UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN LIU and FRIENDS OF JOHN LIU,

Plaintiffs,

-against-

THE NEW YORK CITY CAMPAIGN FINANCE BOARD, ROSE GIL HEARN, and THE CITY OF NEW YORK,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

No. _____

Plaintiffs John Liu and Friends of John Liu, by their attorneys, Emery Celli Brinckerhoff & Abady LLP, for their Complaint against Defendants The New York City Campaign Finance Board, Rose Gil Hearn, and The City of New York, allege as follows:

PRELIMINARY STATEMENT

1. When John Liu declared his candidacy for Mayor of New York City in 2013, he was in the fourth year of a stunningly successful term as Comptroller. He was praised in the press for his "dogged oversight" of the City's finances. Juan Gonzalez, *Controller John Liu Has Saved Taxpayers Millions of Dollars*, New York Daily News, Oct. 9, 2013. As Comptroller, Liu saved New York City billions of dollars through auditing and contractor reviews.

2. In March 2013, Liu, the first Asian-American to win a major elected office in the City, formally announced his campaign for New York Mayor.

3. His announcement was no surprise. By July 2011, nearly two years before the New York City mayoral election, Liu had raised $1.5 million in contributions. Many of his donations came from Asian-Americans, drawn to the possibility of making him the City's first Asian-American mayor.

4. But Liu's political operation, and with it his future, was crippled on August 5, 2013, when the New York City Campaign Finance Board (the "Board" or "CFB") decided to withhold $3.8 million in public financing from his mayoral campaign.

5. Board Chairman Rev. Joseph Parkes rationalized the Board's decision to withhold the money by pointing to what he called "potential violations" of campaign finance rules.

6. As the campaign and the Board both knew at the time, the Board's arbitrary decision amounted to a "death sentence" for Liu's mayoral candidacy.

7. Liu was denied the opportunity to compete on an even playing field with the other mayoral candidates, and his reputation was irreparably damaged.

8. On September 10, 2013, Liu lost the Democratic primary race, with 7 percent of the vote.

9. A few months later, in the last days of his term as mayor, then-Mayor Michael Bloomberg appointed Rose Gil Hearn to chair the Campaign Finance Board.

10. The appointment was and is illegal, because Bloomberg failed to follow the necessary procedures established by law for appointing the Board's chairperson. Although New York City law explicitly requires the mayor to "consult" the speaker of the New York City Council before appointing the Board's chairperson, Bloomberg refused to consult then-Speaker Christine Quinn about Hearn's appointment. Instead, on his last day as Mayor, Bloomberg appointed Hearn by fiat.

11. Hearn's appointment violated the applicable New York City Charter provision requiring the Mayor to consult with the Speaker of the City Council before appointing the Chair of the CFB. *See* Admin. Code of the City of New York § 3-708(1). She was appointed

summarily, circumventing the selection process mandated by law and that had been used to appoint past Chairs.

12. This suit challenges the constitutionality of a campaign finance system that strikes at the heart of voters' rights to choose their municipal leaders. Sadly, the New York City Campaign Finance system was once hailed as a nationwide model, but it has devolved into a nitpicking, imperious bureaucracy, now chaired by a political appointee who was illegally installed by the outgoing mayor. The current system allows five unelected appointees—three chosen by the Mayor and two by the City Council Speaker—to wield staggering influence over the democratic process in New York City. Under this system, the Board can—and in this case, did—determine the fate of a viable electoral campaign on the basis of conjecture, innuendo, and unproven allegations. Under the current campaign finance system, just three CFB Board members, virtually unfettered by any rules or norms, can fatally cripple a political campaign. These volunteer arbiters of our municipal democracy are politically selected, generally unknown to the public, and insulated from any democratic or (as a practical matter) judicial oversight. The most recent Board member, Rose Gil Hearn—the newly appointed chair of the CFB who will direct the Board's action in response to this lawsuit—was illegitimately appointed to her office.

13. New York's public financing system violates the First and Fourteenth Amendments of the United States Constitution by vesting the Campaign Finance Board staff and appointed members with sweeping discretion and virtually no standards to guide the exercise of that discretion. In John Liu's case, it eviscerated years of planning and effort by a candidate and his supporters who had invested their aspirations, hopes, and hard work in his political future.

14. John Liu was treated differently than other candidates who have been suspected of violating campaign finance laws: His campaign was crippled before it got off the ground, while

other candidates have been permitted to use public funds to compete on an equal footing, paying fines or other penalties only after the Board's post-election final audit.

15. Hearn's illegitimate appointment further ensures that any subsequent Board action regarding Liu—or any other party appearing before the Board—will be unlawful.

16. This complaint, arising from the City's unconstitutional policies and the Board's unlawful acts, seeks compensatory and punitive damages, costs, disbursements, and attorneys' fees pursuant to applicable federal civil rights laws.

PARTIES

17. Plaintiff John Liu is a citizen of the United States and a resident of New York, New York. He served as New York City Comptroller from 2010 to 2013. He was a "participating candidate" under New York City Administrative Code § 3-702(1) for the 2013 New York mayoral election.

18. Plaintiff Friends of John Liu is the authorized committed designated by John Liu, pursuant to New York City Administrative Code § 3-703(e), to conduct fundraising efforts with respect to John Liu's mayoral campaign.

19. Defendant City of New York ("City") is a municipality organized and existing under the laws of the State of New York. At all times relevant hereto, Defendant City, acting through the Campaign Finance Board (the "CFB" or "Board"), was responsible for the policy, practice, supervision, implementation, and conduct of all CFB matters, and was responsible for the appointment, training, supervision, and conduct of all CFB personnel. In addition, at all relevant times, Defendant City was responsible for the promulgation and enforcement of the rules of the CFB and for ensuring CFB personnel's obedience to the laws of the United States and of the State of New York.

20. Defendant New York City Campaign Finance Board is an independent city agency tasked with administering the Campaign Finance Program. The Board operates pursuant to the Campaign Finance Act, which is codified at New York City Administrative Code §§ 3-701, *et seq.* (the "Act" or "CFA").

21. Section 3-708 of the Act created the CFB. *See also* New York City Charter Ch. 46, § 1052 . That section also details the composition of the Board and the appointment process for its members. The Act specifically grants the CFB, in its sole discretion, "the authority to promulgate such rules and regulations and provide such forms as it deems necessary for the administration of this chapter."

22. Defendant Rose Gil Hearn is the putative Chair of the CFB. Upon information and belief, she has been serving as an active member and the Chair of the Board since approximately December 31, 2013. She is named here in her official capacity only.

JURISDICTION AND VENUE

23. This case arises under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. This Court has original subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) because Plaintiffs' claims arise under a law of the United States and seek redress of the deprivation, under color of State law, of rights guaranteed by the Constitution of the United States.

24. This Court possesses supplemental jurisdiction over Plaintiffs' claims arising under New York State law pursuant to 28 U.S.C. § 1367(a) because those claims are so related to Plaintiffs' federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

25. Plaintiffs have complied with the requirements of New York General Municipal Law Section 50-i by serving on the Office of the Comptroller of the City of New York notices of claim on November 1, 2013. More than 30 days have elapsed since Plaintiffs served those notices of claim and no offer of settlement has been made.

26. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY TRIAL DEMAND

27. Plaintiffs demand trial by jury in this action.

FACTUAL ALLEGATIONS

I. The New York City Campaign Finance System

A. The Matching Funds System

28. The CFB is a nonpartisan City agency responsible for administering the Campaign Finance Act, including its public "matching funds" system.

29. Among other provisions, the Act requires all candidates to file financial disclosure statements detailing contributions to and expenditures by their campaigns; comply with contribution limits; and respond to inquiries from the Board seeking to verify compliance with CFA obligations.

30. The Act also provides for a public financing system in which candidates for elective office in New York City have the option of participating. Under the program, the CFB authorizes the payment of public funds to the candidate's "principal committee," i.e. an authorized committee designated by the candidate to conduct fundraising efforts, to cover qualified campaign expenses.

31. Under the Act, a candidate's principal committee "shall" receive six dollars of public money for each dollar in "matchable" private contributions the candidate receives. Matching funds are limited $1,050 in public funds per contributor, and are also subject to statutorily determined aggregate maximum payouts depending on the type of election.

32. A contribution is considered "matchable" if it is made by an adult individual New York City resident and satisfies various additional requirements. The definition of a "matchable contribution" is codified at § 3-702(3) of the Act.

33. The Act and the Board's rules impose numerous restrictions on which contributions may be matched with public funds. For example, the contributor must be an individual over eighteen years old; only contributions up to $175 are matchable; the contributor's reported address must be a residential address within New York City; the campaign must provide complete disclosure statements with respect to contributions for which matching funds are sought; contributions must not be made later than December 31 of the election year; for contributions totaling more than $99, the campaign must report the contributor's occupation, employer, and business address; and contributions must be paid by the reported contributor and not reimbursed by anyone else. Contributions also may not exceed legal contribution limits.

34. Campaigns are required to keep records sufficient to verify compliance with the Act, including the requirements for matching fund disbursement.

35. For example, candidates must maintain a photocopy of each check or other monetary instrument representing a contribution. For each cash and money order contribution received, candidates are required to maintain "a separate written record" (also referred to as a "contribution card") containing the contributor's name and residential address, the amount of the contribution, and the name of the candidate's authorized committee. This record must be signed

and dated by the contributor, who must also affirm that the contribution is being made from his or her personal funds and is not being reimbursed.

B. Eligibility Determinations

36. To be eligible for optional public financing, a candidate must file a written certification accepting and agreeing "to comply with the terms and conditions for the provision of [public] funds."

37. The Board's Rules state that the Board has discretion to determine whether a candidate "has met all eligibility requirements of the Act" and CFB rules. Under Board Rule 5-01(a)(1), no public matching funds may be paid out unless the Board has made such a determination.

38. Board Rule 2-02, entitled "Breach of Certification," lists five activities that the Board considers to be "fundamental breaches" of a participant's certification. These include the submission of a disclosure statement that the campaign "*knew or should have known* included substantial fraudulent matchable contribution claims," as well as any submission of substantial information that the campaign "*knew or should have known* was false, or the submission of substantial documentation which the participant or limited participant *knew or should have known was fabricated or falsified*, which would avoid a finding of violation or public funds repayment determination." (Emphasis added).

39. Board Rule 5-01(f) lists a series of reasons that may be the basis for an ineligibility determination by the Board. The list is expressly non-exhaustive.

40. Rule 5-01(f)(1) permits the Board to deem a candidate wholly ineligible for public financing "if there is reason to believe that the participant has committed a violation of the Act or these Rules."

41. Rule 5-01(f)(7) permits the Board to deem a candidate wholly ineligible for public financing "if the participant or an agent of the participant has been found by the Board to have committed fraud in the course of Program participation or to be in breach of certification pursuant to Rule 2-02."

42. The Board has unbridled discretion in interpreting and applying these Rules.

II. The Board's Penalty Schedule and Historical Practice

A. The Penalty Guidelines

43. Section 3-711 of the New York City Administrative Code requires the CFB to "publish a schedule of civil penalties for common infractions and violations, including examples of aggravating and mitigating circumstances that may be taken into account by the board in assessing such penalties."

44. These penalty schedules are supposed to guide the CFB staff in making its recommendations to the Board. Neither the schedules nor the staff's recommendations are binding on the CFB, and the Board reserves for itself the right to deviate from the guidance.

45. For example, the 2013 penalty schedule, described as "baseline penalties," states that "CFB staff recommendations may depart from the baseline amounts if there are aggravating or mitigating circumstances or if the total amount of penalties is disproportionate to the size of the campaign." Guidelines for Staff Recommendations for Penalty Assessments for Certain Violations, 2013 Elections ("2013 Penalty Schedule"). It further states that the Board "may assess penalties that are higher or lower than the staff's recommendations." *Id.*

46. In 2013, the baseline penalty for failing to demonstrate compliance with cash receipts reporting and documentation was 25% of the difference between the amount reported and the amount received.

47. The 2013 baseline penalty for failing to report the intermediary for each contribution delivered or solicited by an intermediary or failing to provide a signed intermediary affirmation statement for each intermediated contribution was $100 per intermediary.

48. In cases of fraud, the 2013 penalty schedule allowed the Board to assess "a penalty of up to $10,000 per violation," but it further noted that the Board "may also require the candidate to return all public funds previously received pursuant to a finding of breach of certification." 2013 Penalty Schedule.

49. The penalty schedule listed three violations considered to be a "fundamental breach" of a candidate's obligations, which could require the return of all public funds: (1) submitting a disclosure statement that the candidate *knew or should have known* contained a fraudulent claim for matching funds; (2) using public funds to reimburse campaign expenses that the candidate *knew or should have known* were fraudulent; and (3) submitting to the CFB information or documents that the candidate *knew or should have known* was false or fabricated. 2013 Penalty Schedule.

50. After the Board has made a determination and/or assessed a penalty, it must, pursuant to CFA § 3-710.5(ii)(b), inform the campaign or candidate of its right to challenge the determination in New York State Supreme Court pursuant to Article 78 of the New York Civil Practice Law and Rules.

51. A petitioner challenging an agency's determination pursuant to Article 78 is limited to raising the following questions: (i) whether the administrative body or officer failed to perform a required duty; (ii) whether the administrative body or officer proceeded without jurisdiction; (iii) whether the determination in question was made in violation of lawful

procedure, or affected by error of law, or was arbitrary and capricious or an abuse of discretion; or (iv) whether the determination, if made after a hearing, was supported by substantial evidence.

52. The petitioner bears the burden of proof; agencies, boards, and public officials are presumed to act in accordance with the law.

B. Historical Practice

53. Historically, in many instances when the Board has found that a campaign violated the Act, it has permitted the campaign's overall participation in the matching funds program to continue while imposing a monetary penalty in proportion to the campaign's proven misconduct. Even where the Board has deemed a candidate wholly ineligible for public financing as a result of proven, egregious misconduct, it has often made such determinations only years after the election, after it has had sufficient time to conduct thorough and considered fact-finding.

54. In cases where alleged criminal conduct is involved, the Board has in some instances permitted such candidates to continue their participation in the matching funds program until a criminal conviction has issued *and* been affirmed on appeal, at which point the Board may require the campaign to refund public matching funds.

55. Even in cases where the Board has found that a candidate breached his or her certification under Board Rule 2-02 or has otherwise deemed a candidate ineligible for public funds, it has in some instances paid out matching funds (minus any invalidated claims) and allowed the candidate to participate fully in an election, requiring that the offending campaign repay the money only after the election.

56. In the past, the Board has alleged or found that various candidates engaged in serious violations of the Campaign Finance Act prior to the elections for which they were

candidates. Rather than refusing to provide any public funds, the Board has continued to release public matching funds, so that the candidate has the equal ability to compete for the position in question. After the election—often years later—the Board conducts a final audit. At that point, if it finds definitively that violations have occurred, it has sometimes, but not always, required the campaigns to pay back all public funds they received.

57. The Board has permitted candidates to receive public funds, even in the face of violations that are alleged or confirmed prior to the election, in many instances. For example:

Sheldon Leffler

58. Over a year before the 2001 citywide election, the CFB found evidence that Queens Borough President candidate Sheldon S. Leffler had submitted matching funds claims for thirty-eight contributions in groups of sequential money orders and bank checks. The Board also noticed discrepancies in the contribution cards associated with the money orders and bank checks. The Board invalidated the matching funds claims for those specific contributions, but otherwise permitted the Leffler campaign to continue participating in the matching funds program, even as it referred the suspicious claims to the Manhattan District Attorney's Office. Over a year after it found the Leffler campaign's activities sufficiently suspicious to warrant a referral to the District Attorney's Office for possible criminal prosecution, on August 6, 2001, the Board paid out $296,084 in public funds to the Leffler campaign.

59. Leffler and his campaign committee were subsequently indicted by a grand jury on thirteen criminal counts. Pending its own investigation into whether to impose penalties against the Leffler campaign, the Board agreed to delay its consideration of the matter while Leffler's criminal trial was ongoing. On November 12, 2003, Leffler was convicted of conspiracy, attempted grand larceny, three counts of offering a false instrument for filing,

furnishing false evidence, and attempted defrauding of the government. The campaign's treasurer and another staff member were also convicted on related charges.

60. The Board asked the criminal court to order restitution of public funds, but the court declined, stating that requiring the return of public funds was within the Board's discretion.

61. But the Board did not exercise this discretion. Instead, the Board agreed to postpone its decision as to whether to penalize the Leffler campaign until after Leffler's criminal appeal was final.

62. At an August 12, 2004 meeting—three years *after* it paid out matching funds to the Leffler campaign, which the campaign had been free to use during the 2001 election—the Board penalized the Leffler campaign for its suspicious claims. Among these offending claims were money order contributions for which the campaign had given differing explanations and whose contribution cards all appeared to bear the same signature, as well as contributions attributed to individuals who later stated in an article published by the *Village Voice* that they never gave to the Leffler campaign. The Board assessed $89,500 in penalties for these violations, less than a third of the public funds the Leffler campaign had received years earlier. While the Board also found that Leffler had breached his certification under Rule 2-02, it agreed to delay any collection of the penalties or repayment obligation pursuant to that finding pending the disposition of Leffler's criminal appeal. It also agreed that it would reconsider the matter in the event the criminal convictions were overturned.

Elizabeth Crowley

63. Also in the 2001 election, the CFB determined that Elizabeth Crowley, a City Council candidate, had failed to respond completely and adequately to allegations of fraud and misrepresentation in connection with the submission of two sets of money order contributions.

Those allegations included evidence tending to show that the signatures on the money orders did not match the signatures on the contribution cards and that the money orders appeared to have been purchased at the same time.

64. When confronted by the Board, the Crowley campaign submitted affidavits from some of the contributors affirming the validity of the contributions, but the signatures on the affidavits did not match the signatures on the money orders *or* the contribution cards. At a subsequent CFB meeting, the campaign admitted that the money orders and contribution cards had been filled out and signed by someone else in the name of the contributors. This admission contradicted the campaign's previous statements to the Board to the effect that the contributors were co-workers who had purchased the money orders together on their lunch break.

65. Years after the election, the Board assessed a $20,000 penalty for the Crowley campaign's misconduct. The CFB also assessed several other monetary penalties against the Crowley campaign, for violations ranging from exceeding expenditure limits, to accepting contributions that exceeded contribution limits, to failing to provide required information about intermediaries.

66. Crucially, the Board did *not* completely exclude the Crowley campaign from the matching funds program, nor did it require Crowley to repay the more than $145,000 she had received in public funds—funds that were disbursed *after* the CFB had already alleged wrongdoing by the campaign.

67. The Crowley campaign was not found to be in breach of the candidate certification.

Kendall Stewart

68. The CFB found that Kendall Stewart's 2001 City Council campaign had lied to the Board regarding a suspicious contribution from a business called "Café Omar."

69. The campaign had assured the Board that Café Omar was unincorporated and was not connected to Kendall Stewart. But a subsequent inquiry with the New York State Department of State, Division of Corporations, revealed that Café Omar was a corporation, that Kendall Stewart was its Chairman or CEO, and that the principal executive office of Café Omar was the candidate's home address.

70. In 2003, two years after the election, the Board assessed monetary penalties against the Stewart campaign for its misconduct, including a $2,500 penalty for making material misrepresentations to the Board.

71. Stewart, who had received over $75,000 in matching funds, was not excluded from the matching funds program, nor was he deemed in breach of the candidate certification.

Danny King

72. Danny King ran for City Council in 2005. Prior to the election, the Board identified suspicious documentation purporting to show matchable contributions. On September 2, 2005, the Board issued a notice of alleged violations, accusing the campaign of falsifying documentation for over 60 cash contributions to fraudulently obtain matching funds. The Board told the campaign that it would hold a meeting on September 9, 2005, to determine whether the campaign had violated the Campaign Finance Act.

73. At the September 9, 2005 meeting, the Board agreed to defer its consideration of the issue to give the campaign more time to respond.

74. The campaign had received $39,623 in public matching funds. The Board did not require the campaign to repay the funds until its final audit, which was issued three years later, in September 2008.

75. These cases show that the Board repeatedly allowed candidates to participate in the matching funds program even when they were under suspicion or had been found to violate the Act or other requirements.

76. In other cases, the Board has preemptively declined to pay matching funds to candidates on the basis of alleged violations of the Act. But its practice in reaching such decisions is inconsistent across cases. In the course of its investigations, the Board sometimes requires candidates and their staff to submit to sworn depositions, and sometimes it does not; it sometimes directs its staff to contact donors whose contributions it considers suspicious, and sometimes it does not; it sometimes hires outside investigators, and sometimes it does not.

77. The Board's decisions preemptively withholding matching funds from campaigns are wildly inconsistent both with each other and with those decisions where the Board has deferred imposing such a penalty until after the election in question has taken place or declined to do so at all. For example:

Pedro Espada, Jr.

78. In 2001, Pedro Espada, Jr. ran for Bronx Borough President. Espada submitted documentation claiming $173,000 in public matching funds. But the Board voted to deny public funds to Espada on August 16, 2001, just under six weeks before the Democratic primary, "based on preliminary audit findings."

79. The August 16, 2001 decision explained that the Board was suspicious of certain contributions made by employees of a non-profit controlled by Espada. The Board also noted

that the campaign appeared to be using a van to advertise the campaign, but had not reported any expenditures related to the van; that a newsletter called the "Bronx-New York Tribune" appeared to be campaign literature but had not been properly disclosed to the Board; that the Bronx-New York Tribune announced Espada's campaign before it officially began; and that Espada and his son, a City Council candidate, appeared to have engaged in "joint campaign activities" that were not disclosed to the Board.

80. After hearing from a representative of the Espada campaign on August 30, 2001, the Board issued a final determination denying public funds to the Espada campaign on the basis of Board Rule 5-01(f), noting that "there is reason to believe that the Committee has committed violations of the Campaign Finance Act."

81. The Espada campaign sued the Board under Article 78 of the New York Civil Practice Laws and Rules, arguing that the Board's decision was arbitrary and capricious. The campaign cited a variety of evidence that, it contended, showed that the Board's suspicions were unfounded. For its part, the Board relied on Campaign Finance Board Rule 5-01(f), noting that the Rule expressly grants it the authority to determine that a candidate is ineligible for matching funds merely "if there is reason to believe that the participants has committed a violation of the Act or these rules."

82. The state court made clear that it was deeply troubled by "the power of an administrative agency to make crucial determinations during a short time frame that may have significant, irreversible consequences for the body politic," noting that "voters, not agencies or courts, should determine elections." *Espada 2001 et. al. v. New York City Campaign Finance Board*, Index. No. 115778/01 (N.Y. Sup. Ct. Sept. 7, 2001). But the state court was bound by Article 78's narrow standard for reviewing administrative determinations. It noted that by

statute, the Board has "broad powers" that a court "cannot simply second-guess." Concerned as it was by the capacious scope of the Board's authority, the court concluded that "the legislature has granted that power" to the CFB.

83. The state court nonetheless took the unusual step of noting that "the discretion that [the Board] has presumably includes the discretion to release some funds." Observing that "most of the issues" for which the Board had penalized Espada were "arguable" and "hardly threaten the entire structure of fair campaign finance in New York City," the state court urged the Board not to completely exclude Espada from the matching funds program. Rather, the court wrote, a partial release of funds would "provide a better balance between deterrence and fairness in this particular situation than the complete cut-off that is currently in place only days before a disputed primary election."

84. The court conceded that it lacked the power to require the Board to change its decision, but "ask[ed] that this suggestion, if possible, be given serious consideration."

85. The Board ignored the court's imploration and pushed ahead with its decision to completely deny matching funds to Espada. The Espada campaign appealed, but the election had already occurred by the time the Appellate Division heard the case. The appellate court held that "the claim is moot since the 2001 election has been held and this Court can no longer grant the relief requested."

86. On March 22, 2006, the Board issued its final audit report, which concluded—based largely on the Campaign's failure to disclose documentation relating to the Bronx-New York Tribune—that Espada breached his certification under Rule 2-02. Notably, Espada was a candidate the very same election year as Sheldon Leffler, Elizabeth Crowley, and Kendall Stewart. He was a candidate for the same office as Leffler, albeit in a different borough. But

unlike those candidates, Espada was excluded preemptively from the matching funds program on the basis of the Board's determination that it had "reason to believe" his campaign violated the Act.

87. Espada narrowly lost the 2001 Democratic primary for Bronx Borough President by fewer than 5,000 votes.

Fred Masson

88. Fred Masson ran for City Council in 2009.

89. After receiving documentation from the Masson campaign claiming matching funds prior to the primary election, the Board attempted to contact some Masson campaign contributors who had donated cash to confirm facts related to their reported contributions. Board staff was unable to reach any of the contributors using telephone numbers the campaign had provided.

90. The Masson campaign explained that an assistant had copied the wrong phone numbers from a spreadsheet onto the contribution cards. The Board's Rules require that a record of a cash contribution include the contributor's name and address, the amount of the contribution, the authorized committee's name, and the contributor's signature and affirmation that the contribution is made from his or her personal funds. The Rule does not require candidates to submit cash contributors' telephone contact information at all.

91. Nonetheless, the CFB determined that it lacked "sufficient assurance that the Campaign's reported contributors did, in fact, contribute to the Campaign or that they contributed in the amounts reported to the Board."

92. The Board did not disburse any public funds to the Masson campaign. In its final audit report, it found the campaign to be in breach of the candidate certification.

93. That the Board sometimes preemptively excludes candidates suspected of misconduct from the matching funds program and sometimes only penalizes them after the fact—with no appreciable rationale grounded in the facts of the particular case for choosing one course or the other—underscores the breathtaking discretion with which the Board is vested, and shows how that unbridled discretion leads to fundamentally disparate treatment across cases.

III. The Witch Hunt Against the Liu Campaign

A. The Liu Campaign

94. John Liu became the first Asian-American elected to a citywide office when he was elected the City's comptroller in 2009.

95. After establishing a high profile as a dogged protector of the public fisc, Liu began contemplating a mayoral run. In the first six months of 2011, over two years before the mayoral election, Liu announced he had raised $1.5 million, with many $800 donations, reflecting the traditional Chinese belief that 8 is a lucky number. At the time, Liu's campaign had a self-imposed contribution limit of $800 per individual contributor, with the intent of broadening a base of donors through small contributions and reducing the perceived influence of large contributions.

96. By May of 2013, Liu was leading all of the candidates in terms of attracting small donors. CFB records showed that more than 2,100 New Yorkers had contributed $175 or less to the Liu campaign. Small donations, which were eligible for matching funds from the CFB, would account for more than 17 percent of the total funds Liu had raised.

97. Liu attracted strong support from immigrants and the Asian community in New York.

B. The New York Times Story

98. On October 11, 2011, the *New York Times* published an article entitled "Doubts Raised on Donations to Comptroller."

99. Citing "two dozen irregularities" uncovered during canvassing of the homes and workplaces of Liu donors, the *Times* reported that "people listed as having given to Mr. Liu say they never gave, say a boss or other Liu supporter gave for them, or could not be found altogether."

100. The *Times* specifically alleged that "[t]wo people who described attending banquets in which Mr. Liu appeared and posed for photos said that company executives who support him provided donations in the names of those in attendance." It also alleged that in "numerous instances" a single individual "appear[ed] to have have filled out [donor] cards for multiple donors"—a practice the *Times* alleged did "not comply[] with some basic campaign finance laws." The *Times* article also reported that the Liu campaign had not disclosed the names of "bundlers"—"individuals [who] collect contributions for a candidate from friends, relatives and others"—as required by campaign finance law.

101. In fact, the Board's Rrules require only that the donor *sign* the card, not fill the entire card out himself. In addition, campaigns also are not required to disclose the names of intermediaries who collect contributions from "relatives," because the Act does not include "spouses, domestic partners, parents, children or siblings" of the donor in its definition of an intermediary.

102. The *Times* story reported that Mr. Liu "vowed to return any money from questionable sources and said he had personally warned many of his donors that they were not helping him if they broke the rules."

C. The Charges Against Jenny Hou

103. On February 28, 2012, a federal grand jury indicted Jia "Jenny" Hou, the Liu campaign's 25-year-old treasurer, on charges of wire and mail fraud and obstruction of justice in connection with alleged irregularities in the campaign's fundraising efforts.

104. The government alleged that Ms. Hou failed to disclose to the Campaign Finance Board the names of certain "intermediaries" as required by law; instructed a campaign volunteer to imitate the handwriting of campaign donors on contribution forms; offered to reimburse one individual for a donation to the Campaign; and took other steps to mislead the CFB and defraud the City in wrongfully obtaining matching funds. The government also alleged that Ms. Hou impeded its investigation by failing to produce subpoenaed records.

105. According to the government, Ms. Hou was involved in a scheme orchestrated by a fundraising intermediary, Xing Wu "Oliver" Pan, to obtain matching funds from the City for invalid "straw" donations.

106. A "straw" donation, also known as a "nominee" donation or contribution, is a campaign contribution made in the name of one individual with funds that actually comes from someone else, such as an employer who instructs an employee to donate and then reimburses the contribution out of the employer's own funds.

107. The government alleged that Mr. Pan conspired with an undercover FBI agent posing as a wealthy would-be donor in a scheme to funnel a large donation through multiple straw donors at a fundraising event for the purpose of wrongfully obtaining matching funds from the CFB.

108. The government charged that Ms. Hou was present at the event (the "August 17, 2011 event"), reviewed donation forms completed by straw donors, and subsequently followed up with Mr. Pan after one of the straw donors' checks bounced.

109. The government also alleged that Ms. Hou collected donations from several intermediaries at a separate event (the "May 9, 2011 event") but failed to list those intermediaries as required in filings with the CFB. According to the government, Ms. Hou concealed those intermediaries in order to conceal the fact that they had reimbursed straw donations.

110. The government alleged that "law enforcement agents ha[d] identified over approximately forty (40) donations to the Campaign where the Straw Donor and/or an intermediary has indicated that the donation was reimbursed."

D. The Hou Trial

111. At Ms. Hou's trial, not a single witness testified that Ms. Hou or anyone else associated with the Liu campaign knew that the intermediaries for the May 9, 2011 event used straw donors.

112. Nor did anyone testify that Ms. Hou knew of Oliver Pan's plan to use straw donors for the August 17, 2011 event. In fact, evidence showed that Mr. Pan had stated that he did not know if anyone from the campaign was aware that he had recruited straw donors.

113. Trial evidence also showed that when an undercover FBI agent asked Ms. Hou whether donations related to the August 17, 2011 event would be matchable, she responded that she did not know, belying any intent to fraudulently obtain matching funds.

114. The government only alleged that Ms. Hou personally offered to reimburse a donation once. Ms. Hou made the offer to an ex-boyfriend who lived in New Jersey.

115. That ex-boyfriend testified at the trial. He stated that Ms. Hou told him that the donation was needed in order for the campaign to reach an internal fundraising goal by a certain date. When the campaign reached its goal, she advised him that his donation was not needed. He also testified that if he had in fact donated and she had failed to reimburse him—which never happened—he would not have asked her for the money. The government did not controvert his testimony.

116. That same man was also undisputedly a resident of New Jersey. Thus, no contribution made in his name could have been matchable under any circumstances, whether or not Ms. Hou ever reimbursed him for it.

117. No evidence was presented that Ms. Hou intended to seek matching funds for his contribution, had it been made. Nor did any evidence at the trial show that Ms. Hou or anyone else affiliated with the Liu campaign ever altered a non-resident contributor's address in order to obtain matching funds fraudulently.

118. Trial testimony established that there was nothing illegal about Ms. Hou's suggestion that a campaign volunteer fill in missing information on donor cards. Witnesses testified that the volunteer's attempts to match the donors' own handwriting were motivated by a desire to minimize unmerited scrutiny of the campaign's finances, rather than any intent to defraud the City or the CFB.

119. Evidence at the trial also established that the government was able to obtain the materials Ms. Hou allegedly failed to turn over to federal investigators by executing a search warrant. Any misstatements or failures to comply with subpoenas on Ms. Hou's part were the result of carelessness and haste rather than any intent to mislead.

120. No evidence—none—proffered at trial ever established that John Liu had any knowledge of or participation in any scheme to falsify donor contributions or falsely obtain matchable funds.

121. The lack of evidence against Mr. Liu himself was not for lack of trying: During the criminal proceedings, it was revealed that the FBI had been wiretapping the telephones of Mr. Liu and his two principal fundraising volunteers for a period of 18 months. Those wiretaps never turned up any evidence whatsoever of any wrongdoing by Mr. Liu.

122. On May 2, 2013, Ms. Hou was acquitted of conspiring to commit wire fraud. She was convicted of attempting to commit wire fraud, obstruction of justice, and making false statements to investigators. Because the jury did not issue a special verdict, it is impossible to know what "substantial step" the jury believed she took, if any, toward committing wire fraud. Her appeal of the judgment and sentence is currently pending.

123. After the Liu campaign learned from the government that contributions associated with the undercover investigation had come from straw donors, the campaign attempted to turn those funds over to the United States Attorney's office. That attempt was rebuffed. To this day, those funds remain in the possession of the campaign's legal counsel, available for return to the United States government—which provided them to the Liu campaign. These funds have not been used in any way for Plaintiffs' benefit.

124. On January 8, 2014, over the government's strenuous opposition, the United States Court of Appeals for the Second Circuit granted Ms. Hou's motion for bail pending appeal and ordered her released from prison. Under applicable law, the Second Circuit's decision to grant Ms. Hou's motion necessarily means that Court concluded that her appeal "raises a

substantial question of law or fact *likely* to result in" reversal of her convictions, an order for a new trial, or a lesser sentence. *See* 18 U.S.C. § 3143(b)(1)(B) (emphasis added).

E. The May 20 Letter

125. On May 20, 2013, the Liu campaign received a letter from the CFB's Director of Campaign Finance Administration, Peri Horowitz.

126. The letter stated that CFB staff would not be recommending to the Board that the Liu campaign was eligible for public matching funds. The letter stated that this determination was "[b]ased on information obtained in connection with the trial of the Campaign's former treasurer and a reported intermediary . . . as well as [CFB staff's] own ongoing review of the Campaign's disclosure and documentation."

127. The letter noted that Jenny Hou, as the campaign's treasurer through March 2012, was "legally indistinguishable from the Campaign and candidate," and thus her actions—"in particular evidence of the solicitation, receipt, and reporting of nominee contributions as well as the improper reporting of intermediary information"—was therefore attributable to the campaign as a whole.

128. The letter concluded that evidence from Ms. Hou's trial "call[ed] into question the legitimacy of all contributions received by the Campaign, such that the mere disgorgement of nominee contributions and other prohibited contributions cannot cure this conduct."

129. The letter cited Board Rules 2-02, 5-01(a)(1), 5-01(f)(1), and 5-01(f)(7) for the Board's authority to completely exclude the Liu campaign from the matching funds program.

130. The letter purported not to "constitute a preliminary or final determination by the Board."

F. The July 19, 2013 Letter

131. On July 19, 2013, the campaign received another letter from Ms. Horowitz. This time, the letter enclosed hundreds of pages of factual materials that the campaign had never seen before but which, by law, should have been provided to the Liu campaign over the course of the prior several years.

132. The Act and the CFB's rules contemplate that candidates will be informed on a rolling basis if the Board determines that matching funds claims submitted by a campaign are deemed invalid. The purpose of these interim "invalid matching claims reports" is to promote compliance with the Act and permit candidates and their staffs to correct any problems with a reported donation in a timely manner.

133. In this case, the Board deviated vastly from that rule and practice. The CFB generated hundreds of invalid matching claims reports concerning matching claims submitted by the Liu campaign between December 2010 and July 2013. But it did not provide the campaign with a *single* invalid matching claim report for this period until July 19, 2013, when the CFB suddenly dumped approximately 1,751 such reports on the campaign as enclosures to Ms. Horowitz's letter.

134. The Board's failure to provide the Liu campaign with these reports on a rolling basis violated the CFA. Section 3-703(12)(b) of the Act requires the Board to "review each disclosure report timely submitted by a candidate . . . and issue to the candidate a review before the next disclosure report is due." The CFA *requires* that these reports "inform the candidate" of any questions the CFB has about the campaign's matching funds eligibility and compliance with the Act, "and give candidates an opportunity to address questions the board has concerning their matchable contribution claims or other issues concerning eligibility for receiving public funds."

135. Upon information and belief, the Board has never withheld such reports from *any* candidate whose campaign it has previously overseen, much less dumped thousands of them on the campaign at the last moment, leaving the campaign almost no time to respond.

136. Hundreds of the invalid matching claim reports the campaign received on July 19, 2013 were invalidations of cash contributions. Indeed, Board staff invalidated almost every cash contribution the campaign received, even though nothing in campaign finance law makes cash contributions—which are more likely to come from low-income donors—more suspicious than other kinds of donations.

137. When the campaign's treasurer questioned why these cash claims were deemed invalid, he was told in sum and substance that CFB staff found it suspicious that contributors had written "cash" by hand on donation forms because there was no check-off box marked "cash." Because the CFB failed for 32 months to inform the campaign that this arbitrary distinction would be considered a basis to deny matching funds for these cash contributions, the campaign had no opportunity to revise its forms or otherwise correct the problem.

138. Hundreds more matching claims were invalidated because the campaign reported them with the incorrect "instrument code," a clerical error that could easily have been corrected had the CFB timely notified the campaign about the problems. Others were deemed invalid because of missing employment information or other substantiation that could easily have been corrected with notice.

139. The CFB also revealed for the first time in the July 19, 2013 letter that it was basing its decision to completely exclude the Liu campaign from the matching funds program in part on the fact that the campaign continued to employ three staffers whom Board staff apparently believed were connected to improper fundraising efforts.

140. Although one staffer has admitted that she once offered to reimburse family members' contributions to the campaign, it is undisputed that she never actually reimbursed any donations and has never been involved in any straw donation scheme. Nor did any of those family members live in New York City; as such, even if that staffer had reimbursed their contributions (which she did not), those contributions would not have been matched by the City.

141. Indeed, none of these three staffers has ever been criminally charged with any wrongdoing, and there is no proof other than one staffer's isolated, brief lapse in judgment that any of them has engaged in any misconduct.

G. The Thacher Report

142. Finally, the July 19, 2013 letter revealed for the first time that the CFB had retained a private investigation firm, Thacher Associates ("Thacher"), to assist it in determining whether the Liu campaign should be deemed ineligible for matching funds.

143. The letter enclosed a written report detailing Thacher's findings (the "Thacher Report" or "Report"). The Report was over a hundred pages long, not including a series of exhibits that were annexed thereto.

144. According to the Thacher Report, "[t]he CFB provided [Thacher] with reported contribution data covering the period December 2010-January 2013 and directed [Thacher] to identify, research, and interview contributors to the Liu campaign."

145. Admittedly prepared in haste, the Thacher Report was filled with speculation, conjecture and outright factual and legal errors. Its shoddiness is astounding. Reviewed with any care, the Report on its face contains no evidence from which any well-founded conclusion about John Liu or his campaign could be reached. Although the report stated that Thacher had "found evidence of potential campaign finance law violations, including reimbursed

contributions and falsified documents," much of this "evidence" was in fact rank innuendo coupled with fanciful guesswork.

146. The CFB provided Thacher with data concerning approximately 6,500 contributions made to the Liu campaign between December 2010 and January 2013. From this set, Thacher interviewed a total of 22 Liu contributors and 19 "family members of contributors."

147. A total of two interviewees told Thacher that they had been reimbursed by their employers for contributions they made to the Liu campaign. Thacher cited no evidence tending to show that Mr. Liu, his campaign, or any member of the campaign's staff was aware of (let alone orchestrated) these reimbursements.

148. In one additional instance, a former employee of a law firm told Thacher "that she had been directed by one of the firm's partners to tell employees they were required to contribute to the Liu campaign but that they would be reimbursed." Again, Thacher provided no evidence of any Liu campaign involvement in this alleged scheme. Neither John Liu nor anyone associated with his campaign had any knowledge that anyone had offered to reimburse these contributions until it received the Thacher Report on July 19, 2013. Thereafter, the campaign immediately refunded contributions made by attorneys at the firm.

149. The Thacher Report baselessly alleged that "some contributors' denials of reimbursement were not credible." This conclusion was purportedly based on the perception of Thacher's interviewers; the Report provided no basis for the interviewers' conclusions. Indeed, many of the interviews were apparently conducted by English-speaking investigators employing Mandarin translators. Nonetheless, the Report credits these investigators with subtle, yet unspecified, credibility determinations, which the CFB purportedly relied upon.

150. According to its authors, the Thacher Report "sets forth in detail the observations giving rise to these credibility assessments." But the report never uses the words "credible" or "credibility" again, so the reader is left to wonder which of the reported "observations [gave] rise to" Thacher's credibility claims.

151. Thacher reported that "some contributors did not live at their reported addresses," but admitted that it did not attempt to interview contributors whose home addresses it could not verify and thus "[did] not know how many of their reported addresses were accurate."

152. Thacher reported that "at five of the contributor addresses," it was "told that the contributor did not live there." Astoundingly, however, Thacher never actually verified that a single contributor who reported a New York City address was actually a non-resident. Instead, Thacher reported that at three addresses "a relative said that the contributor only received mail but did not live there;" that at another address the contributor "only stayed at th[e] address . . . for part of the week;" and that at another address "the landlord said he did not know the contributor."

153. Thacher did not even attempt to grapple with New York law's nuanced and flexible definition of "residence," which permits an individual to have more than one residence and treats the receipt of mail at an address as at least partial evidence of residence there.

154. Next, Thacher reported that "[s]ome contributors did not know their reported intermediary." But nothing in the Campaign Finance Act requires that contributors know their reported intermediary, and in fact the Act specifies that when multiple individuals host a fundraising event, only one may be designated as the intermediary.

155. Thacher reported asking nine individuals whether they knew the intermediary who reported their contribution, and alleged that seven of the contributors "had given their

contribution to someone other than the reported intermediary." But there is no requirement that a contributor must have "given" his contribution to his reported intermediary. Rather, the Act defines an intermediary as the individual or entity who "delivers" the contribution to the candidate or his campaign. Thacher conceded that "there may be legitimate reasons" for the contributors' responses.

156. Thacher also reported that "four individuals with residential addresses in public housing buildings and other individuals living in low-income housing and/or working in traditionally low-income occupations" had contributed $800 or more to the campaign. With absolutely no evidence that any of these individuals' contributions were improper—much less that the campaign knew or should have known about any such impropriety—Thacher simply presumed that political activity by people with low-paying jobs is inherently suspicious.

157. The Thacher Report stated that some contributors had "connections to events and/or individuals" that were "part of the trial" of Jenny Hou and Oliver Pan. The basis for this allegation was that five employees of one Brooklyn company made contributions "in connection with" the May 9, 2011 event or "were otherwise linked to individuals identified in connection with the trial as possible straw donors." Aside from alluding to evidence from the trial that some May 9 contributors were straw donors, Thacher reported no evidence that any of the employees it interviewed (or, indeed, any employees of the company) were reimbursed for their contributions.

158. Perhaps most egregiously of all, Thacher reported that its work had "revealed red flags" suggesting that additional investigation "*could* identify additional potential violations of campaign finance law." As support for this claim, Thacher stated that two Liu donors provided the same (allegedly fake) address that had reportedly been used by employees of a company

whose owner testified at the Hou/Pan trial that he had reimbursed workers for contributions to the Liu campaign.

159. Based upon this thin reed, Thacher conjectured that "further work regarding these two contributions . . . could reveal additional potential violations of campaign finance laws." Thacher did not even speculate that such "further work" would reveal violations *by the Liu campaign* or anyone affiliated with it.

160. The balance of the Thacher Report amounts to nothing more than innuendo and guesswork. For instance, the Report repeatedly implies that contributions are suspicious because multiple individuals with the same surname and address contributed equal amounts around the same time, sometimes with the same intermediary, similar employment information, and/or the same mode of payment. Bafflingly, however, the Report fails to account for the possibility that a group of relatives in the same household (perhaps employed at the same family business) may each have contributed.

161. In other instances, the Report casts aspersions on contributors who could not recite details about John Liu with alacrity; donors who were first-time political contributors or gave using starter checks; and individuals who stated that they chose to donate to Liu because they share his Asian heritage or were encouraged to do so by friends, associates, or neighbors, rather than on the basis of specific political convictions. But the Act ascribes no legal significance whatsoever to any of these facts, and none of them is in any way probative of wrongdoing by the Liu campaign. Nevertheless, the CFB chose to rely on these and other similarly baseless characterizations to deny John Liu the opportunity to pursue elective office.

162. The Report further relied on the baseless assumption that people who were reluctant to speak with investigators were suspicious and had something to hide. The Report's

authors seemed never to consider the idea that people who spoke very little English would be reluctant to discuss their finances and their political activity with strangers.

163. In short, the Thacher Report revealed—at the very most—that a few individual Liu donors attempted to circumvent the Act. The Report is utterly devoid of any evidence that the Liu campaign or anyone affiliated with it was aware of, much less responsible for, the actions of these few donors.

164. Nor did the Thacher Report demonstrate that the Liu campaign could have or should have known about the irregularities it purported to have found. Indeed, the Thacher Report detailed the enormous investment of resources it required even to interview just 22 donors and reach its equivocal findings, including the retention of experienced investigators ("three employees . . . with over 60 years of combined relevant experience"), translators ("experienced, professional interpreters fluent in multiple Chinese dialects"), and a hired car and driver.

165. The July 19, 2013 letter reported that "CFB staff anticipates that it will not recommend to the Board that the Campaign is eligible for a public funds payment," citing Board Rules 5-01(a)(1), 5-01(f)(1), and 5-01(f)(7).

H. The Denial of Matching Funds

166. The July 19, 2013 letter further stated that "[i]f the Campaign wishes to be heard regarding its eligibility for public matching funds, you must submit a response to this letter in writing by close of business on July 31, 2013." This gave the campaign eight business days to respond to 32 months' worth of invalid matching claims reports, the 105-page Thacher Report, and the Board's allegations incorporating by reference all of the evidence presented at Ms. Hou's trial.

167. The letter concluded by purporting not to "constitute a recommendation on the part of the Board staff to the Board" or "a preliminary or final determination by the Board." Upon information and belief, this language was included to prevent the campaign from pursuing any kind of administrative or judicial review of a CFB decision that obviously had already been made.

168. The Board never made any formal finding that Mr. Liu, his principal committee, or any agent thereof committed fraud or breached the campaign certification under CFB Rule 2-02.

169. On August 5, 2013, the Board met to consider the staff's recommendations for public funds payments. A representative for Liu's campaign was permitted to appear, but the Board had already made up its mind.

170. At the end of the meeting, the Board voted to approve more than $23 million in public funds to 75 candidates, including more than $3 million to Christine Quinn and more than $2 million to Bill de Blasio, both candidates for Mayor.

171. Even as it was disbursing millions of dollars to his rivals, the Board voted to deny all public funds to John Liu.

172. In a statement after the vote, Board Chairman Rev. Joseph Parkes stated that the denial was because "there is reason to believe that violations of the Act and Board rules have been committed" by the Liu Campaign.

173. Parkes faulted the campaign for placing "in a major role at least one person who admitted to a plan to violate campaign finance law." This was presumably a reference to Jenny Hou or the one staffer, who "admitted" to offering to reimburse only contributions that would have been ineligible for matching funds anyway—and then never did so.

174. Parkes insisted that the "choice" to withhold funds from a campaign "does not require a finding that the candidate has personally engaged in the misconduct."

175. Parkes further rationalized the Board's decision based on the campaign's lack of "a complete and accurate set of records that demonstrates compliance" with the Act and Board rules.

176. Although Parkes opened the statement by suggesting that Board rules prohibit paying public matching funds if there is any reason to believe that violations of the rules have occurred—a description that, at minimum, does not match past Board practices—he twice referred to the Board's denial of all public funds as a "choice."

177. As a result of the Board's wily "non-determination determination," Liu did not receive one cent of matching funds for the 2013 mayoral election.

178. John Liu lost the Democratic primary, receiving seven percent of the vote.

179. Liu was forced to defend his campaign, his staff, and his entire professional reputation with just a few days' notice. He suffered anxiety in trying to defend his right to the public matching funds that spelled the difference between a viable and a dead-in-the-water campaign. Throughout this ordeal, Liu suffered extreme mental and emotional anguish, along with dignity harms, resulting from being unfairly and unwarrantedly accused of wrongdoing. The Board's decision led to incalculable damage to Liu's professional reputation and earning potential.

180. The Board's decision prevented both Liu and Friends of Liu from disseminating the campaign's message, thereby frustrating the entire mission of Friends of Liu.

181. The Board is still in the process of conducting a final audit of Liu's campaign, which will likely not be finished for at least another year. Under § 3-710 of the Act, the Board

has ten months from the submission of the campaign's last disclosure report to complete its preliminary audit, and eighteen months from the submission of the campaign's last disclosure report to complete its final audit.

182. Liu therefore remains subject to the Board's jurisdiction, and could face further penalties from the Board.

183. John Liu remains committed to public service and may run for elective office in New York City in the future. The damage to his reputation and earning potential, caused by the Board's arbitrary, unfair, and erroneous decision to withhold funds from his 2013 campaign makes any future political activity far more difficult.

184. The Liu campaign has outstanding debts that it could not and cannot afford to repay as a result of the denial of funds by the Defendants.

IV. The Unlawful Appointment of Defendant Hearn

185. Section 3-708(1) of the Act provides that the chairperson of the CFB "shall be appointed by the mayor after consultation with the speaker" of the New York City Council.

186. Section 3-708(1) of the Act also provides that, "[i]n appointing members to the board, the mayor and the speaker shall consider campaign experience in general and particularly campaign experience with the New York city campaign finance system."

187. On December 30, 2013, then-Mayor Michael Bloomberg announced that he was appointing Defendant Rose Gil Hearn to succeed Rev. Joseph Parkes as the Chairperson of the CFB. Numerous media outlets reported the appointment on December 30, 2013. Upon information and belief, the appointment was made official on December 31, 2013.

188. On December 30 and December 31, 2013, the speaker of the City Council was Christine Quinn. The mayor was Michael Bloomberg.

189. Mayor Bloomberg did not consult with Speaker Quinn concerning Hearn's appointment to chair the CFB, rendering her appointment invalid as a matter of law.

190. Indeed, Howard Wolfson, the Deputy Mayor of New York City for governmental affairs under Mayor Bloomberg, telephoned a senior aide to Speaker Quinn shortly before Bloomberg announced Hearn's appointment. Wolfson informed this senior aid that Bloomberg would be appointing Hearn to chair the CFB.

191. The Council aid objected, noting that Quinn was traveling and could not be reached for the statutorily required consultation.

192. Wolfson ignored this objection.

193. The senior aid responded, in sum and substance, that if Bloomberg followed through with the appointment, he would likely "talk to a judge about" the unlawful procedure employed.

194. Christine Quinn was also the Speaker of the New York City Council in 2008, when Rev. Joseph Parkes was appointed to chair the CFB. Upon information and belief, prior to Parkes's appointment, the mayor engaged in an extended process of consultation with Speaker Quinn, involving interviews and other discussion. No such process occurred that constituted any form of "consultation" attendant to Mayor Bloomberg's appointment of Defendant Hearn.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 - First Amendment Violation

195. Plaintiffs reallege each and every allegation contained in all preceding paragraphs as if fully set forth herein.

196. Political expression is core protected activity under the First Amendment.

197. As the United States Supreme Court has repeatedly held, restrictions on the amount of money a person or group can spend on political communication during a campaign necessarily constitute restrictions on political expression.

198. Thus, Defendants' denial of matching funds to Plaintiffs constituted a restraint on speech.

199. A government regulation that places unbridled discretion in the hands of a government official or agency to permit or disallow political speech constitutes a prior restraint and impermissibly empowers government officials to discriminate and improperly censor speech in violation of the First Amendment.

200. The Campaign Finance Board's enabling laws and enforcement rules provide no consistent standards under which the Board penalizes campaigns for alleged violations of the Campaign Finance Act. The Board is empowered to deem a candidate ineligible for public financing based merely on "reason to believe" that his or her campaign has done something wrong. As a result, the Board's enforcement practices are wildly inconsistent. Sometimes the Board waits until misconduct is formally found, through a final audit, before requiring violating campaigns to pay back matching funds. Other times, it denies all matching funds preemptively, before the charges have been formally adjudicated or proven. The Board's investigative and enforcement processes vary wildly from case to case.

201. The Board's penalty schedules specifically permit Board staff to deviate from the guidelines at their discretion, and allow the Board to ignore its own staff's recommendations for any reason.

202. The denial of all matching funds to Plaintiffs constituted an unconstitutional prior restraint that improperly stifled Plaintiffs' First Amendment right to expression. The Board's

arbitrary decision caused Plaintiffs to lose $3.8 million in matching funds and prevented Plaintiffs from waging a viable campaign for Mayor.

203. The prior restraint barred Plaintiffs' political message from being aired and disseminated in public.

204. In order to be valid under the First Amendment, a prior restraint on speech, at a minimum, be attended by certain procedural safeguards. Expeditious judicial review of the restraining decision must be available, and the agency imposing the censorship must bear the burden of going to court to suppress the speech and, once in court, must bear the burden of proof.

205. Neither the Act nor the Board's Rules provides for these crucial safeguards. Review under Article 78 is not available promptly or expeditiously. Moreover, it is the *petitioner* who bears the burden of proof in an Article 78 proceeding, not the agency seeking to suppress the petitioner's political expression—here, the Board.

206. The Board's Rules, including Rule 5-01(f), are official policies of the CFB and of the City, promulgated pursuant to the City Administrative Procedure Act and CFA § 3-708(8)'s delegation of authority for the Board "to promulgate such rules and regulations . . . as it deems necessary."

207. Because New York City Campaign Finance Board Rule 5-01(f) gives a government agency substantial power to discriminate against disfavored speakers by suppressing their expression, the Rule is facially unconstitutional.

208. As a direct and proximate result of the foregoing, Plaintiffs sustained the damages alleged herein.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983 - Equal Protection Violation ("Class of One")

209. Plaintiffs reallege each and every allegation contained in all preceding paragraphs as if fully set forth herein.

210. The Board intentionally treated Plaintiffs differently than similarly situated candidates and campaigns who have been alleged or found to have violated the Campaign Finance Act. Those candidates and campaigns are the applicable comparators for purposes of assessing the irrational discrimination at issue in this case.

211. Unlike other candidates and campaigns, Plaintiffs were denied all public matching funds in the middle of the campaign and before the Board had finally determined whether CFA violations had occurred, based on a shoddy investigation and unspecified information adduced at a criminal proceeding to which Plaintiffs were not parties. Plaintiffs were barred from participation in the matching funds program based on unproven allegations, conjecture, and innuendo. Moreover, and most significantly, Plaintiffs were prevented from knowing about, much less responding to, the factual allegations against them until it was too late to avert an outcome that substantially impaired the exercise of Plaintiffs' fundamental constitutional rights. Indeed, the Board's withholding of years of invalid matching claim reports from the campaign was without any historical precedent. It was also illegal under § 3-703(12)(b) of the Act, which requires the Board to provide campaigns with such reports on a rolling basis so that they may address any questions around their eligibility for matching funds.

212. Plaintiffs were singled out for this constellation of adverse treatment.

213. Candidates and campaigns in circumstances similar to Plaintiffs' were treated more favorably by Defendants than Plaintiffs were, for reasons lacking any reasonable nexus with a legitimate governmental policy.

214. This different treatment was intentional, wholly arbitrary, and without rational basis.

215. The Board's enforcement decisions are undertaken pursuant to the authority granted by the CFA. In particular, § 3-705(1) of the Act expressly bars any public funds from being paid to a candidate's committee absent an eligibility determination by the Board.

216. The Board, through its members, possesses final authority to establish municipal policy with respect to enforcement of the CFA and administration of the matching funds system. As a direct and proximate result of the foregoing, Plaintiffs sustained the damages alleged herein.

THIRD CLAIM FOR RELIEF
New York Civil Practice Law and Rules § 3001 (Declaratory Judgment)

217. Plaintiffs reallege each and every allegation contained in all preceding paragraphs as if fully set forth herein.

218. Because the process by which Defendant Hearn was putatively appointed to chair the CFB was not in accordance with law, Defendant Hearn is not validly a member of the CFB.

219. With a preliminary and final audit still pending, Plaintiffs continue to be subject to the CFB's auditing powers, and are likely to be fined or penalized as a result of findings the Board will make in the course of auditing the Liu campaign.

220. Plaintiffs have a right not to be subject to enforcement powers exercised by an official in whom no such powers are properly vested. Defendant Hearn has no right to wield the powers of a duly appointed CFB member.

221. Plaintiff is entitled to a final judgment declaring the parties' respective legal rights to be as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to grant them the relief requested as follows:

(1) Declaring Defendants' conduct complained of herein to be in violation of Plaintiffs' rights;

(2) Declaring New York City Campaign Finance Board Rule 5-01(f) facially unconstitutional;

(3) Enjoining Defendants from any future enforcement of New York City Campaign Finance Board Rule 5-01(f);

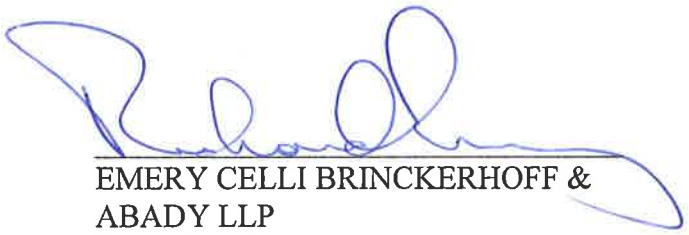
(4) Enjoining Defendant Rose Gil Hearn from purporting to exercise any enforcement powers with respect to penalizing Plaintiffs;

(5) Awarding Plaintiffs compensatory and punitive damages in an amount to be proven at trial;

(6) Awarding Plaintiffs reasonable attorneys' fees and costs; and

(7) Such other and further relief that the Court deems just and proper.

Dated: New York, New York
March 12, 2014



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