Chapter 2

Contributions:

Big Money "Opts Out"

Candidates raised more than $34 million for the 1993 citywide elections, about $32 million of which was collected by participating candidates. All told, participating candidates in the primary raised about $15 million, to which about $17 million was added for the general election. Although the total for participants slightly exceeded in absolute dollars the amounts raised during the last citywide elections in 1989, if inflation is taken into account, candidates in 1989 actually took in slightly more than their counterparts in 1993. As Table 2.1 illustrates, total contributions to mayoral candidates vastly exceeded those for any other office and outdistanced by a comfortable margin fund raising across all four other offices combined. Clearly, New Yorkers — and even people who live well beyond the confines of the City — pay very close attention to who becomes New York City's mayor.

If money means influence, looking at where and from whom campaigns get their contributions reveals some interesting patterns: Out-of-City and organizational donors play a big role in New York City campaigns. Of the money actually coming from within the five boroughs, much of it comes from Manhattan. Although the Program's limits, when contrasted with those applicable under state law, clearly control excessive fund raising, big contributors still play a large role in some campaigns, particularly at the citywide level.

Where the Money Comes From

Money from Manhattan constituted the biggest single contribution resource available to candidates, accounting for some 47 percent of the total dollar amount of all contributions made during the 1993 elections to participating candidates — about $8.6 million in the race for mayor alone. Even at the Council level, money from Manhattan played a big role in the outer boroughs, supplying 19 percent or more of candidates' revenues in each borough, but making up more than one-third of the contributions going to candidates in the Bronx — slightly more than the Bronx itself supplied. Brooklyn, Queens, and Staten Island proved to be more self-sufficient, each supplying more than 50 percent of their candidates' revenues.

Contributions from outside New York City were not far behind those from Manhattan. Indeed, this Out-of-City money flowed rapidly into some of the City's most competitive

Table 2.1
CONTRIBUTIONS BY OFFICE
(Participants Only)

Office	Election	Total Contributions*	Mean Total Per Campaign**	Median Per Contributor
Mayor	1993	$ 18,450,000	$ 6,149,000	$ 100
	1989	19,580,000	3,262,000	51
Public Advocate	1993	2,890,000	481,000	100
Comptroller	1993	5,070,000	1,689,000	100
	1989	3,530,000	883,000	50
Borough President	1993	1,930,000	386,000	100
	1989	2,760,000	460,000	50
City Council	1993	3,500,000	42,000	60
	1991	4,890,000	34,000	50
	1989	2,380,000	72,000	75

*Rounded to nearest $10,000.
**Rounded to nearest $1,000.

Source: Campaign Finance Board data

races and was the second largest resource for candidates on a geographic basis. These contributions made up roughly one-third of all contributions to mayoral and comptroller candidates, 20 percent for public advocate and borough president candidates, and about ten percent for Council candidates. These contributions were primarily from individuals, not organizations, and, while the bulk of them came from suburban residents of the tri-state area, some distant places were also represented, with Washington, D.C., Florida, and Illinois making it into the top ten. (See Table 2.2.)

Who Gives

Contributions from individuals dominated participating candidates' resources in all offices, accounting for some 64 percent of candidates' contribution revenues in 1993, averaging 75 percent in 1989. (See Table 2.3.) Corporate money exhibited a resurgence in 1993; whereas in 1989, money from businesses accounted for about 16 percent of total revenues, in 1993 the percentage coming from businesses increased to about 24 percent. If individuals gave most often, they also gave in small dollar amounts. As Figure 2.1 shows, contributions at or under the $100 mark overwhelmed in sheer numbers those at all other dollar amounts.

Table 2.2
OUT-OF-CITY CONTRIBUTIONS FOR THE 1993 ELECTIONS: THE TOP TEN STATES*
(Participants Only)

State	From Individuals**	From Organizations**	Total**
New York	$ 2,709,000	$ 1,081,000	$ 3,790,000
New Jersey	1,281,000	385,000	1,666,000
Connecticut	590,000	68,000	658,000
California	250,000	153,000	403,000
Washington, D.C.	89,000	236,000	326,000
Florida	198,000	72,000	270,000
Pennsylvania	96,000	78,000	174,000
Illinois	61,000	59,000	120,000
Maryland	52,000	60,000	112,000
Massachusetts	85,000	27,000	112,000

*Unidentified: $376,585
**Figures rounded to nearest $1,000
Source: Campaign Finance Board data

For every office, contributions of less than $100 comprised better than 40 percent of all contributions made; at the City Council level, candidates took in over 55 percent of their contributions in amounts under $100. Seventy-nine percent or more of the number of all contributions was in amounts under $1,000, even among citywide offices. But that was in terms of how *many* contributions candidates received. As Figure 2.2 shows, in terms of the *portion* of campaigns' overall revenues derived from small-dollar contributions, a very different picture emerges.

Although big contributions were given less frequently, large-dollar contributions still made up a sizeable portion of campaigns' receipts, especially at the mayoral level. Over 16,400 contributions to mayoral campaigns of $100 or less made up $545,000, while over 500 contributions of $6500, the contribution limit, amounted to about $3.8 million. At the Council level, however, contributions of $100 or less accounted for about $444,000 of the total, compared with $132,000 at the $3,000 Program limit for that office.

Obviously, the fact that the Program matches contributions up to $1,000 per contributor increases the value of the smaller contributions and gives candidates an incentive to

Table 2.3
CONTRIBUTIONS BY TYPE OF CONTRIBUTOR

	Election Cycle 1993		1991*		1989	
Individuals	$ 20,391,000	64%	$ 3,331,000	68%	$ 21,106,000	75%
Corporations	7,632,000	24	535,000	11	4,466,000	16
Political Committees	1,560,000	5	495,000	10	1,235,000	4
Partnerships	834,000	3	59,000	1	630,000	2
Employee Organizations	612,000	2	285,000	6	473,000	2
Other Organizations	797,000	3	186,000	4	346,000	1

*City Council only.

Note: Figures rounded to nearest $1,000. Percentages may not add up to 100 due to rounding.

Source: Campaign Finance Board data (participants only)

collect money from a wider group of people rather than from a few wealthy donors. Even with the benefit of one-for-one matching, however, whereby a $100 contribution becomes $200, and $1,000 becomes $2,000, a $6,500 contribution becomes $7,500 — so that there clearly remains an incentive to solicit large-dollar contributions. Different ways of making smaller contributions more valuable to candidates (such as increasing the matching rate for smaller contributions) are discussed on p. 122.

Top Contributors over Time. Fact Sheet 2.1 shows the biggest contributors to municipal candidates over the past three regularly scheduled elections. Six of the ten largest contributors during the 1993 elections were in the top ten in previous elections. The most notable shift came during the 1991 off-year elections when only City Council candidates were running. Only two of the top ten contributors during those elections appeared in the top ten in other years. Unions and political committees also exhibited an increased presence in 1991.[1]

Looking at the Council only, a consistent pattern is revealed across all three elections. In 1989, 1991, and 1993, about half of the top ten contributors to Council candidates were employee organizations, and about a third were developers or political action committees representing developers. Political committees were also among the biggest contributors to Council candidates over the years; the Council Political Action Committee ("C-PAC") was among the top eight contributors during all three election cycles. The only other

Fact Sheet 2.1
TOP CONTRIBUTORS OVER TIME*

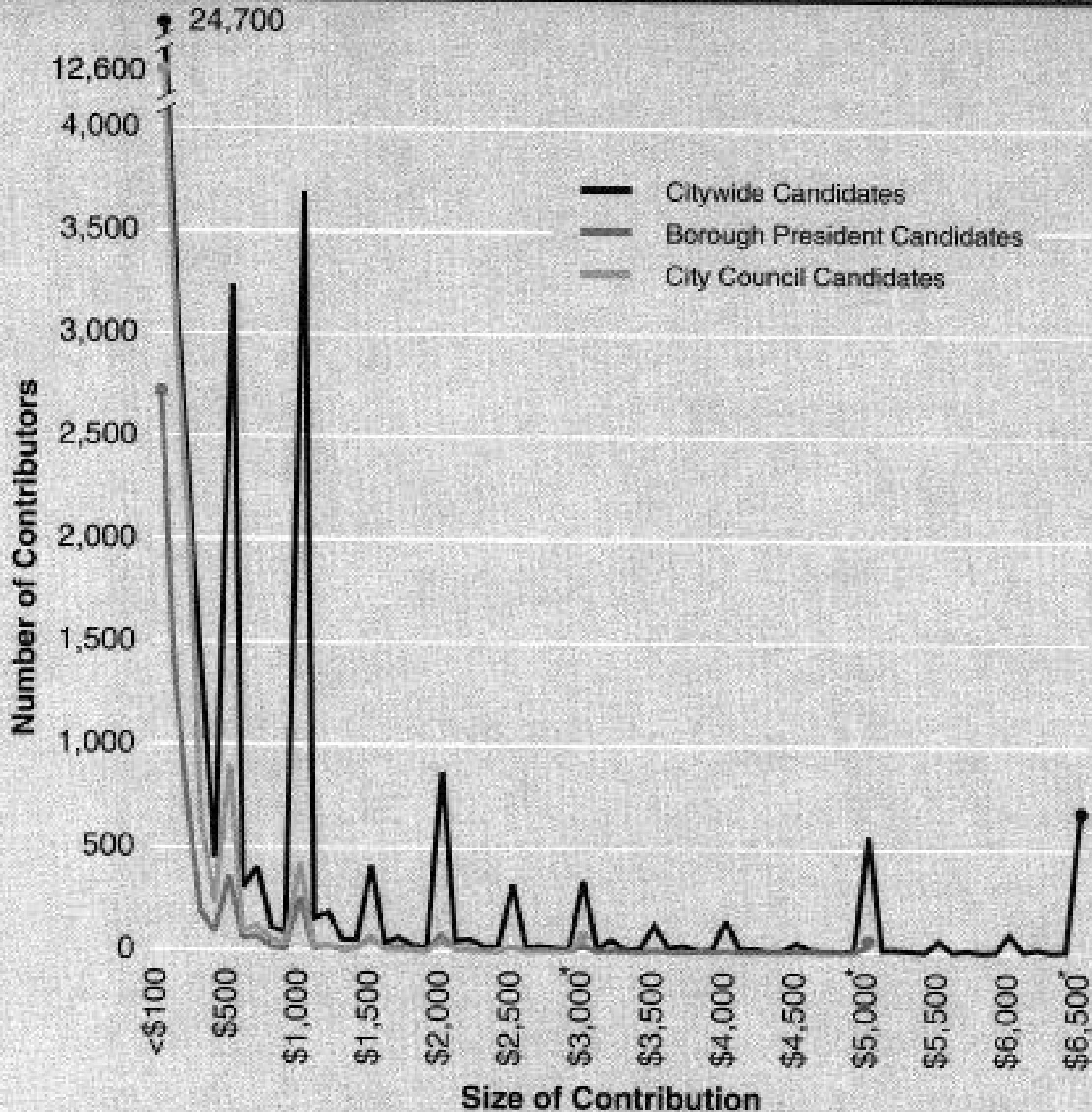
		Number of Candidates Supported	Total Contributions
1993	**DC 37 AFSCME/PAC**	38	$ 60,094
	UFT PAC/Political Education Committee	36	51,913
	Real Estate Board PAC	32	46,480
	Brown and Wood	9	36,940
	Howard J. Rubenstein	22	35,565
	Leonard Litwin	16	34,840
	Rogers and Wells	12	32,650
	ILGWU State and Local Election Fund	13	32,490
	Jeffrey Silverman	5	28,000
	Rent Stabilization Association PAC	18	27,800
1991	Council Political Action Committee	22	$ 44,779
	DC 37 AFSCME	25	31,630
	Friends of Andrew Stein	17	30,389
	Real Estate Board PAC	19	28,900
	AFSCME Local 1549 NYC Clerical Administration	16	20,463
	Social Service Employees Union	17	18,448
	Local 1180 NYC Admin. Employees	17	17,590
	Uniformed Firefighters Association	18	17,515
	Friends of Peter Vallone	9	17,500
	Transport Workers Union	20	16,890
1989	**United Federation of Teachers/PAC**	20	$ 43,839
	Leonard Litwin	13	38,490
	Milton Petrie	5	34,000
	Donald Trump	17	32,440
	Neighborhood Preservation PAC	11	32,400
	Brown and Wood	9	29,645
	Herbert Allen	3	29,025
	Howard J. Rubenstein	15	27,390
	Martin Raynes	9	26,900
	Joseph H. Filner	3	25,725

*Contributors appearing more than once among the top ten contributors are in bold.

Note: In arriving at contribution totals, contributions from contributors with like names were aggregated. Methods of aggregation may vary slightly between election years. Totals for 1993 may be higher than in past years due to more effective aggregation methods.

Source: Campaign Finance Board data (participants only)

Figure 2.1
FREQUENCY DISTRIBUTION OF CONTRIBUTIONS
TO PARTICIPANTS BY AMOUNT

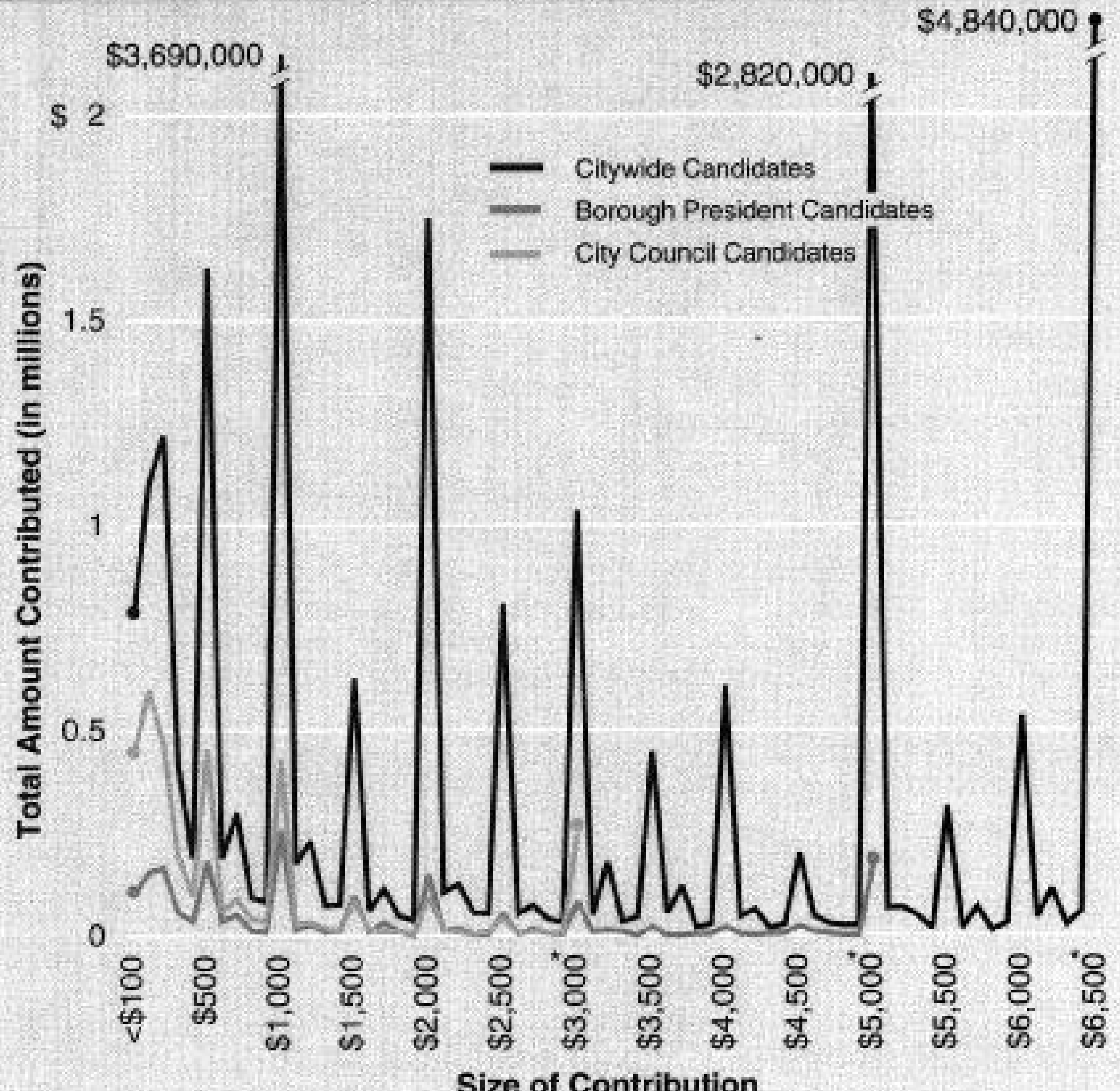


*Contributions for the 1993 elections were limited to $6,500 for citywide candidates, $5,000 for borough president candidates, and $3,000 for City Council candidates.

Source: Campaign Finance Board data

contributor that stayed in the top ten across all three elections was AFSCME's District Council 37.

Figure 2.2
DOLLAR DISTRIBUTION OF CONTRIBUTIONS TO PARTICIPANTS



*Contributions for the 1993 elections were limited to $6,500 for citywide candidates, $5,000 for borough president candidates, and $3,000 for City Council candidates.

Source: Campaign Finance Board data

Contributions and Disclosure. The Program is not intended only to reduce the potential influence of big contributors, but also to give the public better information about "who gives" and "who gets." What must rank among the Board's most significant accomplishments during the 1993 elections were its tremendous advances in public disclosure. The press (both national and local) relied on Campaign Finance Board data for numerous articles on candidates' campaign finances. The Board's value as an information resource was perhaps best highlighted by the controversy over political contributions made by municipal bond underwriters to citywide candidates and elected officials.

The Wall Street Journal, *The New York Times*, *New York Newsday*, and the *New York Law Journal* [2] all used data derived from the Campaign Finance Board's new software application, ACCESS (Automated Campaign Contribution and Expenditure Search System; see p. 65), to present a detailed breakdown of contributions from underwriting firms and law firms and their employees to citywide candidates. This would have been virtually impossible without reliance on the Board's computerized database of candidates' campaign finances.

Donor Ties That Bond

— *New York Newsday* [3]

The influx of money came not only from the underwriting firms themselves, but also the firms' employees. The distribution of funds is noteworthy. Candidates for the offices that are major players in selecting underwriters, the mayor and comptroller, together accounted for about 96 percent of all contributions from municipal bond underwriters. (See Table 2.4.)

A variety of proposals for curbing such contributions has surfaced since August of 1993, but responses have been mixed.[4] Elizabeth Holtzman stated that

> It would be better to have 100 percent public financing and prohibit anybody [from making a contribution] who does any business with or is regulated by the city. But that's not the system we have.[5]

For his part, newly elected Comptroller Alan Hevesi, who estimated that he had raised between $25,000 to $30,000 from Wall Street sources, set his own limits on contributions from underwriters and suggested that the City move toward competitive bidding for underwriting.[6] He also supported the concept of 100 percent public campaign financing at a meeting of the Municipal Forum of New York.[7]

Organizational/Corporate Giving and the "Currency of Incumbency." The potential for influencing decision-making by elected officials through campaign contributions is a matter of considerable concern. While specific instances of questionable contributions — like contributions from Wall Street — usually receive the most attention, a related but less highly publicized issue is that wealthy and powerful donors might make their presence selectively felt, concentrating their resources on incumbents with decision-making authority rather than on challengers facing an uphill election campaign.

Table 2.4
CONTRIBUTIONS TO PARTICIPANTS IN 1993 CITYWIDE RACES FROM 17 MAJOR MUNICIPAL SECURITIES FIRMS AND THEIR EMPLOYEES*

Contributor	Mayor	Public Advocate	Comptroller	Total
Merrill Lynch	$ 170,530	$ 7,875	$ 40,175	$ 218,580
Lehman Bothers	127,075	3,625	52,275	182,975
Goldman, Sachs & Co.	104,070	3,910	58,000	165,980
Prudential Securities	45,185	2,125	20,060	67,370
Donaldson, Lufkin & Jenrette	51,080	325	7,000	58,405
Lazard Freres & Co.	32,835	6,600	6,800	46,235
Morgan Stanley Group, Inc.	31,076	870	3,450	35,396
Bear, Steams Co.	23,675	1,735	6,500	31,910
Oppenheimer & Co.	15,970	580	4,790	21,340
Salomon Brothers	10,820	2,650	250	13,720
Kidder, Peabody & Co.	4,785	6,700	1,275	12,760
Smith Barney Shearson	6,230	200	5,250	11,680
J.P. Morgan Securities	1,525	0	6,000	7,525
Paine Webber Group, Inc.	3,600	0	1,000	4,600
CS First Boston	100	0	0	100
A.G. Edwards & Son, Inc.	0	0	0	0
Dillon Reade & Co.	0	0	0	0
Total	628,556	37,195	212,825	878,576

*In October 1993, these 17 municipal bond underwriting firms agreed in principle to discontinue the practice of making political contributions that attempt or appear to attempt to influence the selection of the firms as underwriters. *See* U.S. Securities and Exchange Commission News Release 93-14 (October 18, 1993). By April 1994, the voluntary ban had grown to include 55 brokerage firms, representing 80 percent of the municipal bond business. *See* Paul Thard, "Muni Funds to Face Ban on Pol Deals," *New York Post*, April 6, 1994, 26.

Data include contributions made by the firm and by individuals listing these firms as their employers.

Source: Campaign Finance Board data

Were there differences in corporate/organizational giving to incumbents and non-incumbents? The short answer is a qualified "yes." Among participants, incumbents were better able to draw contributions from virtually all sources than non-incumbents, but the picture was not always clear cut. Across most offices, incumbents received about 10 percent more in contributions from every category of contributor. In the race for comptroller, however, the officeholder, Elizabeth Holtzman, received less than her opponents.

At the Council level, incumbents enjoyed clear superiority. Incumbents took in about 80 percent of corporate and union contributions and 72 percent of political committee and PAC contributions. The difference was even more obvious in the typical campaign. The 38 participating incumbents received about $9,800 per campaign from corporations,

Table 2.5
TOP TEN NEW YORK CITY LOBBYISTS*
TOTAL CONTRIBUTIONS BY OFFICE

Total contributions made and percentage of the total contributed to incumbents.

Lobbyist	Mayor		Public** Advocate	Comptroller		Borough President		City Council	
Davidoff & Malito	$ 6,500	100%	$ 250	$ 2,100	95%	$ 3,530	100%	$ 2,725	87%
LoCicero & Tan[1]	5,160	100%	100	0		900	100%	1,225	67%
Rosenman & Colin	8,500	53%	1,250	1,225		2,900	100%	3,025	88%
Stadtmauer Bailkin	5,500	82%	500	0		0		0	
Martin McLaughlin	125	100%	500	1,000		750	100%	7,125	93%
Tonio Burgos/NYPROCOA[2]	7,650	100%	3,626	4,760	11%	1,850	100%	2,920	81%
Geto & deMilly	1,800	100%	0	0		1,000	100%	1,000	100%
Bower & Gardner[3]	9,500[4]	100%	1,500	2,000		1,550	100%	2,700	85%
Stroock & Stroock & Lavan	6,500	100%	100	0		660	100%	300	100%
Brown & Wood	13,000	50%	0	19,500	33%	3,790	100%	1,900	100%
Total	$64,235	82%	$7,826	$30,585	29%	$16,930	100%	$22,920	90%

*As identified in The Office of the City Clerk's *1993 Lobbyist Annual Report.*
**There were no incumbents for this office.
[1] LoCicero & Tan and Capalino, LoCicero, Marino & Tan are treated as the same entity.
[2] The Office of the City Clerk's *1993 Lobbyist Annual Report* lists Tonio Burgos and NYPROCOA, Inc. as a single lobbyist.
[3] Bower & Gardner and Bower & Gardner PAC are treated as the same entity.
[4] Bower & Gardner contributed an additional $6,500 to Rudolph Giuliani's Inaugural Committee.

Source: Campaign Finance Board data (participants only)

while the 49 participating non-incumbents averaged about $1,800 each. Non-incumbents' smaller share was consistent with the total resources available to their campaigns; whereas the typical incumbent could count on about $51,000 in contributions, the typical non-incumbent took in only about $20,000. It is interesting that only individual contributions (for which the Campaign Finance Program's matching funds are potentially available) were roughly proportional between incumbents and non-incumbents, about 57 percent going to the former, 43 percent to the latter. But individual contributions accounted for a much greater share of non-incumbents' resources — some 74 percent, compared with only about 50 percent for incumbents.

One instance in which selectivity between incumbents and non-incumbents is unequivocally clear is in lobbyists' contribution activity.[8] Of the top ten lobbyists in the City identified by the City Clerk,[9] all ten contributed to Dinkins, nine in excess of $4,500, for a total of more than $50,000. By contrast, only three of the ten gave to the Giuliani campaign (totalling $11,500), and another gave to his inaugural committee — *after* Giuliani became an incumbent. This pattern of lobbyist giving that favors incumbents appeared in the other offices as well. (See Table 2.5.) Among borough president candidates, no non-incumbents received money from these sources. About $20,000 of the $23,000 distributed by the top 10 lobbyists at the Council level went to incumbents. Money talked in a way that clearly favored the officeholder.

Intermediaries. Although the Program places strict limits on the amount any one individual or organization can give to a candidate, it does not prevent individuals from collecting contributions from many different sources and giving them to a candidate. In-

Table 2.6
1993 CONTRIBUTIONS THROUGH INTERMEDIARIES BY OFFICE

Office	Total "Intermediated" (in thousands)	Number of Intermediaries	Percent of All Contributions
Mayor	$ 3,365	355	18%
Public Advocate	279	107	10%
Comptroller	386	104	8%
Borough President	12	5	1%
City Council	99	73	3%

Source: Campaign Finance Board data (participants only)

deed, when contribution size is limited, it may be impossible to run a citywide campaign without the help of "intermediaries." Nonetheless, many believe that these intermediaries or "bundlers" gain significant influence on candidates. At the same time, fund raising is a time-honored and well-regarded means of assisting any number of causes, including candidates' campaigns.

While there is no evidence of an increasing reliance on contributions through intermediaries since the Program's inception,[10] such monies constituted a significant portion of receipts among candidates for some offices. The data suggest that since 1989 the rate of contributions through intermediaries has remained relatively flat; a slight decline in both the total amounts thus contributed to participating candidates, from $4.9 million in 1989 to $4.1 million in 1993, is probably more attributable to a change in the Board's reporting requirements (excluding professional fund raisers and high-level campaign staffers as reportable intermediaries) than to an actual decline in intermediary activity.[12] Nonetheless, some bundlers, particularly those working on behalf of citywide candidates, were the subject of considerable comment during the 1993 elections.

A Bundle of Support for Dave, Rudy

— *Daily News*[11]

Table 2.7
TOP TEN INTERMEDIARIES, 1993

Intermediary	Candidate	Total Through Intermediary
Edgar Bronfman	David Dinkins	$ 284,150
James Harmon*	David Dinkins	165,300
Stephen Green	Mark Green	85,370
William W. Koeppel	Rudolph Giuliani	76,550
Robert Fee	David Dinkins	73,000
Gerber and Gordon, Esq.	David Dinkins	68,562
Jeffrey Soref	David Dinkins	66,350
Gene Petracca	Rudolph Giuliani	51,235
Leonard Riggio	David Dinkins	48,300
Gordon Davis	David Dinkins	46,840

*Although Harmon was listed as an intermediary in the Dinkins campaign's disclosure statements, the Board's reporting standards do not require persons identified by the campaign as fund raising agents to be reported as intermediaries.

Source: Campaign Finance Board data (participants only)

This attention was deserved. While intermediary contributions played a negligible role in fund raising at other levels of office, they were a major source of funds in some citywide campaigns. In both 1989 and 1993, about 18 percent of all contributions to mayoral campaigns came through intermediaries. Among other citywide offices, intermediaries accounted for about 10 percent of all resources, while among borough president and Council candidates such contributions actually added very little to the typical campaign.

"If somebody spends so much time and so much money bundling, they've got to believe they're going to get something for it."
— Andrew Greenblatt, Executive Director of Common Cause

When a single individual becomes the conduit for a massive block of money, an appearance may be created that the individual has disproportionate influence even though contribution limits are adhered to. By their very nature, "intermediated" contributions when aggregated tend to exceed the contribution limit for a given office, even when individual contributions themselves are within the limit. When aggregated this way, about \$1.5 million coming to Dinkins through intermediaries was above the per-contributor limit of \$6,500; for Giuliani, the figure was about \$500,000.

Many would argue that it is naive to think that amounts of this magnitude coming into a campaign pass without notice. Andrew Greenblatt, Executive Director of Common Cause, stated that "[b]undling is the next problem that needs to be solved. If somebody spends so much time and so much money bundling, they've got to believe they're going to get something for it."[13]

There are, however, some controls on intermediary fund raising. Public opinion may exert a significant influence, and the extent to which the Board's disclosure of intermediary information enhances (and perhaps initiated) debate on this issue is noteworthy. As State law does not require candidates to disclose intermediaries, Campaign Finance Board reports are the sole meaningful source of information about them.

Contributions and Campaign Finance Program Limits: Controlling the Influence of Special Interest Contributors

Although the influence of intermediaries remains an open question, the days when a single big donor could have a major impact on local elections seem to be on the wane, at least for Program participants. As Figure 2.3 shows, a single individual could give up to $100,000 to a non-participating citywide candidate for the 1993 citywide elections — compared with $6,500 to participants. A recent amendment to the State limits applicable in 1997 will still allow non-participating citywide candidates to take about five times the amount permitted under the Campaign Finance Program.[14]

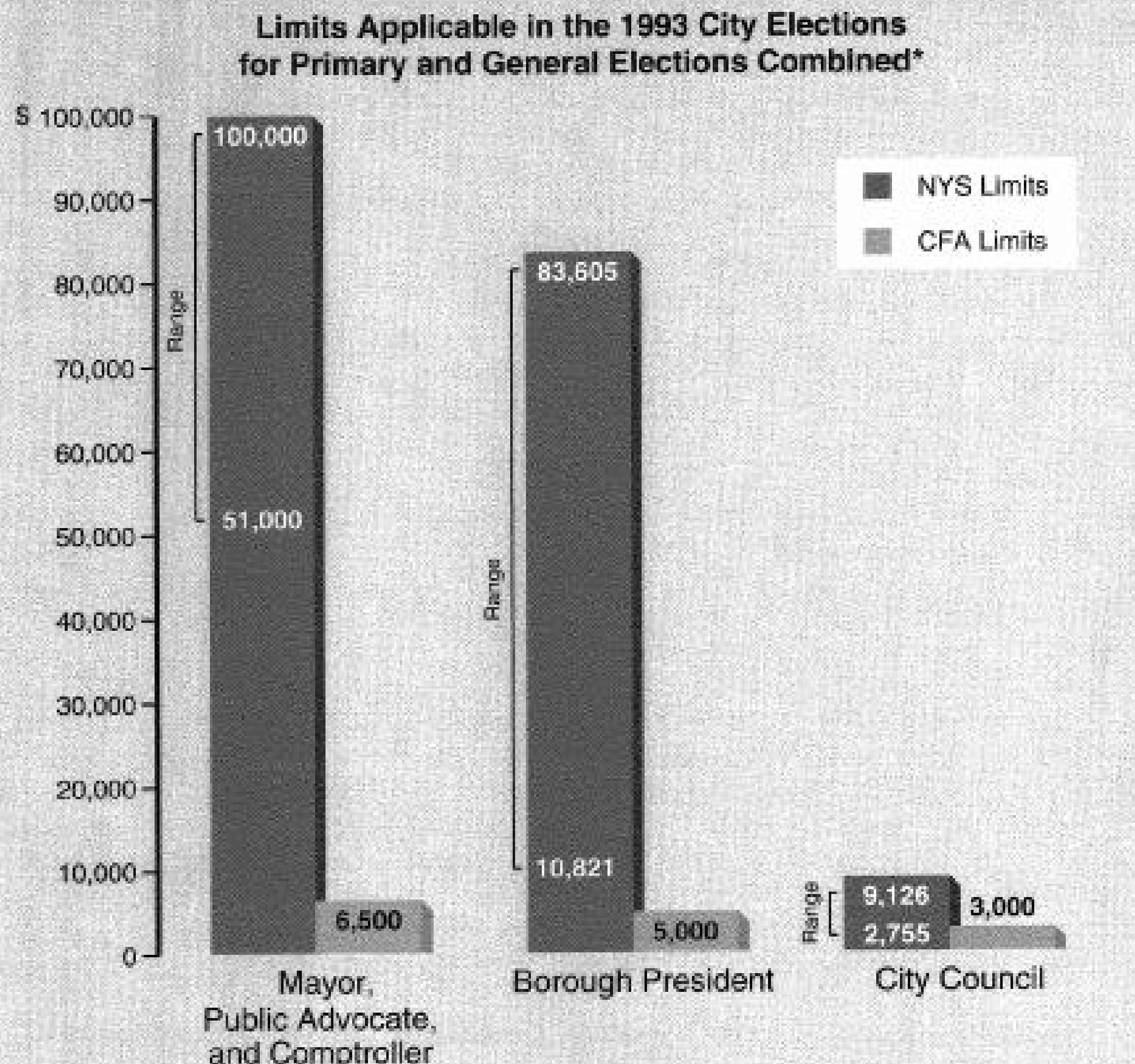
Obviously, non-participant fund raising varied across offices and between campaigns, and non-participants face more lenient standards regarding loans and transfers that can augment their resources. With important exceptions discussed below, however, the overwhelming majority of contributions received by non-participating candidates were within the Program's limits. For most non-participants, then, Program participation would have had no detrimental impact on their ability to raise funds — even for a number of major, non-participating contenders in the 1993 elections and in previous years. This is particularly so at the Council level, where the limits under State law are sometimes below the $3,000 per-contributor limit permitted under the Program.[15]

But there are some instances in which non-participants relied on extraordinary resources to finance their bids for public office. Andrew Stein was one such example. Stein's rejection of the Campaign Finance Program's reforms was particularly noted when he held a gala fund raiser in January of 1992. With "Golden Benefactors" at $50,000 per table, the event purportedly raised some $2 million for his then-undeclared campaign and resulted in considerable criticism from the local media.[16] Sixty-five percent of the dollar amount of Stein's contributions, some $3.55 million, was in amounts in excess of the Program's $6,500 limit for the offices of mayor and public advocate. This $3.55 million came from only 170 contributors, at an average of about $21,000 each, of whom only about half were New York City residents. Most of Stein's over-the-limit contributions were not hovering just over the limit; they were well beyond it. Participation in the Program by Stein would have excluded about half of his campaign funds.

> **"Stein did a simple calculation...The conclusion? That contributions of up to $100,000 are worth whatever criticism he gets from newspapers and good government groups."**
> ***— New York Newsday[17]***

Of course, contributions are not the only resources available to candidates; some non-participants — for example, Republican mayoral candidate Ron Lauder in 1989, and Council member Andrew Eristoff in 1993 — relied instead on large personal loans to finance their campaigns. Lauder loaned his mayoral campaign a total of $1,255,000 in 1989.[18]

Figure 2.3
MAXIMUM STATE LAW CONTRIBUTION LIMITS* COMPARED WITH CAMPAIGN FINANCE ACT LIMITS (1993)



*State contribution limits vary according to the number of registered voters in the City, borough, or Council district (and enrolled voters in the primary election, resulting in different limits for each party primary). In some districts, the contribution limit for City Council candidates falls below the $3,000 limit applicable under the Campaign Finance Program.

Source: New York State Election Law and the Campaign Finance Act

Eristoff loaned his Council campaign some $643,000 in the 1993 special and general elections. Although Campaign Finance Board rules do not place limits on the total amount candidates may receive in loans, the Program does require that all loans be repaid by the date of the election and subjects any loans outstanding as of that date (or loans forgiven by the lender) to the contribution limit applicable to a given office. Non-participants' loans to themselves are, however, effectively exempted.[19] In Lauder's case, $1.13 million was forgiven, and the rest was outstanding as of January 11, 1990;[20] for Eristoff, a total of $643,000 was outstanding as of January 10, 1994. Such cases aside, for small campaigns especially, loans may be an important resource for candidates as seed money to tide the campaign over until it can start fund raising. As noted in Chapter 11, the Board is recommending an increase in the contribution limit applicable to a candidate's contribution to his or her own campaign, thereby giving candidates more leeway to use their own funds to start up bids for office.

What about Participants? Does the frequency of contributions at the Program's limits suggest that these limits are capping what would otherwise be excessive contributions? As Figures 2.1 and 2.2, contrasting the frequency with the total dollar value of contributions in different amounts, suggest (see pp. 24-25), the vast majority of all donors gave in amounts that were well within the Act's limits. But, particularly among candidates for mayor and comptroller, high-dollar contributions were more common. About 700 contributors to citywide candidates gave at the Program's $6,500 limit applicable to these offices, for a total of about $4.5 million, admittedly an impressive sum. Among the relatively large pool of donors willing and able to give at these levels, some clearly would have given even more under the much higher contribution limits permitted under State election law, as was the case with contributors to Andrew Stein's campaign.

New Limits. The Campaign Finance Act requires that the Program's contribution and spending limits be adjusted periodically to reflect changes in the consumer price index ("CPI"). New limits calculated by the Board pursuant to the Act reflect an 18.3 percent in the CPI since 1989. What effect, if any, might these new limits have on candidates' fund raising habits? As fund raising at the limit has been of significance only in the citywide offices, that is the only level likely to be affected. If the new limits had been in place for the 1993 elections, and assuming the most extreme case, that those donors giving at the $6,500 maximum also would have met the $7,700 ceiling and that overall fund raising remained constant, contributions at the new limit would have made up about 21 percent of the mayoral candidates' and 19 percent of the comptroller candidates' total contributions, up from 19 percent and 17 percent under the existing limits. The effects of these new limits, in concert with the prevalence of large-dollar fund raising among citywide campaigns, suggest that the limits should be reduced for future elections. (See p. 121.)

Conclusion

The Campaign Finance Program has made significant strides in limiting what otherwise would be extremely large contributions, thus reducing the influence of special-interest contributions. And, just as important, its advances in public disclosure have given the press and the public new, previously unavailable information on "who gives" and "who gets."

But much remains to be done. Those who make contributions do not necessarily represent a cross section of people in the five boroughs. Big money still plays an important role in some campaigns, as do organizational contributors and contributors from outside the City. Further reforms proposed by the Board, including increasing the public funds matching rate applicable to smaller contributions from City residents and lowering the contribution limits, would help offset this imbalance. (See Chapter 11.)

*****

The restrictions the Program imposes on contributions are one way of "levelling the playing field" in local politics. The Program similarly controls the amounts candidates can spend on their campaigns, as will be examined in the next chapter.

NOTES

[1] The dramatic increase in contributor totals for 1993 reflects in part the increasing sophistication of the Board's computer applications that allows users to implement complex searches of the Board's database; *see* p. 65. Contributors may not necessarily be giving more; the Board's ability to aggregate contributions by contributor, taking into account inconsistencies in spelling, is improving.

[2] Christi Harlan, "Municipal Bond Group Urges End to Being Solicited," *The Wall Street Journal*, September 8, 1993, A11; Jonathan Fuerbringer, "9 Big Bond Firms Curb Their Giving in Political Races," *The New York Times*, October 8, 1993, A1; Walter Fee, "Donor Ties That Bond," *New York Newsday*, September 20, 1993, 7; and Daniel Wise, "Lawyers' Donations Vital to Mayoral Race," *New York Law Journal*, October 29, 1993, 1.

[3] Fee, "Donor Ties That Bond," 7.

[4] In August of 1993 the industry's regulatory arm, the Municipal Securities Rulemaking Board (MSRB), issued a proposed rule for public comment that would prohibit municipal securities dealers from making political contributions for the purpose of obtaining municipal securities business. (*See MSRB Reports*, August 1993.)

Later, in October of 1993, 17 municipal bond underwriting firms announced a voluntary ban on political contributions. This voluntary group has since grown to include 55 brokerage firms which represent 80 percent of the municipal bond business. (*See* Paul Tharp, "Muni Funds to Face Ban on Pol Deals," *New York Post*, April 6, 1994, 26.)

The Securities and Exchange Commission approved rule G-37 on April 7, 1994 (*See* Securities and Exchange Act Release No. 33868 (April 7, 1994); 59 FR 17621 (April 13, 1994)) "intended to halt 'pay to play' practices by Wall Street bankers who give money to local officials in hopes of getting lucrative municipal finance business in return." (*See also* Leslie Wayne, "Some Bond Firms Complain As a Ban on Giving Begins," *The New York Times*, May 9, 1994, D1.)

Calls to restrict such contributions were not without controversy. Leah C. Johnson, a representative of the Dinkins campaign, was quoted as saying "It's a First Amendment right to contribute or decide not to contribute, and whether or not businesses contribute does not affect whether or not they do business with the city." (Jonathan Fuerbringer, "Despite Scandal, Politicians Still Want Wall St. Money," *The New York Times*, October 14, 1993, B1.) A similar comment from the American League of Cities stated that limiting bond firms' contributions is "fundamentally incompatible with our American system of government" (as quoted in "Munificent Munis," *The Wall Street Journal*, March 2, 1994, A10).

[5] From an interview with Elizabeth Holtzman in *New York Newsday*, September 9, 1993, 106.

[6] Hevesi's decision to impose limits on his own campaign is discussed in an interview with him that appeared in *New York Newsday*, September 8, 1993, 83. In June 1993, Hevesi stated that the three candidates for comptroller should limit themselves to a total of $10,000 or less from executives of firms involved in the City's underwriting business. *See also* James McKinley, "Hevesi Urges Rivals to Limit Underwriters' Contributions," *The New York Times*, June 3, 1993, B3. Hevesi indicated his support for making Wall Street's self-imposed moratorium permanent and called for competitive bidding for underwriting. *See* Paul Tharp, "Hevesi Plans Muni Clean Up," *New York Post*, January 14, 1994, 25.

[7] Stated in response to audience questions at a meeting of the Municipal Forum of New York on February 1, 1994, held at the Downtown Athletic Club.

[8] There are also other instances of clear incumbent advantage. Some candidates — mainly incumbents — amass sizeable "warchests" that may deter competition, carrying forward large amounts of money from one election to another. The Campaign Finance Program attempts to limit the impact of such "surplus funds" by requiring that candidates attribute funds from the earlier election to specific contributions from that election and subjecting those contributions to the Board's contribution limits.

The effect of surplus funds varies. In the 1991 City Council elections, only eight of the 256 prospective candidates who joined the Program brought surplus funds into their 1991 campaigns, totalling $228,000 (compared with about $4 million in contributions raised during the 1991 elections themselves). Of those campaigns with surplus, the typical campaign had only about $17,000. One Council candidate, however, had over $100,000 in surplus, raised a little over $1,000 more during the election, and faced virtually no opposition.

In 1993, only 10 of the 186 participants brought in surplus funds. The total amount was $411,000, contrasted with the over $30 million raised during the 1993 elections. Five candidates for City Council "carried in" about $42,000, averaging about $8,000 per campaign. Surplus funds likewise augmented the campaign coffers of one candidate for public advocate ($38,000), two for comptroller ($237,000), and two for borough president ($94,000). The only candidate carrying in a large sum was incumbent Comptroller Elizabeth Holtzman, who had just over $200,000 in surplus — but this still amounted to only about 14 percent of the total she had available during the 1993 elections.

[9] From "1993 Lobbyist Annual Report" published by the Office of the City Clerk (issued March 15, 1994), 7.

[10] Data regarding intermediaries from elections before the implementation of the Campaign Finance Act and data for non-participants are unavailable.

[11] Tom Robbins and Mark Mooney, "A 'Bundle' of Support for Dave, Rudy," *Daily News*, October 22, 1993, 6.

[12] During the 1989 elections, intermediaries could collect contributions from various sources and deliver them to a campaign staffer, with the staffer's name ultimately shown as the intermediary on the campaign's disclosure report — thus losing track of intermediary information in some areas, incorrectly inflating it in others. The Board has since discouraged this practice by distinguishing between "fund raising agents" on a campaign's staff and the intermediaries themselves.

[13] Robbins and Mooney, "A 'Bundle' of Support for Dave, Rudy," 6.

[14] Effective January 1, 1994 these limits were reduced for citywide offices to the lower of $12,000 for the primary and $25,000 for the general election, or $0.05 x the number of enrolled voters in the primary and $0.05 x the number of registered voters in the general election.

[15] In these instances, State law supersedes the Act's contribution limits.

[16] The fund raiser was held on January 21, 1992. Seats went for between $1,500 and $5,000 per plate. (*See* Todd Purdum, "Stein Plans Fund-Raiser and Dinkins Sees Red," *The New York Times*, January 7, 1993, B3.) Stein was criticized over the ensuing weeks in articles with headlines like "Candidate for Sale" (*Daily News*, January 22, 1992, 20) and "$tein Can Sweep Objections Under Rug" (*New York Newsday*, January 24, 1992, 34). WNBC's Gabe Pressman commented that, "Andrew Stein says it's obscene for a candidate to accept government matching funds . . . What was obscene was that . . . some of New York's wealthiest people were able to cough up to $50,000 each to feed the campaign coffers of this would-be mayor." (Gabe Pressman, transcript of commentary on Sunday, January 26, 1992, supplied by News 4 New York.)

Stein's move also drew fire from other politicians and ultimately affected voters' perceptions of him. After the January 1992 fund raiser, then-Mayor Dinkins stated, "[i]t doesn't take a rocket scientist to see a person doesn't contribute $50,000 simply for routine access." (Frank Lombardi, "Dave Gives Andy a Slap on the Campaign Wallet," *Daily News*, January 22, 1992). A poll conducted by the cable channel NY 1 in mid-February of 1993 found that nearly 50 percent of the people surveyed felt that Stein's connections to monied interests belied his image as a "man of the people," a perception that was "reinforced by the lavish fund raising dinner held for him last summer. His reputation cannot have been helped by his decision not to limit his campaign spending by participating in public financing." (NY 1 Newspoll, February 18-21, 1993, 8.)

[17] Particia Cohen, "$tein Can Sweep Objections Under Rug," *New York Newsday*, January 24, 1992, 34.

[18] New York City Campaign Finance Board, *Dollars and Disclosure: Campaign Finance Reform in New York City*, September, 1990 (hereafter *Dollars and Disclosure*), 81.

[19] State law similarly regards all loans unpaid as of the date of the election as contributions subject to the applicable limit (Sec 14-114(6)(a)). As there is no limit applied to contributions from candidates to their own campaigns (Sec. 14-100(9)(3)), however, there is effectively no restriction on the amount a candidate can lend him- or her-self.

[20] *Dollars and Disclosure*, 81.

Chapter 3

Expenditures:

Big Spending Reined In

All told, campaign spending amounted to over $38 million during the 1993 elections. Participants spent about $36 million. (This was actually less than the $34 million spent during the 1989 elections by participants, which, when adjusted for inflation, is equal to about $40 million in 1993 dollars.[1]) Of that amount, about $4 million was spent prior to 1993; $18 million in the primary election, and $14 million in the general election. (See Table 3.1.) Mayoral campaigns raised the most money and spent it most freely, with Dinkins and Giuliani spending more than $19

Table 3.1
TOTAL PARTICIPANTS' EXPENDITURES BY OFFICE IN 1993, 1991, and 1989

	Total Expenditures		
Office	**1993**	**1991**	**1989**
Mayor	$ 19,760,000	$ N/A	$ 23,800,000
Public Advocate	4,000,000	N/A	N/A
Comptroller	6,070,000	N/A	4,100,000
Borough President	1,990,000	N/A	3,250,000
City Council	4,480,000	7,600,000	2,740,000
Total	36,310,000	7,600,000	33,880,000

Note: Figures rounded to the nearest $10,000; totals may not equal sum of figures.

Source: Campaign Finance Board data

million across both elections. Among the other offices, in the race for public advocate, the victorious Mark Green spent about $1 million more than any of his opponents. Every participating comptroller candidate easily broke the $1 million mark. Spending by most borough president and City Council candidates was, by contrast, relatively restrained.

How Candidates Spent their Money

Fact Sheet 3.1 shows how campaigns apportioned their resources. Citywide candidates put more money into advertising than anything else, and the biggest chunk of advertising dollars was spent on television. Not unexpectedly, those making the most money from the 1993 elections were vendors in some way related to advertising (see Table 3.2, below). The Garth Group, the Media Company — even the U.S. Post Office — represented expendi-

Fact Sheet 3.1
TYPES OF EXPENDITURES BY PURPOSE CODE

Purpose Code	Mayor	Public Advocate	Comptroller	Borough President	City Council	Total
Advertising	$ 7,801,774	$ 1,153,777	$ 1,500,064	$ 97,190	$ 236,943	$ 10,789,748
Office/Staff	4,224,679	725,322	706,492	491,228	476,708	6,624,429
Consultants	1,151,087	610,683	2,057,188	116,720	411,122	4,346,800
Fundraising	2,424,001	204,275	379,580	350,443	550,626	3,908,925
Campaign Mailing	733,719	390,342	605,263	230,970	1,449,941	3,410,235
Compliance	2,416,938	52,863	155,195	225,362	51,169	2,901,527
Polling	673,992	85,158	171,531	25,050	52,430	1,008,161
Petition	185,336	47,315	5,356	11,834	119,758	369,599
Constituent Services	12,965	153,147	0	33,762	88,791	288,665
Professional Services	25,017	84,389	3,963	16,253	157,729	287,351
Voter Registration	19,948	350	0	415	19,856	40,569
Other	638,245	454,311	245,311	156,676	705,973	2,200,516
TOTAL	20,307,701	3,961,932	5,829,943	1,755,903	4,321,046	36,176,525

Source: Campaign Finance Board data (participants only)

Table 3.2
TOP TEN VENDORS, 1993

Vendor	Number of Candidates	Total Amount
The Garth Group	3	$ 5,668,822
The Media Company	1	3,142,103
Morris & Carrick	1	1,666,000
U.S. Post Office	79	933,956
Austin Sheinkopf, Inc.	8	889,713
Trippe, McMahon, & Squier	1	733,847
Zale S. Koff Graphics	41	606,073
Sheraton New York	5	563,594
Automatic Data Processing	6	532,904
Giuliani For New York	3	497,003

Source: Campaign Finance Board data (participants only)

tures in some way tied to getting the message out. The Garth Group, for example, was the primary media consultant for Giuliani and the Fusion ticket. The $5.7 million did not all go into company coffers, however; most was spent to reimburse the purchase of air time by the Garth Group on the Fusion candidates' behalf. The presence of "Giuliani for New York" in the chart reflects reimbursements of expenditures by the Giuliani campaign on behalf of the others on the Fusion ticket, primarily for advertising.

The Selling of the Mayor

— *New York Post*[2]

As one commentator put it: "A candidate has to have access to. . . money, because money translates into TV, and TV translates into votes. . . it's as simple as that."[3] This is not a new truth in politics. Even before the first implementation of the Program during the 1989 elections, campaigns poured a tremendous amount of money into advertising, but there have been some interesting shifts.

At the mayoral level, radio advertising has not made up a substantial portion of campaign spending, and newspaper advertisements appear to be on the wane. (They totalled some $1.2 million in 1989, but under $50,000 in 1993.[4]) Television is the medium of

Table 3.3
MEDIA-RELATED SPENDING BY ELECTION

	Mayor	Public Advocate	Comptroller	Borough President	City Council
1993					
TV Ads	$ 7,745,000	$ 1,047,000	$ 1,150,000	$ 655	$ 23,000
Print*	752,000	247,000	555,000	279,000	1,416,000
Radio	15,000	82,000	292,000	48,000	87,000
1991					
TV Ads	N/A	N/A	N/A	N/A	23,000
Print*	N/A	N/A	N/A	N/A	3,071,000
Radio	N/A	N/A	N/A	N/A	83,000
1989					
TV Ads	8,802,000	N/A	1,391,000	776,000	300
Print*	1,527,000	N/A	282,000	771,000	833,000
Radio	143,000	N/A	156,000	24,000	14,000

*Includes campaign mailings, campaign literaure, newspaper ads, and postage.

Note: Figures greater than $10,000 rounded to nearest $1,000.

Source: Campaign Finance Board data (participants only)

choice among citywide campaigns. Printed materials are more prevalent at the Council level: campaign literature and postage made up 25 percent of all Council candidates' spending in 1991 and 22 percent in 1993. (See Table 3.3.)

Not surprisingly, in many cases the biggest differences in spending by winners and losers — especially in the more lopsided contests — centered on the amount of money allocated for media purposes. In tight races there was very little difference in the allocation of resources to television advertising.[5] The race for mayor in the general election is a good example. Decided by about three percentage points, there are no major differences between

Dinkins' and Giuliani's spending. Where the difference between winner and loser was more pronounced — the race for public advocate is a particularly noteworthy example — the winning candidate had a lot more money to spend. Television-related spending took up about 48 percent of losers' resources, compared with 44 percent of the winning candidate's spending, but Mark Green spent over $700,000 on television advertising, twice as much as any of his competitors. A similar pattern is evident in the comptroller's race. Alan Hevesi paid for advertising through consultants; while winner and losers both spent more on TV than anything else, Hevesi put in almost twice what either Badillo or Holtzman were able to muster.[6]

The typical borough president and Council campaign was barely visible on the million-dollar scale of citywide media buying. The total amount expended was quite low; while there was a wide margin in terms of the absolute dollars spent by winning and losing borough president candidates, the winners were much more preoccupied with items like fund raising than advertising. At the Council level, print media were substituted for television; winners spent an average of about $10,000 on advertising, but the differences in amounts spent between winners and losers were often slight. It is important to remember that newsletters paid for out of government appropriations and distributed by elected officials to their constituents are beyond the Board's jurisdiction, and hence are not included in this analysis. Controversy over mailings and other advertising by officeholders during last fall's elections led to various proposals for prohibiting such spending before an election. (See p. 76.) As noted in Chapter 11, the Board endorses a "black-out period" during which such spending would be forbidden.

What does this suggest about the Program's impact on the viability of campaigns? Obviously, money can be a decisive factor and public funds, which can considerably augment a campaign's resources, provide candidates with the wherewithal to put up a stronger fight. The Board recognizes that certain *kinds* of spending may influence the outcome of an election, and may in the future review different ways of facilitating candidates' access to broadcast media. In one important respect, this is already accomplished by the nonpartisan forum offered by the Voter Guide to both participating and non-participating candidates. (See pp. 117-118.)

The Spending Limits

Obviously, the $36 million spent in 1993 by participating candidates was not an insignificant sum. Has the Program kept spending down among participating candidates? In 1985, the year of the last citywide elections prior to the inception of the Campaign Finance Act, then-Mayor Koch spent over $7 million, almost all of it in the primary (about $10 million in 1993 dollars when adjusted for inflation[7]), outspending his closest competitor by seven to one. He captured just under 65 percent of the vote in the primary and nearly 80 percent in the general election.[8] If this is what mayoral campaigns spend when they face little or no opposition, what about a really challenging race? The 1989 and 1993 races were both highly competitive. Comparing 1985 spending to mayoral spending since that time — when the Dinkins-Giuliani face-offs were won or lost by about 3 percentage points — the fact that spending has not soared to altogether stellar levels can only be attributable to the impact of the Act's spending limits.

"Per Election" Limits. One candidate running for a given office may have a primary, another may not, and both may face each other in the general election. This can cause disparities when both candidates must abide by the same spending limit. The Dinkins-Giuliani race for mayor is a case in point. All told, Dinkins spent over $6 million in the Democratic primary, compared with about $130,000 spent by Roy Innis; clearly, that spending could have had as much to do with the upcoming general election as it did with defeating Innis in the primary. Restricting Giuliani to spending in the general election only could also have put him at an enormous disadvantage.

To address this potential disparity, as discussed in Advisory Opinion 1988-4, the Program extends the spending limit to candidates not in a primary if there is a "contested primary election" in the office for which they are running. Innis' challenge to Dinkins thus gave Giuliani the ability to spend during the primary, although he faced no opposition for the Republican nomination.

But some candidates face vigorous primary opposition, then go on to face another opponent in the general election — as was the case in the extremely close contest between Elizabeth Holtzman and Alan Hevesi in the primary and later in the runoff election. Arguably, most of Hevesi's spending in the primary and runoff elections went into defeating Holtzman, and not the person who would be his main opponent in the general election, Herman Badillo.

When Do the Limits "Bite"? Historically, only the mayoral race has seen campaigns routinely spend near or at the Program's limit. In the 1989 race, then-Mayor Koch exceeded the primary spending limit and was assessed a penalty by the Board. During the 1993 elections, after revising his accounting of "exempt" expenditures (see "Exempt Expenditures," p. 45 and p. 110), then-Mayor Dinkins also exceeded the primary limit and was assessed a penalty. Clearly, mayoral candidates would spend more if the limits were not in place. Spending by comptroller and public advocate candidates — although well below the $2.5 million limit applicable to those offices — was still quite high. Particularly as TV advertising seems to play an important role in citywide races, the need to spend is there; the question seems to be less of willingness and more of capacity: with some exceptions, citywide candidates spent virtually every penny they took in. At the Council level, several highly competitive contests involved "bonus" situations (when a participant faced a high spending non-participant) in which the spending limits were lifted. This was particularly true at the Council level during the 1991 elections, when the bonus was applied in 16 districts during the primary election and five in the general election; even in those districts, however, participant spending was often well within the limit that would have otherwise applied.[9]

At the Council level, however, some non-participants brought significant resources to bear against their opponents. In the most extreme case, non-participant Andrew Eristoff spent close to $1 million in his bids for the seat in Manhattan's 4th Council district in special and general elections. He ultimately won both races (vastly outspending Jane Crotty, his participating opponent in both elections), but by very slim margins — 57 votes in the special election, and 201 votes in the general election. One newspaper commented: "Some say he bought the seat by not participating in the City's Campaign Finance Program."[10] In response to his rationale for not having done so — that he needed unlimited spending potential to combat the City's Democratic machine — it was noted that Charles Millard, another East Side Republican facing similar circumstances, had mounted successful campaigns on two occasions (once against a sitting incumbent), both times from within the constraints imposed by the Program.[11]

Exempt Expenditures. "Exempt expenditures" is a category created so that candidates would not be placed at a disadvantage by spending necessarily incurred to comply with State election law and with the Program's disclosure and record-keeping requirements. This has been seen as a potential loophole through which participants could evade the Campaign Finance Act's spending limits by illicitly classifying some spending as exempt. The potential for abuse is present, but what conclusion can be drawn from the numbers?

Variations across offices and between campaigns make it very difficult to pinpoint what the "typical" campaign's exempt spending "should" look like. For mayoral campaigns, exempt spending hovered around 13 percent of total spending across both the primary and general elections, public advocate candidates averaged eight percent, comptroller candidates averaged 2.3 percent, borough presidents averaged nine percent, and Council candidates 5.8 percent. There were also tremendous differences between campaigns. Among mayoral candidates, Dinkins classified roughly 16 percent of his total spending as exempt, but during the primary, exempt spending in his campaign approached 25 percent, or about \$1.3 million.[12] Giuliani spent about nine percent in exempt expenditures; among borough presidents, Fernando Ferrer's exempt spending represented about 20 percent of the total, while Ruth Messinger classified only about two percent as exempt; similar variations appeared in other offices as well. The Board is proposing a modification of the category of exempt spending to narrow the types of activities that may be claimed as exempt, while proposing modest increases in the spending limits for certain offices in order to account for new categories of non-exempt spending. (See p. 125.)

Mayor-elect Rudolph Giuliani testified at the Board's December 1993 public hearings with campaign attorney Randy Mastro.

Joint Expenditures

The 1993 "Fusion ticket" that cut across traditional party lines and united candidates for mayor (Giuliani), public advocate (Alter), and comptroller (Badillo), raised issues about candidates' "joint expenditures." Although only one of the trio was ultimately successful, each campaign did, to a greater or lesser extent, support its allies' bids for office. These joint activities are expressly permitted under the Campaign Finance Act, provided that the benefit each participant receives from the joint material or activity is proportional to the participant's expenditures for the material or activity.[13]

That said, the activities of those involved were not without controversy. Mark Green's campaign filed a complaint against Susan Alter (and similar complaints were lodged against Badillo by his opponents, Alan Hevesi and Elizabeth Holtzman) alleging that a televised advertisement featuring Giuliani, Alter, and Badillo but paid for entirely by Giuliani should have been charged to Badillo's and Alter's campaigns as in-kind contributions (and thus would have exceeded the $6,500 contribution limit applicable to the offices of public advocate and comptroller). For its part, the Giuliani campaign argued that the advertisement was designed solely to support Giuliani's campaign by expressing his message that he would reach out to the City's various constituencies through the Fusion ticket and was not intended to help the other campaigns. The Board, however, did not accept this argument, finding instead that the advertisement was made "in connection with" the Alter and Badillo campaigns and that, although the latter may have had no direct involvement with the advertisement, it was nonetheless not "independent," given the very nature of the Fusion ticket itself. (As this was the first time the Board had considered the question, it did not require reallocation of the expenditures for the advertisement in question among the three campaigns, but made a prospective ruling that would apply to future spending.[14])

Independent Expenditures

Independent expenditures are a widely discussed and difficult topic in campaign finance because of the limits on government's ability to regulate them under the Supreme Court's interpretation of the First Amendment.[15] During the 1993 elections, independent expenditures became an issue in a number of contexts, including spending by a party on behalf of a candidate and spending by a candidate on behalf of another candidate.

"Independent" Spending by Parties. The Board presumes that spending by a party on behalf of its nominated candidate is an in-kind contribution to that candidate and subject to the contribution limit for the office for which that candidate is running. This presumption can be overcome if it is shown that the spending in question was intended for generic party purposes, not for a specific candidate, and that the candidate had no say over how (or indeed, if) the money would be spent.

The Board was confronted with this question in a complaint filed by the Giuliani campaign claiming that some $500,000 in expenditures by the New York State Democratic Committee ("NYSDC") for radio advertising and the production and mailing of brochures promoting the re-election of then-Mayor Dinkins should be regarded as a contribution to the Dinkins campaign. The Dinkins campaign contended that it had no involvement in the NYSDC's advertising campaign and that the spending was wholly independent. Before the Board ruled, the Dinkins campaign voluntarily reimbursed the NYSDC for the money it had spent, without conceding that the NYSDC's spending was not independent.

The Republicans were later brought into the fray by a complaint from the Dinkins campaign over a solicitation by Victory '93, a fund-raising operation of the Republican State Committee, and election-day spending by the Republican party, which the Dinkins campaign alleged were in-kind contributions to the Giuliani campaign, arguing that they were related to the mayoral election. The Giuliani campaign agreed to absorb the pro-rated costs of a Victory '93 letter that mentioned Giuliani specifically. The Dinkins campaign withdrew the complaint after the election, but the Board is studying the matter as part of its audit of the Giuliani campaign and as a matter of general concern.[16]

"Independent" Spending by Candidates. Conflict also erupted over spending by the candidates themselves. Manhattan Borough President Ruth Messinger made expenditures on behalf of then-Mayor Dinkins and of Miriam Friedlander, a former Council member, who was running to win back a seat in 1993. The Giuliani campaign filed a complaint claiming that a mailing and leaflet paid for by Messinger's committee in support of Dinkins should be treated as in-kind contributions to Dinkins subject to the $6,500 limit, but withdrew the complaint after the election.[17] In an unrelated dispute over Messinger's spending on behalf of Friedlander, Council member Antonio Pagan submitted an informal complaint to the Board alleging that several mailings, posters, brochures, and flyers supporting Friedlander were in-kind contributions to Friedlander in violation of the $3,000 limit applicable to Council participants. While these expenditures, if truly "independent," are not subject to the Program's limits, the Board is studying how this kind of spending should be treated in the future. (See p. 132.)

Conclusion

Joint expenditures and independent spending remain challenging issues for the Board. Since its inception, however, the Campaign Finance Program has successfully placed a ceiling on campaign spending. Particularly among mayoral candidates, these limits may contribute to making races more competitive by placing a ceiling on the resources candidates can spend on their campaigns. The comprehensive restructuring of the limits proposed by the Board would consolidate and streamline the limits for future elections. (See p. 125.)

* * * * *

The infusion of public funds into races also helps to "level the playing field." The next chapter will examine public funds and their effect on City elections.

NOTES

[1] Corrected for an 18.3 percent increase in the Consumer Price Index from 1989 to 1993. Source: U.S. Department of Labor, Bureau of Labor Statistics.

[2] Richard Steier, "The Selling of the Mayor," *New York Post*, September 2, 1993, 19.

[3] Sanford L. Fox, chairman of Fox-Morris Associates, Inc., a national executive search firm and a former fund raiser for Mayor Rendell of Philadelphia, quoted in Johnathan Fuerbringer, "Despite Scandal, Politicians Still Want Wall Street Money," *The New York Times*, October 14, 1993, D20.

[4] Some costs associated with the purchase of newspaper advertisements may have been absorbed within other purpose codes (such as "consulting") in 1993.

[5] As campaigns tend to report spending somewhat differently — some campaigns, for example, pay for advertising directly, others pay through consultants — certain expenditure purposes shown may overlap; in this analysis it is assumed that "consulting" is directly related to advertising.

[6] The extent of the support received by Badillo from other members of the "Fusion" ticket is not necessarily reflected in this tabulation. It is noteworthy, however, that although Hevesi dramatically outspent Holtzman on media-related items, the primary election was still very close.

[7] Corrected for a 46 percent increase in the CPI since 1985. Source: U.S. Department of Labor, Bureau of Labor Statistics.

[8] *Dollars and Disclosure*, 84; Board of Elections filings.

[9] Generally speaking, the typical Council candidate never approaches the $105,000 limit: during the 1991 primary and general elections the average participant spent about $38,000 per election, while in 1993 the average participant spent about $46,000 and $30,000 in the primary and general elections, respectively.

[10] Editorial, "Anoint Crotty," *New York Newsday*, October 26, 1993, 42.

[11] *New York Newsday*, "Anoint Crotty," 42. (Millard did, however, violate the spending limit in 1991 by a small amount.)

[12] This amount was supplied to the Board by the Dinkins campaign after the campaign recalculated its exempt spending in response to a Board inquiry, and it is under review by the Board as part of the post-election audit process.

[13] Campaign Finance Act §3-715; Rule 1-08(h).

[14] New York City Campaign Finance Board Administrative Proceeding No. 1993-6, September 23, 1993.

[15] *Buckley v. Valeo*, 424 U.S. 1 (1976).

[16] According to a summary breakdown of spending for the New York City component of the Victory '93 initiative provided by the Republican State Committee to the Campaign Finance Board, the Republican party spent about $540,000, some of which was attributable to election day activities. (This amount was confirmed by Jeff Buley, Counsel to the New York Republican State Committee, in an interview conducted at the Campaign Finance Board on March 25, 1994.) The Democratic party reportedly spent $350,000 on election day activities. *See* William Bunch, "Election Attack," *New York Newsday*, December 1, 1993, 4.

[17] Both the Dinkins and Giuliani campaigns withdrew all pending complaints against each other after the election.