disclosure of the identity of the contributors. In a March 31, 1986 response, Spargo furnished to the FEC an amendment disclosing that $70,000 of the 1985 contributions were from 14 named individuals who contributed $5,000 each.93

91 Id.

92 Of that amount, $2,729.00 was from contributions from other sources and $116.19 was transferred in from another political committee. Although the January, 1986 filing did not so indicate, the remaining $70,000 was made up of 14 checks of $5,000 each from Pyramid-related individuals. The remaining six checks totalling $30,000 in contributions to this committee by Pyramid-related contributors were deposited after January 1, 1986.

93 The FEC disclosure form, unlike the New York State Board of Elections form, requires disclosure of the name and address of the contributor’s employer. However, since many of the contributors did not have an employment relationship with Pyramid, their affiliation with Pyramid was not apparent from the FEC filing either. Rather, further Commission investigation was required.
also filed at this time a disclosure report with the FEC covering the period January 1 through March 31, 1986 in which the balance of the $30,000 in Pyramid-related contributions was disclosed. Finally, on April 28, 1986, Spargo filed a disclosure form with the State Board of Elections containing the $100,000 in Pyramid-related contributions to the Federal Committee. No disclosure of these contributions was made in Dutchess County.

2. **Expenditures For Poughkeepsie Candidates**

Two types of expenditures benefitted the targeted candidates for the Poughkeepsie Town Board: The three political committees (BBNY, RSC and the Federal Committee) spent more than a quarter of a million dollars in support of those candidates and Pyramid directly spent almost half-a-million dollars both on
image building and on the campaign$^{94}$ as follows:

<table>
<thead>
<tr>
<th>Entity Incurring Expense</th>
<th>Type of Expense</th>
<th>Campaign</th>
<th>Image Building</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBNY</td>
<td></td>
<td>$ 69,700</td>
<td></td>
<td>$ 69,700</td>
</tr>
<tr>
<td>RSC</td>
<td></td>
<td>187,648</td>
<td></td>
<td>187,648</td>
</tr>
<tr>
<td>Federal Committee</td>
<td></td>
<td>9,897</td>
<td></td>
<td>9,897</td>
</tr>
<tr>
<td>Pyramid</td>
<td></td>
<td></td>
<td>$475,967</td>
<td>$475,967</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$267,245</td>
<td>$475,967</td>
<td>$743,212</td>
</tr>
</tbody>
</table>

The payment scheme for these expenditures further illustrates the concerted actions of Pyramid, Spargo, the political committees, and the paid consultants. Acting as Pyramid's general contractor, Campaign Strategies utilized the services of approximately 40 vendors, or sub-contractors, for campaign-related services.\(^{95}\) Typically, the vendors would send invoices to Campaign Strategies which would forward them to a Pyramid representative, often Kenan. Kenan would forward the invoices to one of the three political committees after consulting with Spargo as to which committee should receive the

\(^{94}\) It is not possible to determine with precision how much of Pyramid's direct expenditures were for campaign-related costs and how much were for Galleria or Pyramid image-building. For example, Pyramid spent funds directly for Poughkeepsie town-wide polling; part of the poll was to determine voter sentiment concerning particular candidates and part was to determine sentiment concerning the desirability of the mall.

\(^{95}\) Cash disbursement ledger of Campaign Strategies. See also Exhibit 5. These invoices were obtained from Pyramid.
invoice. The vendors received payment from one or more of the three political committees or, in certain cases, directly from Campaign Strategies.96

New York's disclosure laws permitted this scheme to remain secret. In almost every case where expenditures were disclosed by a committee, it was impossible to determine from the disclosure filings alone which expenditures were made for services relating to the 1985 Poughkeepsie election. Most of the disclosure filings indicate only the name of the vendor, the address of the vendor (often outside Poughkeepsie and Dutchess County and, in some cases, outside New York State), the amount of the expenditure and, under the heading "Purpose of the Disbursement", a one-word description such as "consulting." A thorough investigation was required by this Commission, including interviews with each vendor, even to discern which of many expenditures by the committees were connected to the Poughkeepsie campaign.

96 Public hearing I tr. at 155-57.
a. Building A Better New York ("BBNY")

BBNY's disclosure filings made after the election indicate that BBNY spent $70,200. All but $500\(^{97}\) of that amount was spent on the 1985 Poughkeepsie Town Board election.\(^{98}\)

No apportionment among the various Poughkeepsie candidates was proposed in the filings made in 1985 or 1986. However, one year later, at Spargo's direction and in response to the Board of Elections inquiry, BBNY filed a statement purporting to allocate the $69,700 spent on the 1985 Poughkeepsie election among 11 Republican candidates, including all seven Town Board candidates plus the candidates for Town Clerk, Receiver of Taxes, Superintendent of Highways and Town

\(^{97}\) The $500 which was not spent on the Poughkeepsie campaign was "transferred out," i.e., contributed in equal amounts to the campaigns of a Justice of the Supreme Court in Albany County and for the Mayor of the City of Albany.

\(^{98}\) Those expenditures appear on disclosure forms as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Payee</th>
<th>Amount</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/1/85</td>
<td>Phil Friedman and Henry Morris</td>
<td>$10,000</td>
<td>Consulting Fee</td>
</tr>
<tr>
<td>11/12/85</td>
<td>Phil Friedman and Henry Morris</td>
<td>$19,000</td>
<td>Consulting Fee</td>
</tr>
<tr>
<td>11/25/85</td>
<td>Phil Friedman and Henry Morris</td>
<td>$30,000</td>
<td>Consulting Fee</td>
</tr>
<tr>
<td>1/7/86</td>
<td>Campaign Technology</td>
<td>$10,700</td>
<td>Consulting Fee</td>
</tr>
</tbody>
</table>

Total Campaign Expense $69,700
Justice. Spargo proposed this allocation even though the campaign expenditures had been targeted to no more than four of the candidates and six of the 11 candidates ran unopposed in the 1985 election.

99 Attached to the BBNY filing covering the period July 1, 1986 through January 15, 1987, received by the Board on January 27, 1987 is a statement of "Allocation of Campaign Costs to Candidates":

<table>
<thead>
<tr>
<th>Office and District</th>
<th>Candidate</th>
<th>$</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Poughkeepsie:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervisor</td>
<td>John Dwan</td>
<td>9.09</td>
<td>$6,340.20</td>
</tr>
<tr>
<td>Town Clerk</td>
<td>Margaret Karn</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Receiver of Taxes</td>
<td>Hilda Whitaker</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Supt. of Highways</td>
<td>Stanley Still</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Town Justice</td>
<td>Ira Pergament</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Councilman:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dist. #1</td>
<td>Jerome Darrow</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Dist. #2</td>
<td>Paul Banner</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Dist. #3</td>
<td>Karen Bodo</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Dist. #4</td>
<td>Louis DelSanto</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Dist. #5</td>
<td>Vincent Tedone</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Dist. #6</td>
<td>Ralph Pinckney</td>
<td>9.09</td>
<td>6,340.20</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
<td>$69,742.20</td>
</tr>
</tbody>
</table>

The allocation is explained as follows in BBNY's filing:

"The above allocation constitutes a breakdown of the committee's entire expenditures in the 1985 campaign for direct election expenditures. The allocation was spread equally over all of the Republican candidates who ran for Town office in the Town of Poughkeepsie seeking elected public office at the general election. While there may be alternative mathematical formulations, this allocation most fairly and reasonably sets forth the intended equal allocation among all of the Town Republican candidates seeking election in the Town of Poughkeepsie...."

100 By that time, as a result of its investigation, the Board already had affidavits from the candidates who ran (continued...)
b. New York Republican State Committee ("RSC")

Between October 17, 1985 and March 18, 1986, the RSC spent $187,648 on the 1985 Poughkeepsie election by making direct payments to vendors of $156,148 and by making a transfer of $31,500 to the Town of Poughkeepsie Republican Committee, which in turn paid vendors.101

Like BBNY, the RSC did not file an allocation of its expenditures with the Board of Elections until more than one year after the election.102 In 1987, RSC Treasurer Lewis Bart Stone provided the Board of Elections with an allocation authored by

100(...continued)

unopposed attesting to the fact that they had no opposition, that they had not heard of BBNY until after the election, and that they had not authorized BBNY to make any expenditures for them.

101 These expenditures were disclosed in filings with the Board of Elections as follows:

<table>
<thead>
<tr>
<th>Filing Period</th>
<th>Date Received By Board</th>
<th>Amount of Poughkeepsie Expenses Disclosed</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/30/85 - 10/21/85</td>
<td>10/31/85</td>
<td>$10,000</td>
</tr>
<tr>
<td>10/22/85 - 11/29/85</td>
<td>12/6/85</td>
<td>17,195</td>
</tr>
<tr>
<td>11/30/85 - 1/10/86</td>
<td>1/27/86</td>
<td>90,761</td>
</tr>
<tr>
<td>1/13/86 - 5/31/86</td>
<td>6/30/86</td>
<td>41,375</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$159,331</td>
</tr>
</tbody>
</table>

(Less Expenditure Adjustments Per Commission Inquiry) 3,183

Net Expenditures $156,148

102 Election Law section 14-114.4 requires committees to apportion contributions received by the committee among all the candidates supported by the committee. The extent of a candidate's support by a multi-candidate committee is measured by the proportion of the expenditures made by the committee on behalf of that candidate.
Spargo stating that these expenditures were made for the benefit of 11 Poughkeepsie candidates, including the six Republican candidates who ran unopposed.103

c. New York Republican Federal Campaign Committee ("Federal Committee")

Payment in the amount of $9,897.05 was made out of the Federal Committee’s account for Pheiffer’s services in Poughkeepsie.104 The fact that Pheiffer was paid this amount by the Federal Committee was not disclosed anywhere in New York State until April 28, 1986 when the Board of Elections received a disclosure filing signed by Spargo.105

d. Direct Expenditures By Pyramid Companies

In addition to the vast sums flowing from Pyramid-related individuals through one of the three political committees to consulting firms working in Poughkeepsie, the company itself

103 March 23, 1987 letter from Lewis Bart Stone, Esq. to New York State Board of Elections with attachment listing expenditures and a proposed allocation of expenditures among candidates. The language of the proposed allocation is strikingly similar to the language contained in the BBNY proposed allocation.

104 The Federal Committee’s disclosure filing for the period July 1, 1985 through December 31, 1985 includes a payment in that amount to Pheiffer’s firm, Pheiffer/Caldwell Associates, on December 24, 1985 and the purpose of the expenditure is listed as "Consulting - not related to any specific federal candidate."

105 In addition, the Federal Committee reimbursed the RSC for "1985 administrative expenses" in the amount of $20,000 according to a disclosure filing covering the period January 1 through March 31, 1986 and received by the Board on April 28, 1986.
paid consulting firms directly for services in Poughkeepsie. From
October 2, 1985 through July 6, 1987, the Poughkeepsie Galleria
Company and the related Pyramid Company III spent $475,967 for
mixed purposes, i.e., in connection with the campaign and in
connection with image building efforts in the Town of
Poughkeepsie as follows:

<table>
<thead>
<tr>
<th>Entity/Individual</th>
<th>Total Payments</th>
<th>Purposes Of Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campaign Strategies</td>
<td>$386,892</td>
<td>Marketing, Research and Consulting</td>
</tr>
<tr>
<td>Keenan Research &amp; Consulting, Inc.</td>
<td>18,075</td>
<td>Research</td>
</tr>
<tr>
<td>Penn &amp; Schoen Associates, Inc.</td>
<td>22,000</td>
<td>Polling</td>
</tr>
<tr>
<td>Thomas Spargo</td>
<td>49,000</td>
<td>Retainer Fee, Legal Research</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$475,967</strong></td>
<td></td>
</tr>
</tbody>
</table>

Campaign Strategies and the Poughkeepsie Galleria, Inc.
entered into a formal agreement on September 24, 1985 by which
Campaign Strategies would serve as a public image consultant and
advertising agent for the Poughkeepsie Galleria project.
Friedman testified that while much of the important work his firm
performed was campaign-related -- such as polling and analysis
and Friedman's political advice to Ungerer -- he could not
determine with specificity how much was or was not.106

106 Public hearing I tr. at 160-62. Poughkeepsie Galleria, Inc. was subject to the annual limitation on contributions by corporations of $5,000 for all elections. New York Election Law section 14-116.2
At Friedman's suggestion, Pyramid hired Keenan Research and Consulting, Inc. ("Keenan") and paid them over $18,000 for focus group sessions. During these sessions, participants (Poughkeepsie residents who voted in past elections and intended to vote in November) were asked questions about and encouraged to discuss the upcoming elections, the candidates and their own views on various issues. These sessions helped Pyramid and Friedman devise a successful strategy for the Pyramid-sponsored candidates.

Similarly, Penn & Schoen was hired by Pyramid at Friedman's suggestion to conduct polls in Poughkeepsie in September and October, 1985. The polling touched on both the desirability of the proposed Galleria project and attitudes toward Town Board candidates. It is impossible to determine how much of Pyramid's direct $22,000 payment to Penn & Schoen was for campaign-related activities.

While the liabilities for campaign-related services were incurred before Election Day, November 5, direct payments to

107 This firm was also paid for its Poughkeepsie campaign work by the RSC. RSC Disclosure Form dated January 16, 1986.


109 Public hearing I tr. at 119-20. This firm was also paid for Poughkeepsie campaign work by the RSC. RSC Disclosure Form dated January 16, 1986.
vendors from Pyramid were made both before and after that day.

<table>
<thead>
<tr>
<th>Entity/Individual</th>
<th>Pre-Election</th>
<th>Post-Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campaign Strategies</td>
<td>$50,000</td>
<td>$336,892</td>
</tr>
<tr>
<td>Keenan Research Co.</td>
<td>18,075</td>
<td>0</td>
</tr>
<tr>
<td>Penn &amp; Schoen, Co.</td>
<td>22,000</td>
<td>0</td>
</tr>
<tr>
<td>Thomas Spargo</td>
<td>0</td>
<td>49,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$90,075</strong></td>
<td><strong>$385,892</strong></td>
</tr>
</tbody>
</table>

III. The Results Of The Election

Of the four candidates supported by Pyramid, three -- Darrow, DelSanto and Pinckney -- won the election and all three voted in favor of the proposed zoning change, thus providing Pyramid with its margin of victory.

IV. The Board Of Elections Investigation

Shortly after the 1985 Poughkeepsie election, Anna Buchholz, the re-elected Democratic Town Supervisor, complained to the Board of Elections of numerous Election Law violations during the campaign by Spargo, BBNY, RSC and others. One of Buchholz' major allegations was that Spargo had violated the felony provision of the Election Law by setting up BBNY for the

110 Spargo billed Pyramid for professional services rendered beginning on October 2, 1985.
purpose of evading the law's contribution limits. She also alleged that false documents were filed with the Board and that other disclosure provisions had been violated.

The Board of Elections began its investigation early in 1986, initially supervised by Investigator Frank Polsinello, then Chief of the Bureau of Election Law Enforcement and monitored by Donald J. McCarthy, a lawyer who served as Counsel for Enforcement. Joseph Daddario and Richard Tenenini were the lead investigators.

111 Letter from Anna Buchholz to Stanley Zalen dated January 28, 1986 at 2. Election Law section 14-126.4 states:

Any person who shall, acting on behalf of a candidate or political committee, knowingly and willfully solicit, organize or coordinate the formation of activities of one or more unauthorized committees, make expenditures in connection with the nomination for election or election of any candidate, or solicit any person to make any such expenditures, for the purpose of evading the contribution limits of this article, shall be guilty of a Class E felony.


113 Public hearing II tr. at 55-56, 100. In response to Commission subpoenas, Polsinello invoked his constitutional privilege against self-incrimination. Public hearing II tr. at 98, 165.

114 Public hearing II tr. at 167, 191, 198.

115 Public hearing II tr. at 63.
Their first investigative plan, which was approved by Polsinello, called for taking sworn testimony from Spargo, the treasurers of BBNY and RSC, and the contributors to those committees who had any connection with Pyramid. Sometime later, however, Polsinello countermanded the plan and stopped the investigators from interviewing, let alone taking sworn testimony, from the contributors. Polsinello, who is not a lawyer, told the investigators they had no legal right to ask contributors the purpose of their contributions and that such questions would constitute harassment. Polsinello and, later, McCarthy also barred staff interviews of Spargo and the BBNY and RSC treasurers, based on what they said was an unwritten Board policy not to question "targets" of their investigations.

116 Memorandum from Joe Daddario to Chief Polsinello dated March 10, 1986 (Public hearing II, Exhibit 10); Memorandum from Frank D. Polsinello to Donald M. McCarthy dated February 24, 1986 (Public hearing II, Exhibit 7); Public hearing II tr. at 102.

117 Public Hearing II tr. at 73, 76-79, 106-08.

118 Id.

119 Public hearing II tr. at 75-76, 190. Tenenini testified that investigators could question targets with permission from superiors, presumably Board members, but that such permission to question Spargo was never sought. Public hearing II tr. at 76-77.

Daddario and Tenenini were uneasy about dealing with Spargo in the informal manner they did. While they did not know that he was or had been private counsel to Pyramid, they did know that he held a variety of different positions, including counsel to the Senate Election Law Committee and the RSC, and that he was a personal friend of Board members and senior staff. Public hearing II tr. at 93-95, 154-57.
Rather than interview the Pyramid-related contributors, the Board staff sent letters to each of them dated May 7, 1986 requesting copies of the cancelled checks for all political contributions made to New York State candidates and committees from July 15, 1985 through January 15, 1986. On May 9, 1986, Spargo visited Board offices and asked if he could satisfy the Board’s request of the contributors by furnishing copies of the checks himself. With the approval of Polsinello, Daddario agreed to Spargo’s request and notified the contributors that they would not have to provide the information.

Spargo did not provide any checks until 8 months later. In January, 1987, he began to provide copies of checks that ultimately showed $171,000 in contributions from

120 Public hearing II tr. at 74, 110-11; See, e.g., Letter from Joseph Daddario to Robert J. Congel dated May 7, 1986 (Public hearing II, Exhibit 11). Even had this request been promptly complied with, the Board would not have received the contributions made after January 15, 1986.

121 Memorandum from Joseph A. Daddario to Chief Polsinello dated May 9, 1986 (Public hearing II, Exhibit 12; Public hearing II tr. at 110-13). Daddario testified that he did not know how Spargo learned of the May 7, 1986 letter to the Pyramid contributors. Public hearing II tr. at 111.

122 Public hearing II tr. at 112; Memorandum from Joseph A. Daddario to Chief Polsinello dated May 9, 1986. Public hearing II, Exhibit 12.

123 Public hearing II tr. at 113.

124 Spargo’s appearance at the Board two days after the letter - contributors went out, his request to produce copies of their checks, and his ability, eight months later, to produce copies of both sides of their cancelled checks should have (continued...)

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Pyramid-related contributors to RSC and BBNY. The Board found that an additional $10,000 was contributed by Pyramid-related contributors to these two accounts and concluded that those contributors were responsible for total contributions of $181,000. Spargo did not provide copies of the checks totalling $100,000 in contributions to the Federal Committee from Pyramid-related contributors.

The Board itself never uncovered the $100,000 in contributions to the Federal Committee because it never put the contributors, treasurers or Spargo under oath, or even questioned them closely. The Board never uncovered the full $35,000 contributed by Pyramid-related contributors to the RSC housekeeping account because it failed to subpoena that account even after Spargo inadvertently revealed $15,000 which alerted the Board to the fact that Spargo was acting in a representative capacity for the Pyramid contributors.

Included among the checks that Spargo provided in 1987 were three $5,000 checks which, he claimed, should have been deposited in the "housekeeping account" and which he claimed were subsequently transferred to that account. Spargo was never asked or compelled to produce any other Pyramid-related contributions to the "housekeeping account" (Public hearing II tr. at 179-83) and thus was able to keep from the Board the fact that an additional $20,000 was contributed to that account by Pyramid-related contributors.

Public hearing II tr. at 113-14.
Public hearing II tr. at 19.
Id.
had been deposited in it.\textsuperscript{129} In addition, the failure to subpoena the books and records of Pyramid guaranteed that the Board would remain totally ignorant of the over $400,000 in direct Pyramid expenditures in Poughkeepsie. The reasons offered for these omissions -- no legal authority, harassment of contributors, a policy of not questioning targets -- are, in the Commission's view, baseless.

The manner in which the Board conducted its investigation not only resulted in failure to uncover large amounts of Pyramid-related contributions, but it also guaranteed that the Board would not discover the true purpose animating Pyramid's financial sponsorship of the Poughkeepsie elections: the desire to promote secretly the election of Town Board candidates sympathetic to its development plans. The Board totally failed to focus on two critical questions: Were the Pyramid-related contributions to the committees earmarked for particular candidates, that is, were they made with the understanding they would be spent by the committees to assist the candidates in the pivotal Poughkeepsie wards?; and were actions taken, such as the creation of BBNY or the making of expenditures, \textit{for the purpose of} evading the law's contribution limits?

\textsuperscript{129} See footnote 124 above.
Instead of focusing on these two questions, the Board went on an investigative wild goose chase. As described below, the Board’s staff spent months of its scarce investigative resources trying to determine how to allocate the contributions among the Poughkeepsie candidates, only to decide later that the answer to that question was irrelevant.

Early on, the Board decided that in order to determine whether or not actions had been taken for the purpose of evading the contribution limits, they first had to decide whether in fact the contribution limits had been evaded.130 Under their superiors’ direction, Tenenini and Daddario determined that, in order to decide whether the contribution limits had been exceeded, they were required to determine what portion of the Pyramid contributions to the RSC and BBNY were expended on each candidate in Poughkeepsie.131 In short, the only way to make that "allocation [of contributions] is to look at how the committee that receives the money spends its money."132 Months of investigative time was spent on this determination133 while

130 Public hearing II tr. at 171-72. The Board made this decision even though the statute does not require that the contribution limits be evaded, only that certain action be taken for the purpose of evading the limits. Election Law section 14-126.4.

131 Public hearing II tr. at 66-67, 171-72.

132 Public Hearing II tr. at 65.

133 See New York State Board of Elections Report of Investigation by Joseph A. Daddario, Allocation 1985 Campaign (continued...)
the question of intent to evade the contribution limits was ignored.134

Although the investigative plan originally included serving subpoenas for the books and records of the vendors who were paid for campaign-related services,135 in fact, subpoenas were only issued to two vendors, Campaign Strategies and Campaign Technologies. Other vendors received letter requests, at Polsinello's suggestion.136 In addition they informally sought and received from Spargo, rather than from the firms, documentation of the payments to these subcontractors, as well as to other subcontractors identified in Campaign Strategies' records.137

As he had done concerning the political committees' expenditures, Spargo told the Board of Elections investigators

133(...continued)

134 Public hearing II tr. at 176.

135 Memorandum from Joe Daddario to Chief Polsinello dated March 10, 1986 (Public Hearing II, Exhibit 10).

136 Public hearing II tr. at 80-81, 115-16; See Memorandum from Frank D. Polsinello to Donald M. McCarthy dated February 24, 1986 (Public hearing II, Exhibit 7).

137 Public hearing II tr. at 124.
that certain subcontractors' services were provided to 11 Republican candidates in Poughkeepsie.\textsuperscript{138} This had the effect of spreading the contributions from Pyramid-related individuals over a larger number of candidates and thereby lowering the amount of the contribution allocated to any one candidate.

Board of Elections investigators allocated to particular candidates only those expenditures for which the firm providing the service voluntarily produced either its own allocation or an invoice detailing the specific scope of the services.\textsuperscript{139} If they did not receive an invoice, or if Spargo told them the expenditure should be allocated among all 11 candidates, they allocated the expenditure for all 11 candidates,

\textsuperscript{138} For example, Spargo furnished Board of Elections investigators with an invoice from City Imprint Co. of $10,807 and erroneously told them that the firm did printing on behalf of all 11 candidates. The investigators accepted this representation without making further inquiry. Public hearing tr. II at 132-33; New York State Board of Elections Investigative Report by Joseph A. Daddario, Allocation 1985 Campaign Expenses for Building a Better New York Committee ("BBNYC"), dated April 3, 1987 at 3 (Public hearing II, Exhibit 17). Commission inquiry of City Imprint disclosed that the firm provided political brochures only for the four targeted candidates, Darrow, Banner, DelSanto and Pinckney. Similarly, Spargo furnished the Board investigators with invoices from RJF Communications, Richard Fife's company, totalling $15,220.98 and made the same erroneous representation concerning the scope of the purpose of that expenditure. The investigators accepted that representation without consulting Fife, who testified that the campaign was focused on four candidates and that he primarily worked with Pinckney. Public hearing II tr. at 131, New York State Board of Elections Report of Investigation, Allocation 1985 Campaign Expenses For New York Republican State Committee ("NYRSC"), dated April 3, 1987 at 3 (Public hearing II, Exhibit 16); Fife tr. at 27, 34-35.

\textsuperscript{139} Public hearing II tr. at 83, 128-29.
including those who, they knew, ran unopposed. Applying this method, the investigators ended up allocating almost $60,000 of the almost $260,000 in expenditures by the RSC and BBNY to candidates who were in uncontested races and who were not the recipients of the committees' financial support.

After Daddario and Tenenini spent months on this work, McCarthy stopped this misguided effort when he concluded in a legal memorandum to the Board that because the Election Law permitted virtually unlimited contributions to, and expenditures made on behalf of candidates by, committees such as RSC and BBNY, it was not appropriate to attempt to allocate the Pyramid-related contributions among the candidates who benefitted by them.

Further, he incorrectly concluded that because the contribution limits could not have been violated, neither could the felony provision barring certain specified conduct undertaken for the purpose of evading the contribution limits.

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140 Public hearing II tr. at 128-30.


142 Memorandum from Donald J. McCarthy, Jr. dated April 13, 1987 at 2-5.

143 Id. at 4-5.
McCarthy testified before the Commission at a public hearing that the investigators did not attempt to determine whether or not the Pyramid-related contributions had been earmarked because it was "unnecessary, immaterial"\(^ {144}\) and that once contributions were made to an unauthorized or constituted committee, it was not possible or desirable to trace them.\(^ {145}\) The Commission rejects this interpretation. More importantly, the fact that the lawyer who served as the Board's Enforcement Counsel can so read the law dramatizes the urgent need to close this large loophole.\(^ {146}\)

Board of Elections investigators did, however, find some Election Law violations and catalogued them in a long investigative report. They included the committees' failure to file any disclosure statements in Dutchess County; the failure of those who set up BBNY to specify which candidates that multi-candidate committee would be supporting; the RSC's failure to

\(^ {144}\) Public hearing II tr. at 173, 217.

\(^ {145}\) Id. at 217; \textbf{See also} Memorandum from Donald J. McCarthy, Jr. dated April 13, 1987 at 2-4.

\(^ {146}\) Under this interpretation, it would not matter if the Pyramid partners and Spargo \textit{admitted} that they had in fact agreed that the funds contributed to the committees would be used solely for the four candidates and if BBNY and the Federal Committee were established solely for that purpose. The Board would conclude that it could not inquire further into contributors' motives, could not deem the Pyramid contributions as contributions to the candidates who were intended to, and did in fact, benefit, and therefore could not reach the correct conclusion: that the committees were used to get around the $1,000 contribution limit to individual candidates.
report prior to Election Day $35,000 in contributions received before then; BBNY’s failure to file any of its campaign literature with the Board of Elections in either Albany or Dutchess County; and the RSC’s failure to report certain liabilities incurred prior to Election Day.\textsuperscript{147}

However, the Board, without ever interviewing those responsible for disclosure, concluded that its investigation had uncovered no violations warranting criminal prosecution.\textsuperscript{148} What the Board failed to consider was that each of these disclosure violations may well have been pieces in Pyramid’s overall strategy designed to keep Poughkeepsie residents and others in the dark about its role in, and financial stake in the outcome of, the election. Certainly, had these disclosure violations not occurred, the Poughkeepsie electorate would have at least had an opportunity to learn before the election of Pyramid’s massive financial support.

The Board did not announce publicly the violations it found. Instead, the Board issued a two-paragraph public announcement in April 1987 stating that it had closed the matter after a determination that there were no violations warranting

\textsuperscript{147} New York State Board of Elections Report of Investigation by Joseph A. Daddario dated April 3, 1987 (Public hearing II, Exhibit 20).

\textsuperscript{148} Public hearing II, Exhibit 26.
criminal prosecution. The announcement stated that the Board "recognized that there are sections of the law which should be reviewed by the legislature for possible amendment," and directed its staff to work with appropriate legislative committees toward that end. McCarthy sent a memorandum identifying the loophole to the Assembly and Senate Election Law Committees but no action has been taken to close it. At that time and until very recently, the counsel to the Senate Election Law Committee was Thomas J. Spargo.

149 Id.
150 Id.
151 Public hearing II tr. at 173-74, 187-89; Public hearing II tr., Exhibit 25.
CONCLUSIONS AND RECOMMENDATIONS

The Commission's case study of the 1985 Poughkeepsie campaign illustrates that New York's campaign financing laws do not adequately protect the integrity of its electoral process. Robert Congel summarized the situation when he concluded, "You shouldn't be able to do what we [Pyramid] did in Poughkeepsie." We agree. Existing loopholes and weaknesses in the laws are subject to facile manipulation by those with a business or other interest in the outcome of elections. Inadequate disclosure requirements allow such activity to be shielded from public scrutiny and voters to be manipulated. The lack of effective enforcement assures that violators will not be punished and others will not be deterred from similar conduct.

While certain conduct during the Poughkeepsie campaign violated the Election Law, equally serious, in the Commission's view, are those practices that the law allows. This case study vividly illustrates the harmful consequences of such practices and makes a compelling case for much-needed, and inexcusably delayed, reform.

A. **CURRENT LAWS PERMIT CIRCUMVENTION OF CONTRIBUTION LIMITS**

1. **Circumvention By Contributions To Committees**

Pyramid contributors were able to circumvent the contribution limits applicable to contributions to Town Board candidates by making contributions to the RSC, Federal Committee and BBNY, confident that those funds would be applied to the targeted Poughkeepsie Town Board candidates. Rather than contribute money directly to the campaigns of the individual candidates -- in which case the amounts they could have given would have been limited by law to approximately $1,000 per candidate\(^{153}\) -- 18 individuals made contributions totalling more than $300,000 to the three committees. These political committees then expended the funds to advance the campaigns of the candidates in pivotal races who were sympathetic to Pyramid's development plans.

Pyramid and the committees, by a concerted effort, were able to take unfair advantage of the special treatment afforded political committees under the New York Election Law. Under current law, contributions to political party committees and non-authorized multi-candidate committees (sometimes referred to as political action committees, or PACs) such as BBNY, are subject only to an aggregate annual $150,000 limitation for all political

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\(^{153}\) This amount is calculated by applying a formula in the Election Law which requires the multiplication of a dollar amount by the number of voters in the district. New York Election Law section 14-114.1(b).
purposes. By contrast, contributions to individual candidates' committees are subject to much lower limits geared to the office sought by the candidate -- in this case, about $1,000.

The Election Law implicitly recognizes that the goals of a political committee are different from the goals of individual candidates' committees and presumes that political committees will make independent, discretionary expenditures in furtherance of those goals. However, the purpose of the law is defeated and the electoral process sullied if contributors and political committees can scheme to end-run the limits on contributions to particular candidates. In the Commission's judgment, this is precisely what happened in Poughkeepsie.

The Commission has already made recommendations which would close certain aspects of this loophole. For example, the Commission has called for substantial reductions in the amounts that individuals may contribute to party committees and PACS, as well as in the aggregate for political purposes. Similarly, the Commission has already recommended that the amounts these committees may contribute to, or spend on specific candidates, be, for the first time, limited. The need to adopt those recommendations remains urgent.

154 For convenient reference, a summary of all contribution limits previously recommended by the Commission is reproduced as Exhibit 6. (The Midas Touch, Appendix Two.)
Had the Commission's recommended limits been in effect in 1985 in Poughkeepsie, the amounts that the contributors could have spent on the targeted candidates during that campaign would have been decreased. For example, prior Commission recommendations would have limited the amount each Pyramid partner or relative could have given to the RSC (a party committee) to $2,500 - $4,000 per year and to BBNY (a PAC) to $1,500 - $2,000 per year. More significantly, the amounts the RSC and BBNY could have then contributed to or spent on behalf of individual Poughkeepsie candidates would have been limited to approximately $5,000 per candidate (from the RSC) and $1,000 per candidate (from BBNY).

However, even the Commission's proposed limits still would have allowed Pyramid contributors to contribute indirectly to the committees more than they could have contributed directly to the candidates and, if these limits had been in effect, Pyramid could have increased the amounts they could have funneled to the targeted candidates by simply creating a multitude of committees like BBNY. Therefore, lowering the limits is not enough. The issue of earmarking (i.e., making contributions to a committee knowing that those contributions will be used for particular candidates) must be addressed.

Currently, the Election Law does not explicitly treat the question of earmarked contributions and the Board of
Elections ultimately ignored the subject as well. However, if limits on contributions by individuals to particular candidates are to have any meaning, there must be in place a mechanism which discourages individuals from routing contributions through political committees in order to evade those limits.

Under federal law, an earmarked contribution is deemed a contribution to the candidate who is its intended ultimate beneficiary, and therefore subject to the limit on individuals' contributions to that candidate.\textsuperscript{155} The Commission recommends that the Election Law be amended to include a similar provision and that the political committee receiving the earmarked contribution be required to report both the identity of the contributor and the identity of the candidate or candidates for whom it is intended, as in the federal system.\textsuperscript{156}

2. \textbf{Circumvention By "Independent Expenditures"}

Pyramid made almost half a million dollars in direct expenditures to firms for work in Poughkeepsie, an indeterminate percentage of which was campaign-related. These expenditures

\textsuperscript{155} Under federal law, "earmarked" is defined as "a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. section 110.6(b). \textit{See} 2 U.S.C. section 441a(a)(7)(A).

\textsuperscript{156} 11 C.F.R. 110.6(c).
were not disclosed to the Board of Elections and the Board's investigation did not uncover any of them.

Pyramid would argue that such expenditures did not have to be disclosed and cannot be regulated because they were so-called independent expenditures. Current law exempts from disclosure expenditures which are made "independent of the candidate or his agents or authorized political committees," and the Supreme Court has ruled that such so-called independent expenditures cannot be limited in the context of federal law regulating individual donors.

The concerted activities during the 1985 campaign by the Pyramid partners, Paroli and other Poughkeepsie Republican officials, and Spargo and the RSC raise serious questions about whether the Pyramid direct expenditures were in fact "independent" -- none of which were explored by the Board of Elections. For example, Paroli's contacts with Pyramid representatives suggests that, if Paroli were considered an agent

157 The definition of an "independent expenditure" appears in the Election Law section defining "contribution," and goes on to define "independent of the candidate or his agents or authorized political committees" to mean "that the candidate or his agents or authorized political committees did not authorize, request, suggest, foster or cooperate in any such activity..." New York Election Law section 14-100.9(3).

of the candidates, an enforcement agency should have questioned the independence of those expenditures. Moreover, in at least two cases -- payments to Penn & Schoen and to Keenan -- some Pyramid payments were made directly for services which were at least in part campaign-related, and some payments were made through the political committees. An investigation into the "independent expenditures" should have focused on why those different payment methods were employed.

In any event, the agency charged with determining whether or not Pyramid's expenditures were truly independent "of the candidate or his agents or authorized political committees", the Board of Elections, was unable to do so because they knew and were able to learn nothing about them. The current Election Law, by exempting such expenditures from disclosure, virtually assures that the Board will not be in a position to make that determination. By contrast, federal law requires timely reporting of all expenditures greater than $250 which are claimed to be independent159 and that provision has been upheld by the United States Supreme Court.160 The Poughkeepsie case

159 2 U.S.C. section 434(c). Independent expenditure is defined as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. section 431(17).

demonstrates the urgent need for such a provision in New York law.161

B. THE ACTIVITIES OF PYRAMID AND THE POLITICAL COMMITTEES WERE SHROUDED IN SECRECY BECAUSE OF WEAKNESSES IN NEW YORK’S DISCLOSURE REQUIREMENTS

Prior to the election, neither the Poughkeepsie voters nor the sponsored candidates themselves knew that Pyramid was financing the campaigns of four of the Town Board candidates. To some extent, this was the result of violations of existing disclosure requirements by the committees, such as the total failure to file disclosure statements in Dutchess County. However, critical weaknesses and omissions in New York’s disclosure requirements contributed significantly to the shroud of secrecy which obscured both the fact and extent of Pyramid’s involvement in the election.

1. Political Literature And Advertisements Were Produced And Distributed By Pyramid Without Public Knowledge

New York law does not require those financing political advertisements or literature to disclose their identities. Nor is there any requirement that such advertisements or literature reveal whether they are authorized

161 A New York Election Law provision requiring disclosure of independent expenditures need not have a threshold as low as $250. This threshold in the federal law was adopted in the 1970s and has not been changed since then.
by the candidates mentioned. As a result, voters cannot accurately assess the value of this information. Poughkeepsie voters were easily manipulated and victimized by these omissions in the Election Law.

Pyramid paid for and caused to be distributed voluminous campaign literature and advertisements intended to benefit the campaigns of four candidates who were targeted because of their position on Pyramid's proposed mall. However, none of the literature paid for by Pyramid ever mentioned the issue of the mall or Pyramid's involvement in the campaign. Further, the voters had no way of knowing that the candidates themselves had no input into, actual responsibility for, or knowledge of the statements made and ascribed to them in the literature.

Voters are often confronted with a barrage of political literature and advertisements, which are often an effective means of communicating a candidate's position. However, unless the sponsors of such communication are identified, and it is revealed whether the communication is authorized by the candidate it purports to support, the medium can easily be abused and voters misled, as in Poughkeepsie.

Voters must be able to assess the value of political communications. Federal law requires that communications that
expressly advocate the election or defeat of a clearly identified candidate identify the person who paid for the communication and whether the communication was authorized by the mentioned candidate.162 Under current New York law, such so-called "disclaimers" are not required.163 The Poughkeepsie case demonstrates that the absence of a requirement similar in substance to that enacted under federal law encourages misleading campaigning. It is a disservice to both the


163 The 1974 decision in People v. Durvea, 76 Misc. 2d 948, 351 N.Y.S.2d 978 (S. Ct. N.Y. Co.) aff'd 44 A.D.2d 663, 354 N.Y.S.2d 129 (1st Dept. 1974) does not suggest that such a statute would be an unconstitutional infringement of free speech. On the contrary, in holding that a statute requiring attribution of statements made by anyone at any time concerning any candidate or ballot issue was unconstitutionally overbroad, the Durvea court specifically stated that a more narrowly drawn statute would meet First Amendment standards, such as a "statute strictly limited to the activities of campaign organizations." 351 N.Y.S.2d at 993.

Subsequent to Durvea, the Supreme Court of the United States upheld against First Amendment attack the provision of federal law requiring disclosure of independent expenditures for communications "that expressly advocate the election or defeat of a clearly identified candidate," Buckley v. Valeo, 424 U.S. 1, 80 (1976), reasoning that the privacy interests of those who make such expenditures were outweighed by the compelling interest in enforcement of the federal campaign financing laws. Thereafter, the federal provision requiring attribution whenever communications "expressly advocat[e] the election or defeat of a clearly identified candidate," (2 U.S.C. section 441d(a)) has withstood First Amendment attack when the reasoning of Buckley is applied. See, e.g., Federal Election Comm’n v. Furgatch, 807 F.2d 857 (9th Cir. 1987).
candidates and the voting public which seriously threatens the integrity of the electoral process.\textsuperscript{164}

2. Slack Disclosure Laws Deprive The Public of Vital Information

Loopholes and omissions in New York’s laws governing the disclosure of campaign contributions and expenditures severely undercut their effectiveness. Even if the political committees had made the full disclosure in Dutchess County required by the law, significant information pertaining to the financing of the campaigns of Town Board candidates would not have been revealed. Requiring complete and timely disclosure of fundamental campaign financing information is imperative if a voter is to make an informed choice.

Basic and revealing information was not available to the public timely. For example, current law does not require committees to disclose their contributors’ principal place of employment or business affiliation. As a result, examination of the financial disclosure statements filed by the RSC, Federal Committee, and BBNY did not reveal which contributors were affiliated with Pyramid.

\textsuperscript{164} This recommendation was first made in the Commission’s December 21, 1987 Preliminary Report, at page 24, and is reiterated here because of its relevance to the 1985 Poughkeepsie campaign.
Further, the Election Law is vague as to when a contribution is deemed to have been made. As a result, contributors can pledge contributions prior to the election, and committees may then make pre-election expenditures based on such pledges, without having to disclose the contribution until it is received -- in some cases after the election. This ambiguity in the law enabled the political committees to postpone until after the Poughkeepsie election disclosure of substantial contributions which were promised prior to the election either tacitly or explicitly, by Pyramid-affiliated contributors.

The Poughkeepsie investigation also illustrates the need for reform of the laws pertaining to the disclosure of expenditures made by political committees. For example, the Election Law requires political committees to report all expenditures in the form of "liabilities." However, the Board of Elections’ Financial Disclosure Statement requests disclosure of "unpaid bills," allowing political committees to defer reporting expenditures to the extent they can delay the submission of bills by their creditors. Further, the Election Law does not require expenditures made during the twelve days prior to the election to be reported to the Board of Elections

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166 Public hearing II tr. 87-90.
167 Recent Board of Elections staff efforts to amend these forms have been stalled by a 2-2 vote of the Board.
before the election. The RSC, Federal Committee, and BBNY took full advantage of these loopholes.

Additional pertinent expenditure information was withheld from the public because the Election Law requires merely that the purpose of an expenditure be disclosed. Thus, none of the committees disclosed the names of the candidates on whose behalf the expenditures were made. Similarly, the law in effect in 1985 required disclosure of only the name and address of the person to whom the committee made payment; the law did not require disclosure of the ultimate recipient of the expenditure. As a result, the political committees never disclosed the identities of the subcontractors hired by Campaign Strategies, its general contractor, to work on behalf of the Republican candidates in Poughkeepsie.

The 1985 Poughkeepsie election makes a compelling case for the following disclosure recommendations, some of which have been included in earlier Commission reports:

1. Contributors must disclose their principal place of employment, by name and address, as well as their home address, for contributions over $100 (Preliminary Report at 21);

168 Following a recommendation in the Commission’s 1987 Preliminary Report, the Board, by regulation, began to require disclosure of the ultimate recipients of expenditures. 9 N.Y.C.R.R. section 6200.3(d), promulgated August 22, 1988, effective February 1, 1989.
2. A contribution must be deemed to have been made when it is pledged. Contributions pledged prior to the election must be reported to the enforcement agency prior to the election;

3. Candidates and committees must report each liability incurred during the filing period;

4. During the twelve days prior to the election, each contribution received which equals or exceeds $1,000, and each expenditure made or liability incurred which equals or exceeds $5,000, should be reported (i.e., received by the enforcement agency) within 24 hours of the receipt of the contribution, the making of the expenditure, or the incurring of the liability (Preliminary Report at 23);

5. The specific purpose of each expenditure or liability, its amount, and the candidate(s) it is intended to benefit must also be disclosed (Preliminary Report at 22);

6. Disclosure filings by all candidate committees should be made on a monthly basis in election years, and on a quarterly basis in all other years. A party committee or PAC supporting more than one candidate should be required to report in accordance with the campaign cycle of each of the candidates it supports (Preliminary Report at 22).

Implementation of each of these recommendations will insure timely and meaningful disclosure. Further, taken as a whole, these reforms will make it far more difficult to conceal or delay the disclosure of vital campaign finance information.

169 Splitting contributions or expenditures in order to avoid pre-election disclosure should be prohibited.
C. THE BOARD OF ELECTIONS LACKS THE RESOURCES AND INDEPENDENCE TO MONITOR COMPLIANCE WITH CAMPAIGN FINANCING LAWS

During its sixteen-month investigation of the 1985 Poughkeepsie Town Board election, the Board of Elections did not vigorously pursue all the facts. The Board failed even to follow the investigative plan devised by its own investigators. Because of investigative steps not taken, the Board failed to uncover the extent of Pyramid's involvement in the campaign as well as underlying evidence which could have substantiated the existence of a scheme to evade the campaign financing laws. Moreover, the Board summarily dismissed as "technical" a pattern of disclosure violations substantiated by its investigation. In so doing, the Board totally missed the forest for the trees: the concerted effort to evade the contribution limits.

Each of these failures can be attributed, at least in part, to institutional weaknesses which render the Board as currently constituted ill-equipped to enforce New York's campaign financing laws. The majority of the Board's meager resources are spent on the administration of elections. As a result, the campaign financing enforcement staff is overburdened and any initiative they show easily stifled. Further, computerization of campaign financing information was not in 1985 and still is not, a reality at the Board.
Most importantly, the Board is not independent. It is a political body whose members are chosen by the Governor from a pool of nominees selected by high-ranking party officials. The Board and its staff also has numerous dealings with the election committees of the legislature and, as in this case, those committees can be represented by someone who also holds a party position and represents private interests. The dependence of the Board on the parties cripples its autonomy; it has a chilling effect which discourages enforcement.

The Poughkeepsie case exemplifies this problem. The Board did not vigorously and thoroughly pursue allegations against Spargo. Spargo was never interviewed or deposed by the Board during the course of its investigation; nor were his clients, the Pyramid partners, or their subcontractors. Instead, the Board relied upon Spargo's unsworn, incomplete, uncorroborated, and sometimes false factual assertions.

The Commission's prior recommendations concerning changes in the mechanism for enforcing the campaign financing laws are dramatically highlighted by the Poughkeepsie case. As early as December, 1987, in the first section of the Commission's first report, the Commission called for the establishment of a new, independent Campaign Finance Enforcement Agency, selected by an independent nominating commission to
insure the agency's political independence and integrity. In June, 1989, the Commission revisited that recommendation, suggesting that if the establishment of a completely new agency was fiscally impossible, that the Board be radically reorganized to create a separate Office of Campaign Finance with the independence, resources and sense of mission necessary to do the job. In light of the Poughkeepsie case, the Commission forcefully reiterates its June, 1989 recommendations and its comment of more than two years ago: "unless there is independent enforcement ..., New Yorkers will not realize the

171 The Midas Touch at 23-25.
benefits of other campaign financing reforms, however well-
considered and wide-ranging."172

Dated: New York, New York
June 1990

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

John D. Feerick
Chairman

Richard D. Emery
Patricia M. Hynes
James L. Magavern
Bernard S. Meyer
Bishop Emerson J. Moore
Cyrus R. Vance

The Commission gratefully acknowledges the pro bono
litigation support of the law firms of Simpson, Thacher &
Bartlett and Meyer, Suozzi, English & Klein which was essential
to bring this investigation and report to fruition.

NOTE: Commissioner Magavern did not participate in the
investigation or deliberations concerning this report.

Exhibits
<table>
<thead>
<tr>
<th>WARD</th>
<th>CANDIDATE STATUS</th>
<th>NAME</th>
<th>PARTY AFFILIATION</th>
<th>PRE-ELECTION PUBLIC POSITION ON MALL</th>
<th>CANDIDATE ELECTED</th>
<th>VOTE ON ZONING CHANGE</th>
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</thead>
<tbody>
<tr>
<td>FIRST</td>
<td>Incumbent</td>
<td>Garrity</td>
<td>Democrat</td>
<td>Against</td>
<td>Darrow</td>
<td>For</td>
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<tr>
<td></td>
<td>Challenger</td>
<td>Darrow</td>
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<td>Against</td>
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<td>Bodo</td>
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<td>For</td>
<td>Bodo</td>
<td>For</td>
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<tr>
<td></td>
<td>Challenger</td>
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<td>N/A</td>
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<td>FOURTH</td>
<td>Incumbent</td>
<td>Babiarz</td>
<td>Democrat</td>
<td>For</td>
<td>DelSanto</td>
<td>For</td>
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<td>DelSanto</td>
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<td>For</td>
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<td>FIFTH</td>
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<td>Tedone</td>
<td>Republican</td>
<td>For</td>
<td>Tedone</td>
<td>For</td>
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<tr>
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<td>N/A</td>
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<td>Republican</td>
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<td>For</td>
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<tr>
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<td>Challenger</td>
<td>Zeleznik</td>
<td>Democrat</td>
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<td></td>
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<td>SUPERVISOR</td>
<td>Incumbent</td>
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<td></td>
<td>Challenger</td>
<td>Dwan</td>
<td>Republican</td>
<td>For</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT 2

WEEK OF SEPTEMBER 30

POLLING

*Baseline poll in three targeted wards.

RESEARCH

*Issue research to be provided to us.
WEEK OF OCTOBER 6

DIRECT MAIL

* Town-wide generic mailing I to all Republicans, Independents, and Conservatives.

* Bio piece I for Darrow, Banner, Pinckney.

* Issue Piece I in Wards I, II, VI.

DOOR-TO-DOOR

* Door-to-door in key precincts (precincts picked in advance).

OPTIONAL

* Dwan mailing I
WEEK OF OCTOBER 13

ADVERTISING
*Generic Republican radio begins.

DIRECT MAIL
*Bio piece II for Darrow, Banner, Pinckney.
*Issue piece II in Wards I, II, VI.
*Town-wide generic mailing II to all Republicans, Independents and Conservatives.

DOOR-TO-DOOR
*Continued door-to-door in key precincts.

OTHER VOTER CONTACT
*Phone canvass to determine issue preference begins in Wards I, II, VI. Personal letters follow on key issues.

POLLING
*First tracking poll in three key wards.
*Town-wide poll to test Dwan.

OPTIONAL
*Possible Dwan mailing II.
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADVERTISING</strong></td>
<td>*Generic Republic radio continues.</td>
</tr>
<tr>
<td><strong>DIRECT MAIL</strong></td>
<td>*Issue piece III in Wards I, II, VI.</td>
</tr>
<tr>
<td></td>
<td>*Generic mailing III to all Republicans, Independents and Conservatives.</td>
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<tr>
<td><strong>DOOR-TO-DOOR</strong></td>
<td>*Repeat visits begin precincts based on canvass and polling.</td>
</tr>
<tr>
<td><strong>OTHER VOTER CONTACT</strong></td>
<td>*Phone canvass on key issues continues. Personal letters follow.</td>
</tr>
<tr>
<td></td>
<td>*Phone canvass in key wards to identify Darrow, Banner, Pinchney voters.</td>
</tr>
<tr>
<td></td>
<td>Follow-up with thank you mail to favorables and persuasion to undecideds.</td>
</tr>
<tr>
<td><strong>POLLING</strong></td>
<td>*Second tracking poll in Wards I, II, VI.</td>
</tr>
<tr>
<td><strong>OPTIONAL</strong></td>
<td>*Possible Dwan mailing III.</td>
</tr>
</tbody>
</table>
WEEK OF OCTOBER 27

ADVERTISING

*Generic Republican radio.

DIRECT MAIL

*Negative mail I - on Darrow, Banner, Pinckney opponents.

*Town-wide generic mailing IV to all Republicans, Independents, Conservatives.

*Negative mailing II - on Darrow, Banner, Pinckney opponents.

*Wrap-up positive pieces for Darrow, Banner, Pinckney.

DOOR-TO-DOOR

*Repeat visits continue.

OTHER VOTER CONTACT

*Continue phone canvass, for favorables and re-check of favorables. Follow-up with thank you letters.

*Second personalized "friend" letter.

POLLING

*Third tracking poll in key wards.

GET OUT THE VOTE

*Get out the vote phone calls begin.
<table>
<thead>
<tr>
<th>Issue Research to Be Provided to Us</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Town-wide generic mailing I to all Republicans, Independents, and Conservatives. Door to door in key precincts (picked in advance) Deep mailing I</td>
</tr>
<tr>
<td>7. Bio piece I for Darrow to Stark, Pinckney, and all voters in wards I, II, IV.</td>
</tr>
<tr>
<td>8. Issue piece II in wards I, II, IV.</td>
</tr>
<tr>
<td>10. Bio piece II for Darrow, Pinckney, and all voters in wards I, II, IV. Continue door to door in key precincts Phone canvass to determine issue preferences in wards I, II, IV.</td>
</tr>
<tr>
<td>11. Personal letters follow on key issues</td>
</tr>
<tr>
<td>12. First tracking poll in key wards; town-wide poll to test Dean. Possible Dean mailing II</td>
</tr>
<tr>
<td>15. Tracking poll in key wards. Possible Dean mailing III. Repeat visits begin to selected precincts.</td>
</tr>
<tr>
<td>16. Pinckney votes follow with thank you to favorable; negative mailing II. Wrap-up piece on Darrow, et al.</td>
</tr>
<tr>
<td>17. Generic Rep. radio continues</td>
</tr>
<tr>
<td>18. Negative mailing II.</td>
</tr>
<tr>
<td>20. Continue phone canvas for favorables and re-check of avorables; follow-up with thank you letters.</td>
</tr>
<tr>
<td>22. Get out vote phone calls.</td>
</tr>
<tr>
<td>23. ELECTION DAY</td>
</tr>
<tr>
<td>24. Get out vote phone calls.</td>
</tr>
<tr>
<td>25. Can't.</td>
</tr>
</tbody>
</table>
### LEGEND

- **NYRSC**: New York Republican State Committee
- **NYRFCC**: New York Republican Federal Campaign Committee
- **BBNY**: Building a Better New York
- **H**: Housekeeping Account

### CONTRIBUTIONS FROM 19 PYRAMID RELATED INDIVIDUALS

<table>
<thead>
<tr>
<th>CONTRIBUTOR</th>
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<td>1/10/86</td>
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<tr>
<td>Falcone, Michael J.</td>
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<td>11/19/85</td>
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<td>Hollings, Donald W.</td>
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<td>Kenan, Bruce</td>
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<td></td>
<td>10/21/85</td>
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<td>Lugosch, Daniel, J. III</td>
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<td>Hollings, Sheilah R.</td>
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<td>Kenan, Linda</td>
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<td>Leveen, Zayne</td>
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<td>5,000</td>
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<td>5,000</td>
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<td>1/09/86</td>
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<td>5,000</td>
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<td>$301,050</td>
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</table>

MB/hpk
New York Republican State Committee

MEMORANDUM

December 26, 1985

TO: LEWIS R. STONE, TREASURER
FROM: EDWARD S. LURIE, EXECUTIVE DIRECTOR
RE: CAMPAIGN EXPENSES—TOWN OF POUGHKEEPSIE

On December 16th we sent down seven checks totalling $35,000.

These checks were secured through Tom Spargo. According to Tom, the following bills should be paid from these monies:

1. Visual World Systems, Inc. $ 418.22
2. Michael Kelly 740.00
3. Brian Whittell 270.00
4. Eden Personnel 4,511.69
5. Dave-El Livery 708.90
6. Digisoft Computers, Inc. 2,600.00
7. Kennan Research & Consulting, Inc. (consulting) 3,000.00
8. Design Communications 1,520.91
9. Penn & Schoen (polling) 20,000.00

Total 33,769.77

000450
Campaign Strategies

Date: NOVEMBER 4, 1985

Customer: BUILDING A BETTER NEW YORK COMMITTEE

Invoice No: BANY-007

BUILDING A BETTER NEW YORK COMMITTEE
P.O. BOX 7232
ALBANY, NEW YORK 12224

CONSULTING SERVICES

DEBT AND PAYABLE $125,000
November 15, 1985

Bruce Kenan
Phil Friedman

Memorandum

Bills for Republican State Committee

Enclosed are four (4) additional bills for the Republican State Committee.

Because Federal Express' ZapMail sends both an original and a copy, you have received some duplicates in the past. To make sure you are now clear on this I am providing this overall list of bills forwarded to you for payment by the Republican State Committee:

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>PURPOSE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shelley R. Nyman</td>
<td>Design</td>
<td>$1,050.00</td>
</tr>
<tr>
<td>Baker Johnson</td>
<td>Design</td>
<td>$13,970.00</td>
</tr>
<tr>
<td>Slater Hanft Martin</td>
<td>Radio Production</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>Michael Kelly</td>
<td>Shipping</td>
<td>$1,909.00</td>
</tr>
<tr>
<td>Surrey Cadillac</td>
<td>Shipping</td>
<td>$1,903.15</td>
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<tr>
<td>Camera Five</td>
<td>Photography</td>
<td>$2,211.08</td>
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<tr>
<td>Penn &amp; Schoen</td>
<td>Polling</td>
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<td>Design Communications</td>
<td>Design</td>
<td>$1,520.91</td>
</tr>
<tr>
<td>VENDOR</td>
<td>PURPOSE</td>
<td>AMOUNT</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------</td>
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<tr>
<td>Hamilton Associates</td>
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<td>Hamilton Associates</td>
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<td>Campaign Technology</td>
<td>Voter Canvassing</td>
<td>10,700.00</td>
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<td>Brian Whitehill</td>
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<td>Eden Personnel</td>
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<td>4,511.69</td>
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<tr>
<td>Dev-El</td>
<td>Shipping</td>
<td>708.95</td>
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<tr>
<td>Digisoft</td>
<td>Mailing</td>
<td>2,600.00</td>
</tr>
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</table>

We have checked with Western Union, and the Republican State Committee will be receiving a refund in the amount of $2,535.80. This will be sent directly to the 315 State Street address in Albany.
## Commission's Recommended Contribution Limits

<table>
<thead>
<tr>
<th>Category of Contributor</th>
<th>Recipient of Contribution</th>
<th>Proposed Limit</th>
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</thead>
<tbody>
<tr>
<td><strong>CORPORATIONS, UNIONS</strong></td>
<td><strong>TOTA LLY PROHIBITED</strong></td>
<td></td>
</tr>
<tr>
<td>and anyone doing business with government.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>INDIVIDUAL</strong></td>
<td>Candidate for Statewide Office</td>
<td>$2,500 - $4,000 per election</td>
</tr>
<tr>
<td>[$25,000 per year]</td>
<td>Candidate for Senate/Assembly</td>
<td>$1,500 - $2,000 per election</td>
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<tr>
<td></td>
<td>Candidate for Local Office</td>
<td>Citywide Office, New York City: $2,500 - 4,000 per election</td>
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<tr>
<td></td>
<td></td>
<td>All other city/county: $1,000 - $2,000 per election</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Town/Village/other: $500 - $1,000 per election</td>
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<tr>
<td></td>
<td>PAC</td>
<td>$1,500 - $2,000 per year</td>
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<tr>
<td></td>
<td>Party Committee</td>
<td>$2,500 - $4,000 per year</td>
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*Aggregate limit is the maximum any contributor can give per year for political purposes to all candidates, party committees and PACs.*
<table>
<thead>
<tr>
<th>Category of Contributor</th>
<th>Recipient of Contribution</th>
<th>Proposed Limit</th>
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</thead>
<tbody>
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<td>3. PAC</td>
<td>Candidate for Statewide Office</td>
<td>$2,500 - $4,000 per election</td>
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<tr>
<td></td>
<td>Candidate for Senate/Assembly</td>
<td>$1,500 - $2,000 per election</td>
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<tr>
<td></td>
<td>Candidate for Local Office</td>
<td>Citywide Office, New York City: $2,500 - $4,000 per election</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All other city/county: $1,000 - $2,000 per election</td>
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<tr>
<td></td>
<td></td>
<td>Town/Village/other: $500 - $1,000 per election</td>
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<tr>
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<td>Party Committee</td>
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<tr>
<td>4. Party Committee</td>
<td>Any Candidate</td>
<td>5 times limit on contribution from an individual</td>
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<tr>
<td>[No aggregate limit]</td>
<td>Another Party Committee</td>
<td>Same as contribution from an individual to party committee</td>
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<tr>
<td></td>
<td>Party Committees</td>
<td>Same as contribution from an individual to that candidate</td>
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<td>5. Individual Candidates' Committees</td>
<td>Other Candidates</td>
<td>Same as contribution from an individual to party committees</td>
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<td>[No aggregate limit]</td>
<td>Party Committees</td>
<td>Same as contribution from an individual to party committees</td>
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Appendix
Pyramid-Related Contributions and Expenditures for the 1985 Town Board Elections and the Poughkeepsie Galleria

Total Contributions and Expenditures $776,967.

Campaign Contributions from 18 Pyramid-Related Individuals $301,000.
- N.Y. Republican State Committee $126,000.
- N.Y. Republican State Committee $100,000.
- Federal Campaign Committee $31,500
- Total $226,000.

Expenditures by Pyramid-Related Companies $475,967.
- Building a Better New York Committee $75,000.
- Campaign Strategies, Inc. $386,892.
- Attorneys' Fees $49,000.
- Polling and Research Fees $40,075.

Total Contributions and Expenditures from 18 Pyramid-Related Individuals $301,000.
- N.Y. Republican State Committee $126,000.
- N.Y. Republican State Committee $100,000.
- Federal Campaign Committee $31,500
- Town of Poughkeepsie Republican Committee $31,500.
- Building a Better New York Committee $75,000.
- Campaign Strategies, Inc. $386,892.
- Attorneys' Fees $49,000.
- Polling and Research Fees $40,075.

Additional Expenditures Related to Either the Town Board Elections or the Poughkeepsie Galleria: $475,967.

Total Expenditures Related to the Town Board Elections: $267,245.
## REPORTS ISSUED

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<td>17.</td>
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