An Election Interrupted...

The Campaign Finance Program and the 2001 New York City Elections

Part I: Report
September 2002

New York City Campaign Finance Board

. . . An Election Transformed

The thing I think really worked in this last election was campaign finance reform. You had for the first time people having access to pretty much the same amount of money and very competitive elections all over the city. And as a result of our having meaningful spending limits, the hardest working person generally won.

A. Gifford Miller, Speaker, New York City Council

Printed in New Jersey.

cover photo — a polling site at the World Financial
Center immediately after September 11th

inside cover photo — New York City Council 2002
on the steps of City Hall (*Dan Luhmann*)

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…An Election Transformed

Part I: Report

New York City Campaign Finance Board

Dedication

The members and staff of the New York City Campaign Finance Board dedicate this report to their Chairman,

Joseph A. O'Hare, S.J.,

who has led the Board from its inception in 1988, successfully establishing a nonpartisan culture in contradiction to the professional cynics, and providing resolute stability and clarity in response to unpredictable political currents, and always, with generous humor.

> *Nothing is more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things….*[1]

1 "E debbasi considerare come e' non é cosa piú difficile a trattare, né piú dubbia a riuscire, né piú pericolosa a maneggiare, che farsi capo a introdurre nuovi ordine. . . ." Niccolò Macchiavelli, *The Prince*, Chapter 6, translation by W.K. Marriott.

New York City Campaign Finance Board

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Preface

This report is presented in two parts. Part I contains the New York City Campaign Finance Board's comprehensive mandated report to the mayor and the speaker of the City Council on the effect of the New York City Campaign Finance Program on the citywide elections of 2001. Part II, on compact disc, contains the appendices to Part I. The notes to the appendices are located at the end of this report. An Executive Summary of the Board's mandated report is also available. It contains highlights of the report and includes the full set of recommendations made by the Board for improvements in the Program and state law governing campaign financing. The Report, Appendices, and Executive Summary are also available in .pdf format on the Board's Web site, www.cfb.nyc.ny.us.

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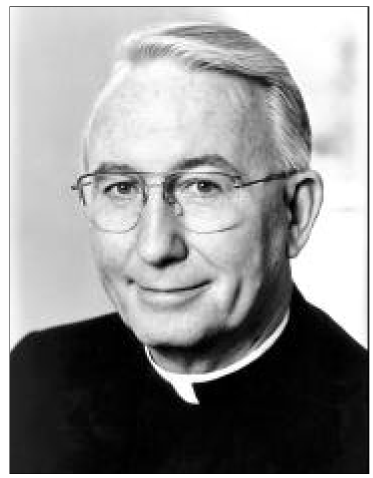

Joseph A. O'Hare, S.J.,
Chairman of the
NYC Campaign Finance Board

The municipal elections of 2001, the fifth set of elections to be conducted under the New York City Campaign Finance Program, promised for several reasons to be a journey into uncharted waters for the Campaign Finance Board and its staff.

The full impact of the law on term limits, approved by New York City voters in 1993, would be realized for the first time. Incumbents in all citywide offices and most of the City Council seats would not be eligible to run for re-election, and a record number of candidates, many running for the first time, were expected to campaign for the contested seats and participate in the Program.

A change in the formula by which private contributions would be matched by public funds, from $1-to-$1 for contributions of up to $1,000 to $4-to-$1 for contributions of up to $250, would mean that more public funds would be distributed to more participants than in any of the previous elections in which the Program was operative. Would such a dramatic increase in the public funding of New York City election campaigns be judged a wise use of public money?

In addition, one potential mayoral candidate, Michael Bloomberg, was expected to finance his campaign out of his own resources and was reportedly prepared to outspend his opponents by wide margins. Would such a campaign, if successful, test the credibility of the Program's limits on contributions and expenditures and thus discourage future participation in the Program?

Through the spring and summer weeks of 2001, the Campaign Finance Board and its staff wrestled with these and other issues, but on Primary Day, September 11, 2001, the terrorist attack on the World Trade Center cast such questions into a radically different context. The primary election was postponed until September 25th, and the dynamics of the campaign, the mayoral race in particular, were fundamentally altered.

This review of the 2001 New York City municipal elections, mandated by law, must address the original questions about the Program that term limits, a changed formula for matching funds, and a wealthy self-financed candidate posed for the Program in the spring and summer of 2001 in the very different environment created by the September 11th attack.

The change in the formula for matching funds had been the occasion of considerable controversy. Since the City Council, in its original legislation, had linked the $4-to-$1 matching rate to a candidate's decision to refuse all corporate contributions (those who accepted corporate contributions would continue to receive matching funds on a $1-to-$1 basis), the Giuliani administration had argued that the ban on all corporate contributions adopted as a revision of the City Charter in 1999 implied a cancellation of the $4-to-$1 matching formula.

The Campaign Finance Board, however, in an advisory opinion published before the vote on Charter revision and in correspondence with the Charter Revision Commission, had taken a different position, namely, that the change in the formula for matching funds had been enacted into law by the City Council to serve purposes of public policy beyond the simple ban on corporate contributions, and that therefore the $4-to-$1 matching rate remained in effect for all participants in the Program.

The issue was not definitively settled until April 2001, when a vote of the City Council that overrode a mayoral veto confirmed the $4-to-$1 formula. The controversy, which included attempts by the Giuliani administration to prevent payment by the CFB of matching funds to candidates in previous elections, had complicated the Board's preparations for the 2001 elections, which presented formidable challenges in any case.

During the spring and summer of 2001, the Board and its staff confronted an unusual number of legal challenges, including some from campaigns intent on receiving public matching funds before they had reached the necessary threshold in matching contributions, as well as the novel argument of a campaign consultant to one of the mayoral candidates that his personal services, as opposed to those of his firm, were offered on a volunteer basis and should not be counted toward the expenditure limit.

Such issues, contentious and legalistic, had preoccupied the Board and its staff during the weeks leading up to the primary election on September 11th. A few hours after the polls had opened, shortly before 9:00 a.m., the first of two hijacked commercial airliners flew into the north tower of the World Trade Center, just three blocks from the headquarters of the Campaign Finance Board, located at 40 Rector Street. Members of the CFB staff already at work in their offices had to flee the building. Other members of the staff were caught in subway stations and in the streets near the burning towers. They all became part of the exodus from lower Manhattan of tens of thousands of New Yorkers heading north through dust-filled city canyons to safety.

For the rest of the municipal election season of 2001, the CFB staff would work out of their homes and in temporary headquarters provided at Fordham University's Lincoln Center campus, responding to the needs of hundreds of first-time candidates, receiving and reviewing their disclosure statements, and recommending to the Board the orderly payment of public matching funds to those candidates who had fulfilled the requirements of the Program. Their service to the city, working under such conditions, was as extraordinary as the new world ushered in by September 11th. One index of their professional competence is the fact that it was, for the most part, taken for granted by candidates and their campaign staffs.

Governor Pataki acted promptly on the morning of September 11th to cancel the primary election, and the legislature rescheduled it for September 25th. The Board, in a meeting held on an emergency basis at Fordham University two days after the terrorist attack, confronted an unexpected question: What adjustments, if any, should be made to the contribution and expenditure limits now that the primary election date had been postponed for two weeks? The Board found no authority in the law to approve additional spending. Nor did there seem to be any interest on the part of the campaigns in receiving additional money. The four Democratic mayoral candidates told the Board of their shared belief that no adjustments should be made in the Program's limits. The Board issued a statement informing the campaigns that no increased spending would be permitted during the weeks preceding the new primary election date, with the exception of spending for typical get-out-the-vote activities that were curtailed on September 11th.

Although the *New York Post*, a conspicuous critic and long-time opponent of the Program, later denounced this decision as the suppression of free speech, the only complaints the Board received from the candidates concerning this decision involved accusations that their opponents were not observing the ban on additional spending. These complaints were investigated and largely appeared to be without merit.

Given the fact that four well-established political figures were competing for the Democratic mayoral nomination, it had long been expected that a run-off election, required if no candidate gained 40% of the primary vote, would be necessary. A runoff also seemed likely in the campaign for the Democratic nomination for public advocate, where seven candidates had mounted serious campaigns. When the postponed primary election was finally held on September 25th, this expectation was fulfilled.

In the Democratic primary election for mayor, Public Advocate Mark Green, who had enjoyed a significant lead in the polls leading up to the election, came in second, in a field of four, to Bronx Borough President Fernando Ferrer: 243,182 votes for Green to 279,451 for Ferrer. After a stormy campaign, marked by ugly charges and counter-charges of racism, Mark Green prevailed over Fernando Ferrer in the run-off election, with 403,000 votes to 387,019 votes for Mr. Ferrer.

Seven candidates campaigned for the Democratic nomination for public advocate, and the front-runner in the September 25th primary for public advocate was Betsy Gotbaum, with 24% of the vote. The next four candidates were tightly bunched, and the final results of the voting would not be certified until just before the run-off election on October 11th. Three of these candidates, Norman Siegel, Stephen DiBrienza, and Scott Stringer, argued at the Board's invitation that they deserved to receive the public funds that would be available for the runoff without waiting for the official tally. The Board agreed. In the end, Norman Siegel was certified as the candidate to face Betsy Gotbaum in the runoff, which she won by close to a two-to-one margin and then went on to win the general election on November 6th with 86% of the vote.

As the city struggled to respond to the September 11th terrorist attack, the mayoral candidates were confronted with an unexpected issue. Mayor Giuliani's strong leadership in the days following the attack led to support in several quarters for an extension of his term in order that he might oversee the rebuilding of lower Manhattan. In the days leading up to the run-off election on October 11th, the mayor proposed to the Republican candidate, Michael Bloomberg, and to the two remaining Democratic candidates, that he continue in office for several months after January 1, 2002. Both Green and Bloomberg supported the mayor's proposal, but Fernando Ferrer refused to assent, arguing that the normal process of succession should be respected.

In the end, the positions of the candidates on this issue proved moot, since the New York State legislature refused to enact the legislation necessary for the mayor's proposal to take effect. Months later, when Michael Bloomberg took the oath of office on January 1, 2002, in the presence of Rudy Giuliani, the emotional pressure of those weeks in October was all but forgotten. Neither the mayor-elect nor his predecessor nor the city at large seemed uncomfortable that the ordinary law of succession was in place.

On Election Day, November 6, 2002, the citizens of New York City elected the Republican candidate, Michael Bloomberg, mayor with 50% of the vote to Mark Green's 47%, 744,757 votes to 709,268 votes. After spending a record $20 million in the Republican primary, where he defeated Herman Badillo, who had not qualified for public matching funds by the date of the primary election, Mr. Bloomberg went on to spend another $53 million in the general election, outspending the Democratic candidate, Mark Green, by a huge margin. Still, the $16.2 million that Green, aided by increased public matching funds, spent was more than any mayoral candidate had ever spent in any previous election.

As the detailed analyses in the following chapters demonstrate, the increased matching formula did encourage a more democratic form of fund-raising, with smaller contributions by more individuals playing a much more important role than in previous elections. The increased availability of public funds also accounted for more expensive campaigns, particularly at the City Council level. Could the desired goal of more representative participation in fund-raising have been achieved and campaign expenditures better controlled, if the matching formula had been $3-to-$1, the original proposal of the Campaign Finance Board in 1998?

Was the increased investment in public matching funds justified by the results of the election? The Giuliani administration, in arguing against the $4-to-$1 matching formula, predicted that the amount of public funds distributed in the 2001 election could be as high as $127 million. The Campaign Finance Board gave its own estimate as closer to $63 million. As a matter of fact, when the final payment of public funds for the 2001 campaign is made, the total will be less than $45 million. Among the Board's recommendations for changes in the Program, found in the final chapter of this report, are proposals for reducing contribution limits and changing the matching formula and spending limits. If enacted into law, these changes would most likely reduce the total of public funds paid out in future elections.

Given the large number of candidates running for the first time, often supported by inexperienced campaign staffs and novice political consultants, it is not surprising that some campaigns found the disclosure requirements and the need to reach certain thresholds to be eligible for matching funds more burdensome than they might have anticipated, despite the efforts of the CFB staff to assist new candidates in complying with the Program's requirements. The increased public funds available under the new matching formula, however, made it all the more important that the CFB exercise oversight of compliance with the conditions of the Program. In the 2001 campaign, as in previous campaigns, honest mistakes as well as instances of deliberate fraud were identified by careful reviews of disclosure statements. If matching funds had been distributed to campaigns guilty of these violations, public funds would have been misused, and those candidates who had observed the Program's regulations would have suffered a competitive disadvantage. To maintain a level playing field for all candidates, while acting as a responsible steward of the Public Fund, the Board must insist on compliance with the regulations of the Program.

In previous municipal elections conducted under the Campaign Finance Program, complaints that rival campaigns had violated the rules of the Program were a common occurrence. In the 2001 elections, there were fewer such complaints. Instead, lawsuits directed against the Board by campaigns disappointed by its rulings became the weapon of choice. The CFB prevailed in all of these proceedings except one (which in the end proved to be moot), and the Board was confident that it would have prevailed on appeal, if it had been allowed to do so. The Corporation Counsel forbade the CFB from appealing, however. This disturbing incident dramatized the need for the CFB, as an independent agency, to have final control over its own litigation. Given the pressure of the campaign season, it is in the public interest that such lawsuits, which consume valuable time and energy that could better be spent in administering the Program, be discouraged.

The interruption of the ordinary election cycle posed special problems for the two principal voter education activities of the Campaign Finance Board: the publication of a general election Voter Guide and the program of mandatory debates for participants in the Program.

In order to assure the delivery of the Voter Guides before the November 6th general election, the books had to go to press before the final winners in the postponed primary on September 25th were known. It was necessary, therefore, to include all the candidates in the primary election, even those who ultimately might not be candidates in the general election. Although the Voter Guide for the general election called attention to the fact that not all the candidates listed in the book would actually be candidates in the general election, some candidates later complained about the overly inclusive nature of the Voter Guide.

The program of mandatory debates was not as useful, particularly at the mayoral level, in the 2001 election as it had been in the 1997 election. The four leading candidates for the Democratic mayoral nomination were all familiar figures in New York City politics. They began meeting in different settings early in the campaign season and had appeared together many times before the first CFB-sponsored debate. On the Republican side there were no mandated mayoral debates in the primary campaign, since one of the two candidates was not a participant in the Program. In the general election, the Democratic and Republican candidates for mayor met once during prime time in the one mandated CFB debate and once during the afternoon on a Spanish language cable television program. While the Republican candidate proposed additional debates, the Democratic candidate, employing the conventional strategy of the presumed front-runner, did not agree to any more debates. Ironically, then, the one candidate least known to the public and running for the first time for public office, Michael Bloomberg, appeared in only one major debate throughout the primary and general election season.

After the experience of the 2001 municipal elections, the Board renews the recommendations it made in 1998 for changes in the mandated debate program that, we believe, would better serve the education of New York City voters about candidates and their programs.

Along with the Voter Guide and the Debate Program, in the 2001 municipal elections the Board's ability to fulfill its voter education mandate was strengthened significantly by improvements in the Campaign Finance Board Web site, which provided a searchable database for any citizen who wished to learn about candidates' contributions and expenditures. If disclosure is, as many observers believe, one of the most important features of the Program, the CFB Web site has dramatically improved access to significant information about the candidates and has set a standard for other jurisdictions interested in providing such information to their citizens.

At the conclusion of the most extraordinary election season in New York City history, perhaps the most vexing questions about the Campaign Finance Program arise out of the successful campaign of Michael Bloomberg, who chose not to participate in the Program and outspent his opponent by the astonishing margin of just over $73 million to $16.2 million. This difference in spending clearly constituted an enormous competitive edge for Mr. Bloomberg. Despite this lopsided difference in campaign resources, however, most observers concluded that the influence of the September 11th attack was far more decisive on the final outcome of the mayoral election.

In the aftermath of September 11th, the fundamental dynamics of the mayoral campaign had been transformed. Mayor Giuliani's strong leadership in rallying the city to respond to a shattering tragedy invested his eventual endorsement of Michael Bloomberg with a moral authority that would have been unthinkable prior to September 11th. The barrage of carefully crafted television commercials repeating this endorsement was the principal reason that Mark Green's comfortable lead in the polls narrowed dramatically in the final days of the campaign. At the same time, the Green campaign chose to use its comparatively limited advertising resources in the final days of the campaign in a personal attack on the opposing candidate that many found offensive, particularly in view of the heightened expectations of leadership created by the September 11th attack and the city's response to it.

The critical question for the Program is whether a candidate participating in the Program and competing against a wealthy self-financed opponent who is not a participant will have sufficient resources to communicate a compelling message to the voters. In the post-election hearings, the Green campaign maintained that the Program had been a failure on the mayoral level because of the disparity in expenditures by the two candidates. In this view, a swing of only 35,000 votes, presumably, would have spelled success for the Program. It seems reasonable to conclude that campaign decisions, for example, on the choice of advertising content and the refusal to engage in more public debates with the Republican candidate may have accounted for those 35,000 votes and more.

Will Mr. Bloomberg's spending in the 2001 campaign discourage future participation in the Program? The answer to that question will depend on what happens over the next four years. If Mr. Bloomberg chooses to run for re-election in 2005, the voters will judge him on his record as mayor. If he is successful, and most observers believe he is off to a promising start, he will be re-elected. If he is not successful, participants in the New York City Campaign Finance Program will have the resources to effectively present an alternative, if one is available. To believe that the quantity of advertising commercials alone is enough to determine the outcome of a campaign betrays a lack of confidence in the discrimination of New York City voters, a judgement not supported by the history of municipal elections in New York City.

As I look forward to the conclusion of my third and final term as chairman of the New York City Campaign Finance Board, permit me to offer a final valedictory word. It is essential that the culture of the Board continue to be, as the architects of the Program intended, nonpartisan. The Board to be faithful to its mandate must operate as an independent agency. This is not always a simple task when the Board must oversee the campaign activities of elected officials who have control over the Board's budget, the location and condition of its offices, and even the ability of the Board to defend itself against lawsuits. Appointments to the Board are made by the mayor and the speaker of the City Council, but Board members, once appointed, are not the agents of either the mayor or the City Council. The nonpartisan character of the Board has been one of the reasons why the New York City Campaign Finance Program has been hailed as a national model of campaign finance reform. The nonpartisan character of the Board cannot be compromised.

It has been a privilege to work over these past 15 years with the executive director of the Campaign Finance Board, Nicole A. Gordon, who has provided superlative leadership in creating a new city agency in 1988 with an ambitious mandate which has met the challenges of five different municipal campaigns. Working closely with Carole Campolo, the deputy executive director from the beginning, Nicole has assembled a group of extraordinary public servants whose performance under difficult circumstances has been the principal reason for the success of the Program.

I know that I speak for my fellow Board members, Alfred C. Cerullo, III, Dale C. Christensen, Jr., Pamela Jones Harbour, and Rabbi Joseph Potasnik, in congratulating and thanking Nicole, Carole, Sue Ellen Dodell, our general counsel, and the entire CFB staff for responding with courage, imagination, and high professional competence to the unexpected challenges of the 2001 municipal elections, a historic moment in New York's civic history.

Joseph A. O'Hare, S.J.
Chairman

July 4, 2002

A Personal Acknowledgement

On September 10, 2001, the CFB staff was exhausted but elated. We had successfully completed what we expected to be the most demanding period of the election season, having disbursed over $31 million to 169 candidates; having fully implemented the primary election Debate Program; and having distributed millions of primary election Voter Guides in multiple editions and languages to all the eligible voters in New York City. It had been the largest set of elections in the history of New York City, and the staff had worked for months and under great pressure, including nights, weekends, and even around the clock, to fulfill the Board's mandates.

On September 10th, the morning's front page, above-the-fold photograph in the *New York Times* was of the five Democratic candidates for mayor appearing in the last CFB debate for the primaries. In the afternoon, we received word that we had prevailed in the last expedited litigation of the primary season. We went home drained, but looking forward to Primary Day, which, at the CFB, is a slow day, when candidates are getting out the vote and have no great interest in our office. Primary Day was therefore to be "dress down," with a celebratory breakfast and a party in the evening at a local bar to watch the election returns. It would be our first breather, though a brief one, before the general election period began. The "worst" was over, because in New York City the general election period is far less demanding than the primary.

On the morning of September 11th, the 60-plus members of the CFB staff were at various stages on their way in to the office at 40 Rector Street, three blocks south of the World Trade Center. About 18 were already in the offices, about a dozen were on the subway, and most of the rest were within a few blocks when the World Trade Center was attacked and, later, when the towers collapsed. Nearly everyone on the staff had a direct experience of those events, and each one, like every New Yorker, was deeply affected by them. Luckily, no one suffered serious physical harm.

The offices at 40 Rector Street were part of the "frozen zone" for seven weeks. The primary election was postponed for two weeks, and the results of those elections yielded two citywide run-off elections. As it turned out, the post-September 11th period was far more demanding for the CFB staff even than the intense pre-September 11th period.

Working from home and out of makeshift offices generously provided by Fordham University, the staff somehow proceeded with business, staying in contact with 158 general election candidates by cellphone; paying out $10 million to over 100 run-off and general election candidates from tables set up in the lobby of the Fordham University campus at Lincoln Center; successfully negotiating (with limited bargaining power) for the continued broadcast of citywide candidate debates for the run-off and general elections; and distributing even larger editions of the Voter Guide to the millions of registered voters in New York City. It is a testament to the determination of the CFB staff that the Board's mandates were fully carried out notwithstanding the staff's lack of access to its accustomed resources or the comfort of its own offices.

Most of all, it is a testament to the staff that this was all accomplished without complaint and in the face of continued trauma and distress, an ample measure of which persists even months later, as CFB staff come to work downtown day after day to confront the changed spaces of a no longer thriving commercial area.

I have had the enviable luck to work with these excellent colleagues in good times and bad. I thank all the CFB staff for having carried through, under the Board's direction, the most successful set of elections in the history of the New York City Campaign Finance Program, the more so for having done this under such extraordinary and painful circumstances.

Nicole A. Gordon
Executive Director

Chapter 1

An Election Transformed

The New York City Campaign Finance Board (CFB or Board), an independent, nonpartisan city agency, is charged with administering the city's Campaign Finance Program (Program) established by the pioneer New York City Campaign Finance Act (Act) adopted in 1988.[1] The voluntary Program provides public matching funds to qualifying candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member who follow the Program's limits on contributions and spending and other requirements, including full public disclosure of all financial transactions and rigorous audit by the Board.

The authors of the Act wisely recognized that, to be effective, reform programs must continually evolve to keep up with the changing environments in which they operate. Thus, the Act requires the CFB to review the performance of the Program following each election and to make recommendations to the mayor and the City Council for change.[2] This report is the result of the Board's study of the Program's performance in the 2001 elections, in which over $41 million in public funds was distributed to 199 participating candidates. Of the 59 candidates who were elected, 54 were Program participants, a record number. This study relies upon statistical analysis of computerized data collected from the candidates' filings, information obtained through audit, comments received at post-election public hearings, in surveys sent to candidates and treasurers, and in other public forums and informal communications received by the Board. A wide range of objective and anecdotal information informed the CFB's analysis of the record and its recommendations for change found in Chapter 10.

A NEW ERA OF REFORM

In the 2000 presidential election, Senator John McCain (R-AZ) made the issue of campaign finance reform the centerpiece of his run for office, charging that "soft money," or unregulated contributions to political parties, corrupts the political process. Another presidential candidate, former Senator Bill Bradley (D-NJ), was also outspoken on the issue of reform and proposed a federal system modeled after New York City's.[3] Although neither candidate won his party's nomination, their shared theme that money was distorting the political process resonated with voters and momentum for campaign finance reform has continued to build nationally. On March 27, 2002, after Congress enacted legislation (McCain-Feingold)[4] that included a ban on soft money at the federal level, President George W. Bush signed into law the first major changes to federal campaign finance law since the post-Watergate era.

The New York City Campaign Finance Board (from left):
Alfred C. Cerullo, III; Rabbi Joseph Potasnik; Executive Director Nicole A. Gordon; Dale C. Christensen, Jr.; and Chairman Joseph A. O'Hare, S.J. (not pictured – Pamela Jones Harbour)

The new federal changes, however, are far from comprehensive, and they represent at best a modest first step in addressing the many ways in which private campaign contributions may wield more influence than citizens' votes. In New York City, by contrast, the 2001 elections demonstrated that progress in democratizing campaign finance, although far from over, is well underway at the local level. The New York City Campaign Finance Program has, in fact, become a standard by which campaign finance systems are measured. In May 2002, Senators John McCain and Russell Feingold (D-WI), as well as Representatives Christopher Shays (R-CT) and Marty Meehan (D-MA), (the principal sponsors of the federal soft money ban) appeared at a press conference held by the nonpartisan advocacy group Democracy 21, where the results of a study were released, urging the dismantling of the bipartisan Federal Election Commission and the creation of a nonpartisan agency. New York City's program was held up as a model in the task force report.[5] The two Democratic candidates running for governor of New York have both felt called upon to address the state's lax campaign finance system, contrasting it with the city's. Calling an overhaul of the way campaigns are financed on the state level a "central premise of my campaign for governor," former Housing and Urban Development Secretary Andrew M. Cuomo outlined a proposal similar to New York City's program, involving contribution and spending limits, as well as public financing. Democratic candidate state Comptroller H. Carl McCall had also previously expressed support for statewide reform and praised New York City's system.[6]

SETTING THE STAGE FOR THE 2001 ELECTIONS

In 1993, as the national movement to limit the terms of elected officials gained strength and popularity, voters in New York City approved a referendum limiting elected officials to two consecutive terms in office. This was the first of two changes in New York City elections that would radically alter the city's political landscape for the 2001 elections.

In October 1998, the City Council enacted the other change — in the New York City Campaign Finance Program's public funds matching formula. Previously, private contributions to New York City candidates participating in the Program were matched with public money at a rate of $1-to-$1, up to the first $1,000 contributed by a New York City resident. The new law created a $4-to-$1 match up to the first $250 contributed by a city resident, for a maximum of $1,000 in public funds per contributor.

The confluence of term limits and the new matching rate had the effect of creating the busiest and most competitive primary and general elections in the city's history. More candidates — 353 — joined the Campaign Finance Program than ever before, nearly double the number of participants in the 1997 and 1993 citywide elections (190 and 186, respectively) and nearly 100 more than the previous high set in 1991 (256) when elections were held for a newly expanded and redistricted City Council.

The 2001 primary election was scheduled for September 11th. The horrific events of that day transformed the city, including, of course, the elections, which were postponed for two weeks. In part because of the postponed primary election, and in part because of the CFB's close physical proximity to Ground Zero,[7] the repercussions of the World Trade Center disaster had a dramatic impact on the mechanisms of the elections and the CFB's operations. These facts are inescapable elements in assessing the role of the Program in the 2001 elections.

Changes in the Campaign Finance Act

$4-to-$1 and the Corporate Ban

There were several reasons why the City Council adopted revisions to the Campaign Finance Act in 1998. Following the 1997 elections, a consensus emerged among the Board, elected officials, and civic leaders that the Program could claim great successes over the years, particularly at the citywide level. These included an increase in the number of small contributions and a reduction in the average contribution size. But the $1-to-$1 matching rate was too low to serve all its intended purposes. High-end contributions to mayoral candidates continued to have too great a presence, candidates continued to rely on out-of-city contributions, and contributions from within the city came overwhelmingly from Manhattan. For Council candidates in particular, the law was not providing sufficient public funds in return for the Program's rigorous demands on the candidates. Recommendations for a new matching rate varied. The CFB, in its 1998 post-election report, recommended a rate of $3-to-$1, up to the first $250 contributed by city residents (for a maximum of $750 per contributor), as well as a reduction in the contribution limits for all offices.

The City Council concluded that a $4-to-$1 match was appropriate. The Council's changes to the matching rate became coupled with a ban on corporate contributions. Corporate contributions received widespread media attention during the 1997 elections. In October 1997, the Board had assessed $220,000 in penalties against the campaign of then-Mayor Rudolph W. Giuliani for contribution limit violations, stemming largely from contributions from affiliated corporate sources.[8] The Giuliani campaign paid the fine but disputed the Board's interpretation of the law, and subsequently, the mayor proposed banning corporate contributions altogether. The City Council, however, remained divided on the issue and adopted a middle ground. The October 1998 law creating the $4-to-$1 matching rate established a

Fact Sheet 1.1: 2001 Program Requirements

Contribution Limits*

Mayor	Public Advocate	Comptroller	Borough President	City Council
$4,500	$4,500	$4,500	$3,500	$2,500

* Per campaign (primary and general election combined). Candidates may make contributions to their own campaigns of up to three times the regular limit. For special elections, the contribution limits are half these amounts. The contribution limits cover the entire 2001 election cycle, which began on January 12, 1998.

Spending Limits

	Mayor	Public Advocate	Comptroller	Borough President	City Council
1998 - 1999*	$90,000	$90,000	$90,000	$60,000	$24,000
2000*	$180,000	$180,000	$180,000	$120,000	$40,000
2001 Primary Election†	$5,231,000	$3,270,000	$3,270,000	$1,177,000	$137,000
2001 General Election	$5,231,000	$3,270,000	$3,270,000	$1,177,000	$137,000

* Spending in excess of these amounts is charged against the first limit applicable in 2001.

† If no primary election is held there is no primary election spending limit.

Threshold Requirements

	Mayor	Public Advocate	Comptroller	Borough President	City Council
Dollar Amount	$250,000	$125,000	$125,000	$10,000 - $49,307*	$5,000
Number of Contributions	1,000	500	500	100	50

* For borough president, the threshold dollar amount is equal to the number of persons living in each borough multiplied by two cents, or ten thousand dollars, whichever is greater. The dollar amount (based on the 2000 census) for each borough is: Bronx, $26,653; Brooklyn, $49,307; Manhattan, $30,744; Queens, $44,588; and Staten Island, $10,000.

Maximum Public Funds*

Mayor	Public Advocate	Comptroller	Borough President	City Council
$2,877,050	$1,798,500	$1,798,500	$647,350	$75,350
$3,487,333†	$2,180,000†	$2,180,000†	$784,667†	$91,333†

* Per election, in election year.

† Maximum public funds under bonus rate.

two-tiered public financing system: to qualify for the new rate, candidates had to forego corporate contributions, but those who continued to accept corporate funds remained eligible for public funds at the old $1-to-$1 matching rate. The changed $4-to-$1 matching rate, it was reasoned, in addition to serving the original purposes of a public funds match (such as increasing competition, broadening candidates' appeals for support, reducing the advantages of those with access to large contributions), would help compensate for the loss of corporate contributions.

Following the Council's October 1998 changes to the Campaign Finance Act, city voters approved a referendum in November of that same year amending the City Charter to prohibit candidates in the Campaign Finance Program from accepting corporate contributions. The CFB had anticipated potential confusion arising from virtually simultaneous changes in the local law and Charter. Thus, before the Charter Revision Commission finalized its ballot proposal, the CFB sent the Commission a letter concerning the proposal then under consideration by the Commission. The letter stated that, consistent with the Act, candidates participating in the Program who chose to forego corporate contributions (whether or not the Charter amendment passed) would be eligible for the $4-to-$1 match. The Commission did not alter its proposal after it received the Board's interpretation. After the City Council enacted the two-tiered system, but before the election day vote on the final Charter proposal, the CFB issued an advisory opinion consistent with its letter to the Commission: if the Charter amendment passed, the result would be a ban on corporate contributions for all participating candidates and a single $4-to-$1 matching rate for all participants.[9]

After the Charter amendment passed, Mayor Giuliani stated his disagreement with the Board's interpretation. The mayor argued that the only purpose of the enhanced $4-to-$1 matching rate was to entice candidates to forego corporate contributions, and now that corporate contributions were unavailable to participating candidates, the $1-to-$1 match should apply instead. The Board argued that Program participation is itself voluntary, so that participants would have to choose whether to forego corporate contributions when they decided to join the Program. The administration did not immediately challenge the Board's interpretation in court, even after the Corporation Counsel *sua sponte* issued a formal opinion supporting the mayor's position.[10] Yet the Board found itself under continued fire: in January 1999, the administration stopped checks made out by the CFB to pay public funds owed to candidates — but the funds that were stopped were funds for the 1997 elections, and thus had been calculated at the $1-to-$1 rate.[11] Although the payments were eventually cleared, the move represented the first time any administration had interfered with the Board's operations.

The administration also refused to approve the CFB's request for $600,000 for public funds in anticipation of the February 1999 special elections to fill three vacant City Council seats.[12] The special elections were the first to be held under the $4-to-$1 matching formula.

Subsequently, without the knowledge of the Board, the Office of Management and Budget (OMB) sent a letter to candidates in the special election informing them that no public funds would be paid until the CFB reversed its legal position on the public funds matching rate.[13] The Board, however, despite the administration's claim that the Board's acts were "illegal,"[14] made timely payments to qualified candidates at the $4-to-$1 rate, by turning to the Public Fund's reserves.

Finally, only weeks after the Board's checks were stopped and its Public Fund allocations denied, the OMB proposed to move the CFB from its downtown Manhattan offices, located within blocks of the City Board of Elections, to Brooklyn, ostensibly on the basis of a cost-savings.[15] The proposal drew the ire of civic groups and newspaper columnists[16] and, although revived in 2000, never resulted in any action.

The Giuliani administration filed a legal challenge to the Board's implementation of the $4-to-$1 public funds matching rate on February 15, 2001, predicting a cost of nearly $127 million. By this time the 2001 citywide primary elections were less than seven months away, and more than $1 million in public funds had been paid — on the basis of the $4-to-$1 rate — to candidates in seven special elections. Forty candidates and public officials joined the CFB as intervenors in the lawsuit. The CFB was confident that the court would uphold the Board's interpretation of the law, but before the court ruled, on April 25, 2001, the City Council enacted Local Law No. 21 of 2001, over Mayor Giuliani's veto, confirming the $4-to-$1 match. The administration's complaint was then dismissed as moot.[17]

Other Revisions

The 1998 legislation changing the public funds formula also lowered contribution limits, increased public funds ceilings, and banned contributions from political committees (including political action committees, or PACs) that had not registered with the CFB. The restriction on PAC money reflected concerns that the ban on corporate contributions might diminish the level of disclosure in the event that corporate sources channeled their contributions to PACs. Another law enacted by the Council in 1998 requires winning candidates for the five offices covered by the Campaign Finance Act to disclose to the CFB financial transactions relating to their transition and inauguration activities. This requirement applies to all candidates whether or not they participate in the Program. The law gives the Board the authority to audit the winning candidates' disclosure statements and, if violations of the law are found, to assess civil penalties.

Also in 1998, the Council enacted changes to the New York City Charter restricting the use of public resources by elected officials during an election year.[18] The new Charter provisions prohibit elected officials from: appearing in publicly-funded advertisements and commercials during an election year; sending publicly-funded newsletters or mailings less than 30 days prior to any primary or general election; and using government funds or resources for a public communication that contains an electioneering message.

New Rules

In preparation for the 2001 elections, the CFB issued a series of new rules based on its experience in the 1997 elections. In order to curb fraudulent cash and money order contributions, the CFB adopted a new rule requiring that contribution cards, which provide information on contributors, contain language affirming that the contributor was not being reimbursed for his or her contribution. Similar rules were adopted to assist the CFB in tracking and auditing intermediated contributions.

New Questions: Leadership PACs

In January 1999, the mayoral campaign of then-Council Speaker Peter Vallone requested a CFB advisory opinion whether the activities of Council PAC (C-PAC) would be attributed to his campaign. Since its inception in 1988, Speaker Vallone had been C-PAC's chairman, and he argued that C-PAC was created "to promote the programs and activities of the Council and its members."[19] In an August 1999 advisory opinion, the Board confirmed that any political committee authorized by a candidate participating in the Program would be treated as a campaign committee of that candidate, and contributions and expenditures of the committee would be attributed to the candidate.[20] The Board reviewed and attributed C-PAC's financial activity between Council-related items and items to be applied to the Vallone campaign's contribution and spending limits. It did this on a one-time basis, as C-PAC dissolved its operations, because of the unique circumstances presented.[21]

Term limits prohibited Speaker Vallone and 34 of the other 50 members of the Council from seeking re-election. This threw the Council races, and the race to replace Vallone as speaker, wide open. One Council member reportedly interested in seeking the speaker's post was A. Gifford Miller, who had been a Program participant in his previous elections. Prior to the Program's 2001 certification deadline, the Miller campaign requested an advisory opinion whether the activities of Council 2001, a PAC Miller helped establish, would be subject to the Miller campaign's restrictions under the Campaign Finance Act should Miller join the Program. In Advisory Opinion No. 2001-4 (May 17, 2001), the Board determined that Council 2001 would not be subject to the Act if those who exercised authority or control over its activities were not operating on behalf of Miller. He was re-elected to his seat and went on to be elected City Council speaker. He chose not to join the Program, citing the lack of an opponent and his desire not to take public funds for a race he did not intend to wage. He did also note that the Board's possible oversight of Council 2001 was a factor in his decision whether to opt in to the Program.[22]

New Efforts in Candidate Assistance

Administering the Program and its new mandates in a year in which a record number of candidates would be seeking office — many for the first time — posed enormous challenges to the CFB. It was essential to equip campaigns with the resources and knowledge necessary to navigate the Program's requirements with minimum burden to candidates. The CFB undertook two ambitious projects: first, designing a Windows-based version of its candidate software (C-SMART: Candidate Software for Managing And Reporting Transactions) that was both easier to use and more useful to campaigns; and second, carrying out an exhaustive series of training sessions and seminars to educate candidates on Program compliance and the use of C-SMART. The CFB's Candidate Services Unit held more than 130 training sessions and seminars as well as one-on-one sessions and occasional personal visits to candidates' campaign headquarters. Sixty percent of campaigns in the Program attended these events.

CONCLUSION

The convergence of term limits and the new $4-to-$1 matching rate provided a major test of the Campaign Finance Program in the 2001 elections, the biggest in the city's history. The CFB's methodical preparations for the new mandates in 2001 were the most extensive it has ever undertaken. The chapters that follow examine the results, both of the changes in the Program and its implementation, before and after September 11th.

NOTES

1 New York City Administrative Code §3-701, *et seq.* In November 1988, city voters approved a provision to amend the City Charter to include the Campaign Finance Board in the Charter and expand its mandate to include the publication and distribution of a nonpartisan Voter Guide. New York City Charter §§ 1052-1053.

2 *See* the New York City Campaign Finance Board's post-election reports: *A Decade of Reform 1988-1998*, September 1998 (hereafter "*A Decade of Reform*"); *On the Road to Reform: Campaign Finance and the New York City Elections*, September 1994, (hereafter "*On the Road to Reform*"); and *Dollars and Disclosure: Campaign Finance Reform in New York City*, September 1990 (hereafter "*Dollars and Disclosure*"). For information about previous elections, *see also* the Campaign Finance Board's Web site at http://www.cfb.nyc.ny.us, where data from previous election cycles is available in financial disclosure reports and as part of a searchable database.

3 Speech by Bill Bradley on Money and Politics; National Press Club, Washington DC, July 22, 1999, on file at the Campaign Finance Board.

4 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

5 Democracy 21/Project FEC, *No Bark, No Bite, No Point. The Case for Closing the Federal Election Commission and Establishing a New System for Enforcing the Nation's Campaign Finance Laws*, May 2002, 33.

6 Robert Hardt, Jr., "Andy Launches Campaign for Clean State Elections," *New York Post*, March 22, 2002, 2.

7 The Campaign Finance Board's offices are three blocks south of the World Trade Center.

8 *A Decade of Reform*, 107-108. Additional penalties of $22,930 were assessed by the Board on October 30, 1997 for similar violations.

9 New York City Campaign Finance Board Advisory Opinion No. 1998-2 (October 23, 1998). *See also* letter from CFB General Counsel Laurence Laufer to New York City Charter Revision Commission General Counsel Elizabeth Dvorkin, dated August 20, 1998, on file at the Campaign Finance Board.

10 Opinion of the Corporation Counsel 1-98 (December 29, 1998).

11 It appears that the administration expected the checks to be for the 1999 special elections (at a $4-to-$1 rate).

12 Frank Lombardi, "City KOs Board's 600G for Election," *Daily News*, January 8, 1999, 18.

13 Letter from Robert M. Harding to Joseph A. O'Hare, S.J. (December 31, 1998), on file at the Campaign Finance Board.

14 Letter from Michael D. Hess to Nicole A. Gordon (January 22, 1999), on file at the Campaign Finance Board.

15 Abby Goodnough, "Mayor Seeks to Move City Campaign Finance Board to Brooklyn," *New York Times*, February 4, 1999.

16 Jim Dwyer, "Rudy's Gulag Growing: Campaign Board Exiled from Manhattan," *Daily News*, February 4, 1999, 12.

17 City of New York v. The New York City Campaign Finance Board, Index No. 400550/01 (Sup. Ct. N.Y. Cty., February 20, 2001). The Board was represented by the law firm of Debevoise & Plimpton in this lawsuit. *See also* Dan Janison, "Rudy Predicts Scandals in Campaign Funding," *Newsday*, February 22, 2001, A30; Frank Lombardi, "Council Holds Line at 4:1," *Daily News*, February 22, 2001, 8; Thomas J. Lueck, "Council Panel Tries to Shield Finance Law from Giuliani," *New York Times*, February 22, 2001, B6. *See also* Chapter 6, note 3, and text thereto.

18 New York City Charter §1136.1.

19 Letter from Vallone Campaign Treasurer A.J. Constantinople to Nicole A. Gordon (January 15, 1999), on file at the Campaign Finance Board.

20 Advisory Opinion No. 1999-10 (August 5, 1999).

21 Advisory Opinion No. 2000-1 (March 7, 2000).

22 *See* "On the Line with Brian Lehrer," WNYC AM 820, January 22, 2002; Wayne Barrett, "A Question of Candor," *Village Voice*, January 16, 2002, 21; advisory opinion request of the Miller campaign, dated April 25, 2001, on file at the Campaign Finance Board.

Chapter 2

Program Participation: More Opportunities, More Candidates

...the combination of term limits and the campaign finance system has produced a more impressive crop of candidates than the city has seen in years.

— editorial, *New York Times*[1]

Just before the original primary election date of September 11, 2001, *New York Times* Editorial Board Member Eleanor Randolph wrote:

In the past, New York City elections had a certain lack of symmetry. One candidate had the money, the mailings, the endorsements, the bunting, the headquarters with real desks and spare phones and carpets. That was the incumbent. The challenger needed a great deal of nerve and occasionally even a bodyguard to venture out on the streets.

This year is different. Democracy is having its day, courtesy of a term limits law that made available more than 40 elective offices at various levels of city government. On top of that is a campaign finance system that offers public money to match contributions for qualifying candidates.

As a result, the city has been swarming with political hopefuls, reflections of the city itself with its many voices, colors, nationalities and political leanings. At one point, there were more than 400 people declaring themselves ready to run. About nine-tenths of them will wind up disappointed, but now that they have taken a dive into politics, the hope is that the contenders of '01 and their supporters will stay engaged. The best part of this wild election year is the way it's broadening the city's base of politically active residents beyond the old tenured officeholders, their immediate families and their anointed successors.[2]

In 2001, participation in the Campaign Finance Program rose dramatically. The combination of term limits and the $4-to-$1 match in public funds encouraged many first-time candidates to run for office, particularly for City Council. "Open seats"[3] always create an opportunity for more candidates to run, and the prospect of enhanced matching funds attracted more Program participants than ever before in the history of the Program. The result was an even more diverse group of candidates than has typically been seen in the city, including the emergence of new immigrant voices from the Asian-American and Russian-American communities, among others.

In commenting on the competitive race in Council District 1 (Lower Manhattan) and what she called a "breathtakingly impressive field of candidates," Linda Stone Davidoff, executive director of the Citizen's Union, attributed the phenomenal level of interest in running for office to what "the combination of term limits and campaign finance reform has wrought in our city."[4] The *New York Times* went even further by suggesting that "now is the time to celebrate the fact that New York has so many decent candidates in competitive races that some districts don't have enough subway stations to accommodate them during the morning rush."[5]

In Council District 47 (Brooklyn - Brighton Beach/Coney Island), for instance, great interest was shown in the seat that would be vacated by term-limited incumbent Howard Lasher. Eight candidates vied for the Democratic and Republican nominations in the primary, three of them Russian-American candidates running for the first time (seven of the eight candidates were Program participants; all three Russian-Americans were Program participants).[6] This represents a new and significant movement for the Russian-American community, which makes up a large part of district 47's population. Program participant Oleg Gutnik defeated non-participant Joseph Amato in the Republican primary and went on to place second (with 43% of the vote) in the general election behind fellow Program participant, Democrat Domenic Recchia, in a close race.

In district 10 (Manhattan - Washington Heights), all eight candidates in the Democratic primary participated in the Program. All the candidates in district 10 were of Hispanic descent (Dominican and Puerto Rican),[7] and were hoping to fill the seat of term-limited Council Member Guillermo Linares, who was the first Dominican-born elected official in the city, and a past Program participant.[8] Miguel Martinez won the Democratic nomination with only 28% of the vote and went on to beat Republican Nilda Luz Rexach (who chose not to participate in the Program) in the general election, garnering 77% of the vote.

In all, three citywide offices (mayor, public advocate, and comptroller), four of five borough presidents, and 37 of 51 City Council seats were open seats. Of the 443 candidates who filed petitions for the offices covered by the Program, 355 (80%) were on the ballot in either the primary or the general election. There were 353 Program participants, 280 (79%) of whom were on the ballot. Nearly 90% of the competitive candidates[9] joined the Program. Of the 355 candidates on the ballot, 298 vied for the 44 open seats, an average of 6.8 per seat. Overall, these figures represent by far the highest number of candidates both on the ballot and in the Program in the city's history.

Of the 30 candidates running for citywide office (mayor, comptroller, and public advocate) and on the ballot in either the primary or general election, 19 (63%) were Program participants. Broken down by office, 10 of 14 (71%) mayoral candidates, 7 of 10 (70%) public advocate candidates, and 2 of 6 (33%) comptroller candidates were Program participants. If only competitive candidates for citywide office are counted, 13 of 15 (87%) were Program participants.

Fact Sheet 2.1: Program Participation by Office Over Time

2001

Office	Number of Participants	Participants on Ballot	Percent of Participants on Ballot	Total Number of Candidates on Ballot	Participants as % of all Candidates on Ballot
Mayor	17	10	59%	14	71%
Public Advocate	10	7	70%	10	70%
Comptroller	2	2	100%	6	33%
Borough President	22	20	91%	27	74%
City Council	301	241	80%	298	81%
Undeclared	1	-	-	-	-
Total	**353**	**280**	**79%**	**355**	**79%**

1997

Office	Number of Participants	Participants on Ballot	Percent of Participants on Ballot	Total Number of Candidates on Ballot	Participants as % of all Candidates on Ballot
Mayor	10	6	60%	9	67%
Public Advocate	3	3	100%	6	50%
Comptroller	3	3	100%	6	50%
Borough President	22	15	68%	27	56%
City Council	138	114	83%	181	63%
Undeclared	14	-	-	-	-
Total	**190**	**141**	**74%**	**229**	**62%**

cont.

Fact Sheet 2.1: Program Participation by Office Over Time (cont.)

1993

Office	Number of Participants	Participants on Ballot	Percent of Participants on Ballot	Total Number of Candidates on Ballot	Participants as % of all Candidates on Ballot
Mayor	5	4	80%	7	57%
Public Advocate	11	6	55%	9	67%
Comptroller	3	3	100%	7	43%
Borough President	11	7	64%	15	47%
City Council	136	87	64%	132	66%
Undeclared	20	-	-	-	-
Total	**186**	**107**	**58%**	**170**	**63%**

1991

Office	Number of Participants	Participants on Ballot	Percent of Participants on Ballot	Total Number of Candidates on Ballot	Participants as % of all Candidates on Ballot
Mayor	-	-	-	-	-
Public Advocate	-	-	-	-	-
Comptroller	-	-	-	-	-
Borough President	-	-	-	-	-
City Council	256	136	53%	239	57%
Undeclared	-	-	-	-	-
Total	**256**	**136**	**53%**	**239**	**57%**

Fact Sheet 2.1: Program Participation by Office Over Time (cont.)

1989

Office	Number of Participants	Participants on Ballot	Percent of Participants on Ballot	Total Number of Candidates on Ballot	Participants as % of all Candidates on Ballot
Mayor	10	5	50%	11	45%
City Council President	0	0	-	6	0%
Comptroller	5	4	80%	10	40%
Borough President	7	6	86%	15	40%
City Council	34	33	97%	97	34%
Undeclared	1	-	-	-	-
Total	**57**	**48**	**84%**	**139**	**35%**

Former Council member and Democratic candidate for public advocate Stephen DiBrienza noted that the Campaign Finance Law "absolutely did accomplish [its] goals. Clearly when you look at the Council races, there were more candidates than usual and people were able to participate and fully participate." He also noted, "when you look at my race, with the Campaign Finance Program, the fact of the matter is all things were made level, or as level as could be, through the Program."[10]

At the City Council level, 241 out of 298 candidates (81%) who appeared on the primary or general election ballot for the 2001 elections were Program participants. In addition, the ten term-limited Council members who sought higher office were Program participants.[11] Competition was high in several districts, with unusually large numbers of candidates running. District 7 in Manhattan (Washington Heights/Inwood), for example, had 13 candidates running in either the primary or the general election, ten of whom were Program participants.

The City Council has always been a diverse body, but in 2001 term limits and the $4-to-$1 matching rate encouraged many new grassroots and minority candidates to run for office.

James Davis, winner of Council District 35 (Central Brooklyn), said, "campaign finance gave me the opportunity to offset major party machinery that I faced in my primary and general elections. Without campaign finance, I would not be sitting here today."[12] Another novice candidate, Robert Cermeli of Council District 30 (Queens - Ridgewood), said he was certain that, although he lost the

Democratic primary, he was able to get his message out, and that he "could not have done this without the help of the Campaign Finance Board."[13] Freshman candidate and winner of Council District 16 (Bronx - Highbridge), Helen Foster, stated that "without the resources [provided by the Program], I don't think we would have been able to fully participate."[14]

Hiram Monserrate, Council member for district 21 (Queens - Corona), said the $4-to-$1 match "is particularly important for Latino candidates and African-American candidates," citing difficulties raising "the kind of money it takes to communicate their message to the voters."[15] Council candidate Terry A. Bastone of district 11 (Bronx - Northwest) said, "for ten years it has been my dream to run for the City Council. The term limits law has made that possible, but what reinforced my decision to run was the 4:1 matching program."[16]

Some Program participant success stories include William Thompson, the first African-American comptroller; Helen Marshall, who became the first African-American woman elected to the office of Queens borough president; John Liu of district 20 (Queens - Flushing), who became the first Asian-American to be elected to the City Council; and the first Hispanic Council member from Queens, Hiram Monserrate.

In an example of political diversity, 2001 also saw the emergence and victory of several candidates who were initially thought not to be favored candidates in terms of fund-raising or party backing. At the mayoral level, Mark Green and Fernando Ferrer went on to a Democratic run-off election over early favorite, leading fund-raiser, and two-term city comptroller Alan Hevesi. It is an open question whether either Green or Ferrer would have been in a position to win the Democratic nomination without the advantages they received by participating in the Program and the spending limits that constrained all the mayoral participants in the primary. Other participants whose surprise wins ran counter to perceived wisdom were Marty Markowitz in the Brooklyn borough president's race, James Davis in Council District 35 (Brooklyn - Fort Greene/Prospect Heights), Allan Jennings in district 28 (Queens - Richmond Hill/Rochdale Village), Eric Gioia in district 26 (Queens - Western Queens), David Yassky in district 33 (Brooklyn - Brooklyn Heights/Greenpoint), and Michael McMahon in district 49 (Staten Island - North Staten Island).

"Without the resources [provided by the Program], I don't think we would have been able to fully participate."

— Councilwoman Helen Foster, district 16

Because party enrollment in New York City runs at over five-to-one,[17] Democratic to Republican, the Democratic primary is often the crucial election, and history has shown the winner going on to victory in the general election more often than not. With so

Fact Sheet 2.2: 2001 Election Statistics

	2001	1997	Percentage Increase
# of Participants	353	190	86%
# of Participants on the ballot for primary or general election	280	141	99%
Public funds paid to date	$41.5 million	$6.9 million	501%
# of Participants paid to date	199	82	143%
% of Participants on the ballot receiving public funds	71%	58%	22%
# of Participants paid by the first primary payment date	89 (52% of those receiving any public funds for the primary)	27 (44% of those receiving any public funds for the primary)	230%
# of Participants paid by the second primary payment date	127 (75% of those receiving any public funds for the primary)	35 (57% of those receiving any public funds for the primary)	263%
# of Contributions	139,400	71,600	95%
# of Matchable Claims	121,000	67,000	81%
Estimated # of Contributors	102,000	58,000	76%
Total Contributions	$54.7 million	$29.5 million	85%

"Under the new system the playing field is level. Big money influence is curtailed. It makes it possible for someone like me to run."

— district 1 candidate
Kwong Hui

many candidates running for office in 2001, a number of candidates won with less than 50% of the vote. Winners with less than 40% of the vote were also fairly common in the 2001 Democratic primary elections. Although New York State Election Law requires a runoff for citywide offices when no candidate wins more than 40% of the vote, there is no similar provision for the other offices covered by the Program. In two of the three borough president races with Democratic primaries (Bronx and Brooklyn), the winner went on to the general election with approximately 40% of the primary vote. Eighteen of the 51 City Council members won their primaries with less than 40% of the vote, and nine more won with less than 50% of the vote. This means that 27 of the 43 elected City Council members who were in primaries won with less than 50% of the primary vote. In the general election, there were three races in which a candidate won with less than 50% of the vote: Alan Gerson in district 1 (Lower Manhattan) with 46%, Tony Avella in district 19 (Queens - Bayside) with 49%, and Michael McMahon in district 49 (North Staten Island) with 49%. All three had won their Democratic primaries with less than 40% of the vote.

WHY CANDIDATES JOIN THE PROGRAM

Candidates participating in the Program subject themselves to lower contribution limits than under state law, as well as to expenditure limits, extensive campaign finance disclosure, and rigorous audits by CFB staff. So what is the incentive to join?

Public Funds

The opportunity to receive public funds is one of the most common incentives cited by candidates who join the Program, particularly at the Council level. The contribution and expenditure limits also encourage grassroots participation and allow many candidates without access to big money to run for office. Yet the Program, in "not giving its money away easily," provides an environment in which candidates have "to be serious and well organized to do all the paperwork required to qualify for matching funds."[18] In the WNET documentary "Running: The Campaign for City Council," Program participant Kwong T. Hui of district 1 (Lower Manhattan) said that "under the new system the playing field is level. Big money influence is curtailed. It makes it possible for someone like me to run."[19] In the same documentary, Letitia James, Council candidate for district 35 (Central Brooklyn), wondered "whether or not we would have been in it had we not received the four to one match."[20] (For a discussion of public funds, *see* Chapter 6.)

Commitment to Good Government

By joining the Program and agreeing to its requirements, candidates demonstrate that they believe in good government initiatives and show a commitment to reform. Indeed, not joining the Program often generates negative editorial attention. In 2001, the press largely criticized mayoral candidate Michael Bloomberg's choice not to participate in the Program.[21] The editorial page of the *New York Post*, a long-time opponent of the Program, on the other hand, argued that Bloomberg's victory was a reason the Campaign Finance Law needed to be "deep-sixed."[22]

The Debate Law — An Opportunity to be Heard

In December 1996, the City Council enacted a law requiring candidates who run for citywide office and who join the Campaign Finance Program to participate in a series of debates. First in effect for the 1997 elections, these debates have since helped educate voters and allow modestly funded candidates to get their messages out to a wider and more diverse audience than was previously possible. Candidates who do not join the Program are not guaranteed this opportunity.

The exposure offered by the debates is a powerful incentive for lesser-known citywide candidates to join the Program. In 1997, the participation of several candidates at the citywide level who made no attempt to qualify for matching funds, yet participated in the debates, suggests that their primary motive for joining the Program was to deliver their messages alongside the major candidates.[23] In 2001, many lesser-known contenders, such as mayoral candidate George Spitz and public advocate candidate Sheila Flaxman, had the opportunity to outline their platforms in debates broadcast on network television and on radio against front-runner candidates.[24] (For a discussion of the debates, *see* Chapter 8.)

WHY CANDIDATES DO NOT JOIN THE PROGRAM

Candidates may decline to join the Program in order to avoid having to abide by the Program's audit and disclosure requirements; to be able to use personal wealth or other resources that would otherwise be limited by the Program's contribution and spending limits; or because they perceive no tangible benefit to their campaign from joining. Some candidates do join the Program without accepting public funds.

Reluctance to Submit to Audit and Expedited Disclosure

Every candidate in the Program is audited. Although this can be a tedious process, it is necessary to safeguard public tax dollars, to ensure that only those candidates entitled to receive public funds get them, and to ensure that no candidates are gaining an advantage over their opponents by evading the Program's requirements. Audits reveal violations of the Program and also instances of outright fraud. (*See* Chapter 9.) Campaigns that are not prepared to expose themselves to scrutiny by an outside body may be deterred from joining the Program.

By law, campaigns are required to file disclosure statements with the City Board of Elections (BOE) whether or not they join the Program. Although BOE and CFB disclosure forms are similar, CFB disclosure statements require more information (such as contributor occupation, employer name, and intermediary information). They are available almost instantly to the public and press in a variety of easily accessible ways: as public disclosure reports on the CFB Web site, as database files on CD, and in paper copies or electronically on the public terminals at the CFB's offices.[25] This disclosure ensures the public and the press timely access to examine campaign records as the records are received by the Board. Some campaigns may be reluctant to participate in the Program because of this expedited disclosure process. (For more information on disclosure, *see* Chapter 7.)

High-Spending[26] Candidates and Contribution and Expenditure Limits

Candidates with significant resources may prefer to self finance their campaigns. Not joining the Program allows candidates to avoid the strict contribution and expenditure limits, permitting these candidates to spend freely on items like television advertising. State law has no expenditure limits and, for most offices, much higher contribution limits. Candidate Michael Bloomberg told voters early in the campaign season: "I won't take the taxpayers' money…."[27] Another self-financed, non-participating candidate, Elana Waksal Posner, ran in the Democratic primary in Council District 1 (Lower Manhattan) but lost to Program participant Alan Gerson. Other high-spending candidates who opted not to join the Program included Madeline Provenzano of Council District 13 (Bronx - Pelham Bay), Ruben Diaz of Council District 18 (Bronx - Soundview), and Tracy Boyland of Council District 41 (Brooklyn - Bedford-Stuyvesant).

No Tangible Benefits from Joining

If candidates believe their campaigns will receive little benefit from joining the Program, they may not be willing to accept the additional limits, audits, and disclosure responsibilities required. In an interview, City Council Speaker A. Gifford Miller said that he did not want to take public funds because he thought he would not face opposition. "It seemed to me to be wasteful to secure public dollars for a race I wasn't going to wage," Miller said.[28]

FUTURE PARTICIPATION

The continued existence of term limits and a generous matching rate makes it likely that future elections will see a large number of candidates, including first-time candidates, and a high level of Program participation. With nearly 90% participation among competitive candidates, the Program appears to be assured an essential place in New York City's political landscape. The Program has created opportunities for contributors as well as candidates to participate in the political process. (*See* Chapter 4.) City Council candidate Rocky Chin said that the Program's $4-to-$1 matching rate made it more attractive to run his "grassroots" campaign, because many of his supporters in Council District 1 (Lower Manhattan) were from lower economic brackets. "I have tailored my fund-raising strategy to the promise of the 4:1 match. It has allowed me to focus my fund-raising efforts among my constituents, many of whom are relatively new immigrants and who do not have much personal wealth. If we did not have the 4:1 match, but had the previous 1:1 match for $1,000 contributions, I would have been forced to change my strategy to target wealthier people who could make larger contributions."[29] Anecdotal information confirms that small contributors are encouraged by matching funds to give to campaigns and to feel they can have a real dollar impact on the election. As contributors become accustomed to seeing government funds added to their private contributions, they, too, may come to expect that their candidates will be participants in the Campaign Finance Program.

At the mayoral level, however, the question has been posed whether future candidates might avoid the Program for fear that a high-spending non-participant will succeed as Michael Bloomberg did in 2001. Bloomberg spent just over $73 million on his campaign, while Mark Green, the Democratic nominee and a Program participant, spent about $16 million. As a participant running against a high-spending non-participant, Green was entitled to the bonus $5-to-$1 public funds matching rate for the general election and had his expenditure limit removed. The additional match added $765,885 (for a total of $976,545 in general election funds) to the $2,846,148 Green had already received in public matching funds in the primary. Green spent the second largest amount of money ever on a mayoral race in New York City history (after Bloomberg), but he was still outspent by a margin of more than four to one. How much of a factor Bloomberg's spending was in his win is difficult to assess. Green's campaign strategist, Richard Schrader, denounced the spending as having been the deciding factor in the election, saying, "He [Bloomberg] bought it fair and square."[30] Green himself said, "I just couldn't compete with the money."[31] At the Board's post-election hearings, Green campaign chairman John Siegal urged the Board to recommend changes to the law. "What we saw this year is that the city Act, despite trying, fails completely to level the playing field when a major candidate opts out of the system and self finances. This is a major flaw that needs to be amended before the next election," he said.[32]

But the Program is not intended to and cannot guarantee success, nor, as a practical matter, can it ever guarantee parity in spending for a participant facing a non-participating candidate. At a minimum, however, the Program should ensure that a serious candidate can get his or her message out. By that standard, the Program succeeded. As Evan Davis, former president of the Association of the Bar of the City of New York, wrote in a *Daily News* column after the election, "Did the campaign finance limits allow Green a sufficient opportunity to get his message out? The answer here is yes."[33]

CONCLUSION

The 2001 elections saw meaningful competition at every level of office. Many of the candidates who ran may have done so largely as a result of term limits, but many were attracted by the availability of public funds as well, and the competitive nature of the campaigns was clearly a result of the Campaign Finance Program. Program participation was the highest it has ever been, and there was a concomitant increase in contributor participation. This marked increase in both candidate and voter engagement is encouraging evidence of the Program's efficacy.

NOTES

1 Editorial, "Council Endorsements: Manhattan," *New York Times*, August 27, 2001, A14.

2 Eleanor Randolph, "Editorial Observer; A Big City Election: 8 Million New Yorkers and 400 Candidates," *New York Times*, September 9, 2001, A18.

3 An "open seat" is one for which no incumbent is running.

4 *Running: The Campaign for City Council*, Dir./Prod./ Stanley Nelson. Videocassette. Firelight Media/WNET, 2002. (First aired on WNET, February 24, 2002.)

5 *Ibid.*, at note 2.

6 Only Republican candidate, Joseph Amato, opted not to participate in the Program.

7 According to the Gotham Gazette (www.gothamgazette.com), district 10's ethnic majority (80%) is Hispanic.

8 Editorial, "Council Endorsements: Manhattan," *New York Times*, August 27, 2001, A14.

9 For the purposes of this report, a "competitive candidate" is defined as a candidate who received at least ten percent of the vote.

10 *Hearings before the New York City Campaign Finance Board*, December 10-11, 2001 (hereafter "*Campaign Finance Board 2001 Hearings*"), vol. I, at 92 (testimony of Stephen DiBrienza).

11 The ten Council members who ran for higher office were: Herbert Berman, Adolfo Carrion, Stephen DiBrienza, June Eisland, Kenneth Fisher, Kathryn Freed, Sheldon Leffler, Helen Marshall, Jerome O'Donovan, and Peter Vallone.

12 *City Council Committee on Governmental Operations/City Council Committee on Finance Hearings*, March 12, 2002 (comment by Council Member James E. Davis).

13 *Campaign Finance Board 2001 Hearings*, vol. II, at 345 (testimony of Robert Cermeli).

14 *Ibid.*, at 372 (testimony of Helen Foster).

15 Affidavit of Hiram Monserrate, City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct. N.Y. Cty., February 12, 2001).

16 Affidavit of Terry A. Bastone, City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct. N.Y. Cty., February 14, 2001).

17 According to the New York City Board of Elections, 67.3% of New York City voters are Democrats, 12.7% are Republicans, 3.2% are registered with other parties, and 16.8% listed no affiliation.

18 *Ibid.*, at note 2.

19 *Ibid.*, at note 4.

20 *Ibid.*

21 *See, e.g.,* Adam Nagourney,"Bloomberg Assails Rivals' Financing," *New York Times*, June 9, 2001, B4; Editorial, "Attacking Clean Money," *Daily News*, June 10, 2001; Joyce Purnick, "Bloomberg Pays His Way; Who Paved It?" *New York Times*, June 14, 2001, B1; Dick Morris, "When the Best Can't Be the Mayor," *New York Post*, August 21,

2001, 36; Editorial, "For GOP Primary, Vote Bloomberg," *Daily News*, September 9, 2001, 44; Editorial/Opinion, Tom Robbins,"The Best Campaign Money Can Buy," *Village Voice*, November 6, 2001, 26; E.R. Shipp, "Clarity Hard to Come By in Mayoral Race," *Daily News*, November 11, 2001, 45.

22 Editorial, "Every Dollar Was Mike's," *New York Post*, December 5, 2001, 32.

23 *A Decade of Reform*, 22.

24 The second mayoral primary debate, in which George Spitz participated, was broadcast on WABC-TV Channel 7 on September 9, 2001; the second public advocate debate, in which Sheila Flaxman participated, was broadcast on WNYC radio on September 6, 2001.

25 The CFB Web site is http://www.cfb.nyc.ny.us.

26 "High-spending" candidates, for the purposes of this report, are defined as non-participating candidates who raise or spend half the Program limits for a given office, thereby triggering the bonus matching rate for Program participants in the same race.

27 Michael Saul and Joel Siegel,"Campaign Finance not Mike's Bag," *Daily News*, June 9, 2001, 6.

28 "On the Line with Brian Lehrer" WNYC AM 820, January 22, 2002. (*See also* "Setting the Stage for the 2001 Elections" in Chapter 1, and note 22.)

29 Affidavit of Rockwell J. Chin, City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct. N.Y. Cty., February 9, 2001). *See also Campaign Finance Board 2001 Hearings*, vol. I, at 83 (testimony of Rockwell J. Chin), in which he remarked, "the removal of spending caps late in the game resulted in a last and new round of high-stakes fund-raising at a time when actually our campaign was not prepared to do that," in regard to a bonus triggered by one of his opponents.

30 Jessica Kowal, "Pricetag: $70M," *Newsday*, December 4, 2001.

31 Editorial, "Forget Mike's Money, Green Beat Himself," *Daily News*, December 12, 2001.

32 *Campaign Finance Board 2001 Hearings*, vol. I, at 138 (testimony of John Siegal).

33 Evan Davis, "Despite Mike's Bucks Finance Law Worked," *Daily News*, November 19, 2001. (*See also* "Examining the Offices" in Chapter 5.)

Chapter 3

Election 2001: At the Races

Had there not been campaign financing, the availability of public matching funds, it would have been literally impossible for me to have run citywide. So this was an opportunity for people like myself, and coincidentally my opponent as well, to have been involved in the citywide campaign and to have had a very credible citywide campaign. I want to thank you and tell you that overwhelmingly the system works, that it is an extraordinary system…and it is the quintessentially significant example of democracy at work… I think it is probably the most creative form of the democratic process that I can think of, and it has literally enabled many people, as this past election has shown, to run for public office when otherwise they would have been totally incapable of doing it.

— Comptroller candidate Herbert Berman[1]

An unprecedented number of candidates sought the five offices covered by the Campaign Finance Program in 2001, and an unprecedented number of candidates joined the Program, thanks to term limits and the availability of public financing. (*See* Chapter 2.) The most notable exception, of course, was Michael Bloomberg, who ultimately spent more than $73 million on his campaign for mayor. What follows is an overview of the three citywide races and selected boroughwide and City Council races to provide the context in which the Program operated during the 2001 election cycle.

MAYOR

The Primary Campaign

Four long-time Democratic elected officials were in the race for mayor from the start: Fernando Ferrer, Mark Green, Alan Hevesi, and Peter Vallone. Ferrer had abandoned a 1997 mayoral bid and instead ran for re-election in 1997 as Bronx borough president. Public Advocate Green had sought the Democratic nomination for the United States Senate seat ultimately won by Charles Schumer in 1998. City Council Speaker Vallone was the Democratic candidate for governor in 1998. These three candidates were able to transfer excess funds from those races to their mayoral committees. Hevesi had a long record of public service, first as a state Assembly Member and then as two-term New York City comptroller. All four officials were term-limited. Former Council Member Sal Albanese, a 1997 mayoral candidate, was also among the early filers, although he dropped out of the running by early 2001. The fifth Democrat who would be on the ballot was George Spitz, a retired New York State auditor.

The biggest early mystery of the campaign centered around Michael Bloomberg, the founder and chief executive officer of Bloomberg L.P., the worldwide financial media company. In October 2000, the lifelong Democrat switched his voter registration to Republican, presumably to prepare for his mayoral bid in a less crowded Republican primary election. He began conducting surveys and registered potential campaign Web site domain names. One account reported that Bloomberg told a Republican official that if he were to run, he planned to "spend up to $10 million of his personal fortune to finance a campaign, rather than submit to spending limits under the city's public finance system."[2]

Another former Democrat, Herman Badillo, chair of the City University of New York Board of Trustees, did some fund-raising in late 1999 and early 2000, but then trailed off. He only began fund-raising again when it became clear that Bloomberg was going to enter the race as a Republican. The CFB determined that the claims for matching funds in one of Badillo's early financial disclosure statements were not valid because the campaign had failed to submit the required documentation on time. This Board determination would lead the campaign to file the first in a series of lawsuits against the CFB later in the campaign. (*See* Chapter 9.) Badillo did not meet the threshold for receiving public funds until after the election, and spent comparatively little during the campaign.

On March 13, 2001, the CFB issued Advisory Opinion No. 2001-1, concluding that it was reasonable to anticipate a runoff in the Democratic primary for mayor and permitting the candidates to open run-off accounts and begin fund-raising. This meant that in addition to the $4,500 contribution limit in effect for mayoral candidates, they could raise another $2,250 per contributor.

Hevesi raised the most money from the largest number of contributors prior to the primary, followed by Green, Vallone, and Ferrer. Despite the fact that Hevesi raised virtually no money after September 11th and Green continued to fund-raise extensively for the runoff and the general election, the number of contributors to Green barely exceeded those to Hevesi for the entire election cycle. (*See* Chapter 4.)

Many of the newspaper accounts of the four major Democratic candidates' fund-raising focused on contributions delivered to the campaigns by intermediaries or "bundlers." (*See* "Intermediaries and Fund-Raising Agents" in Chapter 4). Among the four candidates, $7,678,382 was raised in intermediated contributions from 689 intermediaries, including a few who "bundled" for more than one candidate during the same period. In June, the *New York Observer* reported that the Manhattan district attorney was investigating whether patterns discovered by CFB auditors on documentation submitted by some of the mayoral campaigns were indicative of "improper bundling."[3] A June 21st article in the *New York Times* noted that "bundlers are under more scrutiny this year and are playing a bigger role in the mayor's race because stricter limits have been placed on contributions and corporate donations have been banned altogether."[4] Some of the intermediated contributions were ultimately refunded by the campaigns. Contributions to campaigns, most notably to the Green campaign, were also delivered by fund-raising agents, who, once reported to the Board, are not required to be separately reported along with the contributions they deliver, raising questions about the adequacy of the public disclosure of those transactions. (*See* "Disclosure 'Loophole'?" in Chapter 7.)

On August 6, 2001, Ferrer, Green, and Vallone received initial public funds payments totaling $6,336,430, a figure comparable to the total amount of public funds disbursed to all candidates during the entire 1997 election cycle.[5] The Hevesi campaign was found not to be in compliance with the Program, and therefore no public funds were issued to it on the first payment date. The biggest issue raised with respect to the Hevesi campaign was whether a campaign consultant could volunteer his services to the campaign while his wholly-owned consulting company provided paid services to the candidate. (*See* "To Volunteer or Not to Volunteer: Hank Morris and the Hevesi Determination" in Chapter 9.)

Editorial endorsements and support of well-known Democrats were split among the candidates. The *New York Times* endorsed Green. Both the *Daily News* and the *New York Post* endorsed Vallone. Hevesi was endorsed by *Newsday*. In the Republican primary, Bloomberg was endorsed by *Newsday* and the *Daily News*, despite what the *News* called the "somewhat troubling" use of his personal wealth to finance his campaign.[6] Former Mayor Ed Koch endorsed Vallone before the primary and endorsed Ferrer when Vallone failed to make it to the runoff. Former Mayor David Dinkins and former Police Commissioner Bill Bratton endorsed Green. Former Senator Daniel Patrick Moynihan, former Representative Geraldine Ferraro, and former Manhattan Borough President Ruth Messinger endorsed Ferrer.

The United Federation of Teachers endorsed Hevesi. Vallone was endorsed by District Council 37, although some of its locals backed Green or Ferrer.[7] Four police unions endorsed Vallone, and he was considered the preferred Democratic candidate by the Citizens Union. Ferrer received the backing of Local 1199 of the Service Employees International Union and the Reverend Al Sharpton, whose endorsement had been the subject of much speculation. Bloomberg was the preferred Republican candidate of the Citizens Union and received the endorsement of the then-sitting Republican City Council members. He was also widely expected to (and ultimately did) receive the endorsement of Mayor Giuliani.

On August 28th, the five Democratic candidates participated in their first mandatory debate under the auspices of the CFB. The second debate took place on September 9th. Over the course of the primary campaign, the candidates participated in approximately 100 candidate forums together, by Mark Green's count.[8] Indeed, the candidates arrived at the CFB debate on September 9th at WABC-TV fresh from a joint appearance on WNBC-TV. (*See* Chapter 8.)

Ferrer made "the other New York" a centerpiece of his campaign, a characterization Vallone called "divisive."[9] This became a subject of continued discussion among the candidates and in the press.

Badillo tried to create a "Citizens and Labor Unity" ballot line to ensure that if he lost the Republican primary to Bloomberg, he would appear on the general election ballot. The attempt failed amid allegations that many of the names appearing on his petitions were well-known public figures, both real and fictional.[10] Bloomberg and Hevesi both attempted to obtain independent ballot lines with the word "education" in the heading. Hevesi ultimately ran on the "Better Schools" line, but Bloomberg's "Students First" line failed to meet Board of Elections' criteria.

Despite a late surge by Ferrer in the polls, exit polls conducted in the early hours of September 11th suggested that Green was leading when the terrorist attack on the World Trade Center brought the primary to a halt.[11] The primary was later postponed to September 25th. Because of the extreme circumstances, the CFB prohibited almost all spending until after September 25th, except to recreate Primary Day get-out-the-vote efforts. (*See* "Examining the Offices" in Chapter 5.) When the primary took place on September 25th, Ferrer finished first, with 35.7% of the vote, followed by Green with 31.1%, Vallone with 19.8%, Hevesi with 12.1%, and Spitz with 1%. Bloomberg handily defeated Badillo in the Republican primary, 72% to 28%. Program participant Julia Willebrand won the Green Party primary with 86% of the vote. Because no Democrat received 40% of the vote, a run-off election was required to determine the party's nominee.

After September 11th, the candidates vied for position as successor to Giuliani and who would do well in crisis. Ferrer, by contrast, courted a different constituency, distancing himself from Giuliani's legacy. The fractious primary centered in large part on Mayor Giuliani, who was prevented by term limits from running for re-election.[12]

The Runoff

On September 28th, the CFB issued run-off public funds payments to Ferrer and Green in the amounts of $574,387 and $711,537, respectively. (By law, run-off payments represent 25% of the public funds each campaign has received for the primary.)

The run-off election was held on October 11th. The short campaign period leading up to the runoff was dominated in the news by Mayor Giuliani's attempt to seek an extension of his term to steer the city through the aftermath of the terrorist attack. Such an extension would have needed approval by the State Legislature, and Giuliani asked each of the candidates for his support. Bloomberg and Green agreed. Ferrer refused. He described his refusal as "an important moment in the campaign, a defining moment for the future of our city. It was about who we are as leaders."[13]

During the runoff, Ferrer's endorsement by Sharpton became a campaign issue. The *Daily News* reported that Green campaign aides were present at a meeting at which strategies were developed to suggest that Sharpton would have disproportionate influence in a Ferrer administration.[14] Green denied that his campaign was engaged in these tactics, but the stories continued to loom large through the general election. Green's television advertisements, repeating a *New York Times* characterization of Ferrer as "borderline irresponsible," and asking whether voters could "afford to take a chance," were interpreted as racist by Ferrer supporters.[15] Some of Ferrer's core supporters who might otherwise have advocated for the Democratic nominee after the runoff either did not work actively on Green's behalf or endorsed Bloomberg.[16] Some unions that had actively supported Ferrer during the runoff endorsed Green in the general election, but failed to mount the significant get-out-the-vote efforts that are their hallmark. Local 1199 reportedly had 8,000 volunteers out campaigning for Ferrer on October 11th, but only 300 for Green on Election Day.[17]

The runoff was plagued with confusion about voting machines and the accuracy of the vote count. Because of the unusual circumstances caused by the postponed primary, the Board of Elections employed fewer voting machines than usual for the runoff, so that necessary maintenance could be performed on aging machines prior to the general election.[18] Several election districts were compressed onto single machines. This resulted in an overstatement of Green's margin of victory in the early run-off vote counts. The actual margin was less than 16,000 votes.

The General Election

Many factors contributed to Bloomberg's victory and Green's defeat in the general election. From the day after the runoff, Green saw his sizable lead in the polls begin to ebb away. Two weeks before Election Day, a Quinnipiac University poll showed Green with a 16% lead over Bloomberg.[19] A Marist College poll published on November 2nd showed Green's lead had shrunk to four percentage points.[20] Clearly, Bloomberg's record-setting spending contributed significantly to the outcome, but to argue that money was the only factor would ignore the complexity of the situation.

Bloomberg outspent Green by more than $30 million from September 26th to the date of the general election. Despite the disparity, Green still spent about $9 million during the same period and more than $16 million for the entire election cycle, more than any mayoral candidate in the history of New York City, with the exception of Bloomberg. (*See* Chapter 5.) During the primary period, part of Bloomberg's strategy had been to send mailings to all voters, not just Republicans. He ran 6,500 television commercials, compared to only 2,500 by Green. A campaign commercial featuring then-Mayor Giuliani aired repeatedly during the World Series between the New York Yankees and the Arizona Diamondbacks, when television rates are among the most costly.[21] The advertisement was ubiquitous: "you had to look over Giuliani's shoulder to see Derek Jeter," said pollster Mickey Carroll.[22] Giuliani's endorsement was key to Bloomberg's success, as Giuliani's handling of the aftermath of the terrorist attack caused his popularity to skyrocket. Bloomberg's campaign advisor David Garth told the *New York Post*, "I think we won because of Rudy Giuliani. If he was worth $5 before the World Trade Center, now he's worth $1,000."[23]

After September 11th, Bloomberg's experience as a successful businessman became a more desirable asset, as job losses mounted and projected budget deficits soared. In an election *post mortem*, the *Wall Street Journal* noted, "New Yorkers always said they wanted experience in their next mayor. But after September 11th, they changed their minds about what *kind* of experience."[24] Bloomberg defeated Green, 50% to 47%.

One of the sharpest criticisms of the Program arose from the fact that Green received only $976,545 in public matching funds for the general election, including the bonus $5-to-$1 public funds matching rate. (*See* Chapter 6.) At the Board's post-election hearings, some called for an increase in the matching formula or block grants for participants running against extremely high-spending opponents.[25]

PUBLIC ADVOCATE

Ten candidates for public advocate joined the Program. Seven were on the ballot in the Democratic primary: musician Willie Colon, term-limited Council Member Stephen DiBrienza, audiologist and speech-language pathologist Sheila Flaxman, term-limited Council Member Kathryn Freed, New-York Historical Society President and former Parks Commissioner Betsy Gotbaum, former New York Civil Liberties Union Executive Director Norman Siegel, and Assembly Member Scott Stringer.

Even before the petitioning period, with so many possible candidates, the Gotbaum campaign asked the Board to determine that a run-off election was "reasonably anticipated," thus permitting participants to raise additional contributions from contributors who had already contributed the maximum allowed by law. On May 17, 2001, the Board issued an advisory opinion that concluded that it was too early to predict the likelihood of a runoff.[26] The opinion cited a lack of polling data on the competitiveness of the candidates and the possibility that candidates could yet drop out of the race. On August 23rd, following subsequent requests from both the Gotbaum and Stringer campaigns, the Board concluded that a runoff was "reasonably anticipated," and candidates were allowed to open run-off accounts and to begin soliciting additional contributions.

Five of the seven candidates qualified for public matching funds in the primary: DiBrienza, Freed, Gotbaum, Siegel, and Stringer. Gotbaum raised the most in private contributions and also received the most in public money: $1,213,080. She was followed by DiBrienza ($1,069,324), Stringer ($950,692), Freed ($626,484), and Siegel ($457,626).[27] DiBrienza led the field of candidates in the number of contributors to his campaign with more than 3,000. Stringer was next, with 2,515 contributors.

Major editorial endorsements were split among the candidates. Gotbaum was endorsed by the *New York Times* and the *Daily News*; *Newsday* endorsed DiBrienza; the *New York Post* endorsed Stringer; and Siegel was the choice of the *Village Voice*.

Colon was the first candidate to miss a debate since the beginning of the mandatory Debate Program in 1997. He was later penalized $2,500 by the Board for his failure to participate in the debate, and had he been otherwise eligible, he would have forfeited all claims to public funds.

The repercussions of the September 11th terrorist attacks affected the public advocate race, as well: Freed was the Council member for the downtown district where the World Trade Center was located, and the Gotbaum campaign office on West Street was damaged in the attack. As questions about the balance between security and civil rights arose out of the response to the terrorist acts, Siegel's status as the former New York Civil Liberties Union executive director took on new significance.

When the delayed primary was held, Gotbaum finished in the lead with 24% of the vote, but at first, the race for second place was too close to call among the next four candidates. The Board anticipated such a result and had previously issued an advisory opinion permitting applications for public funds if the participating candidates could demonstrate that they reasonably anticipated being on the ballot for the run-off primary election.[28] As a result, the CFB issued run-off payments to Gotbaum, DiBrienza, Siegel, and Stringer, following appearances by representatives of each of the campaigns at a September 28th Board meeting. (Colon, the other candidate who was still in the running for second place, did not qualify for public funds for unrelated reasons.) The final vote showed that only 6,071 votes separated Siegel, the second place finisher, from Stringer, the fifth place finisher. Gotbaum went on to win the runoff, by an almost two-to-one margin, far outspending Siegel. She was easily elected public advocate with 86% of the general election vote.

COMPTROLLER

Comptroller was the only office for which the number of Program participants declined from 1997, but, in contrast to the lopsided race of 1997, which incumbent Alan Hevesi easily won, the 2001 race was highly competitive. Two participants faced each other in the Democratic primary: Herbert Berman, the term-limited chair of the City Council Finance Committee, and William Thompson, the president of the New York City Board of Education. Thompson resigned his position in April 2001, the effective date of an advisory opinion issued by the New York City Conflicts of Interest Board that would have seriously impaired his ability to raise funds for his campaign had he remained in office.[29] The advisory opinion concluded that high-ranking appointed officials with "substantial policy discretion" could not solicit contributions for candidates for city elective office, including for themselves.

Berman and Thompson both hail from Brooklyn, and the comptroller's race was the first foray into citywide elective politics for both candidates. The race was tight and sometimes characterized by direct personal attacks.

Berman held the fund-raising advantage in the primary, reporting approximately $400,000 more in contributions than Thompson. Berman received $1,487,732 in public matching funds for the primary, and Thompson received $895,228. Thompson was endorsed by the *New York Times* and the United Federation of Teachers; Berman was endorsed by the *Daily News* and *Newsday*. Thompson beat Berman, 54% to 46%, a margin larger than polls taken just prior to the originally scheduled primary had predicted.

Berman accepted $75,432 in public matching funds for the general election as the Liberal Party candidate and participated in the required debates. (*See* Chapters 8 and 10.) Thompson received $115,720 in public matching funds for the general election. Thompson won the general election with 84% of the vote over Berman and Conservative Party candidate John D'Emic, becoming New York City's first African-American comptroller. By the end of the election cycle, Thompson had raised more in contributions than Berman, $1,870,172 to $1,800,352, from more contributors, even though Berman outspent him.

BOROUGH PRESIDENT

Four of the five borough presidents were term limited in 2001. Incumbents Howard Golden of Brooklyn, Claire Shulman of Queens, and Guy Molinari of Staten Island all took proactive roles in campaigning for their endorsed candidates. All the candidates for borough president who had significant financial activity participated in the Program. The CFB disbursed public matching funds to ten candidates in three Democratic primaries and one Republican primary. Nine general election candidates also received public matching funds, including four candidates who did not have primaries.

Incumbent C. Virginia Fields of Manhattan was comfortably re-elected to a second term, with 72% of the vote. Helen Marshall became the first African-American borough president of Queens, first winning a three-way primary, and then defeating term-limited Republican Council Member Alfonso Stabile. Adolfo Carrion, the only Council member not term-limited and who declined to seek re-election, was elected Bronx borough president. Carrion defeated State Senator Pedro Espada, Jr., and term-limited Council Member June Eisland in the primary, and went on to win 79% of the vote in the general election. In Staten Island, Deputy Borough President James Molinaro defeated term-limited Council Member Jerome O'Donovan, 50% to 43%. The Independence Party candidate, Assembly Member Robert Straniere, who lost to Molinaro in a bitter Republican primary, garnered 5% of the vote, and Liberal Party candidate John Walker collected 1% of the vote.

Brooklyn

Term-limited City Council Member Kenneth Fisher began the 2001 election cycle with an eye toward running for mayor, fund-raising and filing disclosure statements with the CFB for a committee called Fisher for Mayor. He finished the election cycle having raised almost one million dollars in contributions, compared to opponents State Senator Marty Markowitz, who raised approximately $600,000, and Deputy Borough President Jeanette Gadson, who raised less than $300,000. Markowitz, however, raised significantly more funds than either of his opponents in small matchable contributions from individual, in-borough contributors. He ended the election cycle with contributions from 3,217 contributors, more than any borough president candidate in the city, and more than many of the citywide candidates. Alluding to the importance of the spending limit in putting the candidates on an equal footing, Markowitz's campaign manager Jill Harris said, "It's not how much you can raise. It's how much you can spend."[30]

Golden and the Brooklyn Democratic organization endorsed Gadson. She also received endorsements from District Council 37, the Civil Service Employees Association, and the Public Employees Federation.[31] The Central Labor Council and the Transport Workers Union endorsed Fisher, as did former Mayor Ed Koch, many members of Brooklyn's Congressional delegation, and the *Daily News*. Markowitz was well known in Brooklyn for his free annual summer concert series and his twenty-three years of service in the State Senate.[32] He received the endorsement of a number of his colleagues in the State Legislature, the Metropolitan Council on Housing and the Tenants' Political Action Committee, and the *New York Times*. Markowitz and Fisher each received the maximum in public funds, $647,350, and Gadson received $491,966. Markowitz won the primary with 39.6% of the vote, followed by Gadson with 33.5%, and Fisher with 26.7%. Markowitz went on to win the general election with 76% of the vote. Fisher appeared on the general election ballot as the Liberal Party candidate, but declined to accept public funds and did not actively campaign. The Brooklyn race proved to be the most costly of the borough president races, both in the disbursement of public funds and in the amount spent by the candidates. (*See* Chapters 6 and 5, respectively.)

CITY COUNCIL

In 2001, Program participation at the City Council level was unprecedented in the 14-year history of the CFB. Of the 353 Program participants, 301 ran for City Council seats. Many of the participants cited the availability of public funds as one of their primary reasons for running. In total, 78 Council candidates did not make it on to the ballot.

One interesting phenomenon in the 2001 Council races was the number of children of term-limited incumbents who ran for office. Helen Foster in Council District 16 (Bronx - Highbridge, Morrisania, Melrose), Peter Vallone, Jr., in Council District 22 (Queens - Astoria), Erik Dilan in Council District 37 (Brooklyn - Wyckoff Heights, Cypress Hills, East New York), and Yvette Clarke in Council District 40 (Brooklyn - Central), were four participants who were elected, succeeding their parents. Donald Wooten, in Council District 42 (Brooklyn - East New York, Brownsville), failed in his attempt to succeed his mother, Priscilla Wooten.

A number of current and former state legislators also turned their sights to the City Council. Participants who won Council seats and who had previously served in the State Legislature included G. Oliver Koppell in Council District 11 (Bronx - Northwest, Riverdale), Larry Seabrook in Council District 12 (Bronx - North, Co-op City), Melinda Katz in Council District 29 (Queens - Forest Hills, Kew Gardens, Rego Park), and Albert Vann in Council District 36 (Brooklyn - Bedford-Stuyvesant).

In contrast to 1997, none of the participating Council candidates declined to accept public funds, although one returned them upon receipt.[33] This can likely be attributed to the more competitive nature of the 2001 races and the far greater amount in public funds available because of the $4-to-$1 match. Bonus situations were triggered by high-spending non-participants in three districts. Public funds were disbursed in a Green Party primary for the first time in city history, and a Libertarian candidate also received public matching funds for the first time.

A description of some City Council races follows.

Council District 1 (Manhattan - Downtown Manhattan, Lower East Side, Chinatown)

The race to succeed ten-year Council Member Kathryn Freed in Lower Manhattan was arguably one of the most competitive Council races in the city. The Democratic primary featured a high-spending, non-participating candidate, Elana Waksal Posner, who triggered a bonus, and six participating candidates who each received the maximum possible in public funds from the bonus situation ($91,333, as opposed to $75,350).[34] (*See* Chapter 6.) Three of the candidates were Asian-American: Rockwell Chin, an attorney for the New York City Commission on Human Rights; Margaret Chin, the deputy executive director of Asian Americans for Equality; and Kwong Hui, an activist with the Chinese Staff and Workers Association. The district, which includes the World Trade Center site and Battery Park City, was directly affected by the September 11th terrorist attack. A number of polling sites were destroyed and had to be relocated for the rescheduled primary on September 25th. The Democratic primary winner, Alan Gerson, who had been endorsed by Freed and by Manhattan Borough President C. Virginia Fields, won with only

21.5% of the vote. He was followed closely by Brad Hoylman at 17.1%, Rockwell Chin at 17.0%, Margaret Chin at 16.6%, and John Fratta at 13.3%. Posner finished with 8.5% of the vote, despite spending almost $600,000. (*See* Chapter 5.) The general election ballot included most of those who had appeared on the primary ballot: Gerson on the Democratic line, Margaret Chin on the Liberal line, Rockwell Chin on the Working Families line, Hui on the Independence and Green lines, and Jordan Kaufman on the Republican line. Gerson won the general election, receiving 47% of the vote. The seven participating candidates raised a total of $782,131 in contributions.

Council District 4 (Manhattan - Upper East Side)

Council Member Eva Moskowitz was a Program participant who had run against high-spending, non-participating opponents in each of the previous two elections in her district. In 2001, however, she was the best-financed candidate. She raised $207,850 in contributions, received $150,500 in public funds, and spent more than $350,000 across the primary and general elections. By comparison, her Democratic primary opponent, Peter Doukas, a self-employed accountant, raised $35,550 in contributions, received $65,048 in public funds, and spent about $100,000. Moskowitz beat Doukas 80% to 20%, and went on to defeat Republican Nicholas Viest in the general election, 64% to 34%. Viest raised $28,911 in contributions, received $58,488 in public funds, and spent approximately $80,000.

Council District 7 (Manhattan - West Harlem, Washington Heights, Inwood)

Eleven Democratic candidates joined the Program and ten appeared on the primary ballot, the most of any district in the city. Four participants did not meet the threshold for public matching funds prior to the primary, and a fifth did not receive public funds for the primary because of compliance issues. One of the participants, Heyward Dotson, was off the ballot for a time and was briefly rumored to be deceased. Some of his opponents observed a premature moment of silence on his behalf at a candidate forum. Dotson was subsequently restored to the ballot by the State Supreme Court. He summed up the experience by saying, “I survived.”[35] Robert Jackson, director of field services for the Public Employees Federation, who was endorsed by the *New York Times*, the Manhattan Democratic party, and a number of unions, raised money from more contributors than his opponents and was elected with 30.5% of the vote in the Democratic primary. Jackson was the only candidate in that district to receive the maximum in public matching funds in the primary ($75,350), followed closely by Mark Levine, executive director of the nonprofit organization Credit Where Credit is Due, who received $73,320 in public matching funds. Levine was the highest spender in the primary, followed closely by Jackson, while the other candidates’ spending trailed. Levine finished second in the primary, with 21.2% of the votes cast, followed by Mario Torres (10.7%), Daryl Bloodsaw (8.3%), Pedro Morillo (8.2%), Jackie Adams (7.0%), Tony Spencer (6.8%), Victor Bernace (3.2%), Michael Hughes (3%), and Dotson (1.1%). Jackson received 80% of the general election vote. Torres, running on the Liberal line, qualified for matching funds for the first time in the general election, and received the full $75,350. He received 6.3% of the vote. The Republican candidate, Faisal Sipra, a non-participant, received 8.3% of the vote.

Council District 13 (Bronx - Pelham Bay, Throgs Neck, Morris Park, City Island)

Incumbent Madeline Provenzano did not participate in the Program in 2001, although she had participated in 1997. She triggered the bonus for her primary opponent, Egidio Sementilli, who raised $31,742, received $83,805 in public matching funds, and spent approximately $135,000. Board of Elections filings indicate Provenzano spent approximately $72,000. She defeated Sementilli, 6,234 votes to 2,495. Her general election opponent on the Republican, Conservative, and Independence lines, John Wilson, was a participant, but failed to meet the threshold for receiving public funds. Provenzano won the general election, 16,192 votes to 8,317.

Council District 17 (Bronx - South Bronx)

Two candidates with well-known political names participated in the Program in district 17: Council Member Pedro G. Espada, the 27-year-old son of State Senator Pedro Espada, Jr., and Jose Marco Serrano, the 29-year-old son of Congressman Jose E. Serrano. Espada accused Serrano of "running on his father's name," but also circulated literature bearing the phrase, "Vote for the father and son team."[36] Serrano's campaign manager had been defeated by State Senator Espada in 2000. The younger Espada raised approximately $20,000, received $55,900 in public funds, and spent about $75,000. During the primary period, Serrano raised approximately $65,000, received $58,348 in public funds, and spent about $120,000. Serrano defeated Espada 61% to 39% in the primary, and faced only minimal opposition from non-participants in the general election. The election in district 17 was the only one in which an incumbent running for re-election was defeated. Ironically, Espada was the only challenger to defeat an incumbent running for re-election in 1997, when he defeated Federico Perez.

Council District 18 (Bronx - Soundview, Parkchester, Castle Hill)

The Reverend Ruben Diaz, Sr., father of Assembly Member Ruben Diaz, Jr., was the Bronx Democratic Party's candidate in the race to succeed term-limited Council Member Lucy Cruz. As a non-participant, he triggered the bonus for the two Democrats who remained on the primary ballot, Armando Montano and Elizabeth Rodriguez, by spending approximately $116,000, according to City Board of Elections filings. Montano raised about $75,000, received $90,883 in public matching funds, and spent approximately $175,000. Rodriguez was one of the few Program participants who had difficulty meeting the dollar threshold to be eligible for matching funds, although she collected sufficient contributions from enough district residents. (*See* Chapter 6.) She ultimately qualified for $31,685 in public matching funds. The *New York Times* endorsed Montano in an editorial that said the district had been short-changed in its representation for a long time.[37] Diaz won the primary handily, with 9,608 votes. Montano and Rodriguez received an almost equal number of votes, 2,893 for Montano, and 2,859 for Rodriguez. Diaz received 81% of the vote in the general election and was the only non-participating non-incumbent to be elected to the Council in 2001.

"I didn't run to become the first Asian-American elected official in New York, but to work hard for my constituents. But I am, and that means that I have additional responsibilities. It is great to represent a group that did not have representation before."

— district 20 candidate
John Liu

Council District 20 (Queens - Flushing)

Petition challenges reduced the number of candidates on the ballot in district 20's Democratic primary from seven to four. Two candidates who ran unsuccessfully against incumbent Julia Harrison in 1997, John Liu and Ethel Chen, were the best financed, and both received the maximum in public funds in the primary. Terence Park, the first Korean-American Council candidate, and Richard Jannacio, a freelance writer, also qualified to receive public funds: $64,860 and $28,736, respectively. Liu, an actuary and community board member, was among the best-financed Council candidates overall, raising $210,650 over the course of the campaign. A Green Party primary was also held in district 20, where Paul Graziano became the first participant in the history of the Program to receive public matching funds in a third-party primary. He received $26,384 in public matching funds. Because both races were close, it took the Board of Elections' final certified count to determine the winners. Liu defeated Chen by 202 votes out of 8,955 votes cast. Graziano and opponent Evergreen Chou tied with 18 votes apiece. The Green Party then determined that the nominee would be Graziano. Liu, who also ran on the Liberal party line, won the general election with 55% of the vote, defeating Graziano, Republican/Conservative Ryan Walsh, and Independence candidate Martha Flores-Vazquez, all participants. Walsh was the only participant in this race who did not receive public funds prior to the election. Liu, New York City's first Asian-American City Council member, said "I didn't run to become the first Asian-American elected official in New York, but to work hard for my constituents. But I am, and that means that I have additional responsibilities. It is great to represent a group that did not have representation before."[38]

Council District 24 (Queens - South Flushing, Jamaica Hills, Briarwood, Forest Hills)

The Democratic primary in district 24 was one of the races in which the candidate who was supported by the Queens Democratic Party organization lost. Barry Grodenchik, the chief administrative officer for the Queens borough president's office, lost the primary to James Gennaro, a Queens College adjunct professor and a policy advisor on environmental issues for the City Council. The two candidates were equally funded through the primary: Grodenchik raised $96,460 in contributions and Gennaro raised $98,841. Gennaro, Grodenchik, and a third participant, David Reich, all received the maximum in public funds. In the general election, Gennaro won with 88% of the vote, defeating both Grodenchik, running on the Working Families line, and Green Party candidate Lori Zett.

Council District 30 (Queens - Ridgewood, Middle Village, Glendale)

Prior to the petitioning period, rumors abounded that a special election would be held in District 30 because term-limited Republican Council Member Thomas Ognibene was expected to be nominated for a judgeship. When the nomination failed to materialize, Ognibene endorsed his chief of staff, Dennis Gallagher, to succeed him in the regular election, as had been anticipated. Gallagher faced no Republican opponent and awaited the outcome of a three-way Democratic primary. The three Democrats were Robert Cermeli, a budget analyst and member of his community and school boards; Elizabeth Crowley, daughter of two former City Council members and cousin of U.S. Representative Joseph Crowley; and Linda Sansivieri, teacher and school board member. Crowley had originally planned to run in Woodside, but reportedly switched to the Middle Village seat at the behest of her cousin and the Queens Democratic leader, Thomas Manton.[39] Crowley far eclipsed her opponents' fund-raising, raising about $75,000 for the primary, compared to $29,430 for Sansivieri, and $20,844 for Cermeli. Crowley was initially not eligible for public funds because she failed to meet the threshold number of district residents. Her campaign subsequently had its public funds payments suspended when a contributor admitted, at a public session of the CFB on August 23rd, to forging signatures of contributors.[40] The campaign later received the public funds after a Board review both of the evidence that the campaign was not involved in the forgery and of a later disclosure statement filed the following week. (*See* "Lawsuits and More Lawsuits" in Chapter 9.) Crowley won the primary, receiving 3,362 votes to 2,367 for Sansivieri and 1,589 for Cermeli. Gallagher, also running on the Conservative and Right to Life lines, defeated Crowley, 59% to 40%. Gallagher raised $77,588 in contributions, received the maximum in public funds, and spent approximately $153,000. District 30 became the only Queens district represented by a Republican.

Council District 33 (Brooklyn - Brooklyn Heights, Williamsburg, Greenpoint)

Democratic Party-endorsed candidate Steven Cohn's first disclosure statement filed with the CFB revealed that his committee had raised more than $288,000 in contributions. This provided him with sufficient funds to spend $137,000, the expenditure limit for Council races, in each of the primary and general elections, with money to spare. His Democratic opponents for the seat being vacated by Kenneth Fisher were David Yassky, an assistant professor at Brooklyn Law School; Kenneth Diamondstone, a housing developer; and David Reiss, an attorney. Three of the four candidates received the maximum available in public funds, although Cohn returned his payment upon receipt. Yassky, by a large margin, won the primary, 43.5% to Cohn's 30.7%, Diamondstone's 15.1%, and Reiss's 10.5%. Cohn and Diamondstone appeared on the general election ballot on the Liberal and Working Families lines, respectively. Cohn once again returned his public funds payment upon receipt. Craig Seeman, chair of the Green Party in New York State, also qualified to receive public funds in the general election, and garnered 2,384 votes running on the Green and Independence lines. Yassky won the election with 16,672 votes.

Council District 41 (Brooklyn - Bedford-Stuyvesant, Brownsville, East Flatbush, Ocean Hill)

The Campaign Finance Program played no apparent role in district 41. Three candidates joined the Program as challengers to incumbent and non-participant Tracy Boyland: Abdur Rahman Farrakhan, Roy-Pierre Detiege-Cormier, and David Miller. Miller did not even file petitions. Farrakhan was removed from the Democratic primary ballot by an appellate court in August. Detiege-Cormier and the other Republican candidate, Aaron Bramwell, were both disqualified from the ballot by the Board of Elections. Boyland, whose family is well known in local politics, had no primary, and was the only candidate to appear on the November general election ballot.

Council District 43 (Brooklyn - Bay Ridge, Dyker Heights, Bath Beach, Bensonhurst)

District 43, described as "one of the city's foremost bastions of the so-called Giuliani Democrats,"[41] featured two primaries and a competitive general election that was a rematch of the 1997 race. Joanne Seminara, an attorney and past participant, won both the Democratic and Green Party primaries. She raised $143,439 in contributions over the course of the campaign and received $75,350, the maximum in public matching funds allowed for the primary. Her Democratic opponents, Carlo Scissura, a former school board member, raised $58,174 and also received $75,350 in public matching funds, and Ursula Gangemi, an attorney, raised $15,035 and received $48,480 in public matching funds. Seminara won the Democratic primary with 54.9% of the vote, and the Green primary with 53.3% of the vote, against Michael Emperor, a non-participant. Seminara was the only participant to run in two primaries simultaneously. Both Seminara and incumbent Republican Martin Golden received the maximum in public matching funds in the general election. Golden raised $222,055 and spent about $300,000. Golden campaigned with Michael Bloomberg and was endorsed by Mayor Giuliani, Governor Pataki, and the Patrolmen's Benevolent Association. Golden defeated Seminara 58% to 42%, despite the district's two-to-one Democratic voter registration.

Council District 49 (North Staten Island)

Deborah Rose sought to become the first African-American City Council member from Staten Island, as she competed in the Democratic primary against two candidates with more established bases of support: Michael McMahon, an attorney who was endorsed by the term-limited Council Member Jerome O'Donovan; and Jon Del Giorno, the administrative manager for the Board of Elections, who received the endorsement of the local Democratic party.[42] Rose raised significantly less money than her competitors: $58,210 in contributions over the course of the entire election cycle. McMahon raised $179,450 and Del Giorno raised $138,889. All three, however, received $75,350, the maximum in public funds. Rose received the endorsement of the *New York Times* and lost to McMahon by only 170 votes out of 12,692 cast. Del Giorno finished a distant third. McMahon won the general election with 50.1% of the vote to Republican/Conservative Joseph Cammarata's 34.4%, Rose's 15% on the Liberal line, and Green

Party candidate Susan Roecker's less than 1%. McMahon received $75,350 in public matching funds for the general election, Cammarata received $73,868, and Rose received $57,116. (Roecker was a non-participant.)

CONCLUSION

> *It's not a myth….New York has had a four-to-one match for one election cycle, this past one. And it was magical….The stories that emerged from it were just breathtakingly wonderful stories about democracy. Immigrants, new citizens saying I've been a community leader my whole life, there is no way I would ever have run but for this four-to-one match. I am campaigning in a completely different way. I can now do small gatherings because a $50 contribution is now worth $250. My public is the people I talk to about issues, not sitting in a dark closet making phone calls.*
>
> — E. Joshua Rosenkranz, President and CEO, Brennan Center for Justice[43]

The many vigorous races in 2001 clearly attest to the democratization of fund-raising and spending made possible by the Program. Losing candidates, as well as winners, understood that the Program gave them a fair chance to compete.

NOTES

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15 *See* Howard Jordan, "City Power; Ferrer's Folk Hide Their Own Agenda," *Newsday*, October 17, 2001, A44; Editorial, "The Next Mayor's Job," *New York Times*, October 4, 2001, A26; Michael Cooper, "Green's Latest Commercial Calls for a Closer Look at Ferrer," *New York Times*, October 10, 2001, D6; Michael Cooper and Randal C. Archibold, "Green, Evoking Elections Past, Says Wait Is Over," *New York Times*, October 12, 2001, D11; Michael Powell and Glenda Cooper, "Democrats' Run-off Race Gives N.Y. Its Edge Back," *Washington Post*, October 11, 2001, A30; Dan Janison, Ron Howell, and Curtis Taylor, "It's Green; Pulls Out Narrow Victory in Hard-Fought Runoff," *Newsday*, October 12, 2001, A3; Joyce Purnick, "The Race Card and Knowing When to Fold," *New York Times*, November 12, 2001.

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22 *Ibid.*, at note 11.

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24 John Harwood, Stefan Fatsis, and Matthew Rose, "New Yorkers Hope Bloomberg's Business Savvy Pays Off," *Wall Street Journal*, November 8, 2001, A26.

25 *Campaign Finance Board 2001 Hearings*, vol. I, at 104 (testimony of Gene Russianoff); vol. I, at 62 (testimony of Charles Juntikka); vol. II, at 247 (testimony of Rachel Leon).

26 Advisory Opinion No. 2001-3 (May 17, 2001).

27 Siegel also received an additional $51,267 in a post-election payment in April, 2002.

28 Advisory Opinion No. 2001-11 (September 7, 2001).

29 *See* Conflicts of Interest Board Advisory Opinion No. 2001-1 (January 30, 2001). The ruling affected Thompson, who resigned, Staten Island Deputy Borough President James Molinaro, who ceased fund-raising on April 1st, and Brooklyn Deputy Borough President Jeanette Gadson, who resigned and was appointed as a special assistant to the borough president.

30 Bill Egbert, "Finance Law Trims Beep Hopeful's Margin," *Daily News*, July 18, 2001, 26.

31 Bill Egbert, "Government Worker Unions Back Gadson for Beep," *Daily News*, July 26, 2001, 1.

32 John Rizio-Hamilton, "Here's Marty: Profile of the Man Who Could Succeed Golden," *Bay News*, August 6, 2001, 10.

33 Steven Cohn, a City Council candidate in district 33 (Brooklyn Heights), returned his public funds payments upon receipt in both the primary and general elections.

34 Candidates who had minor withholdings and came within 2% of receiving the maximum in public funds are included in these numbers if these candidates had raised sufficient funds to receive the maximum.

35 Amy Waldman, "Staying Alive in a Crowded Race," *New York Times*, September 5, 2001, B1.

36 Jonathan Hicks, "2 Families and Factions Contend in Bronx Race," *New York Times*, August 14, 2001, B4.

37 Editorial, "Council Endorsements: Bronx," *New York Times*, August 28, 2001, A14.

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39 Scott Shifrel, "Manton to Back Crowley," *Daily News*, May 1, 2001, 5. *See also* Shifrel, "Crowley Cuz Wins His Nod for Council," *Daily News*, May 2, 2001, 3.

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Chapter 4

Contributions: More Money, More Democracy

…by any fair measure, this year the Board and the staff furthered several key goals of the law…. The average size of contributions [was] down. The number of $250 or less contributions was greatly up. Candidates received a larger percentage of their contributions from city residents, and public matching funds also made up the greater percentage of a candidate's spending than four years ago. It is also clear that the match also played a vital role in both incubating and sustaining many Council candidacies across the city and for citywide office.

— Gene Russianoff and Neil Rosenstein of the New York Public Interest Research Group (NYPIRG)[1]

In 2001, changes in the political landscape motivated contributors to participate in the political process as never before. The 2001 election cycle saw increases in the dollar amount and number of contributions as well as the number of contributors, and as a result, there were many more competitive, meaningful campaigns waged across the city, and in Council districts that have not seen competitive races in many years.

A number of changes in the Campaign Finance Act and the Board's regulations affected fund-raising and contributor behavior during the 2001 election cycle. The contribution limits were lowered for 2001 to reduce further the influence that money can buy. (*See* Fact Sheet 4.1.) Contributions from corporations, which had increased to 27% of all contributions by the 1997 election cycle, were banned after November 1998.[2] Contributions from political committees could only be accepted if the political committees registered with the CFB, so that CFB oversight could prevent the funneling of corporate contributions through political committees. Changes to the Rules required campaigns that claimed matching funds for contributions made by cash or money order to include a signed affirmation to support the claims. The CFB also developed requirements for the documentation of credit card contributions, in anticipation that the Internet would change the way local political campaigns do fund-raising, as had happened at the national level during the 2000 elections.

Fact Sheet 4.1: Contribution Limits Over Time

2001

Mayor	$4,500
Public Advocate	$4,500
Comptroller	$4,500
Borough President	$3,500
City Council	$2,500

1997

Mayor	$7,700
Public Advocate	$7,700
Comptroller	$7,700
Borough President	$5,900
City Council	$3,550

1993

Mayor	$6,500
Public Advocate	$6,500
Comptroller	$6,500
Borough President	$5,000
City Council	$3,000

1989

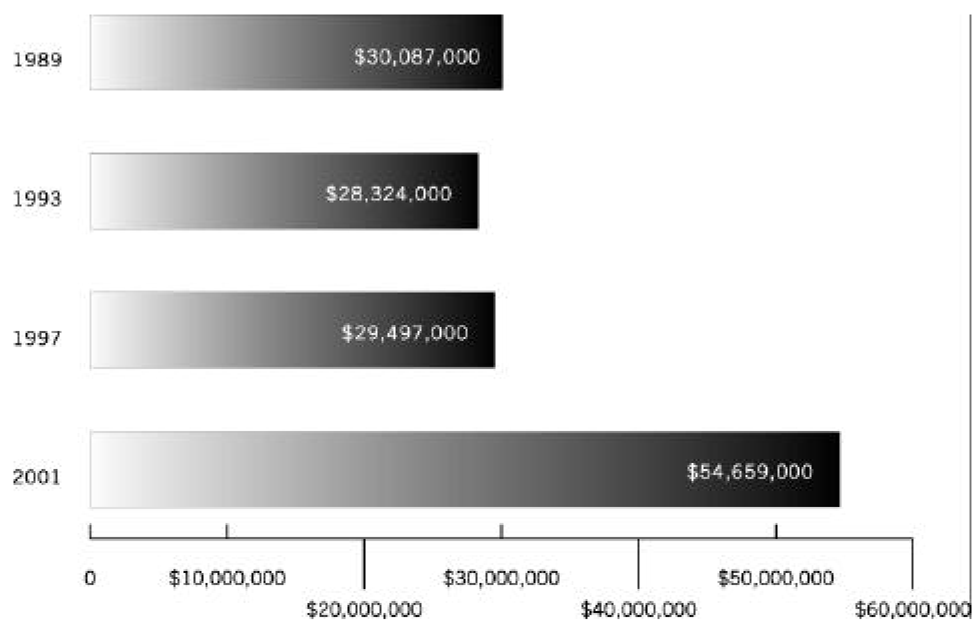
Mayor	$6,000
City Council President*	$6,000
Comptroller	$6,000
Borough President	$5,000
City Council	$4,000

* The office of Public Advocate replaced the office of City Council President on January 1, 1994.

CONTRIBUTION TOTALS

Total contributions increased from about $29.5 million in 1997 to nearly $54.7 million in 2001, an increase of 85%. (The amount of total contributions in citywide election cycles through 1997 had been relatively stable. Participating candidates in 1989 and 1993 raised about $30.1 million and $28.3 million, respectively; *see* Fig. 4.1.) Total contributions to mayoral candidates increased from almost $14.9 million to about $29.1 million (96%); contributions to public advocate candidates increased from about $2 million to almost $4.8 million (135%); contributions to comptroller candidates increased from almost $2 million to almost $3.7 million (87%); contributions to borough president candidates increased from $5.1 million to almost $5.7 million (10%); and contributions to Council candidates increased from almost $5.4 million to about $11.4 million (113%). (*See* Table 4.1.) The percentage increase in contributions between 1997 and 2001, however, (85%) was less than the percentage increase in the number of active Program participants, which was 99%. In 2001, there were competitive primaries for all three citywide offices, four of the five borough presidencies, and an overwhelming number of City Council seats, in contrast to 1997, when incumbents seeking re-election generally dominated the field and were, for the most part, not seriously challenged. The comparatively small increase in 2001 in the amount of contributions to borough president candidates can be attributed to the fact that all the open seats were in the four outer boroughs in 2001, which traditionally raise less money than Manhattan, where candidates for an open seat accounted for 43% of all borough president contributions in 1997. The amount of 1997 borough president contributions was also heavily influenced by contributions to

Figure 4.1: Total Net Contributions to Program Participants — 1989, 1993, 1997, 2001



incumbent Bronx Borough President Fernando Ferrer, who initially planned to run for mayor in 1997 and then decided to run for re-election as borough president. He accounted for another 46% of the total borough president contributions in 1997.

The estimated number of contributions to all active participants almost doubled, from 71,600 in 1997 to 139,400 in 2001. The number of contributors, that is unique individuals and organizations, rose to about 102,000, an increase on the order of 40,000 new contributors since 1997. This total represents the largest number of contributors since and including 1989, when there were close to 80,000 unique entities that contributed to participating campaigns. In 2001, there was also a large increase in the number of contributors who donated to more than one candidate during the election cycle. In 1997, roughly 15,000 contributors donated to more than one participating candidate. In 2001, about 20,000 contributors gave to more than one candidate. In 1997, the percentage of contributors who were "multiple donors" was 14.5%; in 2001, 20% of all contributors were multiple donors. The larger percentage in 2001 perhaps reflects that so many more contributors were encouraged to make donations to two or more offices instead of just one. Growth in the number of contributors is one way to measure citizens' involvement in the political process, and by extension, the success of the Program. Donations to more than one candidate may represent greater interest and a deeper commitment to the political process.

At the citywide level, Democratic mayoral candidate Mark Green raised funds from the most contributors. Brooklyn borough president candidate Marty Markowitz collected contributions from about 3,200 contributors, more than any other borough president candidate and more than any of the public advocate candidates. On the City Council level, 29 candidates each raised contributions from more than 500 contributors. In 1997, only 12 Council candidates reached the 500-contributor level.

Table 4.1: Total Contributions to Participants by Office — 1989, 1993, 1997, 2001

	1989	1993	1997	2001
Mayor	$20,973,000	$15,915,000	$14,857,000	$29,145,000
Public Advocate	N/A	$2,733,000	$2,017,000	$4,747,000
Comptroller	$3,649,000	$4,556,000	$1,959,000	$3,670,000
Borough President	$2,946,000	$1,807,000	$5,136,000	$5,659,000
City Council	$2,519,000	$3,313,000	$5,379,000	$11,439,000

Note: Numbers are rounded to the nearest $1,000. The office of Public Advocate was created after the Charter Revision of 1989. Figures are not adjusted for inflation. Reporting requirements for contributions have changed between election cycles. Dollar totals may not be exactly comparable.

The average contribution size across all offices was $388, a decrease of $24 from 1997. (*See* Fig. 4.2.) This minimal decline reflects an increase in fund-raising at or below the $250 matching level that was significantly offset by a growth in larger contributions to citywide candidates. The average contribution size to mayoral candidates rose by $80 to $883 from 1997 to 2001, despite a reduction in the contribution limit of more than $3,000 and a $750 reduction in the size of a matchable contribution. Two likely reasons for this are the additional contributions for the anticipated run-off election that 2001 Democratic mayoral candidates were permitted to accept from contributors who had already given the regular $4,500 maximum, and the fact that there were four significant candidates who raised huge sums of money, compared with only two candidates in 1997. Similarly, the average contribution to the public advocate candidates rose from over $350 to over $430, reflecting the same two factors: a runoff that permitted fund-raising beyond the $4,500 limit, and a large field of well-known candidates who provided increased competition for the vacant office. The largest decrease in the average contribution size to any office was in the comptroller's race, where the average contribution size fell by $350 (from $952 to $602). In 1997, the incumbent, Alan Hevesi, had virtually no competition for the office and consequently attracted relatively few small contributors. The introduction in 2001 of two strong candidates with the ability to raise significant funds in effect tripled the number of contributors to comptroller candidates.

Among the four Democratic mayoral candidates who raised and spent significant sums of money, the average contribution size per contributor ranged from $753 (Alan Hevesi) to $1,170 (Mark Green). The average size of contributions from individual New York City contributors to those same four candidates was approximately $550, compared with the average size from political committees, which was approximately $1,540, or from unions, which was approximately $1,630. Again, these numbers are higher than they would have been had all four candidates not been permitted to raise money for the anticipated run-off election.

The range in average contribution size among the five public advocate candidates with significant financial activity was wider, with Betsy Gotbaum, the eventual winner, raising average contributions of $828, and Stephen DiBrienza raising average contributions of $242, and candidates Scott Stringer, Kathryn Freed, and Norman Siegel raising average contributions of $459, $341, and $328, respectively. Notwithstanding the differences in average contribution size for the individual candidates in the public advocate race, two of the candidates expressed the opinion that public matching funds adequately made up for differences in what the candidates could raise privately. At the CFB's post-election hearing, candidate Stephen DiBrienza said:

> *When you look at my race, without the Campaign Finance Program, even though among the candidates there were some, perhaps, who had more access to larger contributions or contributors, the fact of the matter is all things were made level, or as level as could be, through the Program. I raised significant dollars from thousands of people generating significant matching funds such that our citywide campaign was able to have a TV budget, participate in mandatory debates, have a mail program, and have access into communities throughout the city. I could not have run without this Campaign Finance Program…. I looked at one of the candidates in my race who was able to raise $400,000 in the initial going from 400 people. Do the math; that is about $1,000 a person. The reason I stayed competitive having raised $260,000, at a point along the continuum, was it was from hundreds and hundreds of smaller contributors generating the matching funds. In the end, if you continue, it came out fairly close.*[3]

One of DiBrienza's opponents, Scott Stringer, noted: "One of the things I thought was very important in the Program in my situation was the ability to raise, I think, $1.2 million. That was a challenge given the low limits. What was really exciting was having something like 2,800 people give to the campaign, many in small donations."[4]

The average contribution size for City Council candidates was virtually identical in 1997 and 2001, at $166 and $167, respectively. At the City Council level, the average contribution size from individual New York City contributors was about $110, whereas from political committees it was about $790, and approximately $625 from unions. There were 67,400 contributions to City Council campaigns.

The most popular contribution amount for all offices (the mode) was $250, reflecting a shift in campaigns' fund-raising tactics to take maximum advantage of the matching formula. The $100 contribution amount, however, was only slightly less popular. The mode in 1997 for all offices was $100. The most common contribution amounts in 1993 and 1989 were $100 and $25 respectively.[5] In 2001, at the City Council level, the most popular contribution amount remained $100. Few Council candidates can expect to receive a $2,500 contribution (the contribution limit for the office) or even a $1,000 contribution (the maximum matchable amount in 1997), but $250 is not nearly as unattainable, especially when it

Table 4.2: Top Ten Contributors to 2001 Participants

Contributor	Amount	# of Campaigns Contributed to
Plumbers Local Union #1	$139,430	48
NYS Laborers PAC	$132,250	66
United Federation of Teachers COPE	$102,321	62
Transport Workers Union	$97,895	53
NYC District Council of Carpenters	$95,097	54
District Council 37-AFSCME 983	$91,990	44
Local 1199 Health & Human Services Employees Union	$91,550	35
Local 6 PAC	$80,350	28
Hotel Trades Council COPE	$73,850	24
Leonard Litwin	$71,000	36

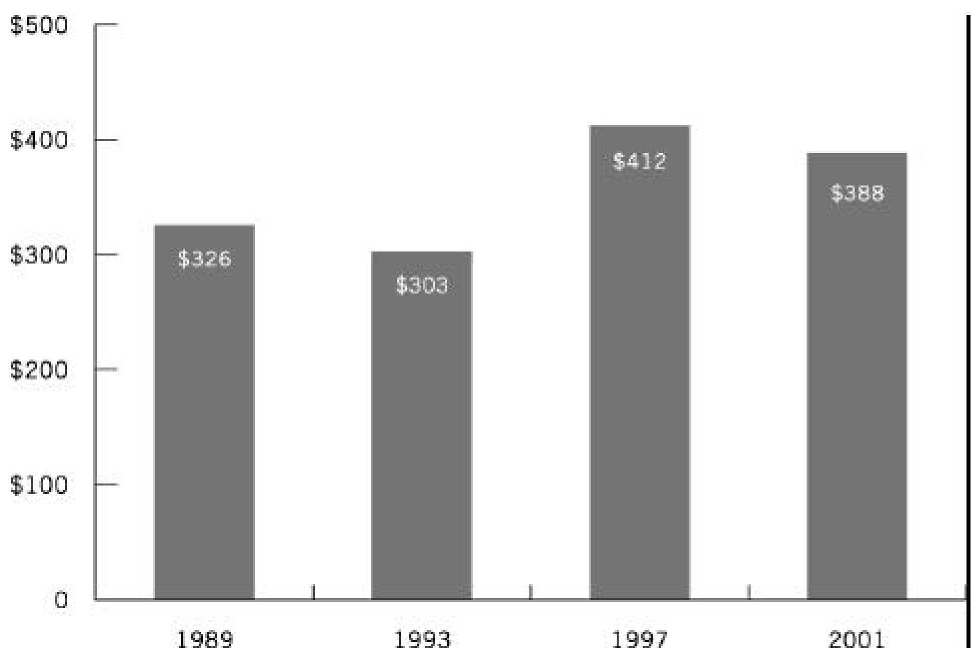
Note: The totals reflect contributions of entities that may have been reported under more than one name, including unions and their political committees. Totals do not include refunded contributions.

is advertised as being worth $1,250 in total to the candidates. In fact, 42% of all participating Council candidates who appeared on the ballot (100 of 241) did not receive any contribution that exceeded $1,500, or $1,000 less than the contribution limit.

The average amount of total contributions raised by Council candidates was $47,681, compared to an average of $43,032 in 1997 for far fewer candidates. In 2001, there were 27 Council candidates who reported less than $5,000 in contributions; in 1997 there were 26. In 2001, there were five Council candidates who raised more than $200,000; in 1997 there were four. Given the increase in candidate participation at the Council level, these numbers indicate that the biggest growth occurred in the number of candidates who were able to raise enough money to qualify for public matching funds and thus mount meaningful campaigns, not candidates at the low or high end as private fund-raisers. The median amount in total contributions to Council candidates rose from $26,567 in 1997 to $33,160 in 2001.

The median contribution size remained at $100 across all offices in 2001. Among mayoral candidates, however, the median rose from $125 in 1997 to $250 in 2001. The median for public advocate candidates rose from $35 in 1997 to $135 in 2001. Comptroller was the office with the largest decrease in median contribution size, from $475 in 1997 to $250 in 2001, a decrease that reflects a competitive primary race for an office where there had been none in 1997. Median contribution size to borough president candidates held constant ($100) from 1997 to 2001, while for Council candidates it rose by $15 to $75 in 2001.

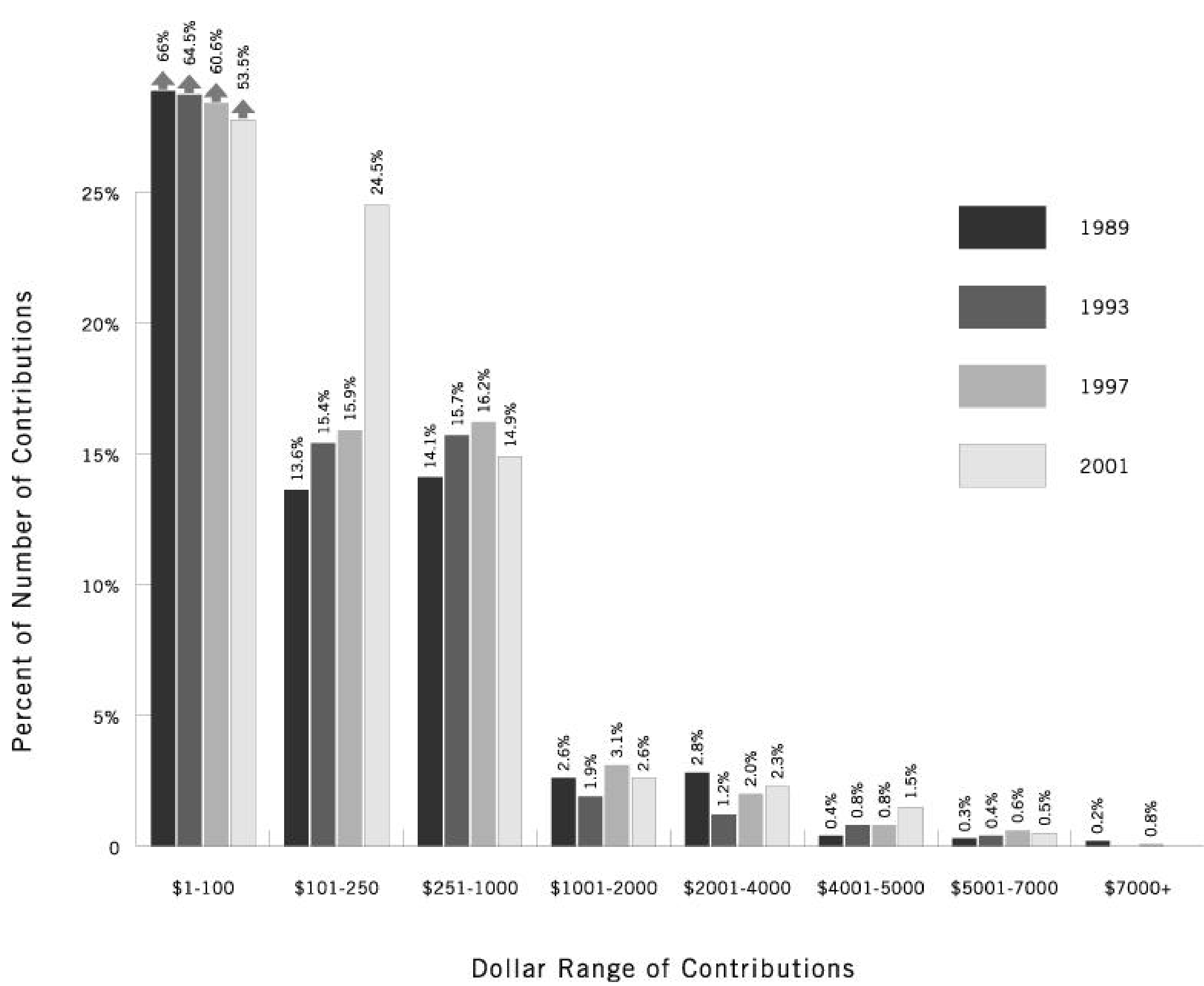
Figure 4.2: Average Contribution Size Across All Offices — 1989, 1993, 1997, 2001



CONTRIBUTION DISTRIBUTION

Overall, the total number and dollar amount of contributions increased dramatically from 1997 to 2001. Across all offices, 54% of all contributors gave $100 or less, compared to 61% who gave $100 or less in 1997. In 2001, 78% of all contributors gave $250 or less, compared to 76% in 1997. (*See* Fig. 4.3.) Contributions up to and including $250 represented 21% of all candidates' total fund-raising, up from 14.4% in 1997. In 2001, the lure of the $4-to-$1 matching formula capped at $250 persuaded 20,778 contributors to donate exactly $250, for a total of $5,194,500 in net contributions, or 9.5% of all net contributions raised. The number of contributors who gave at or below the $250 level doubled from 1997 to 2001. On the City Council level, 89% of contributions were $250 or less, compared to 1997,

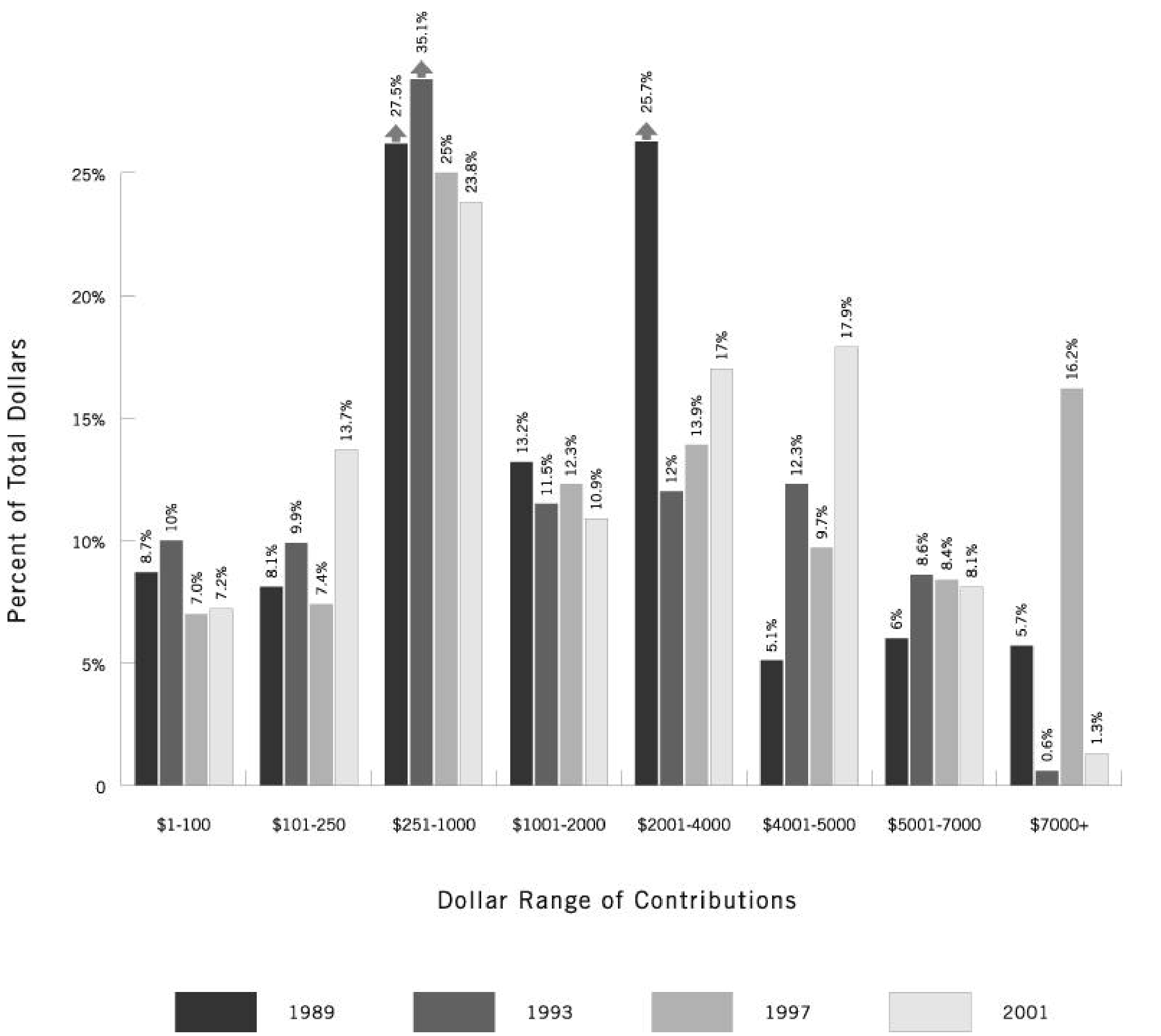
Figure 4.3: Frequency Distribution of Contributions in Each Dollar Range — 1989, 1993, 1997, 2001



when 76% were $250 or less. Those contributions rose in dollar share of total fund-raising from 38% in 1997 to 47% (almost half) in 2001. Among citywide candidates, the influence of contributions $250 or less rose from 7% to 13% of funds raised.

Small contributions may be associated with first-time and less wealthy contributors having become involved in the political process. Candidate Sandy Aboulafia of district 44 (Brooklyn - Borough Park, Bensonhurst), in her response to the CFB's post-election survey, noted, "More people were willing to give $100 donations to see their contributions become $500." Throughout the election cycle, there was much anecdotal evidence about the importance of small house parties to Council candidates' fund-raising

Figure 4.4: Dollar Distribution of Contributions in Each Dollar Range — 1989, 1993, 1997, 2001



strategies. "It's wonderful to get the campaign contributions, but the real value is meeting new people," remarked candidate — now City Council member from district 49 (Northern Staten Island) — Michael McMahon in a *New York Times* article about the different (and new) ways that many candidates were reaching out to potential contributors and voters.[6] Political consultant Evan Stavitsky noted:

> *There are more people hosting more events for more candidates than we've ever seen.…The traditional model for fund-raisers involved rubber chicken dinners with long speeches. The new model for candidates is to broaden the number of people you reach out to, rather than the amount of money you get from each. And the model is to try to use new techniques to bring out new, potential voters.*[7]

Despite an across-the-board increase in the number of small contributions, high-end contributions continued to play a major role in campaign fund-raising. (*See* Fig. 4.4.) Contributions greater than $4,000 ($500 less than the limit for citywide candidates) accounted for 27% of total net contributions. In 1997, contributions greater than $4,500 accounted for 33% of all participants' total net contributions, reflecting the higher contribution limit prevailing then. (*See* Fact Sheet 4.1.) In 2001, there were 1,944 different contributors who donated at exactly the $4,500 contribution limit for citywide offices to one or more participants accounting for roughly 16% of total contributions. Evidently wealthy individuals and well-endowed organizations have the ability to contribute up to the cap, regardless what the cap is. Moreover, there was the phenomenon of the "multiple donor," a contributor who gave to more than one candidate. Big contributors tend to give to a larger number of candidates, particularly to rival candidates in competitive citywide races. In 2001, 20% of all donors were multiple donors, and they accounted for 58% of all contribution dollars to participants in 2001, compared to 43% in 1997, an increase of 156%. The most common total contributions from multiple donors fell in the size ranges of $500, $1,000, and $250, in order of frequency.

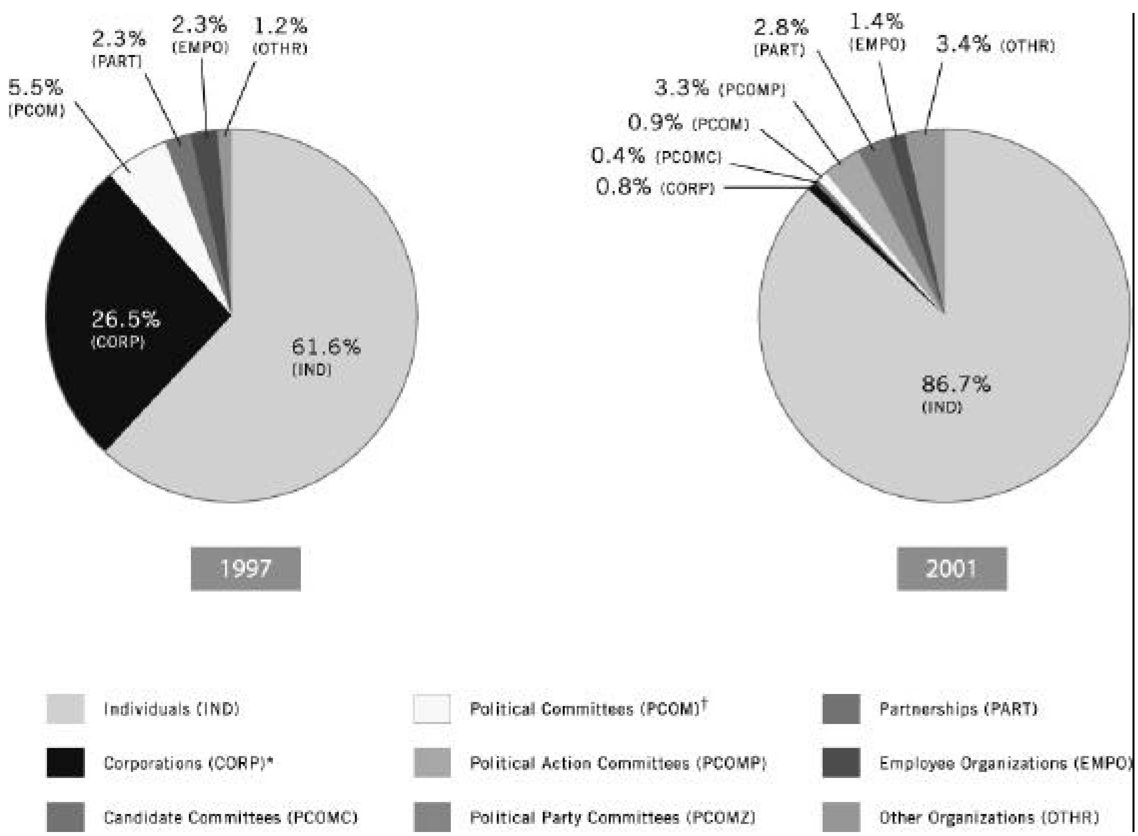
On the City Council level, there was an increase between 1997 and 2001 in the amount and percentage of contributions that came from high-end contributions. Contributions greater than $2,000 constituted 13% of the money raised by Council candidates, but was provided by less than 1% of the contributor base. In 1997, with a $3,550 contribution limit in effect and far less in total contributions, contributions greater than $2,000 accounted for 10% of Council candidates' fund-raising and represented contributions from 0.5% of the contributor base.

CONTRIBUTION SOURCES

The 2001 election cycle saw a shift in both the dollar amount and percentage of contributions that came from individuals. (*See* Fig. 4.5.) The dollar amount of individual contributions increased from 62% of the total contributions to 87% of total contributions. Much of that shift can be attributed to the change in the Act that prohibits the acceptance of corporate contributions. In 1997, corporate contributions made up a hefty 20% (over $1 million) of all contribution dollars to Council candidates. In 2001, the percentage of dollars from individuals rose from 61% to 83% of Council fund-raising, an increase that also reflects the ban on corporate giving. Because of the ban on corporate contributions, in 2001, very few campaigns violated the contribution limits with contributions from affiliated corporate entities. This was a prominent issue in 1997, when, most notably, Mayor Giuliani was assessed a total of more than $240,000 in penalties for such violations.[8]

While overall political committee contributions rose in dollar amount from over $1.6 million in 1997 to over $2.5 million in 2001, political committee contributions as a percentage of all contributions actually decreased, from 5.5% to 4.7%. Because the disclosure for political committee contributions is now more detailed, in 2001 the data show that the bulk of political committee contributions (3.3%) came from

Figure 4.5: Total Contributions by Type of Contributor — 1997 and 2001



Note: Percentages may not add up to 100 due to rounding.

* The 0.8% in contributions raised from corporate sources in 2001 were raised prior to the ban, or the refunds were not reported.

† This classification was replaced by the more detailed Candidate Committee, Political Action Committee, and Political Party Committee mid-way through 2000.

political action committees. Candidate committees gave $220,000 to participating candidates in 2001.[9] Program participants whose committees gave contributions to other participants had the amounts of those contributions deducted from their matching claims for public funds, in accordance with the Board Rules, which are designed to prevent one participating candidate from using public money to fund another candidate's campaign.[10]

Union contributions increased by approximately $100,000 from 1997 to 2001, but declined in percentage influence and constituted only 1.4% of the total contributions (compared with 2.3% of total contributions in 1997). Contributions from partnerships more than doubled, from over $670,000 in 1997, to $1.5 million in 2001, but as a percentage of total contributions rose by only 0.5%. The largest increase in both dollar amount and percentage was in the contributor category "other organizations," which includes sole proprietorships and other businesses that are not corporations or partnerships. Other organizations contributed almost $1.9 million in 2001, compared to about $350,000 in 1997, a significant increase from 1.2% of the total contributions to 3.4%.

Overall, organizational giving constituted 13% of all contributions ($7.2 million). Broken down by office, organizational giving constituted 12% ($3.4 million) of contributions to mayoral candidates, 10% ($478,000) to public advocate candidates, 20% ($721,000) to comptroller candidates, 14% ($779,000) to borough president candidates, and 16% ($1.9 million) to Council candidates.

CONTRIBUTION GEOGRAPHY

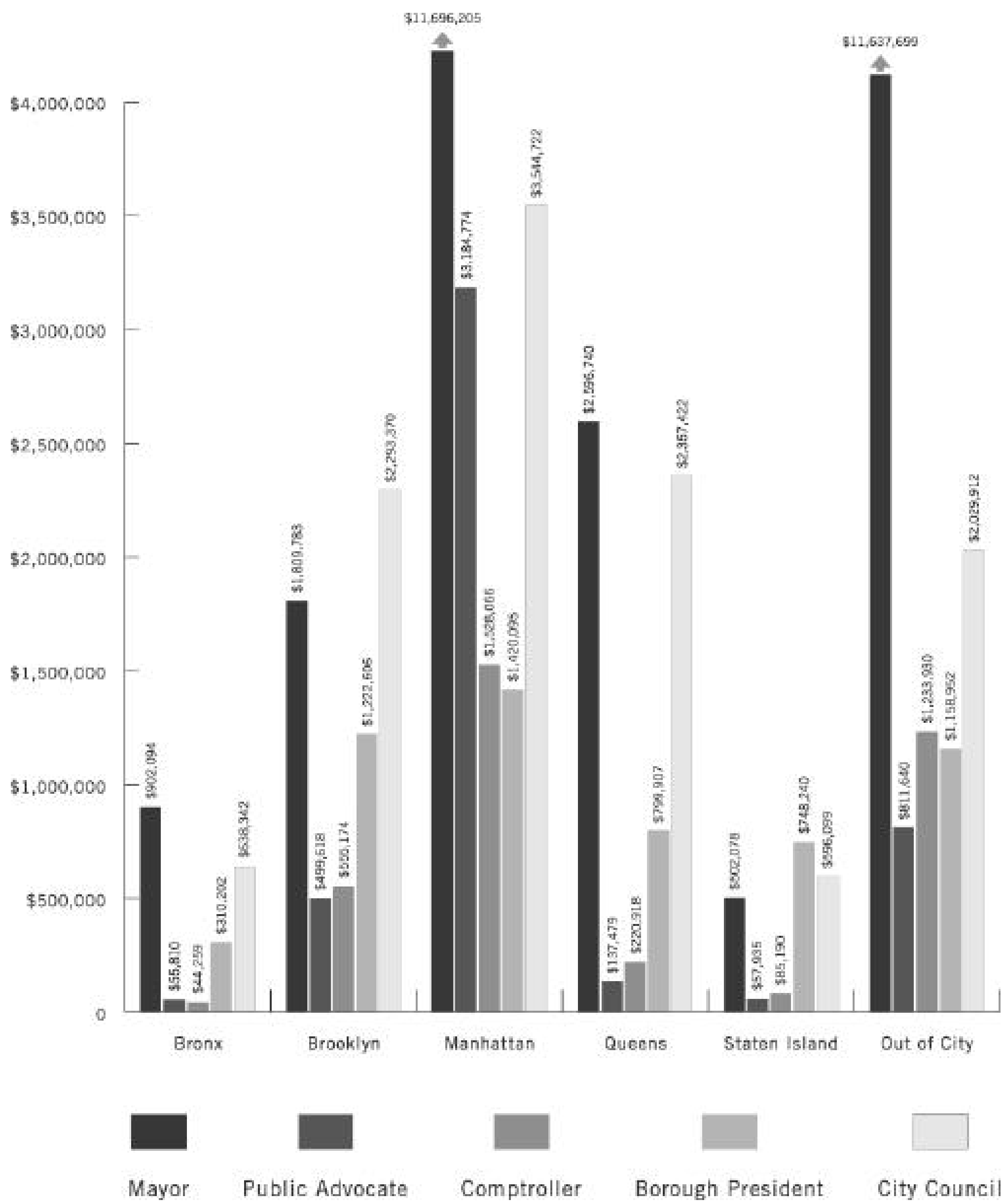
One of the intended consequences of the $4-to-$1 matching formula was to equalize the influence of the outer boroughs in comparison to Manhattan, which traditionally dominated contributions to participants. The actual results were somewhat mixed: as a percentage of total giving, contributions from Queens and Staten Island increased, Brooklyn remained virtually constant, and the Bronx decreased, compared to 1997. In actual dollars contributed, however, all five boroughs gave more in 2001 than in 1997. (*See* Fig. 4.6.)

Manhattan: As in past election cycles, fund-raising was heavily oriented toward Manhattan contributors. Overall, participants raised more than three times the amount of contributions from Manhattan than from any other borough, $21.4 million. Manhattan accounted for 39% of contribution dollars in 2001, compared to 1997, when it accounted for 51%. In 2001, mayoral candidates received 55% ($11.7 million) of all Manhattan contribution dollars, similar to the 57% received in 1997. Just over 40% of all mayoral contribution dollars came from Manhattan. Mark Green and Alan Hevesi each collected 17% of their total contribution dollars from residents of zip code 10021 (Upper East Side), while Peter Vallone and Fernando Ferrer collected 19% and 14% of their respective totals from this same zip code.

Bronx: Bronx residents' contribution dollars to mayoral candidates more than tripled in 2001. This upsurge in contributions from the Bronx very likely reflects the mayoral campaign of Bronx Borough President Ferrer. In fact, 31% of the almost $2 million dollars in Bronx contributions went to Ferrer. This was a milestone of sorts in the history of the borough's participation in the Program.

Staten Island: Staten Island residents' contributions to mayoral candidates also more than tripled in 2001. Staten Island contributors gave more money to borough president candidates and to Council candidates than to mayoral candidates, the only borough to do so. The borough president's race featured a highly competitive Republican primary, and a general election that pitted three long-time borough political figures against each other.

Figure 4.6: Contributions by Borough — 2001



"One of the things I thought was very important in the Program in my situation was the ability to raise, I think, $1.2 million. That was a challenge given the low limits. What was really exciting was having something like 2,800 people give to the campaign, many in small donations."

— candidate for Public Advocate
Scott Stringer

Queens: Queens contributors gave almost as much money to Council candidates as to mayoral candidates. Alan Hevesi and Peter Vallone, who both hail from Queens, competed for the Queens Democratic Party's backing and raised virtually identical amounts from Queens residents: $748,300 and $735,749, respectively. The high level of Council contributions likely reflects the fact that the entire borough's Council delegation was term-limited, and many viable candidates were competing for the open seats. Queens joined two of the other outer boroughs, Brooklyn and Staten Island, in demonstrating significant interest in local races, as evidenced by the changed pattern of contributions to non-citywide candidates. All three boroughs more than doubled their contributions to borough president and Council candidates.

Out-of-city: Contributions from outside the city totaled almost $17 million, with about $11.6 million going to the mayoral candidates. Thirty-one percent of the money raised during the 2001 election cycle came from outside the city, the second largest source after Manhattan. This represents a significant increase in the influence of out-of-city contributions, up from 23% of the total contributions in 1997. It should be noted that more than half the money from outside of the city was reported from individuals residing in other parts of New York State, including many who work in New York City or who have business interests in the city. The largest groups of out-of-state contributions came from neighboring New Jersey and Connecticut. Several other states recorded large increases in donations from 1997, including California (97%), Florida (55%), Illinois (95%), Maryland (217%), Massachusetts (169%), Pennsylvania (31%), Texas (70%), and Virginia (471%), representing a total increase to almost $1.5 million from $770,000.

Compared to 1997, mayoral candidates collected a larger percentage of the out-of-city contributions, 69% in 2001, compared to 56% in 1997, which seems to indicate a substantial mayoral contributor base of non-residents who are interested in the outcome of the New York City election. Indeed, 40% of the money raised by mayoral candidates came from outside the city.

Of the five covered offices, out-of-city residents contributed the least to the public advocate candidates. Public advocate candidate Norman Siegel, however, was a major recipient of out-of-city contributions, raising about $223,000, or 39% of his total fund-raising, from out-of-city sources. In comparison, his opponents raised 17% (Scott Stringer), 15% (Betsy Gotbaum), and 10% (Kathryn Freed and Stephen DiBrienza) from out-of-city contributors.

TIMING OF CONTRIBUTIONS

The four major Democratic mayoral candidates began raising money early in the election cycle. Alan Hevesi and Fernando Ferrer reported significant fund-raising by mid-1998. Hevesi raised more than $500,000 in the first half of 1998. During that same period, Ferrer reported about $285,000 in contributions and transferred more than $400,000 from his abandoned 1997 mayoral quest to his 2001 account. Mark Green and Peter Vallone each began fund-raising immediately following their losing campaigns for other offices. By January 2001, the four mayoral candidates had already raised $16.4 million in contributions, or 58% of their combined total.[11]

Table 4.3: Top Ten City Council Fund-raisers Participating in the Program — 2001 Elections

Name	District	Net Contributions	Public Funds	Primary	General
Steven Cohn	33	$317,459	$147,160	Lost	Lost
Brad Hoylman*	1	$244,735	$91,333	Lost	N/A
Martin Golden†	43	$222,055	$75,350	N/A	Won
John Liu	20	$210,650	$150,520	Won	Won
Eva Moskowitz†	6	$207,850	$150,500	Won	Won
Michael McMahon	49	$179,450	$150,700	Won	Won
Bill de Blasio	39	$174,313	$126,330	Won	Won
Alan Gerson*	1	$173,042	$165,783	Won	Won
Melinda Katz	29	$156,378	$150,700	Won	Won
Arthur Cheliotes	19	$146,955	$75,350	Lost	Lost

* denotes ran against a high-spending non-participant
† denotes incumbent

Through January 2001, Council candidates had raised roughly $3 million, or 26% of their total funds. Eighty-six Council candidates raised enough money to meet the monetary threshold of $5,000 for receiving public funds by the January 2001 disclosure statement deadline.[12] Of the 47 Council participants who were elected, 27 had raised sufficient funds to have met the monetary threshold by this date. It is notable, with respect to the law's disclosure requirements, that many City Council candidates filed statements prior to the Program certification deadline, even though they are not required by law to do so. During the early part of the election cycle, when candidates do not disclose to the CFB which office they are seeking, campaigns exhibited tremendous interest in other campaigns' updated contribution totals posted to the CFB Web site on each filing day. (*See* Chapter 7.)

IN-DISTRICT FUND-RAISING

City Council candidates raised more contribution dollars than ever before, from more contributors than ever before in the Program's history. Contributions from donors residing in a candidate's district were not as significant a source of funds as might be expected, although given that all city residents' contributions are matchable, one incentive to focus on in-district contributions falls away after a City

Table 4.4: Top Ten Intermediaries of Contributions

Intermediary	Candidate(s)	Amount
Steven Spinola	Ferrer, Vallone, O'Donovan	$334,575
William B. White	Green, Hevesi, Vallone, Stringer	$177,650
Jimmy Meng	Hevesi	$176,650
Anastasios Manessis	Green	$138,070
Robert Ivanhoe	Green	$122,350
Joseph Strasburg	Vallone, Gotbaum	$117,780
Eugene A. Petracca, Jr.	Ferrer, Hevesi	$113,000
David Geffen	Siegel	$112,900
Sid Davidoff/Davidoff & Malito	Ferrer, Vallone, Berman	$107,190
Craig H. Solomon	Green	$94,500

Note: Amounts reflect totals across listed candidates.

Council candidate meets the threshold. On average, candidates raised about 25% of their total monetary contributions, approximately $12,000, from individual residents in their own districts. (They raised an average of approximately $500 more from non-individual entities in their districts.) Another 50% of Council candidates' contributions came from New York City sources outside their respective districts.[13]

The threshold contribution requirement to receive matching funds is designed to ensure that only candidates who have support within the districts they seek to represent will be supported with public money. Most of the candidates who raised a large part of their funds within their districts qualified for public funds and were able to run meaningful campaigns, a primary objective of the Program. Among participants who won primaries, however, the average percentage of monetary contributions from in-district individuals was approximately 23%, or slightly below the 25% average.

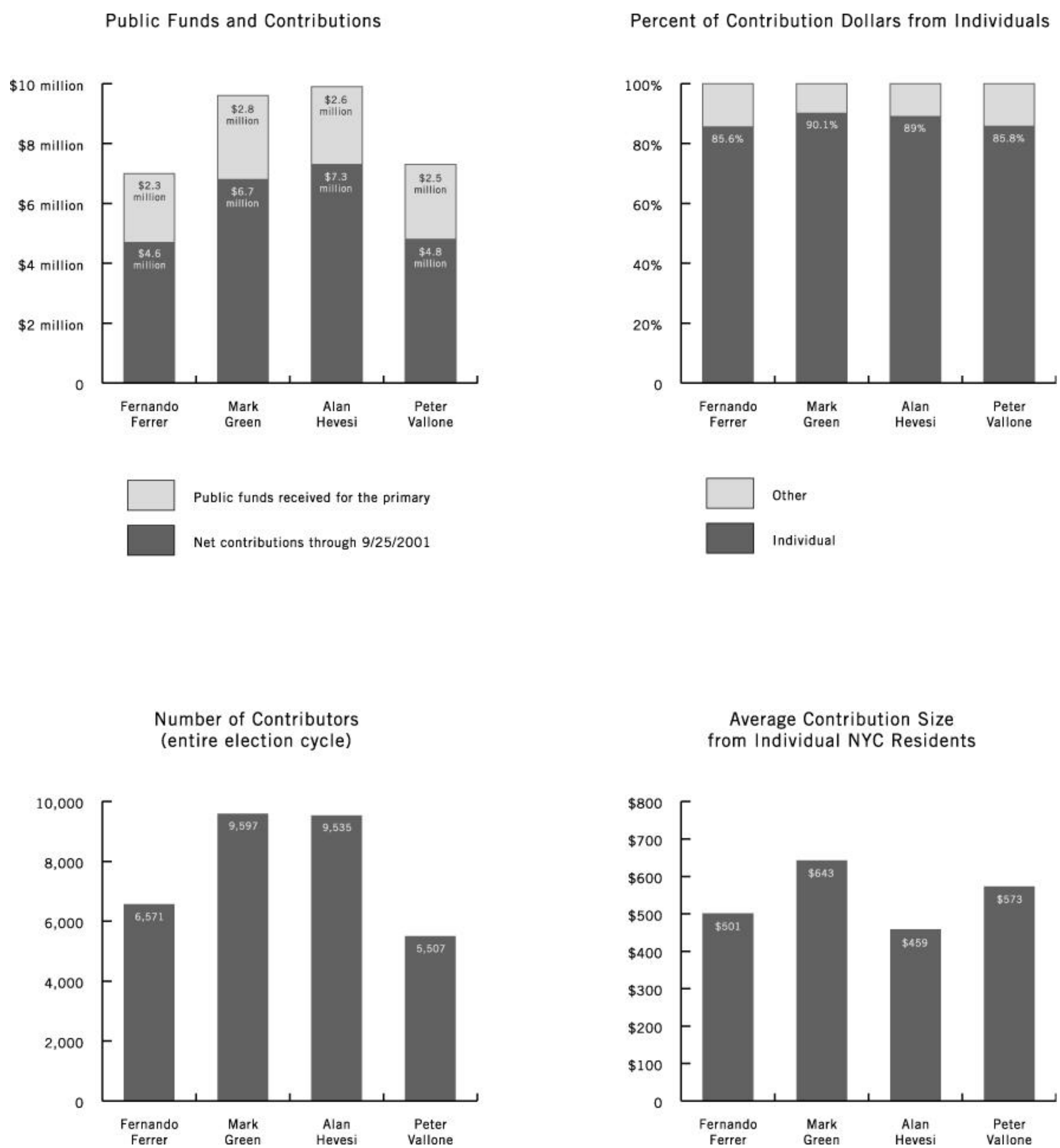
Although two of the top ten fund-raisers, Eva Moskowitz and Martin Golden, raised more than 50% of their funds from individuals within their districts, two other top fund-raisers, Bill de Blasio and Arthur Cheliotes, raised less than 10% of their total funds from individuals within their districts. Moskowitz' and Golden's in-district funds amounted to roughly $100,000 and $50,000 more in contributions than those of their respective general election opponents. Although winning candidate de Blasio's in-district percentage was the lowest of any candidate in his district, he out-fund-raised all his opponents in total contribution dollars. Losing candidate Cheliotes raised about $145,000, more than any of the opposing candidates in his district, but only about $7,000 of that came from individual district residents. Overall, there seems on the surface to be less direct relationship between in-district fund-raising and election outcome in 2001 than the general connection between number of contributions and votes would suggest.

CONTRIBUTIONS AND VOTES

The single best-financed Council candidate was Steven Cohn of district 33 (Brooklyn - Brooklyn Heights, Williamsburg), who raised $317,459 in contributions. He also received $147,160 in public funds, which he returned upon receipt. Cohn finished second in his district's Democratic primary and third in the general election as the Liberal Party candidate. In contrast, the best-financed Council candidate during the 1997 election cycle, Una Clarke, raised $241,397 in contributions, and received $39,825 in public funds. She won the election.[14] Of the ten best-financed Council candidates in 2001 (*see* Table 4.3), seven won Council seats, six after winning primaries.[15]

The national trend of wealthy individuals financing their own campaigns, suggesting to some that spending massive sums of money can overcome the benefits of collecting contributions from a broad base of supporters, is not borne out by the results of the primary elections for City Council in 2001. An analysis of these races reveals that the relationship between contributions and election outcome is stronger than the relationship between expenditures and election outcome. In races having two or more candidates who raised significant funds, the candidate with the largest dollar amount of contributions was successful three quarters of the time. A candidate's ability to attract contributors is a good indicator of the candidate's energy and experience in campaigning, name recognition, constituency appeal, and many other factors. The process of raising a large number of small contributions multiplies a candidate's

Figure 4.7: Comparison of the Four Major Democratic Mayoral Candidates — Fund-raising and Public Funds Available for Primary Election



contacts with potential supporters, who not only might vote for the candidate but who may also persuade others to vote for that candidate as well. By enhancing the value of small contributions through favorable matching rates, the Program has provided a significant incentive for candidates to broaden and enlarge their contributor bases. This proved to be the case for all offices, not just City Council.

INTERMEDIARIES AND FUND-RAISING AGENTS

Contributions delivered by intermediaries drew a large amount of press attention during the 2001 election cycle. Because of the Program's contribution limits and its ban on corporate contributions, there has been some concern that intermediating contributions (delivering collected contributions to a campaign) is a new way to "buy influence" with a candidate.[16] During the 2001 election cycle, 1,160 reported intermediaries delivered contributions to 78 campaigns. By comparison, 547 reported intermediaries delivered contributions to 36 campaigns during the 1997 election cycle. In 2001, about $9.4 million in contributions was intermediated, or 17% of the total contributions, compared to 1997, when $3.7 million was intermediated, or 13% of the total contributions. The real estate industry was prominently represented in this category. (*See* Table 4.4.) In a *New York Times* article on the real estate industry and its pledge to raise campaign contributions for the four major Democratic mayoral candidates, Joseph Strasburg, president of the Rent Stabilization Association, said of the organization's members, "They have to do business in New York regardless of who is mayor. If you give to all of them, then it's just the price of doing business."[17]

Among the mayoral candidates, 25% of all contributions were reported as intermediated in 2001, totaling over $7.6 million dollars. This figure represents about 82% of all the intermediated contributions for the election cycle. In 1997, 20% of contributions to mayoral candidates were intermediated, totaling about $3.2 million, a figure that represents less than half the dollar value for 2001 intermediated contributions. In all, 12 citywide campaigns reported that 874 intermediaries delivered over $8.7 million in contributions in 2001, as opposed to 1997, when seven citywide campaigns reported that 431 intermediaries delivered less than $3.5 million in contributions. Thus, even though the number of campaigns did not quite double, the number of intermediaries more than doubled, and the dollar value of intermediated contributions increased by 152%. On the City Council level, the number of intermediaries delivering contributions more than tripled, from 60 to 190. Those intermediaries working on behalf of Council candidates were effective agents in that they delivered more than triple the dollar amount of contributions to their candidates, compared with 1997.

The use of intermediaries raised flags among members of the media scrutinizing candidates' financial disclosure. (*See* "Disclosure and the News Media" in Chapter 7.) By law, only those who physically deliver contributions to the campaign must be disclosed as intermediaries. At the CFB's post-election hearings, NYPIRG, in a recommendation echoed by Common Cause New York, called for an expansion of the definition of an intermediary "from those delivering contributions, to those who are actively soliciting contributions."[18] (*See* "Proposed Amendments to the Campaign Finance Act" in Chapter 10.)

CONTRIBUTIONS TO MAYORAL CANDIDATES: AN UNTOLD STORY

News reports on the disproportionate resources of Mark Green and Michael Bloomberg in the general election overshadowed the far more comparable finances of the four major Democratic primary candidates. (*See* "Mayor" in Chapter 3.) An untold story of the 2001 election is that Fernando Ferrer arguably benefitted the most of the mayoral candidates from the Campaign Finance Program. Of the four candidates, Ferrer raised the smallest total contributions through the date of the primary, $4,570,976. His total was 64% of that raised by fourth-place finisher Alan Hevesi, whose fund-raising for the primary exceeded seven million dollars. Ferrer collected contributions from 6,571 contributors and raised 11% of his total contributions from his home borough, the Bronx, traditionally the borough that contributes least to Program participants in proportion to its population. His contributions from the Bronx totaled more than four times the amount received from the Bronx by any of his three major primary opponents. A *New York Times* analysis noted that Ferrer was tailoring his appeal to "the other New York" and trailed his opponents in collecting contributions from Manhattan, the most generous borough that provided the most money overall. His spokesman said:

> *We have many, many contributors who are far from wealthy. That speaks to how we are seeking to represent all New Yorkers.*[19]

Ferrer had the second smallest amount of out-of-city contributions, second only to Peter Vallone. He was the most consistent of the four in raising potentially matchable contributions over the course of the election cycle. Despite the factors that, on the basis of funds available to the campaign, would have put Ferrer at a disadvantage vis-à-vis his opponents (*see* Fig. 4.7), public funds and spending limits enabled him to compete on the same field as the others, emerging as the top vote-getter in the Democratic primary.

"I think we have to continue to make sure that we give a sense of empowerment to the small donors, the $25 or $50 contributions."

— Manhattan Borough President
C. Virginia Fields

CONTRIBUTIONS TO MARK GREEN AFTER THE PRIMARY

The Program has faced significant criticism because of the relatively small amount of general election matching funds that the Green campaign was able to earn. An analysis of the contributions raised by Green in the period after the runoff shows that Green primarily collected non-matchable contributions (*e.g.*, from non-New York City and organizational contributors). After October 11th, the date of the runoff, Green raised approximately $4.3 million dollars in contributions, about $2 million of which came from outside the city. The brief interval between the runoff and the general election, which was further

shortened because of the postponed primary, gave Green little time for fund-raising, but in any other election year the fund-raising he did do in this period would have seemed more impressive: $4.3 million is 82% of the expenditure limit (when it is in effect), and it exceeds the total amount Democratic mayoral candidate Ruth Messinger raised for the entire 1997 election cycle. Green's biggest general election fund-raiser
was held only days before the election, after the last public funds payment had already been disbursed. The reason for Green's reliance on non-individual sources from outside the city after the runoff may well be that he could receive the largest allowable donations ($4,500) for immediate spending. It is also conceivable that Green may not have been able to raise more from his own pre-existing in-city fund-raising base after the runoff. In past election cycles, the winner of the Democratic primary could count on contributions from his opponents' contributor base upon winning the primary; in 2001, the bitterly-contested run-off primary may have dried up some potential financial support for Green in the general election. (*See* "Mayor" in Chapter 3.) On the other hand, 361 contributors to Green who had been Ferrer contributors before the runoff accounted for almost $750,000, or about 17% of Green's post-run-off fund-raising. These 361 contributors comprised only 5.5% of Ferrer's total contributors, but they were high-end contributors. Ferrer contributors' average contribution to Green after the runoff was $2,075, compared to the overall average of $1,599 for Green's post-run-off contributions from a total of 2,699 contributors (including the previous donors to Ferrer).

CONCLUSION

The most interesting trend in contributions to emerge from the 2001 election cycle was the enormous increase in contribution dollars from a record number of contributors. Campaign contributors provided Program participants with record levels of funding in spite of the reduced contribution limits in force in 2001. Half of all contributors donated $100 or less to one or more candidates. Candidates responded to the new $4-to-$1 matching formula by reaching out to contributors of relatively modest means — and not just to more affluent donors. The higher Program participation levels, representing a more diverse group of candidates than ever before, helped to broaden the contributor base and introduce new contributors to the world of New York City politics.

Another development worthy of note was Ferrer's role as a fully competitive contender for the Democratic Party nomination. The Ferrer campaign's success, resting significantly on its contribution patterns and corresponding receipt of public funds, demonstrates the Program's capacity to democratize the funding of New York City campaigns.

Many Program participants and observers spoke highly of how the Program has evolved to benefit candidates who reach out to engage new contributors. Manhattan Borough President C. Virginia Fields, who has participated in the Program since its inception as both a City Council and borough president candidate, spoke at the CFB's post-election hearings of how the Program gives encouragement both to the small contributors and to the candidates who seek their support:

I think we have to continue to make sure that we give a sense of empowerment to the small donors, the $25 or $50 contributions. As you heard me say from time to time, this certainly served as a great base of support for me when I first ran for office in 1989, when the Program first began. So I feel like someone who has grown up with the Campaign Finance Program, and without it I know that my ability to have the necessary funds to have run for City Council two terms and Borough President now two terms would have been greatly impacted. And a lot of that is still due to small donors, people who feel that they have an opportunity to participate. When you tell a person "Give me $20," that becomes $20 times 4 [in additional funds], *so that has made a significant difference in terms of people wanting to give. So we must continue to involve and give a sense of empowerment to the small donors, therefore making it risky for any candidate to ignore the small contributions.*[20]

NOTES

1 *Campaign Finance Board 2001 Hearings*, vol. I, at 104 (testimony of Gene Russianoff and Neil Rosenstein).

2 Local Law 48 was passed on October 22, 1998 and became effective immediately. It did not ban corporate contributions, but provided the $4-to-$1 matching rate for candidates who did not accept them. The Charter amendment banning corporate contributions for all participants was approved on November 3, 1998 and went into effect January 1, 1999.

3 *Campaign Finance Board 2001 Hearings*, vol. I, at 92 (testimony of Stephen DiBrienza).

4 *Campaign Finance Board 2001 Hearings*, vol. II, at 385 (testimony of Scott Stringer).

5 Adjusted for inflation, the modes in 1993 and 1989 would be $123 and $36, respectively.

6 Jonathan Hicks, "A Dash for Campaign Cash in City Politics," *New York Times*, May 24, 2001, B1.

7 *Ibid*.

8 *A Decade of Reform*, 107. *See also* Chapter 1, at note 7.

9 "Candidate committees" include committees of non-participating candidates and of candidates for offices not covered by the Program.

10 *See* Board Rule 5-01(n).

11 Transfers from previous elections are not included in this calculation.

12 This analysis only considers net contributions; it does not consider the source of the contributions or the validity of any claims.

13 The percentages of in-district and out-of-district contributions are approximate because of transactions that cannot be placed in any Council district. These discrepancies are due to incomplete or illegible reporting by campaigns so that the addresses are unrecognizable, or to gaps in the city's address database. This analysis of in-district versus out-of-district fund-raising does not consider what was claimed for matching funds or the validity of any claims.

14 At press time, Clarke owed a repayment of public funds and had outstanding penalties stemming from the 1997 election.

15 Expenditure limits for City Council races rose to $137,000 in 2001 (from $124,000 in 1997). It was therefore reasonable to expect an increase in fund-raising to make maximum use of the expenditure limit.

16 Eric Lipton, "Hevesi and Vallone Collecting Big Sums from Intermediaries," *New York Times*, June 21, 2001, B1.

17 Charles Bagli, "Hedging Bets, Big Developers Back 4 Democrats for Mayor," *New York Times*, June 9, 2001, A1.

18 *Campaign Finance Board 2001 Hearings*, vol. I, at 110 (testimony of Gene Russianoff and Neil Rosenstein). *See also* vol. II, at 244 (testimony of Rachel Leon).

19 Eric Lipton, "Ferrer Trails Fund-Raising in Manhattan," *New York Times*, August 21, 2001, B1.

20 *Campaign Finance Board 2001 Hearings*, vol. II, at 328 (testimony of C. Virginia Fields).

Chapter 5

Expenditures: More Money, More Spending

When candidates elect to join the Campaign Finance Program, they voluntarily subject their campaigns to strict spending limits. These limits are intended to curb excessive campaign spending and to "level the playing field" by giving candidates the opportunity to run a competitive campaign. Candidates who run in both the primary and general elections have two separate spending limits, one for each election.[1] All expenses incurred during the primary period, by candidates having no primary election, count toward their general election spending limit.

2001 was a unique year for campaign expenditures. First, there was the extraordinary number of candidates who ran for an unprecedented number of term-limited seats. Then, there was the terrorist attack on the World Trade Center, which resulted in postponement of the primary election, requiring the Board to impose a ban on almost all spending from September 11th, the original primary date, to September 25th, the date of the postponed primary. Finally, the general election was the first citywide test of the effect of the increased spending allowances for City Council candidates and the $5-to-$1 bonus match.

THE MOST EXPENSIVE ELECTIONS IN NEW YORK CITY HISTORY

In comparison to previous elections, the cost of the 2001 elections increased dramatically, both in terms of total monies spent by candidates and payments made from the Public Fund. This resulted in large part from the extraordinary number of participants seeking office. It was also a function of increased matching funds and higher spending limits. Overall, the significant increase in Program participation at every level (particularly the City Council) resulted in a substantial increase in total expenditures.

Thus, while the cost of the elections was higher, 2001 was a much more competitive election cycle than either 1997 or 1993, and the significant increase in dollar for dollar and percentage comparisons between these elections can largely be accounted for by the number of participants. Accordingly, as discussed below, when average candidate spending is examined, the increases over past elections are relatively modest for citywide office. Also, while the cost of the election to the Public Fund was indeed higher than in previous years, it never reached the extreme levels predicted earlier in 2001 by the city administration.[2] Several factors (including high-spending non-participants and the $4-to-$1 matching of public funds) seemed to engender a significant increase in spending on media, especially in the non-citywide races. As in previous years, citywide candidates relied heavily on television, consultants, and print media, while

City Council candidates tended to focus their spending on print media and consultants. Still, at the City Council level, where candidates could spend a potential total of $338,000 in the entire four-year election cycle, many campaigns were making unprecedented expenditures. In 2001, City Council candidates bought television time, a first for the Program in its 14-year history.

In 2001, overall spending increased dramatically for the first time since the Program's inception in 1989. Program participants spent approximately $94.6 million in 2001 (including outstanding liabilities; net expenditures were 90.8 million), well over two-and-a-half times the $37 million spent in 1997 and the $36.3 million in 1993, and nearly triple the $33.9 million spent in the Program's inaugural year, 1989. It should be noted that the cost of the Program in 2001 was about the same, if inflation is taken into account, as the original estimate of the Office of Management and Budget (OMB) for the 1989 elections, the first for which the CFB disbursed public funds. In 1988, the OMB had budgeted for $28 million (or roughly $40.2 million in 2001 dollars[3]), when only 43 offices were up for election, compared with 59 in 2001.[4]

In 2001, payments from the Public Fund accounted for $41.5 million, or about 44% of the total money spent by candidates. When examined on an office-by-office basis, the marked increase in public funds as a percent of total expenditures, particularly at the borough president and City Council levels, illustrates the success of the Program's effort to reduce the influence of outside money on elections. (*See* Fig. 5.1.) Between 1997 and 2001, public funds payments have increased nearly six times, while expenditures have increased two-and-a-half times.

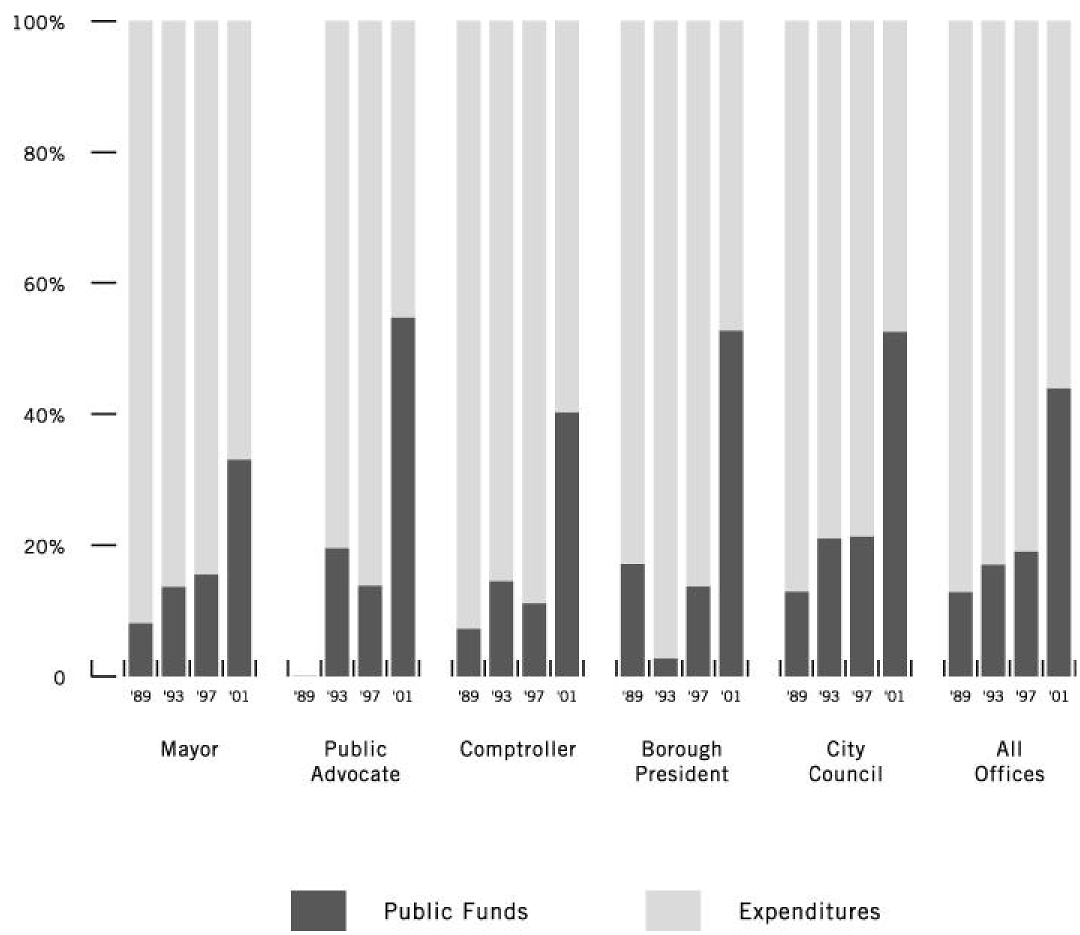
Although expenditures on a per candidate average basis increased only slightly at the level of the citywide offices, a marked increase was seen in the non-citywide offices.[5] Mayoral candidates participating in the Program in 2001 spent a total of $39 million, an increase of 86% from the 20.9 million inflation-adjusted dollars spent in 1997. Yet when looked at on a per-candidate basis, Program participants in 2001 spent an average of $7.7 million[6] compared to $5.2 million[7] in inflation-adjusted dollars in 1997. When adjusted for inflation, public advocate and comptroller participant spending also increased, by 257% and 187% respectively, from totals of $2.7 million and $2.2 million in 1997, to $9.9 million and $6.4 in 2001. Once again, however, a per-candidate analysis shows that, for the office of public advocate, average expenditures for 2001 (almost $2 million per candidate) were more or less in line with 1997 ($1.4 million per candidate in inflation-adjusted dollars). The same held true for the comptroller race, where the two competitive candidates in 2001 spent an average of $3.2 million compared to the only 1997 participating candidate's $2.2 million (adjusted for inflation).

On the other hand, spending by borough president and City Council candidates in the Program, adjusted to account for inflation, increased significantly: by more than 100% and 200%, respectively, up from $6.5 million and $7.8 million in 1997, to $13 million and $26.2 million in 2001. These dramatic increases are clearly a result of the large numbers of candidates in the Program and the $4-to-$1 match yielding more public funds, especially for City Council candidates. Ten Council members ran for higher office as Program participants in 2001, driving up the cost for new or "outsider" candidates trying to get their message out. With 37 open seats in 2001 (compared to nine in 1997) and only 15 incumbents able to run for re-election, the City Council boasted the greatest number of these outsider candidates, and therefore showed the greatest increases in average spending. Even when expenses are examined per candidate, borough president figures show an increase to an average of $916,000 in 2001 from an average of

$699,800 (inflation-adjusted) in the barely contested races of 1997. City Council figures show an increase to an average spending of $126,900 from an average of $84,600 (inflation-adjusted) in 1997, or an increase of about 50%.

Expenditure limits are geared specifically to each level of office covered by the Program and are designed to allow candidates sufficient resources to get their message out. Reflecting the rising cost of running campaigns in New York City, the Program's expenditure limits have increased over the years. Yet, the question must be asked: does the combination of the increased funds provided by the $4-to-$1 matching rate and the higher spending limits drive up the cost of campaigns? In other words, does more money equal more spending? At least at the borough president and City Council levels, it seems the answer is yes.

Figure 5.1: Public Funds as a Percentage of Expenditures Over Time



* The office of Public Advocate replaced the office of City Council President on January 1, 1994.

Fact Sheet 5.1: Total Participants' Expenditures by Office, Over Time

Mayor

Election	Number of Participants*	Total Expenditures
2001	17	$38,980,000
1997	6	$19,250,000
1993	3	$19,760,000
1989	5	$23,800,000

Public Advocate**

Election	Number of Participants*	Total Expenditures
2001	10	$9,910,000
1997	2	$2,560,000
1993	7	$4,000,000
1989	0	-

Comptroller

Election	Number of Participants*	Total Expenditures
2001	2	$6,400,000
1997	1	$2,050,000
1993	3	$6,070,000
1989	4	$4,100,000

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

* Not including small campaigns (*i.e.*, campaigns that did not spend at least three times the contribution limit for the office).

** The office of Public Advocate replaced the office of City Council President on January 1, 1994.

† City Council election only: charter revision expanded the City Council from 35 to 51 seats.

‡ City Council had only 35 seats in 1989.

cont.

Fact Sheet 5.1: Total Participants' Expenditures by Office, Over Time (cont.)

Borough President

Election	Number of Participants*	Total Expenditures
2001	22	$13,130,000
1997	12	$5,920,000
1993	5	$1,990,000
1989	6	$3,250,000

City Council

Election	Number of Participants*	Total Expenditures
2001	301	$26,220,000
1997	109	$7,210,000
1993	112	$4,480,000
1991†	135	$7,600,000
1989‡	33	$2,740,000

Totals for All Offices

Election	Number of Participants*	Total Expenditures
2001	353	$94,640,000
1997	131	$36,990,000
1993	112	$36,310,000
1991	135	$7,600,000
1989	48	$33,880,000

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

* Not including small campaigns (*i.e.*, campaigns that did not spend at least three times the contribution limit for the office).

** The office of Public Advocate replaced the office of City Council President on January 1, 1994.

† City Council election only: charter revision expanded the City Council from 35 to 51 seats.

‡ City Council had only 35 seats in 1989.

The unprecedented number of candidates in 2001 created a stir not only in the media, but in political circles as well. Although the number of candidates on the ballot dropped off significantly before in the general election, in the (most often Democratic) primary, Council districts that in the past had only a few people running were packed with interested candidates. In these crowded races, each candidate necessarily spent money to gain his or her party's attention and nomination. Candidates posted signs, handed out literature, and mailed brochures, fostering a competitive environment in which each candidate endeavored to match the promotion, strategy, and spending of the others.

In the 2001 primary election, districts with six or more candidates participating in the Program spent an average of $78,000 per candidate, while districts with five or fewer candidates spent $95,000 per candidate. On a case-by-case basis, districts varied widely in the amount of money spent. In Manhattan's district 7 (Inwood), ten candidates ran in the Democratic primary. In the general election, the two participating candidates spent an average of $92,500 each, whereas the eight candidates with significant expenditures in the primary election spent an average of only $78,400 per candidate. By contrast, an examination of neighboring district 10 (Manhattan-Washington Heights), with the second highest number of participating candidates (eight), shows a decrease in spending by competitive candidates from an average of $91,500 in the primary to just under $59,000 in the general election (with three participating candidates running).[8] While the cost *per candidate* in this election does not seem to have been driven up by the Program, it is clear that the sheer number of candidates drove up the total amount of money spent.

RELATIVELY SPEAKING, MONEY COUNTS

The range of total expenditures varied greatly from one council district to the next. Moreover, some districts had much larger voter turnouts than others. A contest-by-contest comparison of votes received as against actual dollars spent is tempting but not very meaningful at this level of detail. Some candidates would win their elections at $26 per vote, and others at $86 per vote. Of course, spending does count, but mostly in a relative sense, all other factors being equal. Not surprisingly, the spending of a candidate *relative* to that of his or her rival was a good predictor of election outcome (winning or losing) in the 2001 Council primaries. The candidates who outspent their rivals won about 68% of the time. In other words, the odds in favor of winning, regardless of the total number of votes cast or actual amount of dollars spent, was slightly greater than two to one if the candidate was first in spending. And, in hotly contested races in which the highest-ranked spender did not win, the second highest was favored to win at odds of five to one.[9]

These odds, though impressive, were not as good a predictor of who would win as a candidate's ranking by contributions received. As previously noted in "Contributions and Votes" in Chapter 4, the candidate who led in contributions was successful three quarters of the time (odds of three to one). Being strong enough to attract contributors is a good indicator of a candidate's electoral appeal, and of course is the basis for a candidate's ability to spend, and thereby to increase the chances of reaching voters. But to conclude that dollars alone are sufficient to "buy" an election ignores all the other real-world factors that influence voters' decisions.

Fact Sheet 5.2: Types of Expenditures by Purpose Code — 2001

Purpose Code	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Advances	$117,836	$123,762	$37,053	$201,696	$667,719	$1,148,066
Campaign Mailings	$1,553,653	$916,490	$253,431	$2,055,594	$3,799,016	$8,578,184
Political Contributions	$55,470	$40,764	$14,405	$88,473	$113,676	$312,788
Consultants	$3,319,430	$1,813,042	$1,302,532	$1,923,766	$3,597,406	$11,956,176
Constituent Services	$839,528	$30,058	$58,000	$42,343	$191,276	$1,161,205
Fund-raising	$1,075,639	$192,799	$271,638	$531,525	$1,045,721	$3,117,322
Interest Expenses	$34,859	$0	$0	$4,301	$4,054	$43,214
Campaign Literature	$1,555,374	$516,430	$153,884	$2,104,820	$4,624,592	$8,955,100
Office Expenses	$972,138	$494,574	$157,636	407,836	$1,295,301	$3,327,485
Other	$4,297,384	$403,786	$278,336	$756,449	$2,165,628	$7,901,583
Petition Expenses	$756,202	$120,474	$39,415	$164,967	$610,970	$1,692,028

cont.

Fact Sheet 5.2: Types of Expenditures by Purpose Code — 2001 (cont.)

Purpose Code	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Polling Expenses	$856,454	$28,975	$0	$225,251	$348,246	$1,458,926
Postage	$154,510	$123,026	$279,041	$409,089	$1,409,489	$2,375,155
Print Ads	$507,907	$85,380	$11,123	$321,729	$1,203,667	$2,129,806
Professional Services	$1,692,590	$356,343	$684,099	$1,241,009	$1,308,385	$5,282,426
Radio Ads	$1,451,639	$438,984	$224,055	$372,346	$231,813	$2,718,837
Office Rent	$357,350	$132,851	$87,188	$153,518	$952,205	$1,683,112
Television Ads	$17,789,137	$3,358,035	$2,100,000	$1,193,710	$482,363	$24,923,245
Unknown	$5,383	$0	$0	$0	$114,166	$119,549
Voter Registration	$4,187	$1,216	$0	$106	$23,673	$29,182
Campaign Workers' Wages	$1,582,548	$736,595	$444,121	$935,564	$2,031,789	$5,730,617

MEDIA AND CONSULTING COSTS TOP THE LIST OF EXPENDITURES

Media-related expenditures[10] such as television, radio, and print media[11] are viewed as the most effective way for citywide candidates to communicate with a geographically diverse range of voters. In 2001, the battle for citywide office was once again waged largely on television and radio, while borough president and City Council candidates tended toward print media. There was a massive jump in print media spending and a slight increase in spending on radio, and one new trend at the City Council level (detailed below): spending on television.

Media spending in 2001 topped the list of overall expenditures for Program participants in all offices, rising to $52.8 million from $15 million in 1997 (or $16.3 million in inflation-adjusted dollars), and $14 million in 1993 (or $17.2 million in inflation-adjusted dollars). In 2001, media spending made up 56% of total expenditures by participants. The percentage of media spending dedicated to television alone has been on the decline, from 75% of total media expenditures in 1989, to 70% in 1993, to 63% in 1997, to 51% in 2001. Nevertheless, in the non-citywide races, borough president and City Council candidates spent $18.2 million on media, compared to only $4.4 million (in inflation-adjusted dollars) in the far less competitive 1997 races. On average, borough president candidates in 2001 spent $426,900 compared to $179,000 (inflation-adjusted) in 1997. City Council candidates in 2001 spent an average of $62,200, compared to $34,000 (inflation-adjusted) in 1997. Of course, all candidates tend to spend whatever funds are available when races are competitive. Generous matching funds and the current Program expenditure limits appear to have facilitated increased media-related spending.

The second largest expenditure reported by Program participants was on consultants. In 2001, consultants played a high-profile role in the press coverage of the elections. Hank Morris, the consultant for Alan Hevesi's campaign for mayor, testified before the Board that he should be allowed to volunteer all or part of his services to the campaign. Because Morris' firm, Morris, Carrick & Guma, was also providing paid services to the Hevesi campaign, the Board concluded that Mr. Morris' "volunteer" time would constitute a prohibited in-kind corporate contribution by the firm to the Hevesi campaign. The Board withheld public funds from the Hevesi campaign until the matter was resolved. (*See* Chapter 9.)

Citywide Office and Media Spending

Predictably, media played an enormous role in the communications of candidates running for citywide office. Candidates in the mayoral race spent a total of $26.2 million on media in 2001 (including sub-contracted media buys), the first increase since the Program's inaugural year, 1989 (up from the inflation-adjusted totals of $15.1 million in 1989, $10.3 million in 1993, and $8.8 million in 1997). Of their total media spending, mayoral candidates in 2001 spent 76% of their media-related dollars on television advertisements. The use of print media also rose for the first time since 1989, to 18% of total media spending (up from 15% in 1989, nine percent in 1993, and only six percent in 1997).

Candidates running for public advocate spent a total of $5.4 million on media-related expenses in the 2001 elections. This represents a significant increase in media expenses from the 1.3 million inflation-adjusted dollars spent in the much less competitive 1997 race. Television alone accounted for 62% of participant media spending in 2001, as compared with 58% in 1997. When adjusted for inflation, print spending for public advocate candidates rose dramatically as well, from $90,000 in 1997 (7% of total media spending), to more than $1.64 million (30% of total media spending) in 2001. These expenses were likely driven up by several factors, including the rising cost of television advertising, the large number of candidates (including several veterans of city politics) vying for the office, and the availability of public funds at the $4-to-$1 matching rate.

With two participants running competitive campaigns for the office, comptroller candidates spent a total of $3 million on media in 2001, just under double the $1.63 million spent in 1997 when the lone participant vying for office was the incumbent, Alan Hevesi. The two candidates running for comptroller in 2001 reported spending $2.1 million on television advertising between them (33% of their total spending), compared with Hevesi's $1.6 million in 1997 (78% of all his spending for that election).

Borough President and City Council Media Spending

Print has always been the preferred medium for most participants at the borough president and City Council levels. In 2001, spending in this area rose sharply, along with increases in broadcast media spending. Indeed, the fact that there was any borough president and Council television spending at all is notable. In 1997, 96% of all borough president media spending went toward print media and only two percent went into television. In 2001, 76% and 18.5% went toward print and television, respectively. This represents a marked increase in spending on television advertising for a non-citywide office. With a large field of candidates running for office, the expensive battle waged with various forms of media was obviously encouraged by significant competition. At the City Council level, 94% of all media spending was directed toward print. Only six percent was spent on radio and television combined. Of the 189 City Council candidates who recorded significant spending, 12 made expenditures on television.[12] Of those 12, Eva Moskowitz, spent the most on television, at $68,100 (all during the general election period), more than double the next highest City Council spender (Miguel Martinez, who spent $33,200 on television for both the primary and general elections). This accounts for 47% of Moskowitz's spending in the general election period, and about 20% of her total spending for 2001. The third and fourth highest spenders at the Council level were Joseph Cammarata ($32,566 for the general) and Ydanis Rodriguez ($32,175 for both the primary and general).

Further, with 241 participants on the ballot at the Council level spending more than $10.7 million on literature, mailings, advertisements, and postage (an average of $42,500 per candidate in 2001 who recorded significant spending, compared to the 1997 average of $29,400 per candidate), the question arises whether the spending limits and the $4-to-$1 matching rate is leading to unnecessary expenses by making available such large sums of public funds to campaigns. Certainly the availability of public funds at the $4-to-$1 matching rate significantly subsidized campaign coffers. Without these funds, the candidates would not have had nearly as much money to spend. At the City Council level, public funds received accounted for 55% of total funds available, including all private contributions.

Fact Sheet 5.3: Media-Related Spending by Participants, by Election

2001

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Television	$19,967,000	$3,358,000	$2,100,000	$1,194,000	$482,000	$27,102,000
Print-Media*	$4,613,000	$1,641,000	$698,000	$4,891,000	$11,037,000	$22,880,000
Radio	$1,595,000	$439,000	$224,000	$372,000	$232,000	$2,862,000
Total Media	**$26,175,000**	**$5,438,000**	**$3,022,000**	**$6,457,000**	**$11,751,000**	**$52,844,000**

1997

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Television	$6,946,000	$699,000	$1,591,000	$32,000	$115,000	$9,383,000
Print-Media*	$445,000	$83,000	$41,000	$1,368,000	$2,456,000	$4,393,000
Radio	$688,000	$427,000	$0	$31,000	$34,000	$1,180,000
Total Media	**$8,079,000**	**$1,209,000**	**$1,632,000**	**$1,431,000**	**$2,605,000**	**$14,956,000**

NOTE: Figures greater than $10,000 have been rounded to the nearest $1,000; totals may not equal sum of figures.

* Includes campaign mailings, campaign literature, newspaper advertisements, and postage.

cont.

Fact Sheet 5.3: Media-Related Spending by Participants, by Election (cont.)

1993

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Television	$7,745,000	$1,047,000	$1,150,000	$655	$26,000	$9,969,000
Print-Media*	$774,000	$415,000	$663,000	$280,000	$1,575,000	$3,707,000
Radio	$17,000	$82,000	$292,000	$48,000	$87,000	$526,000
Total Media	**$8,536,000**	**$1,544,000**	**$2,105,000**	**$329,000**	**$1,688,000**	**$14,202,000**

1991**

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Television	-	-	-	-	$23,000	$23,000
Print-Media*	-	-	-	-	$3,071,000	$3,071,000
Radio	-	-	-	-	$83,000	$83,000
Total Media	-	-	-	-	**$3,177,000**	**$3,177,000**

NOTE: Figures greater than $10,000 have been rounded to the nearest $1,000.

* Includes campaign mailings, campaign literature, newspaper advertisements, and postage.

** City Council races only.

Fact Sheet 5.3: Media-Related Spending by Participants, by Election (cont.)

1989

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Television	$8,802,000	-	$1,391,000	$776,000	$300	$10,969,000
Print-Media*	$1,527,000	-	$282,000	$771,000	$833,000	$3,413,000
Radio	$143,000	-	$156,000	$24,000	$14,000	$337,000
Total Media	**$10,472,000**	-	**$1,829,000**	**$1,571,000**	**$847,000**	**$14,719,000**

NOTE: Figures greater than $10,000 have been rounded to the nearest $1,000.

* Includes campaign mailings, campaign literature, newspaper advertisements, and postage.

Candidates and their Consultants

The second largest expenditure for Program participants was campaign consultants, accounting for 12.6% of the total spending for all offices in 2001, slightly higher than the 12% spent by candidates in 1997. Consultants can help shape a campaign's interaction with the public and press and are intimately involved in directing campaign strategy, media strategy, and the design of campaign literature and advertising. At the citywide level, mayoral participants spent almost $3.3 million on consultant services, 8.5% of these candidates' total spending (down from 12% in 1997). Public advocate and comptroller candidates spent $1.8 million (18.3% of total spending in 2001, compared to 5.5% in 1997) and $1.3 million (20.4% of total spending in 2001, compared to 10% in 1997), respectively. Even borough president and City Council participants spent relatively large sums on consultants: $1.9 million (14.6% of total 2001 spending, compared to 20% in 1997) and $3.6 million (13.7% of total 2001 spending, compared to 7% in 1997), respectively. These numbers highlight the important role consultants play in city politics.

A list of the top vendors to candidates (*see* Tables 5.1 and 5.2) shows that all were involved in either consulting or media. In 2001, the top ten vendors were all consulting firms.[13] At the City Council level, the top ten vendors were also largely consulting firms, but included several printing and graphics companies.

EXAMINING THE OFFICES

Campaign spending on the whole increased since 1997, largely due to media and consultant fees as explained above, but these numbers do not tell the whole story. Below are more detailed examinations of the spending patterns for each office.

Mayor

In 2001, Program participants running for the office of mayor spent a total of $39 million, or 70% of the total amount spent by Program participants in the four other covered offices combined (compared with 1997, when the candidates in the mayoral race spent about 110% of the total amount spent in the other four offices combined.) A wide field of candidates in the Democratic primary election, coupled with the $4-to-$1 match of public funds, fostered a competitive environment in which candidates ran intense television and print campaigns to get their messages out.

The race for mayor has always been the most media-intense competition in New York City, and 2001 was no exception. Mayoral candidates participating in the Program spent a total of $26.2 million on media-related expenses, half the 1997 total spending for all offices combined. Having been on a steady decline since the hotly contested primary races of 1989, this increase in media spending at the mayoral level was the first in the Program's history: up from $10.5 million in 1989 ($14.9 million in inflation-adjusted dollars), $8.5 million in 1993 ($10.3 million in inflation-adjusted dollars), and $8.1 million in 1997 ($8.7 million in inflation-adjusted dollars). As expected, television again dominated media spending in 2001. More than 76% of all media spending ($20 million) was on television. There was also a significant change in print spending in 2001, reflecting an increase in the use of campaign literature, newspaper advertisements, and mailings. Print media accounted for 12% of all spending by mayoral Program participants in 2001, an increase of almost ten points over 1997.

Primary Election

During the primary election period, the press was dominated by stories of the close competition between Democratic candidates.[14] The front-runners in the mayoral race, Fernando Ferrer, Mark Green, Alan Hevesi, and Peter Vallone, spent a total of $25.8 million on the Democratic primary (including $12.5 million on media and $2.8 million on consultants).

Early on in the press, the then-fund-raising leader, Alan Hevesi, was portrayed as the favorite to receive the Democratic nomination.[15] But when Hevesi began to fall behind in the polls, a tight race between Fernando Ferrer and Mark Green emerged. By the originally scheduled primary date of September 11th, Ferrer and Green were neck-and-neck in the polls and had spent $6.4 million and $7.2 million on the primary, respectively. With the attack on the World Trade Center and a primary delayed until September

Table 5.1: Top Ten Vendors* for 2001 — All Offices

Vendor	Amount
Trippi, McMahon & Squire	$9,450,000
Morris, Carrick & Guma	$4,904,000
Strategic Persuasion Inc.	$4,733,000
Axelrod & Associates	$4,353,000
LUC Media	$3,061,000
U.S. Postal Service	$2,855,000
Sheinkopf Communications	$2,163,000
The Bynum Consulting Group	$1,792,000
Branford Communications, Inc.	$1,345,000
Miranda y Mas	$1,341,000

Table 5.2: Top Ten Vendors* for 2001 — City Council

Vendor	Amount
U.S. Postal Service	$1,779,000
Parkside Group	$1,288,000
The Advance Group	$1,179,000
Branford Communications, Inc.	$804,000
Astoria Graphics, Inc.	$611,000
Prime New York	$409,000
Run! Inc.	$396,000
Strategic Persuasion, Inc.	$385,000
Verizon	$314,000
East River Mail, Inc.	$290,000

* These figures are understated to the extent that they do not include subcontracted work performed by these vendors and they are overstated to the extent that they reflect media and other expenses subcontracted through the consultant. These data are also limited by inconsistencies in reporting of vendor names by campaigns.

25th, the Board met on September 13th at a regularly scheduled meeting (but on an emergency basis at Fordham University) and, having no precedent for the extraordinary circumstances and no authority to alter the law's provisions on contribution and expenditure limits or on public matching funds payments, severely limited any post-September 11th primary election spending. The decision reached by the Board stipulated that candidates could not engage in

> *further campaign spending in the primary with the following exceptions: Costs associated with Election Day activities on September 11th can be replicated for the September 25th Election Day, and costs associated with the replacement of campaign facilities that were destroyed or rendered inaccessible by the destruction caused by the World Trade Center tragedy will not count against the expenditure limit. The primary spending limits, with these exceptions, remain in effect, as do all contribution limits. No additional matching funds will be provided for the primary election, and none will be released until after the primary, for use in the next election, whether this proves to be a necessary run-off election or the general election.*[16]

The postponed primary yielded 35.7% of the vote for Ferrer, and 31.1% for Green, forcing a run-off election to be held on October 11th.

Running in the Republican primary election as a non-participant, Michael Bloomberg made headlines by spending $20 million of his own money, breaking former non-participant Ron Lauder's 1989 record of $13.7 million (or $19.7 million in inflation-adjusted dollars). The $20 million translated into $415 per vote cast for Bloomberg in the Republican primary election. In contrast, Bloomberg's primary opponent, Herman Badillo, who did not reach the threshold for receiving public matching funds in time to receive those funds until after the election, spent $516,500 on his election effort, or $28 per vote. The fact that Bloomberg continued to spend massive amounts of money throughout the primary, even while Badillo spent comparatively little, was consistent with the Bloomberg campaign's comments that he needed to establish name recognition in anticipation of a general election against a high-profile Democratic candidate with strong name recognition.[17]

Primary Election Runoff

For the runoff, Ferrer and Green were issued payments of public funds on the basis of the law's formula of 25% of what each campaign had already received for the primary. The run-off election was held on October 11th. During the period between September 26th and October 11th, the Ferrer and Green campaigns spent a total of $5.2 million (about $2.6 million each). They also made similar media-related expenditures, coming in at about $2 million each on television, radio, and print media.

General Election

After the general election, the press was dominated by stories concerning Michael Bloomberg's high-spending campaign, including several questioning the efficacy of the Campaign Finance Program.[18] By contrast, other opinion pieces and editorials lauded the Campaign Finance Law and cautioned against making negative judgments of the Program's efficacy during such an unusual election cycle.[19]

After spending an unprecedented $20 million on the Republican primary, Bloomberg went on to spend a grand total of $73,109,266 for the 2001 elections. Bloomberg's status as a high-spending non-participant in the general election triggered the lifting of the Program's expenditure limits and the institution of the $5-to-$1 match in public funds for Mark Green. As a result, Green received an additional $765,885 in public funds. According to records filed with the City Board of Elections, Bloomberg spent a total of $52 million on media (71% of all expenditures), $32 million of which was spent during the general election. Fifty-nine percent (about $31 million) of Bloomberg's media spending was on television, while 36.5% ($19 million) went toward print. The Bloomberg campaign also spent $2.5 million on campaign consultants.[20] Mark Green, by comparison, spent $11.5 million in total on media in 2001 (70% of all expenditures), of which he spent $7 million in the general election. Green's television and print campaigns for 2001 were 87% ($10 million) and 13% ($1.5 million) of total media spending, respectively.

Public Advocate

Seven participating candidates ran for the Democratic nomination for public advocate, the office that seemed to show the greatest increase in spending of all offices covered by the Program: nearly four times the amount spent in 1997. Yet, because only two candidates ran in 1997, as opposed to seven in 2001, this comparison does not necessarily indicate an extraordinary increase in spending per candidate. When looked at on a per-candidate basis, competitive candidates for public advocate spent an average of $1.97 million in 2001, compared with $1.4 million in 1997. Candidates for public advocate who participated in the Program spent a total of $9.9 million in 2001, $5.4 million of which was on media. Front-runners included several high-profile participating candidates, including: former City Council members Stephen DiBrienza and Kathryn Freed; New York State Assembly Member Scott Stringer; recording artist Willie Colon; Betsy Gotbaum, former New York City parks commissioner; and Norman Siegel, former executive director of the New York Civil Liberties Union.

Once again, media-related expenses and consultants topped the list of expenditures for participating candidates running for public advocate. Candidates spent approximately $3.4 million on television and more than $1.6 million on campaign consultants: 33.9% and 18.3% of all spending for that office, respectively. The third largest expenditure was on print media, at more than $1.6 million, or 18.3% of all spending. Public advocate candidates also spent $736,600 on campaign workers' salaries and $494,600 on office expenses.

Two first-time candidates, Betsy Gotbaum and Norman Siegel, survived the primary to compete in a runoff for the Democratic nomination. One of Gotbaum's advantages was her fund-raising ability. Raising funds early provides a candidate with the opportunity to obtain the maximum in public funds at an earlier date so that he or she can concentrate on strategy and issue advocacy later in the campaign (as opposed to more fund-raising). By the primary election date of September 25th, Gotbaum had raised almost $3 million and had been paid $1.2 million in public matching funds. By contrast, Siegel had raised only $936,600 by that time and been paid $457,600 in public matching funds. Further, while Siegel spent only $115,500 and $128,000 (13% and 14% of his total primary spending) on television and campaign consultants, respectively, in the primary, Gotbaum was able to spend $992,000 and $443,000 (39% and 17% of her total primary spending). Gotbaum also had a more intense print media campaign, spending $288,000 in the primary, compared to Siegel's $211,000.

Early fund-raising also provides a candidate with the opportunity to receive more public funds in the event of a run-off election. In the 2001 runoff for public advocate, qualifying candidates were paid an additional 25% of their primary matching funds, as required under the Act.[21] For the runoff, Gotbaum was paid more than $300,000 (25% of $1.2 million), while Siegel was paid about $114,400 (25% of $457,600).

In the general election, Democratic candidate Gotbaum faced former Democratic hopeful Scott Stringer, running on the Liberal line. Gotbaum spent a total of $848,600 on the general election, $149,000 and $354,000 on television and consultants, respectively; Stringer, by comparison, spent only $51,000, of which just $3,000 and $31,000 went for television and consultants. Gotbaum easily won the general election with 86% of the vote.

Comptroller

The two participating candidates for comptroller, Herbert Berman and William Thompson, were also the top two contenders. Thompson won the Democratic nomination and then the two met again in the general election, with Berman running on the Liberal line. Berman and Thompson spent a total of $6.4 million in 2001, the bulk of which was $2.1 million on television, $1.3 million on consultants, $684,000 on professional services, and $444,000 on campaign workers' salaries. Thompson won with 84% of the vote.

Borough President

Spending by participating candidates running for the five borough president offices also rose in 2001, above even 1997's previous high. The 20 participating candidates spent a total of $13 million in 2001, more than double the $5.9 million spent in 1997 ($6.4 million in inflation-adjusted dollars). Of the 14 candidates who recorded significant expenditures, the average total spending was almost $916,000 per candidate. Just about half of all borough president spending ($6.5 million) was on media, including $1.2 million on television and $4.9 million on print media. The largest expenditure overall was on campaign literature ($2.1 million); the second largest was campaign mailings ($2.06 million).

Participating candidates in Brooklyn spent the most, with an average of more than $1.2 million per candidate in the primary and general elections. (Brooklyn Borough President Marty Markowitz alone spent $1.6 million, the most of all 20 candidates for borough president.) The race in Manhattan was not as competitive, as the popular incumbent C. Virginia Fields was running for re-election. C. Virginia Fields spent nearly $1 million. Her opponent, Jessie Fields, spent barely more than $200,000.

City Council

As with the other offices covered by the Program, participants running for City Council tended to concentrate their spending on consultants and media. City Council participating candidates spent a total of $26.2 million in 2001, approximately $11.8 million (45%) of which was on media. In addition to the figures on the primary costs, anecdotal evidence suggests that 2001 saw a glut of printed advertising at the City Council level, particularly mailings and posters. Of the approximately $11.7 million spent on media, candidates for City Council spent $11 million (94%) on print media alone in 2001: almost five times the $2.5 million spent in 1997. A breakdown of the top three expenditures for City Council candidates shows that campaign literature topped the list at more than $4.6 million (or 17.7% of all expenditures for the office), followed by campaign mailings at $3.8 million (14.5% of total expenditures), and campaign consultants at $3.6 million (13.8% of total expenditures). Other expenses that came in at more than $1 million include: fund-raising ($1 million), office expenses ($1.3 million), professional services ($1.3 million), and campaign workers' salaries ($2 million). In contrast to the higher offices, City Council candidates spent relatively little on television ($482,000, only 1.8% of total spending for that office). Yet, as mentioned earlier, the fact that there was any spending on television at all is a new, and perhaps questionable, development.

The strongest predictor of success has always been incumbency, and this remains so. In 2001, of the 14 incumbent City Council members running to retain office, 13 won. With 35 term-limited Council seats available, however, the predictors of success for offices without an incumbent seem to have shifted to a different kind of name recognition (such as that of children running for their parents' seats) and spending. This is evidenced by the massive amounts of money devoted to media-related expenditures at the City Council level. With many first-time candidates running for office, campaign strategy focused on "spreading the word" or gaining name and message recognition among the voting public.

Among the Program participants who reported making expenditures in 2001, the winners on average outspent the losers. Over the entire four-year election cycle, the Program participants for City Council who won their seats spent an average of $180,300 total, while the candidates who did not win spent an average of $83,000. The 49 participating candidates who won their primary elections spent an average of $114,000, while the 181 losers spent an average of only $65,000 each. In the general election, the 47 participating candidates who won spent $78,000 on average, whereas the 136 participants who lost spent an average of almost $32,000 per candidate. As mentioned earlier, of greater statistical significance is the fact that 68% of the time, candidates with the highest spending received the highest number of votes. Furthermore, when the candidate with the highest expenditures did not win, candidates with the second highest amount of expenditures won 83% of the time. Although this indicates that spending and vote totals are highly correlated, as seen in Chapter 4, contributions were an even better predictor of success.

Of the nine Program participants running for Council who spent approximately $300,000 or more, six won. Furthermore, of these nine high-spending candidates, six were paid either the maximum allowable in public funds or were just shy of receiving the maximum.[22] In fact, of the 13 participating City Council campaigns that received the maximum ($75,350 per election, for a total of $150,700 for 2001), or nearly the maximum, in public funds, only one spent less than $200,000 (the Brewer campaign for district 6 spent $189,000). These campaigns also tended to be successful fund-raisers: only four of the 13 campaigns that were paid the maximum in public funds raised less than $140,000.

QUALIFIED AND EXEMPT EXPENDITURES

Candidates who join the Program can spend public funds only on certain types of expenditures. The Act and Board rules impose restrictions on what constitutes a "qualified expenditure." Generally speaking, qualified expenditures are intended to advance a candidate's campaign and must comply with certain limitations.[23] For example, a candidate who pays a printing company $1,000 to print pamphlets for a mailing has made a qualified expenditure, whereas a candidate who pays an immediate family member $1,000 to print the pamphlets has made a non-qualified expenditure.

Certain types of expenditures are considered "exempt" from the Campaign Finance Program's spending limits. These include expenditures necessary to comply with state election law as well as with the Program's disclosure and record-keeping requirements. In 1995, the Board adopted rules requiring candidates to substantiate exempt claims early in the election cycle. In 1997, the Board recommended that the range of expenditures that can be classified as exempt be narrowed and that expenditure limits be increased accordingly to account for the changes. The Board's recommendations were not adopted by the City Council. Exempt expenditures is a category that lends itself to reclassification of expenses in a manner that avoids the Program limits. The Board therefore once again recommends changes in the Program to address this. (*See* "Proposed Amendments to the Campaign Finance Act" in Chapter 10.)

LIFTING THE SPENDING LIMITS

When candidates participating in the Campaign Finance Program face non-participants whose contributions or expenditures reach a certain level, the spending limits for the participating candidates are lifted to help level the playing field, allowing the candidate to spend whatever he or she can raise. Candidates also receive a "bonus" match of public funds, at a rate of $5-to-$1 instead of $4-to-$1, up to a higher maximum amount for each office.[24] Contribution limits, however, remain in effect.

In 2001, the spending limits were lifted for ten participating candidates in either the primary or general election. One mayoral candidate and nine City Council candidates were determined to be eligible for "bonus" provisions under the Act and had their spending limits removed. In Council District 1 (Manhattan - Lower Manhattan), non-participant Elana Waksal Posner triggered the bonus match and expenditure limit suspension for six other candidates. In the primary for district 13 (Bronx - Pelham Bay), non-participant Madeline Provenzano triggered the bonus for Egidio Sementilli, who lost but spent a total of $135,500, more than Provenzano herself ($122,000).

The most high-profile example of the suspension of the Program's expenditure limits occurred in the race for mayor. Meeting non-participant Michael Bloomberg in the general election, mayoral candidate and Program participant Mark Green qualified for the $5-to-$1 bonus match of public funds and had his spending limits removed. Green spent $9.1 million in the general election, $3.8 million more than would otherwise have been allowed under the Program's limit of $5.2 million. This money was largely spent on media ($7 million) and allowed the Green campaign to buy significantly more advertising time on television than the spending limits would have permitted. Still, Green was outspent by a ratio of more than four to one.

SOFT MONEY AND INDEPENDENT EXPENDITURES

2002 was a banner year for campaign finance reform at the federal level. With all the press surrounding the proposal and passage of the Shays-Meehan and McCain-Feingold bills, the public was regularly reading about the influence of "soft money" on the political process. Soft money circumvents existing campaign finance regulations by allowing unlimited contributions to political parties for "party-building" activities. (Advertising bought with soft money, for instance, cannot directly urge a voter to "vote for" or "vote against" a candidate.) As in 1997, soft money played no discernable role in the campaigns for New York City offices covered by the Program.[25]

By definition, "independent" expenditures are expenditures intended to benefit a candidate but not connected with the campaign in any way. An independent expenditure is not counted toward the candidate's spending limit, as long as no one associated with the campaign authorizes, requests, or cooperates with the expenditure in any way. If anyone associated with the campaign is found to have cooperated with the entity making the expenditure, the expenditure is considered an in-kind contribution and is counted toward the candidate's spending limit. An example of an independent expenditure is an advertisement endorsing a candidate but paid for by a political action committee not associated with the campaign. No allegations were made of significant "independent" activity during the 2001 elections.

CONCLUSION

In 2001, the combination of term limits and the $4-to-$1 match of public funds drove up the cost of campaigns, especially at the City Council level. But there was real competition in virtually every race, which is clearly a significant success for the Program in providing grassroots campaigns with the resources to wage competitive contests. Furthermore, the increase in public funds as a percentage of expenditures, especially at the City Council and borough president levels, illustrates the Program's success in giving candidates significant funds unencumbered by contributors' expectations.

A definitive assessment of the Program's impact on the mayor's race and the extent to which the Program was successful in achieving its objectives for that race in the 2001 general election cannot be made, given the extraordinary events and factors outside the typical election experience, including, at first, a virtual blackout, and later, only scant local coverage of political news after September 11th. Certainly candidates had enough resources to present their ideas and wage competitive campaigns. The degree to which these resources were overwhelmed in the singular set of circumstances surrounding the 2001 general election for mayor poses a question that will always be unanswered.

NOTES

1 Participating candidates must also abide by separate spending limits: one for the first two years of the election cycle, and one for the third year of the election cycle.

2 At a public hearing on March 16, 2001, concerning Intro. 879, the Council bill confirming the $4-to-$1 match, then-Mayor Giuliani called the campaign finance system a "massive subsidy for politicians and the people who work for them." (Thomas Leuck, "Giuliani Vetoes Campaign Financing Plan, Forcing Council Showdown," *New York Times*, March 17, 2001, B3). In his veto message, Giuliani cited predictions by the Office of Management and Budget that the $4-to-$1 matching rate of public funds would cost the Fund between $110 and $127 million. The Campaign Finance Board's estimate of $63.3 million had been submitted to the administration in early March 2001. *See also* "Contribution Totals" in Chapter 4.

3 All inflation adjustments are based on calculations using the Consumer Price Index.

4 In 1991 the City Council was expanded from 35 to 51 members. New York City Charter §22.

5 For the purposes of all averages in this chapter, only candidates who spent at least 10% of the spending limit for the primary election in a given cycle were considered.

6 This number includes Herman Badillo who did not spend 10% of the expenditure limit but was considered a major candidate in the Republican primary for mayor in 2001. Without Badillo's spending, the average becomes $9.6 million per candidate.

7 This number includes Al Sharpton who did not spend 10% of the expenditure limit but was considered a major candidate in the Democratic primary for mayor in 1997. Without Sharpton's spending, the average becomes $6.8 million per candidate.

8 In many districts, the Democratic primary is the more competitive race, with the winner of the primary often the presumptive winner of the general election. It follows in these situations, then, that less money will be spent in the general election.

9 These analyses receive further support from standard rank correlation tests, which indicate that the relationship between spending and votes and contributions and votes is highly statistically significant. Again, the predictive value of contributions is greater than that of spending.

10 "Media-related" spending includes print, radio, and television expenditures. As purpose codes are reported by candidates, the information discussed here is dependent upon how campaigns chose to list certain expenditures.

11 "Print media" spending includes campaign mailings, campaign literature, newspaper advertisements, and postage expenditures.

12 To avoid including misreported expenditures, such as the purchase of electronics equipment or cable television for office use, this analysis includes spending on television by a City Council candidate only if it represented at least 5% of the expenditure limit for that office (just under $17,000).

13 Candidates often sub-contract television advertising through consultants who then take a percentage of the expense as their fee. The top ten vendors would therefore reflect a reliance not only on consultants, but on media expenses.

14 *See, e.g.,* Gail Collins, "The Longest Campaign," *New York Times*, June 1, 2001, A19; Charles Bagli, "Hedging Bets, Big Developers Back 4 Democrats for Mayor," *New York Times*, June 9, 2001, A1; Eric Lipton, "4 Democrats Raise Enough to Reach Spending Cap," *New York Times*, July 13, 2001, B6.

15 Diane Cardwell, "Liberal Party Gives Hevesi Its Backing," *New York Times*, June 3, 2001; Jessica Kowal, "Hopefuls Submit Petitions," *Newsday*, July 13, 2001, A6.

16 New York City Campaign Finance Board, "Statement of Chairman, Joseph A. O'Hare, S.J.," September 14, 2001. This decision was supported by the mayoral candidates. *See also* Maggie Haberman and Robert Hardt, Jr., "Election Is on but Campaign Is Over," *New York Post*, September 16, 2001, 37; Editorial "A Time for Campaigning," *New York Post*, September 19, 2001; Editorial "Tomorrow's Election," *New York Post*, September 24, 2001, 40.

17 Bloomberg was quoted as saying, "I'm an outsider. I've got to come in and introduce myself in a very short period of time." Michael Saul, "Bloomberg: Go for Broke!" *Daily News*, July 18, 2001.

18 *See, e.g.,* Adam Nagourney, "Mayoral Victor Reaches Goal in First Try as Politician," *New York Times*, November 7, 2001, A1; Michael Cooper, "Record Spending by Bloomberg Raises Questions About City's Acclaimed Law," *New York Times*, November 8, 2001, D4; Editorial, "50 Million Reasons to Scrap a Law," *New York Post*, November 11, 2001; Joel Siegel, "Bloomy Spending Hit," *Daily News*, December 11, 2001, 44.

19 Evan Davis, "Despite Mike's Bucks, Finance Law Worked," *Daily News*, November 19, 2001; Editorial, "Despite Bloomberg's $69 Million, Democracy Lives," *Newsday*, December 7, 2001, A52; Karen Hunter, "Forget Mike's Money, Green Beat Himself," *Daily News*, December 21, 2001.

20 Data for non-participating candidates is gathered by the CFB staff manually from City Board of Elections records and are not audited. The data are entered into the CFB's database, the Campaign Finance Information System (CFIS), for purposes of analysis. Campaign disclosure requirements for filings with the City Board of Elections are less detailed than those for the Campaign Finance Program.

21 *See* "Run-off Grants" in Chapter 6.

22 For the purposes of this analysis, candidates who came within $1,000 of receiving the maximum allowable in public funds have been included.

23 New York City Administrative Code §3-704 (1)(2). *See also* Board Rule 1-08(g).

24 The maximum amounts in public funds under the bonus matching rate of $5-to-$1 for each office are: mayor, $3,487,333; public advocate and comptroller, $2,180,000; borough president, $784,667; City Council, $91,333.28

25 For discussion of the role soft money played in the 1993 elections, *see On the Road to Reform*, 47.

Chapter 6

Public Funds: How to Turn $10 into $50

I'm the poster boy for campaign financing. Personally, I'm very proud of that….I think the greatest thing that ever happened is campaign financing. I know that campaign financing was meant to help challengers in terms of the possibility of challenging incumbents. But it also is of tremendous help to incumbents, as well, who never would have a chance for higher office had it not been for campaign financing.

— Brooklyn Borough President Marty Markowitz[1]

2001 marked the first citywide election in which contributions of up to $250 from individual New York City residents were matched at a $4-to-$1 rate by the CFB. The change in the law was designed to encourage more people to participate in the political process by further maximizing the value of small contributions. Thanks to public funds, a $10 contribution could now be worth $50 to a candidate. The CFB began educating potential participants about the Program by asking the question "How do you turn $10 into $50?" on the covers of its informational brochures. The $4-to-$1 match was controversial even before the date of the first public funds payment. The Giuliani administration claimed the Program would cost New York City taxpayers well over $100 million dollars and even up to $127 million and filed suit to prevent the implementation of the increased match. (*See* "Setting the Stage for the 2001 Elections" in Chapter 1.) The CFB's own budget estimate in early 2001 was $63.3 million, taking into account the maximum likely disbursement of public funds, even under extreme circumstances. Some $41.5 million was disbursed for the 2001 elections.

The purpose of public matching funds is to reduce the need for candidates to spend significant amounts of time and money on raising funds from private and organizational contributors and to create a level playing field for all candidates. The goal is for candidates to spend the bulk of their time campaigning, not fund-raising, while also reducing the influence of wealthy donors. The availability of public funds is designed to eliminate money as an obstacle to running for office, as well as to serve as a reward to candidates for abiding by the Program's strict contribution and expenditure limits and the stringent disclosure requirements. Public funds can only be used for certain types of campaign expenditures and must be returned to the CFB if not used, or if used improperly. The Board's audit staff is concerned with ensuring that only qualified candidates receive public funds, and once they do, that they use them as provided for by law.

COST OF THE PROGRAM

The CFB disbursed $41,545,428 in public matching funds for the 2001 election cycle through April 30, 2002. (As final audits are concluded, some candidates may still be entitled to post-election public funds payments to cover outstanding qualified debts.) This figure included $31,617,884 for the primary, $2,208,605 in run-off grants, and $7,718,939 for the general election. Seventy-one percent (199 out of 280) of eligible Program participants received public funds for either the primary or the general elections.[2] One hundred and seventy candidates received public funds for the primary, six candidates received public funds for the runoff, and 103 candidates received public funds for the general election. Of the 81 participating candidates who were on the ballot but did not receive public funds, ten were not in compliance with Program requirements. The rest failed to meet the minimum thresholds.

The total primary payment to four Democratic mayoral candidates, $10.2 million, far exceeded the total amount of public funds that had been disbursed in the entire 1997 election cycle: $7.0 million. The cost of the Program in 2001 was still far below the Giuliani administration's estimates and about equal to the Office of Management and Budget's original estimates of the cost of the Program for the 1989 elections when adjusted for inflation. In 1989, the OMB's original prediction for the size of the Public Fund was $28 million. Adjusted for inflation, this becomes roughly $40.2 million. (The 1989 elections were the first for which the CFB disbursed public funds.)[3]

The largest percentage of public funds, 33%, went to 173 City Council candidates, followed closely by the five mayoral candidates aggregated at 31%. In 1997, City Council candidates received 27%, and mayoral candidates received 49%. (*See* Fig. 6.1.)

"I'm the poster boy for campaign financing."

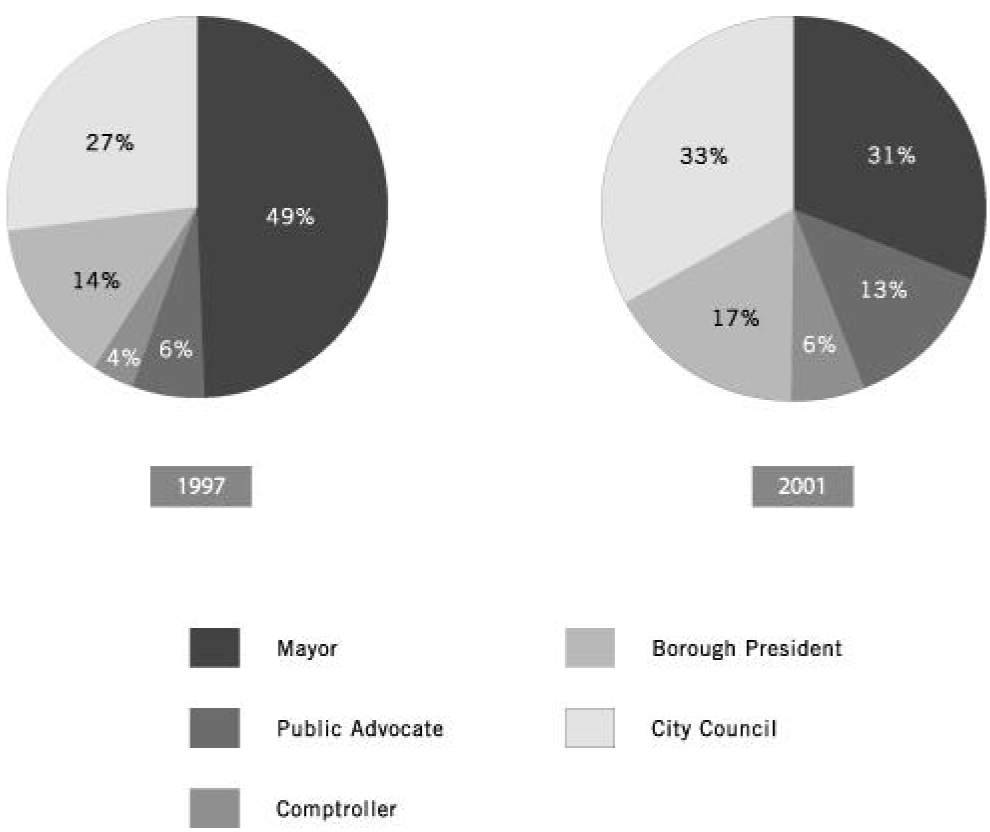
— Brooklyn Borough President
Marty Markowitz

Public funds as a percentage of the total dollars available to candidates more than doubled for all offices, from 19% in 1997, to 43% in 2001. (*See* Fig. 6.2.) Fifty-five percent of the total funds available to City Council candidates came from public matching funds, more than doubling the 26% figure in 1997. With public funds, the total amount of money available to candidates (public and private combined) increased from $36,299,024 in 1997 to $96,267,068 in 2001, an increase of about 165%. About $28 million in contributions went to four participating Democratic mayoral candidates, for whom public funds represented anywhere from 27% to 35% of their total funds available, or an average of 30% for that office.

The $4-to-$1 formula, the number of participants, and the increase in the maximum amount of public funds that Council candidates could receive led to an increase in the average public funds payment from $15,019 to $57,132 per district. An average of 3.4 City Council candidates per district received public funds payments, compared to an average of 1.5 in 1997. The large number of competitive open seats contributed to the change from the previous election cycle. Incumbent Council members seeking re-election received a total of $982,094 in public funds, for an average of $89,281, compared with an overall average payment amount of $55,595 for all other participating Council candidates who appeared on the ballot.

The new limits caused candidates to tailor their fund-raising accordingly. (*See* Chapter 4.) Candidates must indicate on their disclosure statements which of their contributions they wish to be considered for matching. Matchable claims up to the $250 limit totaled $12,635,316 for all active participants, based upon which the $41.5 million in public funds was disbursed. This represents payment on 82.2% of all matching claims. There are various reasons for which a candidate may not receive payment on a particular matching claim, including: a limit on the amount of public funds a candidate can receive; invalidation of some matching claims; and reductions in the amount of public funds pursuant to various

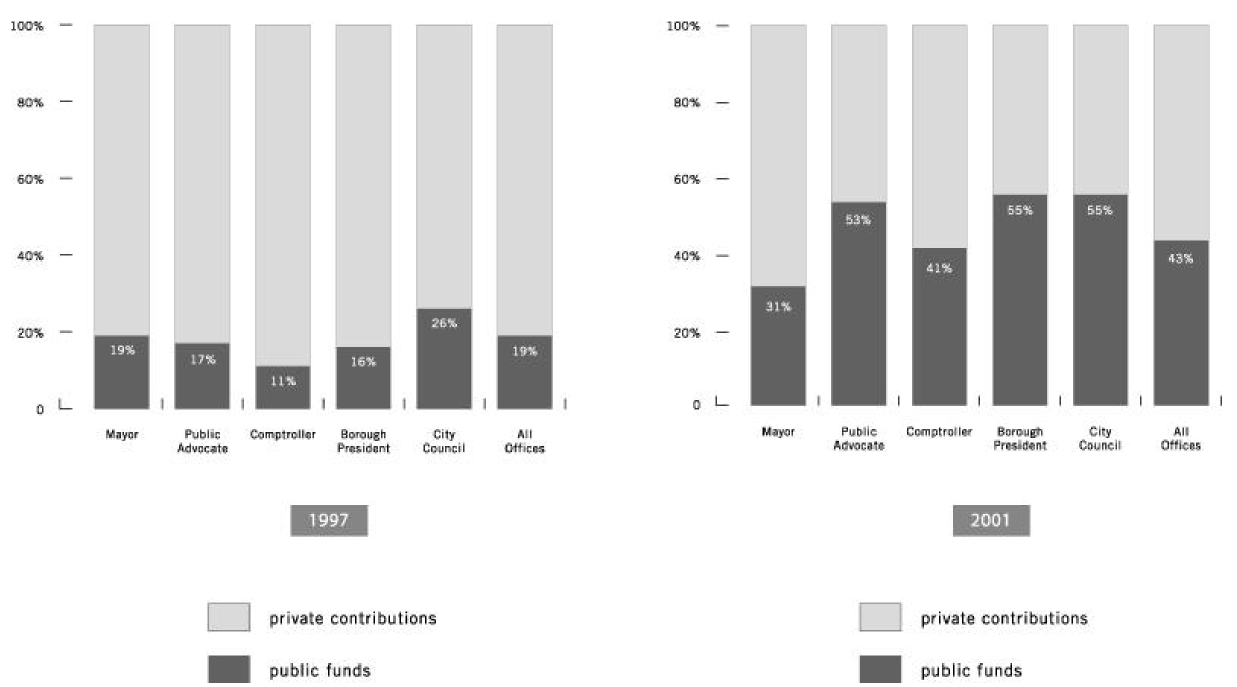
Figure 6.1: Public Funds by Office — 1997 and 2001



rules. Candidates may also have failed to qualify for public funds due to a failure to meet the threshold or non-compliance with Program rules. Had all claims been matched at face value, the disbursement of public funds would have been $50,541,264, about $10 million more than was actually disbursed.

One of the major criticisms of the Program going into the 2001 elections was that the $4-to-$1 matching rate was too high and would significantly drive up the cost of the Program. (After the 1997 election, the CFB had proposed a $3-to-$1 matching rate.[4]) Because contributions were solicited to take advantage of the benefits offered by the $4-to-$1 match, whereas contributions in previous election cycles were solicited with the previous matching formula in mind, any analysis of matching claims across election cycles with different matching formulas must be examined cautiously. If, however, the exercise is carried out, it shows that had the $3-to-$1 rate been in effect for the 2001 elections, it would have yielded a disbursement of just over $31 million, about $10 million less than what has been disbursed for 2001. Using the 1997 formula of a $1-to-$1 match up to a matchable limit of $1,000, about $13 million in public funds would have been disbursed in 2001, without consideration of a bonus matching factor. The influence of the matching formula on fund-raising can be seen in a comparison of the amount of potentially matchable contributions at the levels of up to $250 and up to $1,000 in 1997 and 2001. In 1997, total matching claims of up to $1,000 were nearly $8 million, whereas contributions from city residents up to $250 were about $4.5 million, a difference of $3.4 million, or 43%. By contrast, in 2001, a comparison between the amount of contributions of up to $250 claimed for matching and the amount of contributions from city residents up to $1,000 shows a minuscule difference — of only 1% (or about

Figure 6.2: Public Funds as a Percentage of Total Dollars Available to Candidates by Office — 1997 and 2001

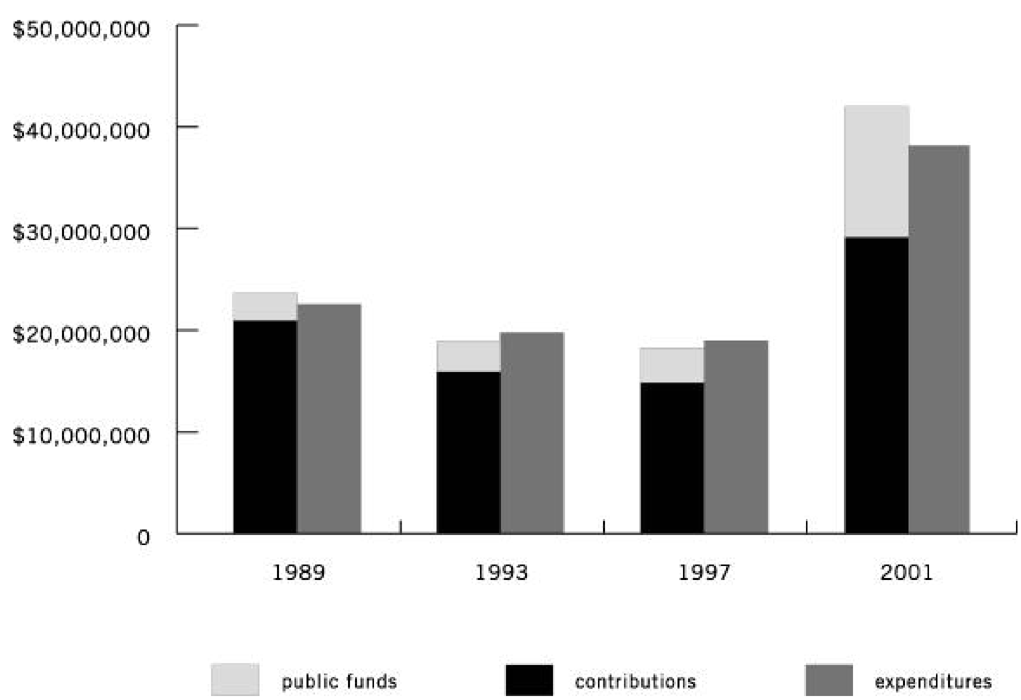


$125,000). This indicates that candidates and contributors do tailor their fund-raising and their giving to the available match. Application of the $4-to-$1 match factor to matching claims up to $250 in 1997 yields a figure of slightly more than $18 million. It is worth noting that there were many more matching claims up to $250 in 2001 than in 1997 because there were many more viable candidates with fund-raising capability and many more contributors. (*See* Chapter 4.)

TIMING OF PAYMENTS AND INTERIM PAYMENTS

The first public funds payment of the election cycle took place on August 6, 2001. This was the next business day after the Board of Elections had been scheduled to complete its disqualification hearings. The relative lateness of the first payment date was raised repeatedly at the CFB post-election hearings by both candidates and civic groups.[5] Candidates responding to the CFB post-election survey also expressed concern about the impact of the timing of payment on their campaigns. Because eligibility for public funds is dependent on being on the ballot, there appears to be little, if anything, that the Board can do on its own to make payments earlier without legislative change at the state level. (*See* Chapter 10.) The short time for issuing public funds payments affects candidates in two ways: public funds now constitute

Figure 6.3: Contributions and Public Funds vs. Expenditures Over Time — Mayoral Candidates

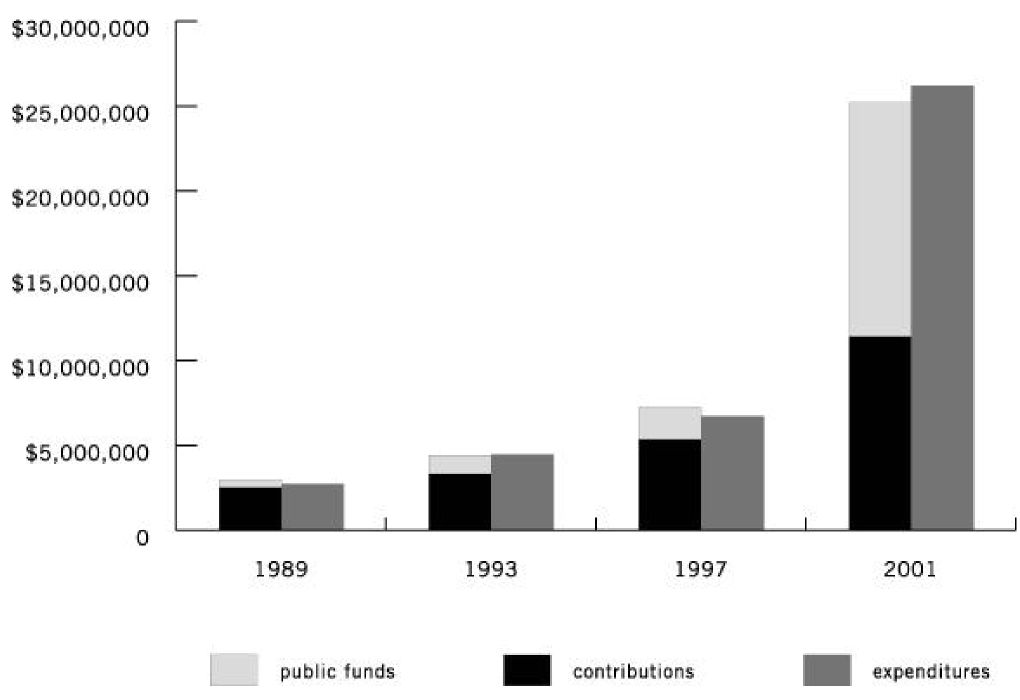


a larger percentage of the total money available to them to spend, and they do not have that percentage on hand until the CFB issues it; and candidates who have not met threshold or who have compliance problems sometimes have too short a period to correct deficiencies in time to receive public funds before the primary. One City Council candidate noted that the relatively late payments result in voters facing a deluge of mail and advertising in the final four weeks of the campaign, which is too easily ignored.

Some campaigns that did not have primaries raised the possibility of having public funds disbursed during the primary period in future elections, because opponents with primaries have more money to spend and are reaching general election voters as part of their primary campaigns. A representative of several Independence Party candidates, Harry Kresky, noted that:

> *independent third-party and local Republican candidates begin with less name recognition and less organizational resources. But while Democratic party candidates are spending money during the pre-primary period and building up their name recognition in an effort to win the primary, the other candidates must operate with one hand tied behind their back. It is difficult, and in most cases impossible, to make up the gap, which will have actually widened during the pre-primary period, in the relatively short period between the primary and general election. The problem is compounded by the fact that, at least in New York City, the winner of the Democratic primary usually becomes the beneficiary of the party's significant organizational resources and top-of-the-ticket pulling power, making the gap grow wider still.*[6]

Figure 6.4: Contributions and Public Funds vs. Expenditures Over Time — City Council Candidates



Because of the postponed primary, the always short general election period was particularly brief during this election cycle, and the first general election payment was unavoidably delayed until October 12th, less than one month before the general election.

In past election years, the CFB used "interim" payments to disburse public funds to candidates who had not received public funds on a scheduled payment date due to staff error or unusual circumstances, such as being removed from and then reinstated to the ballot. In 2001, particularly as the election season progressed, the CFB employed interim payments more liberally to pay participants who had not yet received any public funds when they met threshold through the correction of invalid matching claims between scheduled payment dates. Unpaid participants who resolved disclosure problems that had caused them to miss scheduled payment dates were also given interim payments. During the primary period, 29 participants received interim payments, 26 of whom were Council candidates receiving public funds for the first time.

After September 11th, when the CFB operated from its temporary location at Fordham University, the criteria for interim payments expanded to include candidates who had already received public funds for the primary, but submitted disclosure statements late, or by mail, arriving timely postmarked but after the due date. This policy took into account delays in mail delivery when the Postal Service closed various facilities to investigate the source of a deadly anthrax contamination. It also reflected a desire to fulfill candidates' expectations of getting prompt payments even for late received disclosure statements, notwithstanding the CFB's limited resources to process payments for regular payment dates during its displacement from its Rector Street offices.

THRESHOLD

> *The finance board, which oversees the pot of money that goes to candidates, has not been giving its money away easily. That is probably a good thing because the worry a year ago was that some candidates would be running for the city's matching money instead of for the offices. Supporters of the program were also afraid that the city would wind up financing legions of eccentrics, fanatics and goofballs. But in the end, it turned out that candidates had to be serious and well organized to do all the paperwork required to qualify for matching funds.*
>
> — Eleanor Randolph, *New York Times*[7]

Candidates are required to meet a two-part threshold to be eligible to receive public funds. For their respective offices, they must raise a minimum dollar amount in valid matchable contributions from individual New York City residents, and a minimum number of valid matchable contributions of $10 or more from residents of the area they seek to represent. (*See* Fact Sheet 6.1.) The purpose of the threshold requirement is to ensure that candidates who receive public funds have a base of support in their communities.

Seventy-four percent of participants who appeared on the ballot met the threshold for receiving public funds at some point prior to the general election. Some participants did not meet the threshold requirements because they filed unitemized small campaign statements, thereby attesting to having less financial activity than the threshold requirement. Others failed to meet the threshold because they did not file the required disclosure statements at all. (A small number of participants will have met the threshold with disclosure statements filed after the general election, or with the correction of earlier invalid claims as part of their post-election audits, and may be eligible for post-election payments as a result.)

City Council member was the office with the most participants, and therefore the most candidates who met threshold and the most candidates who did not. One Council candidate, Victor Bernace of district 7 (Manhattan - West Harlem, Washington Heights, Inwood), criticized the CFB for "being extremely strict with everyone, going over everything with a fine-tooth comb"[8] before he met threshold. He ultimately qualified for $19,520 in public funds. Another Council candidate, Brad Hoylman of district 1 (Lower Manhattan, Lower East Side), defended the fact that many candidates did not receive public funds on the first payment date, writing that it "suggests…that the CFB…is doing its job. As a candidate, I can attest that the CFB's auditing procedures are rigorous, as they should be, since public money is distributed to candidates who join the Campaign Finance Program."[9] Hoylman received a primary payment of $91,333 on the first payment date, the maximum public funds payment in a bonus situation.

Matching funds claims must be valid, in accordance with the Act and the Board Rules, to count for the threshold. Candidates who submitted their first itemized disclosure statements in July 2001 often had difficulty correcting invalid claims in time to be paid on the first or second payment dates. In response to this situation, the CFB is recommending that all candidates, not just boroughwide and citywide, be required to file disclosure statements early in the election cycle in order to preserve matching claims. This gives candidates more of an opportunity to get feedback, and to alleviate some of the pressure on candidates and the Board to review the massive July disclosure statements and issue the first public funds payments within an extremely short time frame. (*See* Chapter 10.) This will not cure the problem entirely, as many candidates for City Council have little fund-raising activity until the year of the election. The Board is therefore also considering additional optional disclosure deadlines for the spring of an election year. Some candidates were adversely affected by their lack of awareness of the Rules change that took effect on July 12, 2001 (Disclosure Statement 9). The change, which was included in the candidate handbook and of which all candidates were additionally notified by mail, required cash and money order contributors to affirm on their contribution cards that they gave their contributions from their own personal funds and were not reimbursed.

Participants in City Council races had more trouble raising $10 contributions from 50 district residents than they did garnering the $5,000 minimum dollar amount. (*See* Chapter 4.) Candidates competing in districts with many candidates often met the threshold with barely 50 district residents. When a candidate fails to meet the threshold, it is sometimes difficult to identify whether the problem stems simply from lack of contributions from district residents, or from a preponderance of invalid claims that removes many district resident contributions from consideration for threshold. There were about a dozen candidates who raised money from just over 50 district residents who met the threshold with their first itemized disclosure statements in July 2001 and received public funds on the first payment date, while others who raised significant sums of contributions had difficulty reaching the minimum 50 resident individuals and had to correct invalid matching claims or raise and document new in-district contributions to meet the threshold. Some candidates called for an increase in the threshold requirement as a way to decrease the likelihood of "spoiler candidates."[10] Thirty-four of 44 respondents to the CFB post-election survey deemed the threshold requirements appropriate. Four suggested that the district resident threshold for City Council candidates be lowered by 50%, to 25 district residents. Candidate G. Oliver Koppell of Council District 11 (Northwest Bronx) noted that neither he nor his primary opponents had trouble meeting the threshold requirements, but acknowledged that for some candidates, "it was not that easy; that means they are appropriate."[11]

There was only one winning participant, incumbent Christine Quinn of Council District 3 (Manhattan - Chelsea, Clinton, Midtown), who did not claim to meet the threshold requirement prior to the general election.

Fact Sheet 6.1: 2001 Threshold Requirements

Office	Dollar Amount*	Number of Contributors†
Mayor	$250,000	1,000 New York City Residents
Public Advocate	$125,000	500 New York City Residents
Comptroller	$125,000	500 New York City Residents
Borough President		
Bronx	$26,653‡	100 Bronx Residents
Brooklyn	$49,307‡	100 Brooklyn Residents
Manhattan	$30,744‡	100 Manhattan Residents
Queens	$44,588‡	100 Queens Residents
Staten Island	$10,000‡	100 Staten Island Residents
City Council Member	$5,000	50 Residents from the Council District

* Including all matchable contributions from New York City residents in amounts of up to $1,000.

† Each must have given a matchable contribution of $10 or more.

‡ These amounts are based on 2000 Census figures for the population in each borough.

2001 marked the first election cycle in which the CFB disbursed public funds in a Green Party primary. A total of three Green candidates, Paul Graziano in Council District 20 (Queens - Flushing), Gloria Mattera in Council District 39 (Brooklyn - Windsor Terrace), and Craig Seeman in Council District 33 (Brooklyn - Brooklyn Heights, Greenpoint), qualified for public matching funds, and a Libertarian candidate, Gary Snyder of Council District 6 (Manhattan - Upper West Side), met the threshold requirement for the first time in the history of the Program and received $19,124 in public funds.

"MAXING OUT"

Because of the $4-to-$1 match, just meeting threshold for a City Council participant guaranteed that a candidate received a minimum of $20,000 in public matching funds.[12] In 2001, the $4-to-$1 match also meant that many more candidates at the Council level received the maximum possible in public funds. (*See* Fact Sheet 6.2.) Eighty Council candidates received the maximum in public funds, $75,350, for the primary, and 25 "maxed out" for the general election.[13] Thirteen received the maximum for both elections. By comparison, in 1997 only six Council candidates received the maximum, $40,000, for the primary, and only four for the general election. In 1997, a single candidate, Eva Moskowitz, received the

Fact Sheet 6.2: Maximums in Public Funds

Year	1997	2001
Mayor	$2,366,000	$2,877,050
Public Advocate	$1,479,000	$1,798,500
Comptroller	$1,479,000	$1,798,500
Borough President	$532,500	$647,350
City Council	$40,000	$75,350

NOTE: The maximum amount of public funds a candidate can receive represents 55% of the spending limit for that office.

maximum in both the primary and general elections.[14] Because contributions to Council candidates have always tended to be smaller, the $4-to-$1 match greatly increases the public funds Council candidates can receive, and in many ways is felt most on the Council level.

Two borough president candidates, Kenneth Fisher and Marty Markowitz, both of Brooklyn, received the maximum for that office in the primary, a first for the Program in 2001. No candidate for citywide office received the maximum in public funds in either election, although Mark Green's primary payment of $2,846,148 constituted all but the maximum for a mayoral candidate, $2,877,050. In the history of the Program, there has never been a mayoral candidate who received anything close to the maximum in public funds in both the primary and general elections. Although in the past Democratic mayoral primary winners could expect to have easier general election campaigns because of the Democrats' 5-to-1 voter registration advantage, recent general elections have been fiercely competitive.

THE BONUS SITUATION

To keep the playing field more level when a participant faces a non-participant who raises or spends more than half of the spending limit, public funds are disbursed at a rate of $5-to-$1, instead of $4-to-$1, the maximum in public funds is raised, and the spending limit is lifted. Bonuses were triggered by high-spending non-participants in three City Council Democratic primaries: Districts 1 (Lower Manhattan, Lower East Side), 13 (Bronx - Pelham Bay, Throgs Neck, Morris Park, City Island), and 18 (Bronx - Soundview, Parkchester, Castle Hill). (*See* Table 6.1.) Opposing candidates were paid at the $5-to-$1 rate, resulting in $132,799 more disbursed for these races. The spending limits were also lifted for these candidates. In district 13, the public funds allowed the participating candidate, Egidio Sementilli, to outspend the non-participant, Madeline Provenzano, $135,500 to $122,000.[15]

The most significant bonus situation was, of course, in the mayoral general election.[16] Mark Green was paid at a $5-to-$1 rate, resulting in his receipt of an additional $765,885 in public funds. Because Michael Bloomberg spent so much money, Green's additional public funds constituted only 1% of Bloomberg's total spending. The amount of public funds that he received clearly did not permit Green even to approach matching Bloomberg's spending. Many, including Green's campaign chairman, John Siegal, called for an examination of the use of block grants to level the playing field against extremely high spenders.[17] Proponents of this change nonetheless conceded that it is difficult to determine how much a non-participant will spend, thus making it difficult to administer any form of public funding that would be designed to match a non-participant's spending dollar for dollar. As Linda Stone Davidoff, executive director of the Citizens Union pointed out at the CFB post-election hearings, "The campaign finance system can't be expected to match self-funded efforts, but it should be enough to get the message out."[18] Green's ability to publicize his message during the general election period remains the subject of debate in light of Bloomberg's spending. It is nonetheless generally recognized that many factors other than money had an impact on the outcome of the mayoral election. In a post-election op-ed piece in the *Daily News*, Evan Davis, former president of the Association of the Bar of the City of New York, argued that "the campaign finance system was never created to ensure that candidates abiding by it would win, nor was it designed to hold candidates harmless from their own tactical errors. Green had every opportunity to win the mayor's race under the campaign finance system, even in the face of competition from a supremely well-financed opponent."[19] Davis argued that Green held a double-digit lead in the polls two weeks before the election, at which point Bloomberg had already spent $41 million dollars (approximately the amount disbursed to all candidates in the entire Program). Davis also argued that the Program was successful in that the appearance of corruption and special interest influence were avoided, because the major candidates either participated in the Program, or, in Bloomberg's case, used money that was his own and clearly not received in exchange for influence. A *Newsday* editorial noted that if money were the only factor determining victory, Alan Hevesi would have won the Democratic primary instead of finishing a distant fourth, and Green would not have been the party's nominee.[20] Certainly if money were the sole reason for success, Fernando Ferrer, the least well funded of the four major Democratic candidates, and probably the candidate with the least affluent supporter base, would not even have made it to the runoff without public financing. (*See* "Contributions to Mayoral Candidates Compared" in Chapter 4.)

Under the 1997 formula, a participant facing a high-spending non-participant received double the amount in public funds because the match rose from $1-to-$1 to $2-to-$1 when a bonus was declared. The 2001 formula represents only a 25% increase against a non-participant, raising questions about how useful the current bonus rate is in leveling the playing field. The Green bonus payment for the general election, relative to his opponent's spending, and relative to the public funds he had received for the

Table 6.1: 2001 Races in Which Bonus Matching Was Triggered

Office	Election	Non-Participant Who Triggered Bonus Matching	Participants Potentially Eligible for Bonus Matching*
Mayor	General	Michael Bloomberg	Kenneth Golding, Mark Green, Alan Hevesi, Kenny Kramer, Thomas Leighton, Julia Willebrand
Council District 1	Primary	Elana Waksal Posner	Margaret Chin, Rockwell Chin, John Fratta, Alan Gerson, Brad Hoylman, Kwong Hui
Council District 13	Primary	Madeline Provenzano	Edigio Sementilli
Council District 18	Primary	Ruben Diaz, Sr.	Armando Montano, Elizabeth Rodriguez

* Even when bonus matching is triggered, only participants who are qualified to receive any public funds can receive the bonus funds.

primary, reflects how small an increase the current rates allow. In 1997, the Board proposed a two-tiered system for bonus payments, to distinguish between the high spenders and the extremely high spenders, that would keep the playing fields reasonably level in each situation.[21] Had the $4-to-$1 rate been doubled, Green would have received an additional $3,063,540 as a bonus in the general election instead of $765,885. Had the Board's original recommendation of a $3-to-$1 match been in effect with a bonus that doubled the matching factor to $6-to-$1, Green would have received $2,134,611 for the primary (as opposed to $2,846,148) and $2,460,699 for the general election (as opposed to $976,545), including a bonus of $2,297,655 (as opposed to $765,885). Green would not have been eligible for the maximum allowed in a bonus situation, $3,487,333, in either scenario.[22] This suggests that there was simply not enough time or opportunity to fund-raise meaningful amounts in "matchable" contributions from new individual New York City contributors in the short time period between the primary runoff and the general election. In any event, however, the maximum public funds that can be disbursed in the current bonus situation still represents less than 5% of Bloomberg's total spending.

RETURN OF PUBLIC FUNDS

There were no participants who chose not to accept public funds in 2001, arguably because of the more competitive nature of the races. Steven Cohn, however, a City Council candidate in district 33 (Brooklyn - Brooklyn Heights, Williamsburg, Greenpoint), returned both his primary and general election public funds payments upon receipt. In a letter to Board Chairman Joseph A. O'Hare, S. J., Cohn wrote that he was returning the public funds because he believed "there are priorities for the use of public tax dollars that far exceed any possible need my campaign could have."[23] Similarly, Brooklyn borough president candidate Marty Markowitz returned his second general election payment because he anticipated returning funds after the election anyway. In 1997, a few participating incumbent City Council members did not accept public funds because they faced only minimal opposition to their re-election. Many 2001 participants returned unspent public funds to the CFB as or before they filed their final disclosure statements for the election cycle, most notably Alan Hevesi, who returned his entire public funds payment of $2,641,247 on November 30, 2001. As of April 30, 2002, the total amount of public funds that had been returned to the CFB was $4,861,915. (The amount will increase as the post-election audit process continues, although disbursements of public funds will also be made.)

RUN-OFF GRANTS

Mark Green and Fernando Ferrer received run-off payments of $711,537 and $574,387 respectively. These amounts reflected 25% of the public funds their campaigns had received for the primary.

In the public advocate race, when the second place finisher of the Democratic primary was not immediately apparent, the CFB invited the first place finisher, Betsy Gotbaum, and the four candidates who could possibly finish second to make the case why they should receive run-off payments before a second-place finisher was certified by the Board of Elections.[24] The Board agreed with the campaigns' arguments that public funding was especially critical during the short run-off period and would be of no use to the second place finisher if it was withheld until the Board of Elections certified the results. The Board approved public funds payments to four candidates: Betsy Gotbaum, Norman Siegel, Stephen DiBrienza, and Scott Stringer. Willie Colon was not in compliance with Program requirements and was therefore not eligible for public funds. Gotbaum received $303,270, compared to $114,407 for Siegel (who was eventually certified as the second-place finisher), $267,331 for DiBrienza, and $237,673 for Stringer. Gotbaum's payment reflected a carryover of her fund-raising advantage into the run-off period.

In 2001, there were no rerun elections that necessitated public funds payments to any boroughwide or City Council candidates.

SMALL PRIMARIES, HALF-HEARTED CAMPAIGNS, AND TOKEN OPPONENTS

Although there were more competitive races than ever before, there was still concern that public funds were being disbursed in situations that did not require such large expenditures of public tax dollars. The candidates in the Green Party primary in district 20, for example, had to reach a small number of registered voters, only 36 of whom actually voted in the primary. Pursuant to law, however, the CFB disbursed public funds in that situation at the same rate as applies when there are 100,000 registered voters whom candidates have to reach. This kind of result is why in 1998 the CFB recommended a $10,000 cap on the amount of public funds available to participants in a primary in which fewer than 1,000 citizens are eligible to vote.[25] (*See* "Proposed Amendments to the Campaign Finance Act" in Chapter 10.)

In the public advocate and comptroller races, candidates who lost in the Democratic primaries and for all practical purposes ceased campaigning continued to accept public funds for the general election in which they appeared on the Liberal Party line. In contrast, Alan Hevesi, although he appeared on the general election ballot, declined to accept additional public funds, and he ceased campaigning.

Similarly, because of the huge Democratic registration advantage, in many Council districts and boroughwide races the general election often merely confirms the results of the Democratic primary. Candidates who do not have significant opposition essentially must police their own spending and answer to the voters if they spend public funds unnecessarily. Much of the unspent funds returned thus far has come from candidates who either raised such large amounts in contributions that they did not require the use of public funds, or who spent relatively little to achieve large margins of victory.

A number of campaigns, in testimony at the CFB's public hearing as well as in responses to the post-election survey, have called for decreased or no public funds to be disbursed to candidates facing "token" opponents, but had difficulty in defining just what constitutes a token opponent.

Fact Sheet 6.3: Public Funds Disbursed per Election

Year	Office	Total Payment
1989	Mayor	$2,779,508
	Public Advocate	N/A
	Comptroller	$421,665
	Borough President	$799,228
	City Council	$507,764
	Total	**$4,508,155**
1990	Staten Island/1st Council District*	$10,155
1991	City Council**	$2,660,514
	Brooklyn/29th Council District*†	$137,650
	Queens/22nd Council District*†	$0
	Total	**$2,798,164**
1993	Mayor	$3,262,250
	Public Advocate	$947,189
	Comptroller	$1,066,802
	Borough President	$64,956
	City Council	$1,142,559
	Total	**$6,483,756**
	Manhattan/4th Council District*†	$132,146
1994	Staten Island/51st Council District*	$30,677
	Staten Island/51st Council District*†	$60,339
	Total	**$91,016**

* Off-year election to fill a vacancy
** City Council redistricting election
† Denotes special election

cont.

Fact Sheet 6.3: Public Funds Disbursed per Election (cont.)

Year	Office	Total Payment
1996	Manhattan/5th Council District*	$81,375
	Manhattan/5th Council District*†	$63,208
1997	Mayor	$3,431,133
	Public Advocate	$427,575
	Comptroller	$247,054
	Borough President	$968,208
	City Council	$1,877,410
	Total	**$6,951,380**
	Bronx/17th Council District*†	$0
1999A	City Council†	$788,554
1999	City Council	$272,961
2001A	City Council†	$91,388
2001	Mayor	$12,862,667
	Public Advocate	$5,416,438
	Comptroller	$2,574,112
	Borough President	$6,923,341
	City Council	$13,768,870
	Total	**$41,545,428**

* Off-year election to fill a vacancy
** City Council redistricting election
† Denotes special election

CONCLUSION

The importance of public matching funds to campaigns and to the people whose contributions were being matched was underscored by the reactions of many of the candidates to the legal challenges to the $4-to-$1 matching formula early in the election year. Candidate Rudolph Greco, Jr. of Council District 25 (Queens - Jackson Heights), echoing similar statements by other candidates, stated in an affidavit submitted in the $4-to-$1 litigation:

> *In deciding to run, the availability of $4-to-$1 matching funds was a major factor. It has been a key element of how we have conducted our campaign fund-raising and has been featured in each appeal my campaign committee has made for contributions….I have been struck by the great enthusiasm the $4-to-$1 matching formula creates among contributors and campaign volunteers. The anticipation of the $4-to-$1 match has helped me build broad-based support in my community because it has underscored for potential contributors and supporters the inherent strength and viability of my campaign.*[26]

Richard Perez of Council District 37 (Brooklyn - Wyckoff Heights, Cypress Hills, East New York) stated:

> *Raising money in an impoverished district such as the one I would represent is very difficult. The $4-to-$1 match makes it possible to mount a credible campaign, while raising money mostly from the people in my district. I have been reaching out to people in my district who usually don't think it's worth making their small contributions….I believe the $4-to-$1 match encourages them to contribute and makes them feel like their contribution is valued. In that way, people from underserved communities are becoming more committed to the political process.*[27]

The opportunity to receive public funds was cited as the top reason for joining the Campaign Finance Program by 42.3% of respondents to the CFB's post-election survey. After the election, these campaigns categorized the effect of the receipt of public funds on their campaigns as "large" or "medium." More individuals contributed to participating campaigns than ever before. (*See* Chapter 4.) Thus, in 2001, public funds accomplished the twin goals of removing financial barriers for potential candidates and encouraging more citizens to participate in the political process.

NOTES

1 *Campaign Finance Board 2001 Hearings*, vol. II, at 424 (testimony of Marty Markowitz).

2 These figures include $407,990 in public funds payments disbursed to two candidates as part of the post-election audit process. Pursuant to §3-703(1)(a) of the New York City Administrative Code, a candidate must meet all the requirements of law to have his or her name on the ballot to be eligible to receive public funds.

3 *See* testimony of Nicole A. Gordon before the City Council Committee on Governmental Operations, March 7, 2001, on file at the Campaign Finance Board. In fact, only $4.5 million in public funds was disbursed in 1989, *see* Fact Sheet 6.3. *See also* Chapter 1, note 17, and text thereto.

4 *A Decade of Reform*, 131.

5 *Campaign Finance Board 2001 Hearings*, vol. I, at 41 (testimony of Herbert Berman), at 49 (testimony of Linda Stone Davidoff), vol. II, at 297 (testimony of Evan Davis).

6 *Campaign Finance Board 2001 Hearings*, vol. II, at 220 (testimony of Harry Kresky).

7 Eleanor Randolph, "Editorial Observer; A Big City Election: 8 Million New Yorkers and 400 Candidates," *New York Times*, September 9, 2001, A18.

8 Diane Cardwell, "Public Funds Lag in Council Races," *New York Times*, August 30, 2001, A1.

9 Brad Hoylman, answering a question at http://www.bradhoylman.com/townhall/.

10 *Campaign Finance Board 2001 Hearings*, vol. II, at 235 (testimony of David Yassky).

11 *Ibid.*, at 208 (testimony of G. Oliver Koppell).

12 Because the CFB sometimes assumes an error percentage greater than the candidate's actual error rate, there may have been initial public funds payments that were less than $20,000. Any difference between $20,000 and what the candidate received would have been made up in subsequent public funds payments, assuming the candidate remained in compliance with Program requirements.

13 Candidates who had minor withholdings and came within 2% of receiving the maximum in public funds are included in these numbers if these candidates had raised sufficient funds to receive the maximum. One candidate, Egidio Semintilli, who received $83,805 in the primary, is not included in this figure because without the bonus match, he would not have been eligible for the maximum in public funds.

14 Moskowitz returned her entire primary payment on July 29, 1997.

15 The figure for Provenzano's spending is based on filings obtained from the New York City Board of Elections.

16 Despite Bloomberg's high spending, a bonus was not triggered prior to the Republican primary because Bloomberg's primary opponent, Herman Badillo, did not meet the threshold to qualify for public funds prior to the election.

17 *Campaign Finance Board 2001 Hearings*, vol. I, at 174 (testimony of John Siegal). *See also* vol. I, at 63 (testimony of Charles Juntikka) and at 106 (testimony of Gene Russianoff).

18 *Campaign Finance Board 2001 Hearings*, vol. I, at 48 (testimony of Linda Stone Davidoff).

19 Evan Davis, "Despite Mike's Bucks, Finance Law Worked," *Daily News*, November 19, 2001.

20 Editorial, "Despite Bloomberg's $69 Million, Democracy Lives," *Newsday*, December 7, 2001, A52.

21 *A Decade of Reform*, 134-135.

22 These hypothetical calculations are based on Green's valid matching claims as of the dates of the last primary payment and the last general election payment. Under the $3-to-$1 calculation, he also would have received less in public funds for the runoff.

23 Letter of Steven Cohn to Chairman Joseph A. O'Hare, S.J., dated August 8, 2001, on file at the Campaign Finance Board.

24 *See* Advisory Opinion No. 2001-11. (September 7, 2001.)

25 *A Decade of Reform*, 134.

26 Affidavit of Rudolph E. Greco, Jr., City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct. N.Y. Cty. February 13, 2001).

27 Affidavit of Richard Perez, City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct. N.Y. Cty. February 14, 2001).

Chapter 7

Disclosure: Real-Time Online Information

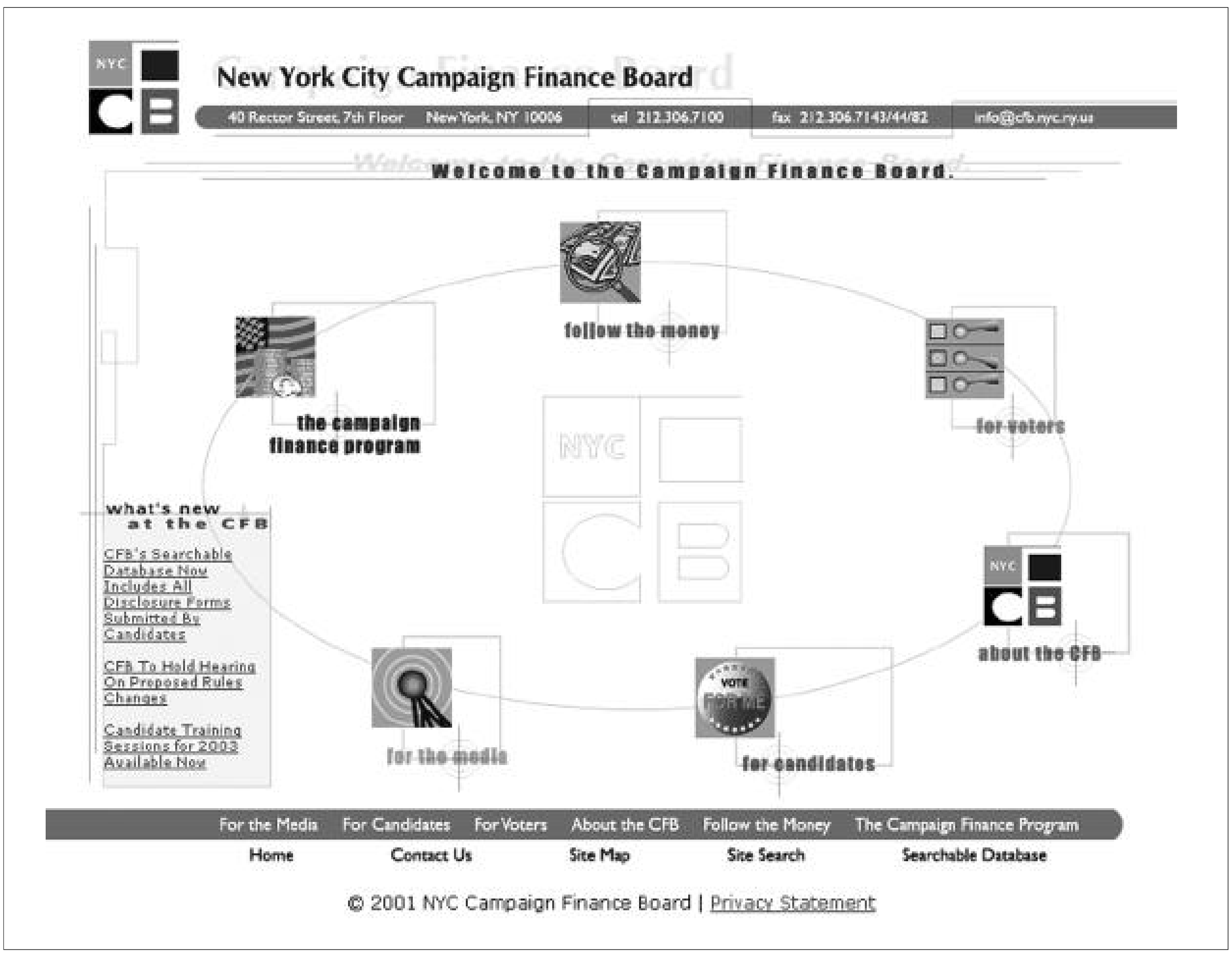
The CFB's ability to provide disclosure, even under extreme circumstances, was tested as a result of the events of September 11th. During a typical election season, the agency's offices are visited on a daily basis by journalists, candidates, and members of the public who want to study public disclosure reports, use the public terminal to search the CFB's database, or request copies of candidates' financial disclosure statements. But by far the most frequently used resource for CFB records is the Internet. With power out to much of lower Manhattan for several weeks after September 11th, the agency's Web site was down. Because it was unknown how long the Board's offices would be closed, getting the site back up online was a priority. Fordham University, which became the agency's temporary home, made its server available to the CFB and hosted the Board's site during the displacement, allowing for the continued disclosure of campaign finances during this extraordinary election season.

THE CFB WEB SITE

The Campaign Finance Board Web site, www.cfb.nyc.ny.us, has become one of the most important bookmarks for people interested in city politics, candidates running for office, and reporters who cover City Hall. (*See* Fig. 7.1.) The site, already a ground-breaker in computerized public disclosure, was redesigned for the 2001 elections to include new features, making it a veritable one-stop shop for information on political candidates in New York City, while continuing to enable visitors to the site to "follow the money" in many different ways. The centerpiece of the site, the searchable database for candidates and their contributions, was expanded to include expenditures, and, after the election was over, was further expanded to include intermediaries (or bundlers), public funds payments, monetary transfers, loans, liabilities, partners, subcontractors, and affiliated contributions. No other jurisdiction in the country provides this level of searchable computerized access to candidates' campaign finance information. Currently, data going back to the 1997 election are available in searchable format. At press time, CFB staff was nearing completion of a project intended to make all the Board's data going back to 1989 available on the Web site's searchable database. Users can also view summary reports of candidates' fund-raising, find out when the next Campaign Finance Board meeting will take place, download forms, consult the law governing the Campaign Finance Program, and learn the latest CFB news. After the election, candidates who established transition and inaugural committees were required (whether or not they participated in the Program) to file disclosure forms with the CFB. The data for these committees are available as a summary across candidates and in searchable format. At the Board's post-election hearings, Program participant and Public Advocate Betsy Gotbaum said, "the Board has been an innovator in the public disclosure of campaign finance information. The information on the Board's Web site is terrific."[1]

One of the most important additions to the site was the online version of the Voter Guide, which in its print form goes to every registered voter in New York City by mail. (For more information, *see* "The Voter Guide" in Chapter 8.) The online Voter Guide featured a find-your-district capability, allowing the user to get a personalized Voter Guide just by typing in a street address. In addition to the personalized Voter Guide, visitors to the site could also browse through the Guide by office, by clicking on borough maps, or alphabetically by candidate name.

Figure 7.1: The CFB Home Page



DISCLOSURE AND THE NEWS MEDIA

Real-time disclosure gives reporters and candidates the opportunity to look at the data and ask questions about perceived irregularities while the campaign is still underway. Stories reported by the news media about candidates' campaign finances can lead to further investigation by the Board and may result in penalties or the withholding of public funds from a candidate if there is reason to believe that the candidate has committed a violation of the Act or the rules. In April 2001, WNBC political correspondent Jay DeDapper reported how much mayoral candidate Alan Hevesi was spending on office space, political consulting, and fund-raising compared to his rivals for the Democratic nomination. DeDapper's report showed that Hevesi was spending far less on these expenses than the others, and since spending is strictly regulated under the Program's rules, Hevesi's competitors cried foul. DeDapper's report led to coverage of the issue by several more news organizations, including the *New York Times*, NY1 News, *Newsday*, the *New York Post*, the *Daily News*, and the *New York Observer*, and to perhaps the biggest story of the campaign prior to September 11th — the Board's decision to withhold more than $2.6 million in matching funds from the Hevesi campaign. (*See* "To Volunteer or Not to Volunteer: Hank Morris and the Hevesi Determination" in Chapter 9.)

Those who wished to perform searches other than those the Web site offered were able to purchase the Board's entire database on disk and perform their own analyses. *New York Times* reporter Eric Lipton analyzed the giving patterns of intermediaries, which were considered critical in this election because of the new ban on corporate contributions.[2] *Crain's New York Business* reporter Philip Lentz looked at individual contributors by industry, as well as intermediaries, to determine who might have influence over the candidates for mayor.[3] As the primary election approached and polls indicated that Bronx Borough President Fernando Ferrer would most likely make it into the anticipated run-off primary, Lipton, using the CFB's database, did a geographical analysis of Ferrer's campaign contributions to determine how he might raise additional funds to compete in the run-off election.[4]

CANDIDATES AND DISCLOSURE

The disclosure of campaign finance information is not just a benefit to the public. Candidates often cite their desire to be accountable to the public as a reason for joining the Program. At the Board's post-election hearings in December, 2001, Green's Campaign Chairman John Siegal, speaking of the disclosure requirements, said, "among other things, it employed on a full-time basis several journalists and a lot of researchers who spend a lot of time vetting contributions, and, in our case, returning contributions voluntarily, because the full disclosure required really allows you to determine who these people are and what their interests might be and where the appearance of impropriety or conflict of interest is such that the campaign doesn't want to accept the funds. That purpose was well served."[5]

DISCLOSURE "LOOPHOLE"?

To ensure public disclosure of those who might wield undue influence over a candidate, "intermediaries" who collect contributions from other sources and deliver them to a campaign must be disclosed by the campaign together with each individual contribution the intermediaries deliver. By contrast, fund-raising agents, as provided for by Board rules, are full-time campaign workers, professional fund-raisers, and fund-raisers who occupy a significant position within the campaign and whose disclosure is therefore believed to be burdensome to the campaign without yielding knowledge of substance for the general public. A fund-raising agent's name, unlike that of an intermediary, need not be disclosed with each individual contribution he or she delivers.[6] In March 2001, the *Daily News* reported that the brother of mayoral candidate Mark Green was raising large sums of money for the campaign but that his name was not being disclosed along with the contributions.[7] The candidate's brother, Stephen L. Green, is the chief executive of S.L. Green Realty Corporation, one of the city's largest commercial real estate companies, and he had correctly been disclosed to the CFB as a fund-raising agent. The campaign, therefore, was not required to list Stephen Green as an intermediary. Nonetheless, in response to criticism, the Green campaign voluntarily released the names of all contributors successfully solicited by Stephen Green, as well as the amounts contributed, which totaled more than $672,000.[8]

"The Board has been an innovator in the public disclosure of campaign finance information. The information on the Board's Web site is terrific."

— Public Advocate
Betsy Gotbaum

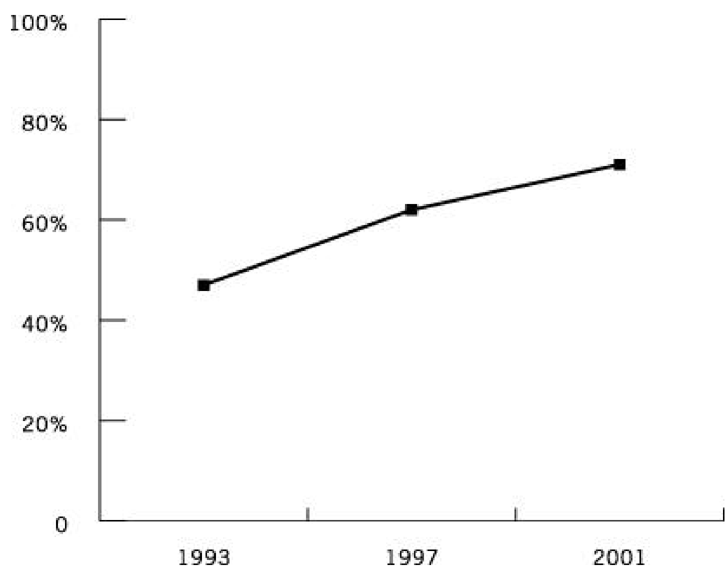
At the Board's post-election hearings, Gene Russianoff of the New York Public Interest Research Group (NYPIRG) urged the Board to tighten the exemptions on reporting contributions delivered by fund-raising agents. "The need for this change was shown when the Green campaign this year listed the candidate's brother as an agent, thus initially depriving the public of information on contributions he delivered," Russianoff said.[9]

The incident, despite the ultimate disclosure, exposed a weakness in the CFB's rule, which the Board is addressing in a post-election rulemaking.

REAL-TIME DISCLOSURE

The public disclosure information on the Board's Web site is drawn from the Board's internal database, the Campaign Finance Information System (CFIS). CFIS maintains candidates' financial information and allows the Board to run hundreds of reports for auditing, determining invalid matching claims, policy analysis, and public disclosure. Candidates' financial information comes to the Board primarily through filings made on Candidate Software for Managing and Reporting Transactions (C-SMART), the Board's Windows-based candidate software, distributed free to Program participants. C-SMART was first offered in 1993, and 47% of

Figure 7.2: Increase in the Use of C-SMART Over Time



candidates used it. In 1997, candidate use increased to 62% and went up again in 2001 to 71% of all participants. (*See* Fig. 7.2.) C-SMART allows candidates to enter financial information and to generate submission diskettes to file disclosure statements electronically. The Board uploads data from these diskettes directly into CFIS and then transfers the data onto the Board's Web site. Electronic filing allows the CFB Web site to be updated with new information on the day it is submitted.

A new, improved version of C-SMART, version 5.0, was released in June of 2000 for the 2001 elections. The software was changed from a DOS format to Windows, and several new campaign management features were added. A new version of C-SMART has been released for the next set of City Council elections in 2003. The Systems staff took into account many of the suggestions made by campaigns in the development of the new software. A new version will be prepared for the next citywide elections in 2005. Board staff are also investigating how candidates might submit information over the Internet or via e-mail to make the disclosure process even easier.

CONCLUSION

The Board's capacity to provide real-time disclosure continues to keep pace with technological advances. Candidates, journalists, and the public at large were able to get valuable information virtually instantaneously in the 2001 elections. The Board is improving its Web site and candidate software to make them even easier to use in future elections.

NOTES

1 *Campaign Finance Board 2001 Hearings*, vol. II, at 280 (testimony of Betsy Gotbaum).

2 Eric Lipton, “Hevesi and Vallone Collecting Big Sums from Intermediaries,” *New York Times*, June 21, 2001, B1.

3 Philip Lentz, “Politicians Soak NY,” *Crain’s New York Business*, March 12, 2001, 1.

4 Eric Lipton, “Ferrer Trails Fund-Raising in Manhattan,” *New York Times*, August 21, 2001, B1.

5 *Campaign Finance Board 2001 Hearings*, vol. II, at 138 (testimony of John Siegal).

6 Board Rule 3-03 (c)(7)(ii).

7 Mike Amon and Joe Calderone, “Loophole Aids Green,” *Daily News*, March 22, 2001, 17.

8 Joe Calderone, “Green Got 672G from Big Brother,” *Daily News*, August 18, 2001, 4.

9 *Campaign Finance Board 2001 Hearings*, vol. I, at 103 (testimony of Gene Russianoff).

Chapter 8

The Voter Guide and Debates: A Better-Informed Electorate

Candidates for elective office, particularly at the local level, often complain about scant media coverage of their campaigns. In turn, voters often complain that they do not know enough, or anything at all, about the candidates on the ballot. The Campaign Finance Board's voter education mandate, which includes distributing Voter Guides to all registered voters in New York City before each municipal election and administering a program of debates, assists candidates in communicating their messages to voters and assists voters in making more informed decisions on election day. The importance of this mandate was magnified, especially in the case of the Voter Guide, by the virtual news blackout on campaign coverage immediately following the September 11th terrorist attack.

THE VOTER GUIDE

The Voter Guide, the core of the CFB's voter education mandate, has been informing New York City voters since 1989. Available data show that voter guides are an efficient and low-cost mechanism that can dramatically increase the quantity and quality of voter participation.[1] All candidates for the Program's five covered offices, whether or not they participate in the Campaign Finance Program, may submit — at no cost — their biographical information, photograph, and a campaign statement for inclusion in the nonpartisan Guide. The CFB also publishes and distributes the Voter Guide when a ballot proposal or referendum is before city voters. The Voter Guide is published in English, Spanish, and for some districts, Chinese, and mailed to every household in the city having a registered voter. The Voter Guide serves both candidates and voters. Candidates use the Guide to get their message out to registered voters, a targeted audience, and voters use the Guide to make more informed decisions on election day.

Targeting Potential Candidates

The CFB's Publications Unit worked in conjunction with the Candidate Services and Press Units to reach the widest possible audience of potential candidates to be included in the Voter Guide. Nearly 1,400 Voter Guide submission kits and letters about the Voter Guide were sent to political party leaders, local political clubs, good government groups, and the nearly 600 potential candidates known to the CFB at the time of the mailing. The potential candidates also received follow-up phone calls. In addition, the Board of Elections distributed a CFB flyer urging candidates to submit Voter Guide statements, and for the first time, the Voter Guide submission kits were also made available on the CFB's Web site. These and other efforts, including press releases and outreach to community boards, succeeded in reaching nearly every candidate who appeared on the ballot in the primary or the general election. The CFB failed to reach a small number of candidates directly, and some who were reached declined to submit a statement. Candidates who did not submit statements were included in the Voter Guide section called "Candidates at a Glance", which gives voters a summary list of every candidate on the ballot.

Publication and Distribution

In 2001, the CFB produced 2.74 million primary Voter Guides and 6.41 million general election Guides, for a total of 9.15 million Guides, in 32 editions. In past citywide elections, the CFB produced five English/Spanish Guides editions per election — one covering each borough — plus one Chinese language edition. Because of the unprecedented number of candidates running for office in 2001, the more populous boroughs of Manhattan, Brooklyn, and Queens had to be further broken down by district. As many as four English/Spanish editions had to be produced for these boroughs for each election, as well as three separate Chinese language editions — 17 editions for the primary election alone. The difficulty of assembling, publishing, and distributing a Voter Guide of such magnitude and complexity for the general election was severely compounded after September 11th. The Publications Unit lost access to its computer records and had to work from the offices of the Guide's formatting and design vendor, D-Zine, Inc., to produce the general election Guide. The postponement of the primary election did not permit a postponement in preparing the general election Guide, which still had to arrive before election day on November 6th. Waiting for the primary election results was not an option. Voters would then receive the Guide well after the general election, rendering it both useless and wasteful. The only way to proceed was to include every primary election candidate in the general election Guide. The space needed for all these candidates also meant publishing a separate citywide

Excerpt from the 2001 General Election Voter Guide Welcome Letter

Due to the tragic events that took place on Sept. 11, 2001, the primary election was postponed until Sept. 25, 2001. To reach voters before the general election on Nov. 6, the 2001 General Election Voter Guide editions had to go to press prior to Sept. 25.

Since we did not know who would win the primary races, the Voter Guide includes all the candidates who appeared on the primary election ballot <u>in addition</u> to those anticipated to appear on the general election ballot. *Many of these candidates will therefore not appear on the final general election ballot, so please check the ballot carefully before you vote.*

Guide to cover Charter Revision and New York State ballot proposals. The inclusion of the primary candidates and the additional editions of the Guide were bound to cause some degree of confusion (notwithstanding the explanation provided to the voters in the Guide). But the alternative was no Guide at all. The decision to issue the Guide was met with some criticism. It nonetheless remains the Board's view that, especially in light of the lack of news coverage of candidates after September 11th, the voters and the candidates were well served by the publication of the Guide.

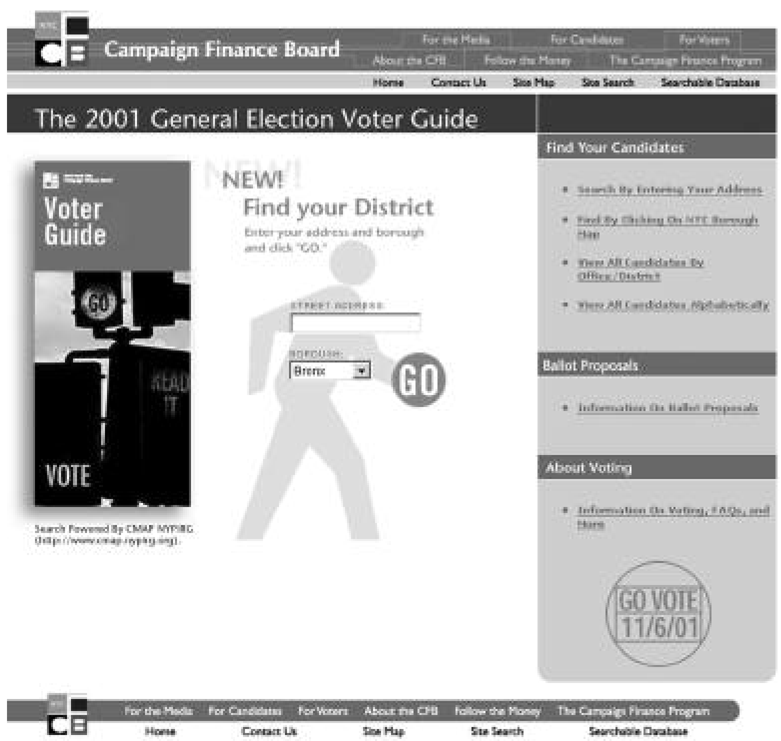
Online Voter Guide

In 1998, the CFB published a citywide Voter Guide covering local ballot proposals, and for the first time, made it available on the Board's Web site. In 2001, the CFB added an interactive feature to the online Guide: visitors to the CFB's Web site could type in their addresses, and a personalized Voter Guide would appear on the screen. The online Guide was simple and easy to use, and it provided citizens with a new resource for voting information. The CFB publicized both the print and Web Voter Guides through subway and bus advertisements and public service announcements.

Voter Guide Assistance

Numerous agencies and organizations provided assistance to the CFB's Voter Guide project. The City Board of Elections provided the CFB with specially prepared registered voter mailing tapes, and its staff helped verify dates, telephone numbers, and reviewed all the voting information included in every Voter Guide. The BOE's website, www.vote.nyc.ny.us, was also a valuable resource for this and other CFB projects. NYPIRG's CMAP Project provided borough maps for both the print and web Voter Guides and also provided the underlying technology for the find-your-district capability featured on the online Voter Guide. Finally, D-Zine, Inc. and Unimac Graphics/MacNaughton Lithograph provided technical resources, space in which publications staff could work after the attack of September 11th, and, along with the translation vendors, invaluable support, without which the general election Voter Guides could never have been produced and distributed in time to reach the voters.

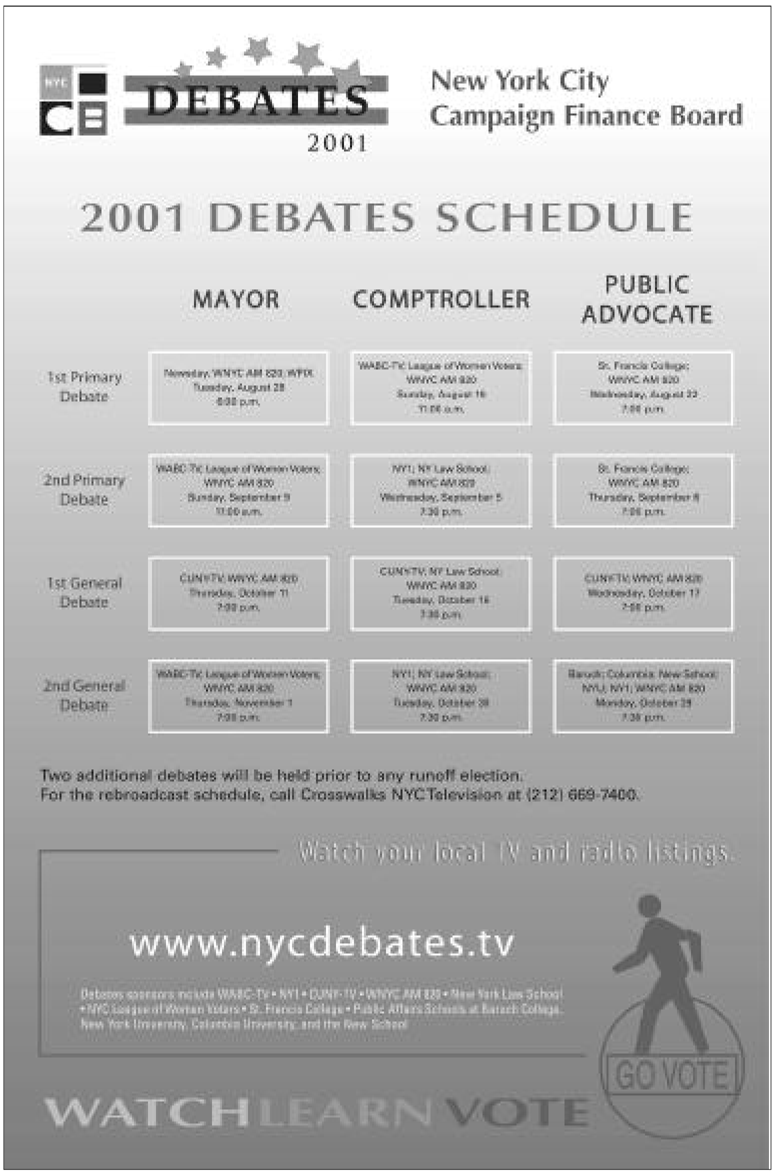
The 2001 Online Voter Guide



THE DEBATE PROGRAM

The Debate Program, first in effect for the 1997 elections, grew out of public frustration with the 1993 mayoral campaign, when Rudolph Giuliani and then-Mayor David Dinkins could not agree on the terms of a debate, and none was held. Editorial page sanction was strong, especially since the two candidates had received more than $3 million in public matching funds. A year later, there was much criticism when the gubernatorial candidates also failed to debate in the New York State governor's race. In 1996, Mayor Giuliani signed into law an amendment to the Campaign Finance Act establishing a program of mandatory debates for citywide candidates who join the Campaign Finance Program.[2]

Subway Poster Advertising the 2001 Debate Program



The Law

The Debate Program requires citywide candidates who join the Campaign Finance Program and who appear on the ballot to participate in two debates prior to any primary election or run-off primary election and in at least one debate prior to the general election. (If there is no contested primary for an office in a political party, then no debate for that party's nomination is held, and in the case of a primary debate, the debate is among Program participants seeking nomination of the same political party.) A second general election debate is required for Program participants who are determined to be "leading contenders." Candidates who do not join the Program but who qualify as leading contenders are invited, but not required, to participate in the second debate. Uniform and objective criteria for determining leading contenders are set in advance of the debates by the debate sponsors. The Debate Law requires sponsors to provide an alternative voter education forum to candidates who are not deemed leading contenders.

Debate Sponsors

The CFB solicits debate sponsor applications by writing to hundreds of academic, civic, community, and news organizations, as well as through a press release announcing the application guidelines. Debate sponsors may be any organizations not affiliated with a political party or candidate. In 2001, the CFB received nine applications from 14 different organizations, several of which submitted joint applications: *Newsday* and WPIX; WABC-TV and the League of Women Voters of the City of New York (LWV/NYC); and a consortium of public affairs schools (at Baruch College, Columbia University, the New School, and New York University). The individual sponsor applicants were CUNY-TV (a cable television station run by the City University of New York), NY1 News, New York Law School, the *New York Times*, St. Francis College, and WNYC radio. The number of applicants, particularly from nonprofit organizations, declined from 1997, when 21 organizations accounted for 15 individual or joint applications. Of the nine (joint and individual) applicants in 2001, eight were selected. (*See* "Indemnification" below) As in 1997, each sponsor of the 2001 Debate Program signed a Memorandum of Understanding (MOU) with the CFB, which constituted the formal sponsorship agreement. The MOU set forth in detail the terms and conditions agreed upon for the 2001 debates, including the criteria the sponsors would use for determining leading contenders. The MOU contained a provision calling on the sponsors and the CFB to engage in publicity efforts to promote the debates, and all the sponsors did so in good faith. The CFB's efforts included an aggressive outreach campaign that placed the schedule of debates in subway stations throughout the five boroughs and distributed public service announcements produced by Crosswalks-TV, the City of New York's cable channel group, that aired repeatedly on network and cable television stations.

THE DEBATES

Mayor

The first mayoral debate took place on Tuesday, August 28, 2001, two weeks prior to the scheduled primary election on September 11th. The debate was sponsored by *Newsday*, WPIX, and WNYC radio (WNYC was a sponsor of every debate) and featured the five Democratic candidates on the ballot and in the Program: Fernando Ferrer, Mark Green, Alan Hevesi, George Spitz, and Peter Vallone. The second debate, sponsored by WABC-TV, LWV/NYC, and WNYC, was held in WABC's Manhattan studios on Sunday, September 9th, two days before the original primary election day, and featured questions from reporters stationed in other boroughs. Both debates garnered significant media attention, including a *New York Times* front-page picture on September 10th of the five Democratic candidates in the WABC studio. Additional mayoral debates not administered under the Campaign Finance Program were held by other organizations. The *New York Times* and NY1 News sponsored a mayoral debate that included four of the five Democratic candidates participating in the Campaign Finance Program. The fifth, George Spitz, was not invited, nor was he invited to two debates sponsored by WNBC-TV.

No Democratic mayoral candidate received 40% of the vote in the primary election, and thus an October 11th run-off election was held between the top two finishers: Fernando Ferrer and Mark Green. The Debate Law requires participants to appear in two debates prior to a run-off election. The first was a 90-minute debate held on October 3rd, sponsored by the consortium of public affairs schools, NY1 News, and WNYC radio. It featured questions from a live audience of students. WABC-TV, LVW/NYC, and WNYC radio sponsored the second run-off debate, and like the second primary debate, it featured questions from reporters stationed in the outlying boroughs.

In the Republican primary election, no debates were held because only one participant, Herman Badillo, was on the ballot. The other candidate, Michael Bloomberg, did not participate in the Program and thus, by law, could not be invited to appear in a CFB sponsored primary election debate. Bloomberg and Badillo did, however, debate twice, albeit at off-peak hours.

The first mayoral general election debate, sponsored by CUNY-TV and WNYC radio, was held on Wednesday, October 17th. The participants were Kenneth Golding (American Dream), Mark Green (Democrat), Kenny Kramer (Libertarian), Thomas Leighton (Marijuana Reform), and Julia Willebrand (Green). The Republican nominee, Michael Bloomberg, was not a Program participant and thus, by law, could not appear in the debate.

Bloomberg met the leading contender criteria and accepted the invitation to appear, along with Mark Green, in the second CFB-administered general election debate, sponsored by WABC-TV, LWV/NYC, and WNYC radio and held at 7 p.m. on Thursday, November 1st. The debate drew a large television audience, finishing second in its time slot behind only *Seinfeld*, and was the only opportunity for most voters to see the two candidates in a face-to-face meeting. Bloomberg urged Green, as did a *New York Times* editorial,[3] to join him in additional debates, but the Green campaign agreed to only one other, broadcast in the late afternoon on a Spanish-language cable television station. The Program participants deemed not to be leading contenders participated in an alternative voter education forum, as provided for in the Debate Law, that was sponsored by WABC-TV, LWV/NYC, and WNYC Radio.

Public Advocate

A large field of candidates for the office of public advocate joined the Program, and all were Democrats: Willie Colon, Stephen DiBrienza, Sheila Flaxman, Kathryn Freed, Betsy Gotbaum, Norman Siegal, and Scott Stringer. St. Francis College and WNYC radio sponsored both primary election debates, held on Wednesday, August 22nd and Thursday, September 6th. Given the large number of candidates participating, the sponsors elected to run each debate for 90 minutes. All seven candidates participated in the first debate, but Willie Colon, a well-known musician, chose not to appear in the second debate. It was the first time in the Debate Program's short history that a candidate failed to appear in a required debate, which is a violation of the Act requiring forfeiture of all public funds to which the candidate might otherwise be entitled. The Colon campaign did not meet the qualifying threshold for public funds and thus had none to return, but was still subject to a monetary penalty. The Board assessed a penalty of $2,500.

The hotly contested primary campaign did not produce an outright winner. The two top finishers, Betsy Gotbaum and Norman Siegel, faced off in two debates prior to the October 11th run-off election, both sponsored by NY1 News and WNYC radio. Betsy Gotbaum won the Democratic nomination, but another Democrat, Scott Stringer, appeared on the Liberal Party's general election ballot line. Stringer qualified as a leading contender, and thus two debates were held, both sponsored by WNYC radio. Sheila Flaxman, who did not qualify as a leading contender, appeared on WNYC radio's "On the Line with Brian Lehrer," a morning news and talk program.

Comptroller

The only two candidates for the office of comptroller were Program participants. Both were Democrats: Herbert Berman and William Thompson. WABC-TV, LWV/NYC, and WNYC radio sponsored the first primary election debate, held on Sunday, August 19th. In the Debate Program's short history, this was the first non-mayoral debate broadcast citywide on a network station. WABC-TV's involvement in sponsoring the mayoral debates led to its sponsorship of the comptroller debate. On Wednesday, September 5th, NY1 News, New York Law School, and WNYC radio sponsored the second debate. Thompson won the Democratic primary, but Berman, like Stringer, remained on the ballot as the nominee of the Liberal Party. Berman also qualified as a leading contender and thus two general election debates were held, both sponsored by WNYC radio.

ISSUES TO BE ADDRESSED

Based on the lessons learned from the 1997 Debate Program, the CFB made recommendations for changes in the Debate Law that included: permitting debate sponsors to limit participants to those who meet a minimum threshold of public support; limiting the second primary debate to leading contenders; eliminating one of the two primary run-off debates; and removing the provision in the law requiring debate sponsors to indemnify the city.

Who Should Debate?

The *New York Times* asked to be removed from consideration after it became clear that the CFB's legislative proposals would not be considered by the City Council in time for the 2001 elections. The *Times* was unwilling to sponsor a debate that included every Program participant, instead of a debate limited to serious contenders as judged by journalistic standards. Other sponsor applicants shared the *Times*' concern. NY1 News chose not to sponsor either of the public advocate primary debates because it did not want to include all the candidates. It held its own debate with six of the seven candidates in the Program.[4]

Since the Debate Program's inception, the question who should participate has itself been the subject of debate. In 1997 and 2001, debates included candidates who reported receiving no contributions and no expenditures, as well as those who raised nominal amounts.[5] Eric Ruano-Melendez, for instance, a participant in two 1997 Democratic primary debates, raised $20. Newspaper columnists and debate sponsors have suggested that providing a platform to nominal candidates diminishes the public value of debates.[6] In addition, it has been the CFB's experience that organizations are less willing to sponsor debates with lesser-known candidates, and the press is less likely to cover them. Crosswalks-TV was the only television station willing to broadcast the two public advocate primary debates. In the general election, none of the daily newspapers covered the comptroller or public advocate debates broadcast by WNYC radio. What attention they did receive was related to the candidates' continued acceptance of public funds.

Not surprisingly, many candidates have joined the sponsors in objecting to the law as it is currently written. John Siegal, speaking on behalf of the Mark Green campaign at the CFB's post-election hearings, argued for an overhaul of the law:

> *"The Debate Program, in our view, did not work effectively this year, and it proved that the Board's past proposals for change were needed….The requirement of including all candidates in the primary debates and in the first general election debate caused major news organizations, including WNBC and the New York Times, to essentially refuse to participate in the Program….The first general election debate was not even carried on a major broadcast outlet. It required the Democratic nominee to debate only candidates of third-tier minor parties. It should have been an embarrassment to advocates of the debate law. It was in the midst of a general election campaign on an evening when there was an extraordinary amount going on. Nobody was going to see this debate. Nobody was interested in this debate…[and] many of the participants at the debate were really not prepared to engage in the level of debate that should exist for a campaign for mayor of the City of New York. This was the price for accepting $720,000 in matching funds, and you had to do it….In addition, higher thresholds should be imposed for minor candidate participation, possibly including financial and petition signature milestones that must be reached before minor party candidates participate in mandatory debates."*[7]

Others who testified at the CFB's post-election hearings also remarked on the efficacy of the Debate Program. Herbert Berman recommended limiting participation to those who receive public funds,[8] while others recommended increasing the number of debates. Charles Juntikka, a Manhattan attorney who leads the student-based organization Students 4 Reform, recommended holding at least four debates, with three limited to leading contenders.[9] Several speakers recommended expanding the Debate Program to include the offices of borough president and City Council member.[10] Aside from the administrative difficulties that such an expansion would entail, the relative lack of press coverage generated by the public advocate and comptroller debates suggests that low public demand for debates does not warrant an expansion of the Debate Program. In addition, community boards, local civic groups, and nonprofit organizations held numerous debates at the Council level throughout the city. Without any involvement from the CFB, NY1 held numerous debates for City Council candidates prior to the 2001 primary election. Unlike the case at the mayoral level, where the failure of candidates to appear in debates resulted in the Debate Program's creation, debates at the Council level are already prevalent.

Leading Contenders

In 1997, sponsors relied on polling data collected by two professional polling organizations to determine which candidates qualified as leading contenders. The two polling organizations agreed to rely on pre-determined technical standards set forth in the MOU between the CFB and sponsors. Candidates who reached a threshold level of support (15% +/- the margin of error) would be considered leading contenders, but if only one candidate in a given race met the criterion, no second debate would be held.

The CFB's experience with the use of polling in 1997 was "problematic."[11] A candidate in the public advocate general election (Jules Polonetsky) who raised and spent more than $500,000, qualified for public funds, and went on to receive 24% of the general election vote, did not meet the polling threshold. On the other hand, a candidate in the comptroller general election (Annemarie McAvoy), who spent $20,000 and received 20% of the vote, met the polling threshold by reaching 10% in a poll with a 5% margin of error. The inconsistency of these two results pointed to the limitations of polling in gauging candidates' public support.

In 2001, no professional polling organization was willing to conduct polls according to predetermined technical standards, as had been done in 1997. After the 1997 experience, polling organizations believed that acting in cooperation with sponsors and the CFB would increase their exposure to potential lawsuits. Furthermore, polling organizations chafed at the imposition of outside technical standards and the added costs that accompanied them. As a result, in 2001, the sponsors and the CFB removed themselves from

Democratic Candidates for Mayor Prepare for CFB Debate

This photo appeared on the front page of the *New York Times* on September 10, 2001
Photo courtesy of James Estrin/The New York Times

the polling process and agreed to examine polls conducted by three leading polling organizations: Blum and Weprin; Marist; and Quinnipiac. To qualify as a leading contender, candidates would need to poll 15% (within the margin of error) in two of the three polls; if only one or two polls were conducted, a candidate would need to meet the 15% threshold (within the margin of error) in at least one of them. If, however, no polls were conducted, candidates who met a contribution threshold ($500,000 for mayor; $250,000 for public advocate and comptroller) would be deemed leading contenders. The financial threshold proved to be a necessary addition when no polls were conducted during the public advocate and comptroller general election campaigns.

Major Party Candidates on Minor Party Lines

Candidates who appear on the ballot for the general election must appear in required debates unless they have, for all practical purposes, terminated their campaigns. In this case, candidates may petition the CFB to be excused from the debates, as happened in 1997 when Sal Albanese, who lost the Democratic mayoral primary election but appeared on the Independence Party's general election ballot, asked for and received a waiver from the requirement to debate.[12] In 2001, Stringer and Berman, who both lost Democratic primaries for public advocate and comptroller, respectively, but appeared on the Liberal Party's general election ballot, did not seek to be relieved of their obligation to debate. Both received public funds for the general election, met the financial threshold for determining leading contenders, and appeared in two general election debates with their Democratic opponents. In the debates, both Berman and Stringer faced repeated questions regarding whether they were remaining on the ballot only to qualify for public funds. Both argued that their campaigns for office were continuing, although neither candidate seemed to campaign actively or received more than 7% of the vote. Stringer, in fact, had endorsed the Democratic winner, Gotbaum, in the Democratic primary runoff, an unusual move for a candidate preparing for a general election battle. In an October 29, 2001 editorial, the *Daily News* called the situation "farcical," and chastised all four candidates (Gotbaum, Stringer, Berman, and Thompson) for accepting public funds for essentially uncontested elections.[13] (For further discussion of this issue, *see* "Issues of Concern" in Chapter 10.)

This scenario raises the question whether the receipt of public funds, regardless of polling results, should qualify candidates as leading contenders. It may be argued that no debate should exclude a candidate who is receiving public funds, nor should candidates receiving public funds be given a free pass from the obligation to appear before the public in debates — the core purpose of the law. It is worth noting that the acceptance of public funds by the four public advocate and comptroller candidates might have gone unnoticed by the press were it not for the required debates. Yet, the four debates were in fact almost completely ignored by the city's daily newspapers, even before September 11th, calling into question the purpose of debates that get little media coverage.

Indemnification

In both 1997 and 2001, sponsors objected to the Debate Law's requirement that they "indemnify" the city for any liability arising from "acts or omissions" of the sponsors.[14] Assuming this burden exposes sponsors to monetary costs that, although largely limited to defending frivolous lawsuits brought by disgruntled candidates, can be too much for some organizations to risk. In 2001, unlike 1997, no lawsuits were brought against the CFB or the debate sponsors in connection with any debate. Nevertheless, 2001 saw a decline in the number of debate sponsor applicants, particularly smaller civic and minority-based organizations, a fact that may be largely attributable to the indemnification requirement.

Run-off Debates

The difficulties inherent in scheduling two debates prior to a run-off election were first apparent in 1997, when initial results in the mayoral primary election indicated that no Democratic candidate received 40% of the vote. When the Board of Elections eventually certified the results a few days before the run-off election, the debate sponsors had already held the first run-off debate. The only problem was that there was no run-off election. Absentee ballots had put Ruth Messinger over the 40% threshold.

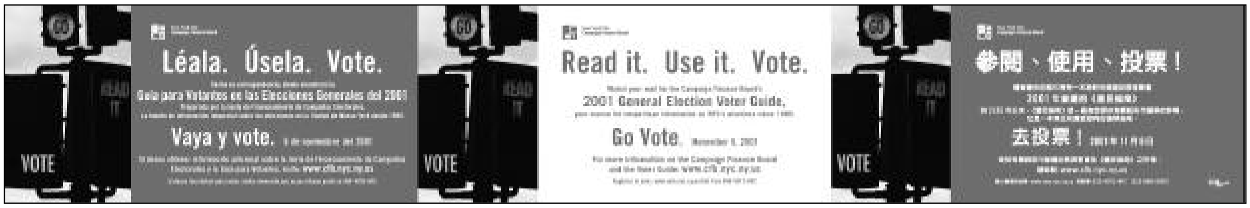
In 2001, in scheduling and then rescheduling the run-off debates after September 11th, the Board and sponsors chose dates as close to the run-off election as possible, in the hope that the Board of Elections would certify the primary election results before the first debate. The BOE, however, certified the results on October 5th, two days after the first mayoral run-off debate and one day after the first public advocate run-off debate.

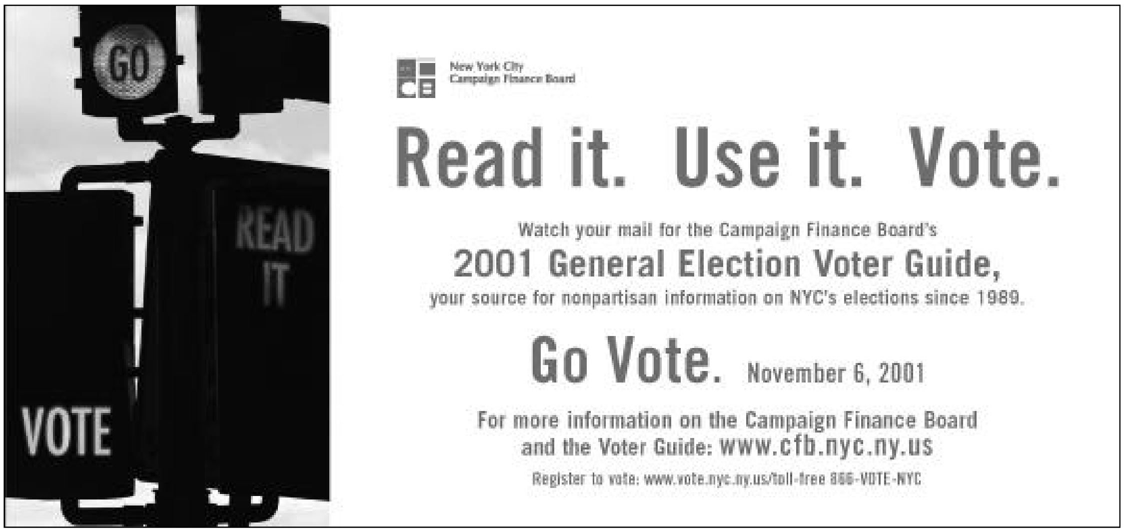
The CFB and the debate sponsors faced a difficult situation in the public advocate primary election, which was so close that the Board made public funds payments to four candidates who had legitimate chances of ending up in the run-off election. The BOE did not certify the results (Betsy Gotbaum and Norman Siegel were the two top finishers) until 11 days after the primary, by which time sponsors and the CFB had already conducted the first public advocate run-off debate, held on October 4th. Based on the latest BOE reports, the CFB and sponsors had invited Gotbaum and Siegel to the debate. In this case, the other candidates did not ask to be included, having also concluded from preliminary BOE reports that they were not in the running. But had the BOE results been in question, the CFB and debate sponsors would have been in an even more difficult position. The experience of 2001 seemed to confirm the wisdom of the Board's recommendation that only one run-off debate be required.

CONCLUSION

The Voter Guide and the Debate Program, promoted by the CFB through a highly visible public relations campaign, provided voters in the 2001 elections with opportunities to learn more about the choices before them on election day. The 2001 Voter Guide, bigger than any before it and published under extraordinary conditions, continued to serve voters and candidates successfully at minimal cost to the taxpayer — about 50 cents per copy for production and mailing. In light of the lack of news coverage of candidates after September 11th, this year's general election Voter Guide may have been many voters' most visible reminder that there would be an election and what day that election was taking place. For many, the Voter Guide was probably their primary, if not only, source of information about candidates running. The Debate Program, while extremely worthwhile in having provided voters with significant debates at several levels, including a debate broadcast citywide between the two leading mayoral

Subway Poster Advertising the 2001 Voter Guides





candidates that might not have occurred but for the Debate Program, is nonetheless in need of legislative improvement. After administering the Debate Program in two citywide elections and studying its performance in each, the Board is concerned that, should changes be delayed again, the defects in the law will make its administration both untenable and unpopular. In the meantime, the Debate Program did offer voters the opportunity to see and hear many candidates who would otherwise have had no comparable way to reach the voters.

NOTES

1 Peter Brien,"Voter Pamphlets: The Next Best Step in Election Reform," *Journal of Legislation*, 1.

2 Local Law No. 90 of 1996.

3 Editorial, "Mark Green Ducks Debates," *New York Times*, October 23, 2001, A22.

4 Sheila Flaxman was excluded by NY1 News.

5 These have included Olga Rodriguez, a 1997 mayoral candidate; Shogi Fret, a 1997 public advocate candidate; Wendy Lyons and Genevieve Torres, 1997 comptroller candidates; and Kenneth Golding, a 2001 mayoral candidate.

6 *A Decade of Reform*, 92. *See also* Elizabeth Kolbert, "At Race's End, Folly at Forum is a Metaphor," *New York Times*, September 8, 1997, B1.

7 *Campaign Finance Board 2001 Hearings*, vol. I, at 147 (testimony of John Siegal).

8 *Campaign Finance Board 2001 Hearings*, vol. I, at 75 (testimony of Herbert Berman).

9 *Campaign Finance Board 2001 Hearings*, vol. I, at 64 (testimony of Charles Juntikka).

10 *Campaign Finance Board 2001 Hearings*, vol. I, at 88 (testimony of John Walker); at 192 (testimony of Rocky Chin); at 197 (testimony of Rudy Greco); vol. II, at 209 (testimony of G. Oliver Koppell); at 236 (testimony of David Yassky); at 329 (testimony of C. Virginia Fields); at 338 (testimony of Sandra Vassos); at 381 (testimony of Danniel Maio).

11 *A Decade of Reform*, 94-95.

12 Advisory Opinion No. 1997-13. (November 25, 1997.)

13 Editorial, "Campaign Fund Sham," *Daily News*, October 29, 2001, 40.

14 Administrative Code §3-709.5(5)(a)(vi).

Chapter 9

Compliance and Enforcement: Protecting the Public Trust

I hope people, as they look at what you are doing here, understand that the key to this is not only the allocation of the money, not only what the law says, but how it is enforced. I think this Board has a record that really is, if not unique, certainly one that is recognized nationally as a Board that does attempt in very tough circumstances and often in unpopular circumstances to enforce the law. That gives it teeth. That means the players understand there is a level playing field and that, at the end, is what this is about.

— Common Cause President Scott Harshbarger[1]

The Campaign Finance Board's primary enforcement and compliance objectives are to uphold the contribution and spending limits and prohibitions, ensure timely disclosure of campaign finance activity, and ensure that the distribution of public funds is made only to those candidates who qualify for them on the basis of legitimate contributions. This both protects the taxpayers against misuse of public funds and prevents candidates from gaining advantage over their opponents by evading the Program's requirements. The enhanced $4-to-$1 matching rate for the 2001 elections and the high number of candidates magnified both the need to educate candidates and the need to subject the campaigns' finances to meaningful scrutiny. The Board's Candidate Services Unit (CSU) was in regular contact with the campaigns throughout the election cycle to ensure that they filed disclosure statements correctly and on time and to respond to candidates' questions about the Program's rules. The CFB's Auditing and Accounting Unit began preparations well in advance of the campaign season to examine the campaigns' documentation fully.

The CFB becomes aware of violations of the Act in several ways, including by reviewing information submitted by campaigns in filings, auditing campaign records both during and after the election, investigating complaints brought by opposing campaigns, reviewing reports in the press, or through information otherwise brought to the Board's attention. In 2001, before recommending payment of public funds, the Audit Unit reviewed each disclosure statement for potential violations of Program requirements and visited each campaign's headquarters. After the CFB was displaced from its offices on September 11th, the Audit Unit continued to perform the same reviews, notwithstanding the inaccessibility of candidates' prior records. While the CFB was out of its offices, members of the staff returned to 40 Rector Street, within the "frozen" zone, when permitted, to retrieve some of the key candidate files needed to perform its reviews.

The Board's enforcement powers include the authority to: investigate complaints; assess penalties and withhold public funds; subpoena documents, records, and testimony; and institute civil lawsuits against candidates and campaigns. Criminal charges may be brought by prosecutorial offices against individuals who knowingly violate the Act or the Penal Law. Finally, the CFB is authorized to publicize violations of the Act. A number of the Board's actions described in this chapter received significant press and editorial attention.[2]

2001 ENFORCEMENT SUMMARY

In 2001, CFB reviews found all manner of deficiency, ranging from innocent error to outright fraud, that would not have been caught without the vigilant review that is given to every campaign. Without that careful oversight, millions of public dollars would have been distributed to unqualified candidates with little likelihood of ever recovering these taxpayers' funds. The 2001 election cycle saw a number of changes in the CFB's enforcement methods. The Board had full-time staff to review contribution records before public funds payments were made and even before candidates opted into the Program. This strengthened the CFB's ability to assure that payments were made only for valid matchable contributions. Also notable in 2001 was the decrease in the number of formal complaints and the substantial increase in the number of lawsuits (described later in this chapter) filed against the Board by candidates. Further, the 2001 election cycle was the first citywide election in which the newly enacted ban on corporate contributions and the ban on contributions from unregistered political committees were in place. In 2000, the CFB also added to its Web site a list of candidates who, after repeated notices, had failed to pay either assessed penalties or public funds owed. This public list proved to be extraordinarily effective and resulted in the prompt payment of some $116,859 (including penalties assessed for the 2001 elections) in penalties and repayments of public funds.

Since the summer of 2000, the CFB has focused attention on collecting penalties and repayments of public funds owed from previous elections. In addition to the Web site list, the Board instituted seven lawsuits to recover monies owed from the 1997 and 1999 elections.[3] These efforts resulted in the return of $145,187 in penalties and repayments of public funds and the provision of satisfactory documentation to account for an additional $193,935 in public funds payments.

As of April 30, 2002, the Board had assessed civil penalties against 119 campaigns for late or missing filings, for accepting over-the-limit contributions, for accepting prohibited contributions, for failing to participate in a CFB-sponsored debate, for failing to report financial transactions, and for failing to respond to requests for audit documentation. A total of $86,503 in penalties was assessed, of which $41,681 was paid by campaigns. An additional $14,199 was withheld from public funds payments to satisfy penalty assessments. Approximately $31,504 was still owed to the Board, and 22 candidates had been listed on the CFB's Web site. (These figures are separate from the $4.86 million returned to the CFB by candidates after the election from leftover campaign funds.) (*See* Chapter 6.) Additional penalties may be assessed, pending the completion of the Board's post-election audits.

The Board has also been working with law enforcement authorities on criminal matters. As in previous elections, described in Board reports, criminal prosecutions may ensue from probable instances of fraud. Where apparent fraud cannot be pursued criminally, the Board may proceed with civil actions.

Corporate Contributions

The most common violation in the 2001 elections was the acceptance of corporate contributions. In all previous citywide elections, the failure to file or the late filing of disclosure statements were the most common violations. The 2001 election was the first citywide election in which the ban on corporate contributions was in effect. The Board's audit staff, prior to payment of public funds, notified candidates when it detected that they had accepted corporate contributions. While most campaigns quickly rectified any error by refunding the contributions, some candidates' public funds payments were suspended because they had not returned corporate contributions. Some campaigns inadvertently violated the corporate ban by accepting contributions from professional corporations (designated by the notation P.C.). The Board, after hearing responses from several candidates that they were unaware that P.C. indicated a corporation, determined not to assess penalties for the acceptance of contributions from individuals practicing as professional corporations. By April 30, 2002, the CFB had assessed $21,350 in penalties against 51 campaigns for accepting 120 corporate contributions.

Late or Missing Disclosure Statements

The CFB emphasizes timely filings because late disclosure statements impede the public's and opposing candidates' ability to study the disclosure information that the Charter mandates be made available. In addition, lateness compromises the Board's ability to monitor a campaign's compliance with other Program requirements. In 2001, the CFB instituted a policy rejecting filings that were severely deficient. These deficiencies included filings missing diskettes or with unreadable diskettes, electronic filings not accompanied by signed paper printouts, and unsigned disclosure statements. Candidate Services Unit staff reviewed disclosure statements as they were submitted and were often able to notify campaigns of deficiencies immediately. By April 30, 2002, the Board had assessed $27,263 in penalties against 49 campaigns for late or missing disclosure statements.

Unregistered Political Committee Contributions

The ban on accepting contributions from political committees that were not registered with the CFB was also first in effect citywide in 2001. This requirement proved to be a difficult one for campaigns, and in certain instances for the Board, to monitor. Although the CFB published a regularly updated list of all registered political committees on its Web site, many candidates relied on the committees' assertions that they were registered. Because political committees are required to register with a number of agencies, the information that the committees gave to candidates about registration with the Board was not always accurate. In addition, differences in the reporting of political committee names and the misreporting of union contributions as political committee contributions sometimes caused citations for unregistered political committee contributions when in fact the contributor was registered under a name or acronym different from the name reported by the candidate or was not required to be registered. The CFB is creating a database for cross-listing political committee names to minimize such problems in the future. By April 30, 2002, the Board had assessed $17,775 in penalties against 40 committees for accepting 99 contributions from unregistered political committees.

TO VOLUNTEER OR NOT TO VOLUNTEER: HANK MORRIS AND THE HEVESI DETERMINATION

In the spring of 2001, news reports and other mayoral candidates noted that Democratic candidate Alan Hevesi's spending for certain routine expenses appeared to be unusually low, when compared with the spending of the other mayoral candidates.[4] For example, the Hevesi campaign had reported no expenditures for rent. Questions were raised about the fee arrangement between the Hevesi campaign and its principal campaign consultants, Morris, Carrick & Guma. The services Morris, Carrick & Guma provided Hevesi were more comprehensive than those of other campaign consultants, yet the cost was far less. The Hevesi campaign maintained no formal campaign office, instead opting to work out of Morris, Carrick & Guma's headquarters. Of greater significance, it came to light that Hank Morris, the owner of Morris, Carrick & Guma, was volunteering his own services as a consultant while charging the Hevesi campaign for other work done by his firm.

Campaigns are allowed to use (and in fact could not operate without) the assistance of volunteer workers.[5] The Campaign Finance Act, however, recognizes limits on what can be considered volunteer services. The Act defines a contribution to include "any payment by a person other than a candidate or a political committee authorized by the candidate…including but not limited to compensation for the personal services of any individual which are rendered in connection with a candidate's election or nomination without charge."[6] In Advisory Opinion No. 1989-8, the Board discussed whether certain services provided without compensation by law firm partners and associates, without charge, are contributions.[7] The Board concluded that volunteered services by a law firm partner would not be a contribution. If paid for by the law firm, however, the services of lawyers, secretaries, paralegals, and others assisting the partner in providing legal services to the candidate would be considered a contribution by the law firm. The services provided by an associate attorney would be considered a contribution unless the associate volunteered his or her own time to the candidate over and above the time normally devoted to the work of the law firm, including on *pro bono* matters. Further, goods or services that are provided at below fair market value are considered in-kind contributions.[8] In the spring of 2001, Hank Morris informally raised the question whether, hypothetically, he could provide his services to the Hevesi campaign on a volunteer basis without consequence to the campaign. He was encouraged to request an advisory opinion from the Board. The Hevesi campaign never submitted a request for an advisory opinion on this issue.[9]

On August 6, 2001, Morris and the Hevesi campaign's legal counsel appeared before the Board. They argued that Morris was constitutionally entitled to volunteer his personal services to the Hevesi campaign. They also argued that the contract between Morris, Carrick & Guma (calling for payment of approximately $400,000) was commercially reasonable whether or not Morris was paid for his services. While recognizing the right of a candidate to run his or her campaign in a very different and frugal way, the Board determined that Morris could not be considered a volunteer under the Campaign Finance Act. Morris had never operated as a political consultant separately from his firm. The Board reasoned that as long as the firm he owned was receiving payment for its services to the Hevesi campaign, Morris could not volunteer his time, which instead was in effect a contribution by the firm to the campaign. This would constitute a violation of the corporate contribution ban and a violation of the contribution limit. The Board suspended payment of more than $2.5 million in public funds until the Hevesi campaign could establish that it had a commercially reasonable arrangement with Morris, Carrick & Guma[10] that included the value of Morris' services. The *New York Times*, in reporting one of the most memorable exchanges of the campaign, wrote that Morris said the campaign was going to sue the Board. Asked about Morris' remark, Board Chairman Joseph A. O'Hare, S.J., replied "[s]o sue me – go ahead."[11]

Ten days later, after the Hevesi campaign had provided additional information regarding the amounts charged by Morris, Carrick & Guma to other political campaigns, the Hevesi campaign agreed to modify its contract with the firm by paying Morris, Carrick & Guma an additional $250,000 to account for Morris' services. On August 16, 2001, the Board released approximately $2.6 million in public matching funds (reflecting new matching claims in an intervening disclosure statement) to the campaign.

LAWSUITS AND MORE LAWSUITS

While the Hevesi campaign did not pursue a lawsuit, many other campaigns did. In the past, lawsuits against the Board were filed by candidates who missed the deadline for joining the Program, but nonetheless sought public funds or participation in the Debate Program. In 2001, most of the lawsuits concerned the failure of the Program participant to receive public matching funds. None of the lawsuits filed against the Board, however, resulted in additional funds being paid to any candidate or in funds going to a candidate any faster than through the Board's routine processes. Below is a description of some of the cases.

Herman Badillo

Republican mayoral candidate Herman Badillo filed the disclosure statement due on July 17, 2000 (Statement #5) without backup documentation required for contributions claimed to be eligible for matching funds, despite several notices from Board staff that backup documentation was required. Backup documentation consists of copies of all checks, money orders, and contribution cards for cash, money order, and credit card contributions. Badillo submitted his backup documentation several days later after another reminder from Board staff. On September 15, 2000, the Board determined that by failing to submit backup documentation on a timely basis, Badillo had forfeited his right to matching funds for claims made in Statement #5. Although he threatened to file an Article 78 proceeding, Badillo did not challenge the Board's determination at that time, but in August 2001, Badillo appeared before the Board to request that the claims be counted, not for the purpose of paying public matching funds on these claims, but for the purpose of meeting the threshold for qualifying to receive public matching funds. The Board determined that although it understood the challenge Badillo faced (he was running for the Republican nomination against Michael Bloomberg, who was financing his own campaign), there was no basis in the Act to make this distinction between matching claims for payment and matching claims for threshold purposes. On August 27, 2001, Badillo brought an emergency petition before Justice Nicholas Figueroa in New York County Supreme Court. Three days later, Justice Figueroa decided that the Board should count the otherwise valid claims in Statement #5 towards the $250,000 threshold requirement.[12] Upon review, Board staff determined that Badillo had not met the threshold even when the valid claims from Statement #5 were included. The Board would have appealed Justice Figueroa's decision, which it believed was incorrectly decided. Corporation Counsel Michael Hess, however, forbade the Board to file an appeal. This was the first time in the Board's history that the Corporation Counsel prevented the Board from exercising independent authority in litigation.[13]

On the last payment date before the primary election (September 7, 2001), the Badillo campaign attempted to demonstrate that it had met the threshold by asking the Board to review contributions that were to be reported on its next disclosure statement, not due until September 21st.[14] The Board determined that it could not consider contributions which were not reported in a regularly scheduled disclosure statement in determining whether a campaign had met the threshold.[15] That afternoon, the Badillo campaign again filed an emergency petition before Justice Figueroa who upheld the Board's determination.[16]

When the September 11th primary was rescheduled for September 25, 2001, the State Legislature determined that the rescheduling of the primary would not create any additional disclosure obligations for candidates.[17] This effectively resulted in the postponement of the filing deadline for the ten-day post-primary disclosure statement from September 21st to October 5th. The Badillo campaign nonetheless attempted to file this postponed disclosure statement before the rescheduled primary election on September 25th to claim that it had now met the threshold. The Board determined again that it could not consider claims that were not reported in a regularly scheduled disclosure statement. Badillo again brought an emergency petition. Justice Figueroa confirmed the Board's decision.[18]

On April 11, 2002, Badillo received a post-election payment of $356,723.

Elizabeth Crowley

Elizabeth Crowley was a candidate for the Democratic nomination in Council District 30 (Queens - Middle Village.) With its July 16, 2001 disclosure statement, the Crowley campaign submitted claims for matching funds for a series of nine money order contributions. Each contribution was accompanied by a contributor card which purported to be signed by the contributor but appeared to be forged. The Board invalidated the matching fund claims for these contributions. In an attempt to validate these contributions, the Crowley campaign submitted affidavits from some of the nine contributors. The CFB's Audit Unit noted that the signatures on the original contribution cards, the money orders, and the new affidavits did not appear to match, and the campaign was questioned about the discrepancy. On August 23, 2001, a consultant for the Crowley campaign appeared before the Board with an individual who admitted to having forged the signatures on the original contribution cards. On August 30th, the Board delayed payment of public matching funds for the Crowley campaign so that the Board could assess the degree of the campaign's involvement in the fraudulent activity and give the CFB staff an opportunity to review and, if necessary, pose questions about the campaign's next disclosure statement, due the next day.

The campaign was notified that it could be paid as early as the following Tuesday, September 4th, if the new disclosure statement was in order. The Crowley campaign nonetheless filed suit in Queens County Supreme Court on August 31, 2001. On September 4th, after the CFB staff had reviewed Crowley's disclosure statement and received adequate responses to its inquiries, the Board made a public funds payment of approximately $75,000 to the campaign. The case was discontinued without decision.

Pedro Espada, Jr.

On July 16, 2001, Pedro Espada, Jr., a candidate for the Democratic nomination for Bronx borough president, filed his first disclosure statement for the 2001 elections without claiming any public matching funds. On July 31st, the Espada campaign filed an amendment to its disclosure statement to claim funds. The amendment, however, was submitted too late for the Board's staff to review the information in time to recommend payment on August 6th, the first scheduled payment date. After the Board's staff reviewed Espada's disclosure statements and conducted a routine compliance visit, the staff recommended that the Board not pay the campaign because the campaign was not in compliance with the Program's requirements.

On August 16, 2001, the Board's staff sent the campaign a request for information regarding questionable campaign activity, including a high percentage of contributions from employees of the Soundview Health Center, of which Espada is the president, the unreported use of a campaign van, the publication of a newsletter called the *Bronx-New York Tribune*, which appeared to be unreported campaign material funded through corporations under Espada's control, and joint campaign activities between Espada and his son, Pedro G. Espada (an incumbent candidate in Council District 17 - Bronx - Hunt's Point). On August 20, Espada filed suit in New York County Supreme Court to compel the Board to pay his campaign. On September 7th, Justice Martin Schoenfeld found that the City Council had granted the Board the power "to make crucial determinations during a short time frame that may have significant, irreversible consequences for the body politic" and that the Board had not "wielded that power in an arbitrary, capricious, or irrational fashion."[19] Espada never adequately addressed the issues raised by the Board prior to the primary election and, therefore, did not receive public funds prior to the election.

USE OF GOVERNMENT RESOURCES

After the 1997 elections, then-Speaker Peter Vallone and then-Council Member Sal Albanese proposed legislation, adopted by the Council in 1998, that makes it illegal for an employee of the city who is a candidate for elective city office: to appear in a government-funded television, radio, print, or Internet advertisement during the election year; to send government-funded mass mailings less than 30 days prior to the election; or to use government funds for a communication supporting or opposing a candidate, a political party, or a referendum question.[20] The new section, however, contains substantial exceptions. For example, the new section does not cover "ordinary" communications between elected officials and their constituents. In September 2000, the Board issued an advisory opinion concerning the application of this provision to participants in the Program.[21] Following earlier advisory opinions, the CFB concluded that the expenditure limitations of the Act were not intended to restrict the valid use of government funds for expenditures by a person holding public office and that these expenditures were

Excerpt from Espada 2001 v. NYCCFB, New York Supreme Court, September 7, 2001

What [petitioner] is attacking, in a broad sense, is 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. This Court has some concern in that regard. Voters, not agencies or courts, should determine elections.

However, the legislature has granted that power to respondent. Indeed, given the abstruse nature of campaign finance law, and the need for quick decisions, it is hard to see how it could have done otherwise. In this case, respondent has not wielded that power in an arbitrary, capricious, or irrational fashion. To take what this Court sees as petitioner's most egregious impropriety, only in an Alice in Wonderland, a-thing-is-what-I-say-it is, sense, could the [Bronx-New York] Tribune be considered a "newspaper." Thus respondent could legitimately have found that petitioner had violated the New York City Campaign Finance Act and Rules.

The deeper question here is whether respondent may impose the drastic sanction of completely denying funds because of one or a few limited improprieties that the applicant is offering to correct. Respondent claims not to have the resources to monitor all campaign financial transactions, and that it must rely on the prophylactic effect of denying funds in some cases so that in others there will be greater self-policing….If enforced correction were the only penalty, there would be no incentive to comply in the first instance, which would tend to rot the whole system.

therefore outside the jurisdiction of the Board. The new law merely defined some of the instances in which the use of government resources would be inappropriate. The CFB found that it would have jurisdiction if the appropriate regulatory agency found that government resources had been used for campaign purposes.

During the 2001 elections, the use of government resources by elected officials during the election year continued to be an issue, notwithstanding the enactment of Charter Section 1136.1.[22] Rival candidates and the press reported that Peter Vallone, running for the Democratic mayoral nomination, had spent almost $200,000 of city funds on give-away tote bags and flags in the previous year.[23] The tote bags were imprinted with the words "Compliments of New York City Council, Peter F. Vallone, Speaker." The flags, which celebrated several nationalities and gay rights, had "Compliments of NYC Council, Peter F. Vallone, Speaker" imprinted on them.[24] Gene Russianoff of the New York Public Interest Research Group said, "[i]t's an abuse of government resources. The speaker knows better, he sponsored the law that prohibits city officials or candidates putting their name on TV, radio, or print ads during an election year."[25] Mr. Vallone defended the purchases as important for government purposes, *i.e.*, promoting conservation by using canvas bags rather than paper or plastic at the grocery store and promoting ethnic pride. As there was no finding by an enforcement agency that an improper use of government resources had occurred, the matter never came before the CFB. The Board, however, did investigate reimbursements by four of the Democratic mayoral candidates to their city offices for resources used during the campaign.

Fernando Ferrer, Mark Green, and Alan Hevesi documented that they were fully reimbursing the city for the use of government resources. Peter Vallone made an additional payment to the city for the use of his city car for campaign purposes.

The Board sees another misuse by some elected officials of government resources for campaign purposes: the use of city resources to communicate with the CFB and to perform certain tasks related to the Program. When telephone calls or faxes are made from city offices, or city staff are in communication with the Board, it is the Board's policy not to respond and to require the campaign to use its campaign resources to perform these functions.

In light of the Board's experiences in the 2001 elections, it recommends that Section 1136.1 be strengthened to ban altogether the use of government resources for distributing gifts to promote an officeholder's candidacy and to extend the current prohibition on mass mailings by candidates who are city employees from 30 to 90 days prior to the election. The CFB further recommends that the Conflicts of Interest Board be granted explicit authority to investigate and determine whether violations of this section have occurred, and, if a violation has been detected by the Conflicts of Interest Board, that the Campaign Finance Board be given the authority to investigate and determine whether a prohibited use of government resources also violates the Campaign Finance Act.

SUMMARY OF ADVISORY OPINIONS

The Board has the authority to issue advisory opinions regarding questions arising under the Act or the Board's Rules.[26] As the Program has become more established and candidates have become more familiar with the Act and the Rules, the number of advisory opinions issued during an election cycle has generally decreased. For the 1989 election cycle, the Board issued 63 advisory opinions; for the 1993 election cycle, it issued 29; and for the 1997, election cycle, 21. During the 2001 election cycle (January 12, 1998 to January 11, 2002), the Board issued 31 advisory opinions on a variety of subjects, including contributions,[27] expenditures,[28] public funds,[29] coordination of 2001 campaign activities with other elections,[30] and run-off elections.[31] In 2000, the Board began posting its advisory opinions (as well as the Act and the Rules) on its Web site.

Several advisory opinions had far-reaching consequences. In October 1998, the Board discussed the effect that a proposed Charter amendment banning corporate contributions would have on previously enacted legislation increasing the matching formula to $4-to-$1 for candidates who chose not to accept corporate contributions. The Board determined that, if passed, the Charter amendment would create a $4-to-$1 match for all Program participants.[32] A dispute over this issue was finally resolved legislatively in 2001. (*See* "Setting the Stage for the 2001 Elections" in Chapter 1.) From 1999 to 2001, the Board issued a series of advisory opinions concerning when the activities of leadership political committees would be subject to the Program's regulations.[33]

CONCLUSION

Comprehensive training led to fewer significant compliance problems in 2001, but thorough audits, investigations, and prompt action during the election season have nonetheless been central to the integrity of the CFB's enforcement efforts. The knowledge alone that the CFB regularly audits every campaign undoubtedly deters many violations of the Act. The assessment of penalties and criminal prosecutions, when called for, are also crucial deterrents. Looking to the future, the Board is investigating reworking the ways it determines violations and assesses penalties to increase clarity and predictability for candidates. To that end, the Board recently published a schedule of staff penalty guidelines for certain common violations.

Similarly, the payment process, which calls for campaigns to be in unambiguous compliance with the Act in order to benefit from the expeditious four-day turnaround for public funds payments,[34] has proven to be a rigorous but effective process that limits encroachments on taxpayer funds and has been supported by the courts.

Although the Board's compliance and enforcement efforts understandably seem tedious for many candidates, those efforts are essential to safeguard the millions of public dollars entrusted to the Board's care and to ensure that some candidates do not obtain unfair advantage by failing to adhere to the Program's stringent standards. At the CFB's post-election hearings, candidates provided useful feedback, both positive and negative. John Walker, a candidate for Staten Island borough president who is a certified public accountant, testified: "[t]he audit that I have gone through so far — as an auditor I observed it very closely — was extremely thorough and I can assure you that your interests are being protected as well as the interests of the taxpayers whose money is being spent. I have to admire that. I didn't necessarily like it, but they certainly did a very good and thorough job."[35]

NOTES

1 *Campaign Finance Board 2001 Hearings*, vol. I, at 24 (testimony of Scott Harshbarger).

2 *See, e.g.*, Editorial, "Money Shouts," *New York Times*, August 8, 2001, A16; Editorial, "The Odd Couple," *Daily News*, August 8, 2001, 26; Mirta Ojito, "Finance Board and Badillo Head to Court Over Donations," *New York Times*, August 29, 2001, B5.

3 In 1999, there were three special elections in Council Districts 3, 48, and 50 in March (with accompanying elections in the fall) and an additional fall election in Council District 4.

4 Jessica Kowal and Robert Polner, "Bloomberg's Cashing In," *Newsday*, July 17, 2001, A8; Bob Port, "Aide Package for Hevesi," *Daily News*, July 20, 2001, 17; Eric Lipton and Adam Nagourney, "What's a Campaign Debt Between Friends?" *New York Times*, July 22, 2001.

5 Board Rule 1-02 states that "'[i]n-kind contribution' does not include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or authorized committee."

6 Administrative Code §3-702(8)(c). *See also* Board Rule 1-02 (definition of "in-kind contribution").

7 Advisory Opinion No. 1989-8 (January 25, 1989).

8 *See* Rule 1-04(g)(3), which states: "[i]f goods or services are provided at less than fair market value, the amount of the resulting in-kind contribution is the difference between the fair market value of the goods or services… and the amount charged to the participant."

9 Former City Council Speaker Peter Vallone's campaign did request an advisory opinion on the subject. *See* letter of Karen M. Persichilli to Nicole Gordon, dated June 27, 2001, on file at the Campaign Finance Board; and Eric Lipton, "Board's Opinion Allows 2 Sides to Claim Victory," *New York Times*, July 20, 2001, B3.

10 *Ibid.*, at note 8.

11 Adam Nagourney, "Finance Ruling Denies Hevesi Matching Cash," *New York Times*, August 7, 2001, A1. *See* "Disclosure and the News Media" in Chapter 7 for a discussion of media coverage of the Hevesi ruling.

12 Badillo v. NYCCFB, Index No. 116367/01 (N.Y. Sup. Ct., Aug. 30, 2001).

13 Pursuant to Section 394(a) of the New York City Charter, the Corporation Counsel "shall be attorney and counsel for the city and every agency thereof and shall have charge and conduct of all the law business of the city and its agencies and in which the city is interested." *See also* Charter Section 395. (*See also* "Setting the Stage for the 2001 Elections" in Chapter 1.)

14 He submitted these contributions on reports filed pursuant to Board Rule 3-02(e) which requires campaigns during the two weeks preceding an election to report contributions or loans over $1,000 and expenditures over $20,000 within 24 hours of receipt or spending. These contributions, loans and expenditures are reported more fully in the next regularly scheduled disclosure statement.

15 In fact, the Board had been asked to make a similar exception for a City Council candidate, Louisa Chan, and had found that it could not.

16 Badillo v. NYCCFB, Index No. 117171/01 (N.Y. Sup. Ct., Sept. 10, 2001).

17 Chapter 298 of the Laws of 2001.

18 Badillo v. NYCCFB, Index No. 117595/01 (N.Y. Sup. Ct., Sept. 24, 2001).

19 Espada 2001 v. NYCCFB, Index No. 115778/01 (N.Y. Sup. Ct., Sept. 7, 2001).

20 New York City Charter §1136.1, effective September 25, 1998.

21 Advisory Opinion No. 2000-4 (September 14, 2000). In 1997, the Board had recommended that the ban on mass mailings commence sixty days before the primary election and that the law contain a provision for express jurisdiction with the New York City Conflicts of Interest Board to determine violations and separate jurisdiction for the Board to determine whether the funding of the communication constitutes a contribution or expenditure under the Act. *See A Decade of Reform*, 142.

22 In 1997, the Board dismissed for lack of jurisdiction a formal complaint by the Messinger campaign which alleged that a government-financed radio commercial was in effect a political advertisement for incumbent Mayor Giuliani. *See A Decade of Reform*, 107.

23 Dan Janison, "Vallone Has Baggage," *Newsday*, August 3, 2001, A6; Dan Janison, "From Bags to Flags," *Newsday,* August 9, 2001, A7.

24 *Ibid*.

25 Dan Janison, "From Bags to Flags," *Newsday*, August 9, 2001, A7.

26 New York City Charter §1052(a)(7); Administrative Code §3-708(7); Rule 7-04.

27 CFB Advisory Opinions Nos. 1999-4 (January 15, 1999) (contributions from limited liability companies permissible); 1999-6 (May 11, 1999) (corporate PAC contributions permissible if not derived from corporate funds); 2000-3 (September 14, 2000) (setting recordkeeping standards for checks signed by business agents) (codified in Board Rule 4-01(b)(2)); 2001-2 (May 17, 2001) (clarifying Board Rule 1-04(p)(1), discussing when participating in fund-raising deemed an in-kind contribution); 2001-6 (June 14, 2001) (determining when contributions from limited liability company and limited partnership general managers are affiliated); 2001-8 (July 11, 2001) (services from a not-for-profit legal services corporation not an in-kind contribution).

28 Advisory Opinion No. 2001-5 (May 17, 2001) (income taxes not exempt from the spending limit).

29 CFB Advisory Opinions Nos. 1999-7 (June 10, 1999) (contributions not contemporaneously reported are not matchable); 2000-2 (May 5, 2000) (stating that contributor's residence at time of contribution determines whether matchable); 2001-9 (August 2, 2001) (invalid matching claims cannot be counted toward threshold).

30 CFB Advisory Opinions Nos. 1998-1 (May 7, 1998) (bridge loan from 2001 committee to 1997 committee); 1999-3 (January 7, 1999) (transfers from non-covered committees may not derive from corporate or unregistered political committee contributions) (codified in Board Rule 1-07(c)); 1999-5 (February 23, 1999) (contributions and expenditures prior to January 12, 1999 presumed to be for candidate's state-wide election); 2000-7 (November 16, 2000) (consequences of engaging in fund-raising for future election during 2001 re-election campaign).

31 Advisory Opinions Nos. 1999-1 (January 7, 1999) (accepting run-off contributions) (codified in Board Rule 1-04(q), 2-06(c)); 2001-1 (March 13, 2001) (runoff in democratic mayoral primary reasonably anticipated); 2001-3 (May 17, 2001) (runoff in democratic public advocate primary not reasonably anticipated); 2001-7 (June 14, 2001) (issues regarding transfers between primary/general account and run-off account); 2001-10 (August 23, 2001) (runoff in democratic public advocate primary reasonably anticipated); 2001-11 (September 7, 2001) (participants reasonably anticipated to be in a runoff may be eligible to receive public funds).

32 Advisory Opinion No. 1998-2 (October 23, 1998).

33 Advisory Opinions Nos. 1999-10 (August 5, 1999); 2000-1 (March 7, 2000); 2001-4 (May 17, 2001). (*See also* "Setting the Stage for the 2001 Elections" in Chapter 1.)

34 Administrative Code §3-705(4) (providing for "possible payment" within four business days "or as soon thereafter as is practicable").

35 *Campaign Finance Board 2001 Hearings*, vol. I, at 80 (testimony of John Walker).

Chapter 10

Board Recommendations: Improving the Model

After each citywide election the Board conducts public hearings, distributes candidate surveys, evaluates data collected by its staff, and receives formal and informal comments from candidates, government reform advocates, and others. The following recommendations are based on those sources, legal and factual research obtained from other jurisdictions, and on the more than 14 years of experience the Board has had in administering the Program.

2001 was a year in which New York City elections were interrupted by the terrorist attack of September 11th, and it was a year in which those elections were transformed by term limits and the Program's generous new matching rate for public funds. Although news coverage of local races largely ended on September 11th, the Program had by then already encouraged hundreds of candidates, many of them first-time and grassroots candidates, to run for public office, and had given almost 200 of them the resources to wage meaningful campaigns. By virtually any measure, 2001 was the Program's most successful year since its inception in 1988. The Program's goals were fulfilled as never before, with a democratization of fund-raising and campaign spending that engaged many more candidates and many more contributors, yielding serious races at every level and for nearly every office. Similarly, the Board's computerized disclosure was more complete and available faster, on the Internet, than ever before, and the debates and particularly the Voter Guide filled a vacuum created by September 11th, providing important information to all registered voters. Once again, the Program proved itself a model, and administration of the Program was carried through successfully notwithstanding the displacement of the Board's operations by the terrorist attack. Reform, however, must always keep pace with practical realities, and so the Board makes its recommendations for certain substantive changes in the following pages.

To continue to improve the effectiveness of the Campaign Finance Program, the Board proposes changes in the New York City Charter, the Campaign Finance Act, and State law. In making these recommendations, the Board focused on simplifying the Program for participants, furthering the goals of the Program, and safeguarding the Public Fund by reducing areas of potential fraud and deception. Many of the recommendations are the same or substantially the same as recommendations proposed by the Board following the 1997 elections. Recommendations that the Board believes would represent a significant simplification for candidates include restricting organizational contributions (*see* Recommendation 1(a)), consolidating separate calendar year spending limits, (*see* Recommendation 3(a)), eliminating most categories of exempt expenditures (*see* Recommendation 3(b)), and requiring candidates to have separate committees for each election (*see* Recommendation 4(c)). In addition, the Board is reviewing its rules and procedures, as it does after every election, to improve the operations of the Board and to address matters raised by participating campaigns where these can be managed administratively. At press time, the Board had adopted its first set of proposed rule changes.

PROPOSED AMENDMENTS TO THE CAMPAIGN FINANCE ACT

1. Contributions

(a) Restrictions on Organizational Contributions

In 1998, the New York City electorate approved an amendment to the New York City Charter prohibiting Program participants from accepting corporate contributions. In proposing the statutory ban on corporate contributions now in effect, the New York City Charter Revision Commission noted in 1998 the dangers of corruption, erosion of confidence in the democratic process, and unfair advantage in the political marketplace created by corporate contributions, and the need to ban corporate contributions to enhance individual citizen participation and equality in city elections. The same rationale applies to other organizational contributions, and the Board therefore proposes to treat them all in the same manner. The Board proposes an amendment to the Act to prohibit participants from accepting contributions from any organizations, including unions, partnerships, limited liability companies, and all political committees. Banning all organizational contributions would also significantly simplify reporting and compliance. Some candidates had difficulty, for example, distinguishing between contributions from corporations and other organizations, or failed to understand the political committee registration process. (*See* "2001 Enforcement Summary" in Chapter 9.)

The ban on corporate contributions had a significant impact on increasing the role of individual participation. In 1997, 27% of all contributions came from corporations, and 62% came from individuals. In 2001, fewer than 1% of all contributions came from corporations, and 87% came from individuals. A complete ban on organizational contributions will not necessarily have a significant impact on candidate fund-raising. The percentage of contributions from two major categories of organizations (political committees and unions) actually decreased from 1997 to 2001 — from 5.5% to 4.7% and from 2.3% to 1.4%, respectively.[1] (*See* "Contribution Sources" in Chapter 4, for further discussion.)

(b) Lowering Contribution Limits

In the past, the Board has recommended reductions in the contribution limits. The objective has been to reduce the risk that large contributors could exercise undue influence without at the same time unduly impairing participants' ability to raise funds to wage competitive campaigns. In its 1998 post-election report, the Board recommended significantly lowering the contribution limits.[2] In 1998, following the Board's recommendation, the City Council passed legislation reducing the contribution limits from $7,700 to $4,500 for candidates for citywide office, from $5,900 to $3,500 for borough president candidates, and from $3,550 to $2,500 for City Council candidates. The mandated inflation adjustment will increase the contribution limits for the 2003 and 2005 elections to $4,950 for citywide candidates, $3,850 for borough president candidates, and $2,750 for City Council candidates.

The Board repeats its 1998 recommendation to lower the contribution limits for City Council candidates to $2,000. In 2001, 99% of all contributions to City Council candidates did not exceed $2,000, but accounted for 13% of all contribution dollars.[3] Almost half of all City Council candidates (114 of 241) received no contribution this large. Accordingly, this proposed change limit would have no effect at all on some 50% of candidates.

Contributions over $4,000 accounted for 24.5% of the citywide candidates' total fund-raising, although such contributions represented only 4% of the total number of contributions for these candidates.[4] (*See* "Contribution Totals" in Chapter 4 and *see* "Cost of the Program" in Chapter 6.) As the analyses in Chapters 4 and 6 show, high-end contributions continue to play a disproportionate role in the totality of funds available to citywide candidates. This is to a significant degree offset by the $4-to-$1 matching rate for small contributions, but as long as the contribution limit is higher than the matchable amount, there will be an incentive to seek the bigger contributions. The Board recommends narrowing this gap by lowering the contribution limit for citywide and boroughwide candidates.

The newly enacted McCain-Feingold legislation increases the individual contribution limit for presidential candidates to $2,000 per election, or a total of $4,000 for the primary and general elections combined. If no change is made, the Program's $4,950 contribution limit for citywide candidates will be 24% higher than the combined primary and general election contribution limit for presidential candidates. The Board recommends lowering the contribution limit for citywide candidates from $4,950 (the new inflation-adjusted limit) to $4,000 and the borough president limit to $3,000. This would not, apparently, cause any significant fund-raising burden for citywide candidates, who were easily able to spend up to the spending limits.[5] The recommended contribution limits are listed in Table 10.1.

2. Public Funds

In 2001, the presence of extraordinary amounts of public funds drove up the cost of elections, especially on the City Council level, perhaps beyond what is reasonably necessary to wage an effective campaign. To address this, the Board proposes:

1. lowering the matching rate (*see* Recommendation 2(a)),
2. lowering the maximum amount in public funds a candidate may receive (*see* Recommendations 2(b)), and
3. recalculating the spending limits (*see* Recommendation 3(c)).

These measures would in all likelihood also reduce the demand on the Public Fund. (*See* Table 10.2.)

(a) Matching Rate

In 1998, the CFB recommended increasing the matching rate from $1-to-$1 (for each matchable contribution of up to $1,000) to $3-to-$1 (for each matchable contribution of up to $250). In 1998, the City Council passed legislation that increased the matching rate to $4-to-$1 for each matchable contribution of up to $250. For the 2001 elections, the CFB made public funds payments of over $41 million. If the $3-to-$1 matching rate is applied to the data available for the 2001 elections, the result is a total of $31 million in public funds payments that would have been paid.[6] This represents a reduction of approximately $2.9 million at the mayoral level, $1.8 million at the public advocate and comptroller levels, $1.7 million at the borough president level, and $3.4 million at the City Council level.[7]

In 1998, the Board supported the increased matching rate to encourage smaller contributions, which make fund-raising more democratic and further limit the influence of special interests. During the 2001 elections, public funds represented 43% of all funds available to candidates, compared with 19% in 1997. At the City Council level, public funds represented 55% of all funds, compared with 26% in 1997. If the matching rate had been $3-to-$1, public funds as calculated above would have represented 36% of all funds available in 2001. Thus, at a $3-to-$1 rate, the percentage of public funds would have been almost double the amount that it was in 1997, only about 10% lower than the actual 2001 rate, and an almost $10 million savings to taxpayers. The Board repeats its recommendation of 1998 to change the matching rate to $3-to-$1.

(b) Reduced Maximum Public Funds for Council Candidates

In 1998, the Board recommended that the maximum amount of public funds City Council candidates should receive be increased from $40,000 to $70,000. In 1998, the City Council passed legislation increasing the maximum to 55% of the spending limit (the same as for all other offices), or $75,350

Table 10.1: Recommended Contribution Limits

Office	2001 Limit	Inflation Adjusted Limit	Proposed Limit
Mayor	$4,500	$4,950	$4,000
Public Advocate	$4,500	$4,950	$4,000
Comptroller	$4,500	$4,950	$4,000
Borough President	$3,500	$3,850	$3,000
City Council	$2,500	$2,750	$2,000

for 2001. Because of the mandatory adjustment of the spending limit based on the changes in the Consumer Price Index, that amount will increase to $82,500 for the 2003 elections. Thus, in less than four years and over a single election cycle, the maximum amount of public funds City Council candidates can receive has more than doubled from $40,000 in 1997 to $82,500 in 2003.[8]

The Board is recommending that the spending limit for City Council be lowered to $146,000. (*See* Recommendation 3(d) below.) The reduction in the spending limit would reduce the maximum amount of public funds City Council candidates could receive for the 2003 elections from $82,500 to $80,300, if one adheres to the formula dictating that the maximum in public funds be 55% of the spending limit. Given the extraordinary spending at the Council level that was seen in 2001, however, the Board recommends further reducing the maximum public funds a City Council candidate can receive to $70,000 (the cap the Board recommended after the 1997 elections).[9]

Table 10.2: Fiscal Impact of Recommendations*

Proposal	Fiscal Impact
Lower Match to $3-to-$1 (Recommendation 2(a))	($10 million)
Lower Public Funds Maximum for City Council (Recommendation 2(b))	($163,000)
Lower Spending Limit (Recommendation 3(c))	$0**
Net Two-Tiered Bonus (Recommendation 2(d))	+$1.8 million
Net Savings	**($8.4 million)**†

* Calculations are based on application of the Board's recommendations to 2001 public funds payments. This methodology is somewhat limited because participants would of course change their fund-raising strategies based on any change in the matching formula.

** The lower spending limit for City Council candidates should reduce the overall expense of the elections. Because the Board is recommending a public funds maximum for Council candidates that is not keyed to the spending limit, this recommendation will not affect the Public Fund. The Board is recommending a simplification and spending limit increase for all other offices. (*See* Recommendation 3(c).)

† Other recommendations, such as the cap on public funds for small primaries (*see* Recommendation 2(g)), would also reduce the cost of the Program.

(c) Threshold Geographic Requirement for Candidates for City Council

Census results from 2000 will require redistricting of City Council district lines before the 2003 elections. In a year when district lines are uncertain, the Board recommends changing the threshold requirements for City Council candidates to allow them to satisfy the threshold with contributions from residents of the borough(s)[10] in which they are running rather than of the Council district. The Board also recommends that the number of required resident contributors be increased from 50 to 100 for the 2003 elections. This change would encourage candidates in the Program to demonstrate more significant community support, but enables them to do so from a much larger geographic area in 2003. In 2001, 76% (184) of the City Council candidates who appeared on the ballot received more than 50 valid matchable contributions from residents of their district.[11] In 2001, approximately 71% (170) candidates had valid matchable contributions from 100 or more borough residents. It therefore appears reasonable for candidates to show the seriousness of their candidacies by raising 100 contributions of at least $10 from borough residents to qualify to receive public matching funds.[12] The other threshold requirement, that the candidate receive $5,000 in private contributions, would not be changed. It should be noted that when the threshold is reached under current law, a minimum of $20,000 in public funds payment is due. Under the Board's recommendation (*see* Recommendation 2(a)), the first minimum payment would be $15,000 (or three times the $5,000 threshold). Raising the threshold number of contributions is consistent with the approach in other jurisdictions, which have higher thresholds for the required number of contributors than New York City has.[13] Assuming that this recommendation is adopted, the Board anticipates revisiting the threshold requirement after the 2003 elections.

(d) Increased Bonus for Participants Facing Well-financed Non-participants

In the 2001 elections, questions were raised whether the bonus in place for participants facing a well-financed opponent was generous enough to let the participant effectively compete against a truly high spending non-participant. In 2001, the bonus was triggered in three City Council primaries and in the general election mayoral contest. (*See* "The Bonus Situation" in Chapter 6.) To enhance the bonus

Table 10.3: Bonus Situation — Tier One

Office	Matching Rate	Trigger	Public Funds Maximum
Mayor	3:1 ➡ 5:1	$3,007,000	$3,307,700 ➡ $4,009,333
Public Advocate/ Comptroller	3:1 ➡ 5:1	$1,880,000	$2,068,000 ➡ $2,506,667
Borough President	3:1 ➡ 5:1	$676,500	$744,150 ➡ $902,000
City Council	3:1 ➡ 5:1	$73,000	$70,000 ➡ $97,333

further, the Board renews its 1998 recommendation to have a two-tiered bonus system. The first tier would be similar to the current bonus situation — triggered when a non-participant raises or spends more than half the spending limit, increasing the matching rate from $3-to-$1 to $5-to-$1, and increasing the maximum public funds cap to two-thirds of the spending limit. (*See* Table 10.3.)

The second tier would be triggered when a non-participant raised or spent 1½ times the spending limit. The participant would then receive public matching funds at a rate of $6-to-$1 up to a cap equal to 100% of the spending limit. (*See* Table 10.4.) Under both tiers, the spending limit would be lifted, but the contribution limits and prohibitions would remain in effect.

In 2001, the first tier would have been triggered in two City Council primaries (districts 13 and 18), and the second tier would have been triggered in the district 1 City Council primary and in the mayoral general election. As discussed in "The Bonus Situation" in Chapter 6, no definitive conclusions can be reached about the influence of money on the mayoral election,[14] but the 2001 mayoral race does shed some light on the need for a two-tiered system because of the relatively small additional amount ($765,885 for a total of $976,545 in the general election) Mark Green received under the current bonus formula. Under the proposed system, Green would have received an additional $2.3 million for a total of $2.5 million. (*See* "The Bonus Situation" in Chapter 6.)

(e) Money Order Contributions

Under current law, candidates participating in the Campaign Finance Program may receive public matching funds for contributions in the form of money orders. Money orders are very similar to cash and, like cash, can be used by some individuals to disguise the true source of campaign contributions. The Board recommends that money order contributions be treated like cash contributions for receiving public matching funds. Under State law, cash contributions are limited to $100. To reduce the incentive and the opportunity to commit fraud, the Board recommends that money order contributions in amounts greater than $100 no longer be matched with public funds.

Table 10.4: Bonus Situation — Tier Two

Office	Matching Rate	Trigger	Public Funds Maximum
Mayor	3:1 → 6:1	$9,021,000	$3,307,700 → $6,014,000
Public Advocate/ Comptroller	3:1 → 6:1	$5,640,000	$2,068,000 → $3,760,000
Borough President	3:1 → 6:1	$2,029,500	$744,150 → $1,353,000
City Council	3:1 → 6:1	$219,000	$70,000 → $146,000

(f) Public Funds Cap for Small Primaries

The Board recommends that public funds payments be capped at $5,000 for participating candidates in a primary election in which the total number of eligible voters is less than 1,000. The cap would be lifted, however, if the participating candidate is opposed in the primary election by a participating candidate who is also in another primary (and therefore would not be subject to this cap) or by a non-participating candidate who makes expenditures in excess of $10,000 for that primary election. This proposal is intended to protect the Public Fund when the number of voters to whom a candidate must appeal is very limited. Currently, New York has eight official political parties, all of which may have a primary in any of the 51 Council districts. Of the 408 potential primaries (eight parties and 51 Council districts), 282 primaries would have fewer than 1,000 eligible voters.[15] There was one such primary election in 2001. In that case, a candidate running on the Green Party line in Council District 20 (Queens - Flushing), Paul Graziano, received more than $26,000 in public funds for running in a primary in which the total number of eligible voters was 111, and the total number of votes cast for the two candidates who ran was 36. For the general election, as the Green Party nominee, Graziano received an additional $936.

3. Spending

(a) Consolidate Separate Calendar Year Spending Limits

As adjusted for inflation, the Campaign Finance Act and the Board Rules establish spending limits shown in Table 10.5. below.

The Board recommends, as it has in the past, simplifying the spending limits by consolidating the various calendar year limits into two limits, one for the primary election and one for the general election. The two limits would cover the entire election cycle: the primary limit would cover from the first year of the election cycle through the primary, after which the general election limit would apply. This change would simplify the Program and would put participants who often start their campaigns later in the election cycle on a more equal footing with their opponents. The spending limits proposed in (c) account for consolidated spending limits.

(b) Exempt Expenditures

Currently, a number of different types of expenditures are exempt from the spending limits, including costs to comply with the Act, the Board's Rules, and New York State Election law, as well as the cost to challenge or defend the validity of petitions. Because there is a danger that candidates could evade the expenditure limits by improperly characterizing expenditures as exempt, the rules governing the claiming and documentation of exempt expenditures are rigorous. In the past, candidates have had trouble complying with these rules, and it is difficult to verify exempt expenditures because the line is not always clear between "reasonable" exempt expenditures as opposed to inflated and re-categorized spending to evade the spending limit. Previous attempts to simplify the Board's rules alone while maintaining oversight to prevent evasion of the limits have not improved the situation.

The Board therefore proposes, as it has in the past, eliminating exempt expenditures, except for legal fees to challenge and defend petitions.[16] All other expenditures would be covered by the spending limits. The proposed amendment would simplify candidate reporting and Board auditing. If average aggregate exempt expenditure claims made by candidates in the 2001 elections are considered, adjusting for anomalies (such as candidates who did not claim any exempt expenditures and candidates who claimed more than 50% of their expenditures as exempt), it appears that increasing the expenditure limit by 5%, as discussed in (c) below, would more than compensate for the removal of the category of exempt expenditures. The increased limits are set at high figures so that the removal of exempt expenditures should allow candidates to incur necessary compliance expenses without interfering in the candidate's ability to wage an effective campaign.

(c) Spending Limits

Mandated inflation adjustments will drive the spending limits 9.5% higher than in 2001. (*See* Table 10.5.) The Board recommends that the spending limits be further increased by 5% for the citywide and borough-wide offices to account for actual expenditures that otherwise would be exempt and for consolidating spending limits. (*See* 2(b) above.) These new figures would not affect the public advocate, comptroller, and borough president races, if 2001 is a guide, because none of the candidates for these offices approached the existing spending limits.

Table 10.5: Inflation-Adjusted Spending Limits for 2005

Spending Period	Mayor	Public Advocate and Comptroller	Borough President	City Council
1st/2nd Year*	$90,000	$90,000	$60,000	$24,000†
3rd Year*	$180,000	$180,000	$120,000	$40,000
Primary Election	$5,728,000	$3,581,000	$1,289,000	$150,000
Total Primary Limit**	$5,998,000	$3,581,000	$1,469,000	$214,000
General Election	$5,728,000	$3,581,000	$1,289,000	$150,000

* Spending in excess of these amounts does not violate the Act or the Board Rules, but is charged against the first limit applicable in the year of the election.

** If the primary limit is not applicable, the amount in this row is applicable for the general election.

† Not applicable for the two-year 2003 and 2005 election cycles for City Council.

At the same time, the Board is recommending limiting the increase in the spending limit for City Council to $146,000.[17] This limit represents an increase of approximately 7% (the average percentage of exempt expenditures claimed by City Council candidates in 2001)[18] from the current $137,000 limit. In the 2001 elections, the average spending per Council district for the primary was approximately $89,000.[19] In only three City Council districts did the average primary spending exceed the recommended $146,000 spending limit. One of those districts had no spending limit because a well-financed non-participant triggered the bonus. In the other two districts, the primary election victors received more than three times the votes of their opponents, suggesting that such high spending was unnecessary. The recommended spending limits for the primary and general elections are shown in Table 10.6.

(d) Additions to the List of Expenditures that are Not Qualified

The Board proposes amendments that would clarify and add certain expenditures to the list of expenditures for which public funds may not be used: expenditures for canvassing results, payment of penalties, payments to contributors (as described below), post-election expenditures, expenditures for lawsuits, and unitemized expenditures. Although the Board recognizes that candidates may seek to make these expenditures during the course of an election, participants should not use public funds for these expenditures because they do not directly further their nomination or election. Among the other expenditures that would be excluded as qualified expenditures are payments to contributors up to the amount of public funds received by the candidate as a result of these contributors' contributions. This is intended to protect the Public Fund from candidates who, in effect, return contributions to contributors after the candidate has used those contributions to receive public funds.

4. Disclosure

(a) Intermediaries

Participants are currently required to report intermediaries and the contributions that the intermediaries deliver to a candidate. The Board recommends expanding the current definition of "intermediary" to include not only individuals or entities who deliver contributions to a candidate, but also those known to the campaign to have successfully solicited contributions for the candidate, excluding professional fund-raisers and campaign staff workers. During the election, there was some discussion about the broad definition of fund-raising agent, which is an exception to the rules regarding reporting intermediaries. (*See* "Disclosure and the News Media" in Chapter 7.) At press time, the Board had adopted a rule which would narrow the definition of fund-raising agent.

(b) Contemporaneous Disclosure

Prospective candidates for citywide office and borough president must now file disclosure statements before they join the Program in order to preserve matching claims for any contributions received during the first three years of the election cycle. The Board recommends that this requirement be extended to prospective Council candidates, in place of the current option for these candidates that allows them to make contemporaneous filings but that does not require these filings to preserve matching claims. This would allow the Board to provide candidates who do early fund-raising with an early review of their compliance with Program requirements and would provide the public with early disclosure of these candidates' finances.[20]

(c) Separate Committee for Covered Elections

In order to reduce the possibility that candidates will violate the Act and to simplify reporting requirements for candidates, the Board is proposing that participating candidates be required to establish separate committees for elections covered by the Program. Furthermore, to simplify and clarify public disclosure, the Board proposes that participants be permitted to authorize only one committee for primary and

Table 10.6: Recommended Spending Limits

Office	2001 Spending Limit	Inflation Adjusted Spending Limit	Recommended Spending Limit
Mayor			
Primary	$5,501,000*	$5,998,000*	$6,014,000
General	$5,231,000	$5,728,000	$6,014,000
Public Advocate/ Comptroller			
Primary	$3,540,000*	$3,851,000*	$3,760,000
General	$3,270,000	$3,581,000	$3,760,000
Borough President			
Primary	$1,357,000*	$1,469,000*	$1,353,000
General	$1,177,000	$1,289,000	$1,353,000
City Council Member			
Primary	$201,000*	$214,000*	$146,000
General	$137,000	$150,000	$146,000

* This is a consolidation of the various calendar year limits. If the primary limit is not applicable, the amount in this row is applicable for the general election.

general elections covered by the Program and held in the same calendar year. The Board's educational materials for candidates have always advocated that candidates voluntarily follow these mandates to simplify participation requirements, and many candidates already follow this recommendation.

(d) Reporting Requirements Generally

The proposed amendments would require participants to report all contribution and expenditure information and would delete the requirement that participants must report certain information only to the "best of their knowledge." Under the current rules, contributions that are not fully disclosed are not matched with public funds. These amendments would require full disclosure for all expenditures and for all contributions regardless whether the participant intends to seek matching funds. This change would more closely align the Act's reporting requirements with those of numerous other jurisdictions around the country.

5. Deadline for Joining the Program

In 1998, based on Board recommendations, the Act was changed to provide for a single later "opt-in" date of June 1st of the election year.[21] The amendment to the Act also added a provision to allow the Board to declare a later opt-in date if certain extraordinary circumstances, such as the death or withdrawal of a candidate, occurred. In the November 1999 off-year elections, a Green Party candidate sued the Board when it declined to find that an extraordinary circumstance under the Act had occurred in her case.[22]

The Board recommends that it be authorized to provide for later deadlines to afford the Board maximum flexibility to adopt the latest administratively feasible deadlines without jeopardizing its review of matching claims or the responsible payment of public funds to participating campaigns in a timely manner.

6. Rules for Postponed Elections

The Board proposes amendments that would allow the CFB to pass emergency regulations relating to public funds payments and additional expenditure limits for candidates on the ballot for an additional day of voting, a court-ordered election, or an election that has been postponed because of an emergency or other unforeseen circumstance.[23] The attack of September 11th forced the postponement of the primary elections to September 25, 2001, and the Board effectively froze spending for most of that period.[24] (*See* "Examining the Offices" in Chapter 5.) Candidates, had budgeted expenditures in anticipation of the September 11th primary, and had they been permitted to spend during this period, would not routinely have had either funds or room under the primary expenditure limit to continue campaign activities through September 25th. The Campaign Finance Act does not contain any provision allowing the Board to make additional public funds payments or to provide for an additional expenditure limit. The proposed amendment would authorize the Board to issue regulations to make public funds payments, as well as give candidates an additional expenditure limit, so that they are able to continue campaign activities during a period of postponement. Allowing the Board to issue emergency regulations (rather than set fixed limits) provides flexibility to tailor the increased public funds and spending limits to the needs of the candidates taking into account the specific circumstances surrounding the postponement, court-ordered election, or additional day of voting, *e.g.*, the length of time the election is postponed, the number of candidates affected, or the fact of a news blackout. The figures contained in current law do not necessarily bear any relationship to what may be practical in these circumstances. (*See* note 23.)

7. Debate Program

(a) Require Debate Participants to Show a Minimum of Public Support

The Board proposes limiting eligibility for debates to those participants who meet objective, nonpartisan, and nondiscriminatory criteria set forth in a sponsor's application. Under the current law, participation in the debates is limited, with certain exceptions, only to candidates who join the Program and who are opposed on the ballot. This leads to candidates joining the Program and perhaps even running for office for the sole purpose of appearing in debates. One major criticism of the 1997 and 2001 debates was that candidates with significant standing in the polls were obligated by law to debate candidates with little name recognition and relatively unorganized campaign committees. This broad field detracted from the debates' effectiveness. For this reason, in 2001 the Board had difficulty finding sponsors, particularly television stations, for the debates. (*See* "The Debate Program" in Chapter 8.)

In 1998, the United States Supreme Court found that limiting participation in a debate according to neutral and reasonable standards does not violate the First Amendment.[25] Accordingly, there is no constitutional problem with limiting the participation in the debates to those candidates who meet an objective standard. This standard would cover all debates, including the selection of "leading contenders" for the second debates for an election, but would be a lower standard than that for "leading contenders." To improve the quality of the debates, sponsors would be permitted to invite non-participants to the debates if the non-participants met the same objective, nonpartisan criteria that participants must meet.

(b) Limit Second Primary Election Debate to "Leading Contenders"

The Board recommends treating the primary election debates in the same way as the general election debates by limiting the second primary election debates to "leading contenders" and permitting sponsors to invite non-participants to the second primary election debates if they meet the same objective, nonpartisan criteria that participants must meet to be considered "leading contenders." This standard would be higher than the general standard for participation in debates discussed above.

(c) Eliminate Alternate Forums

The requirement of an alternative nonpartisan voter education program for citywide candidates excluded from the general election "leading contenders" debate did not generate public interest in 1997 or 2001. The Board proposes to repeal this requirement and thereby eliminate a significant administrative burden for the debate sponsors and the Board.

(d) Eliminate One of the Two Run-off Primary Debates

The Board recommends that in the event of a run-off primary, only one debate be required. In 2001, run-off Democratic primaries were held for both mayor and public advocate. The Board and the debate sponsors were required to plan, schedule, and hold four additional debates in the two-week period prior to the runoffs. The scheduling difficulties were further compounded by the postponed September 11th primary. (*See* "The Debates" in Chapter 8.) One run-off debate would be sufficient to promote public discourse and would be less burdensome for sponsors and the candidates in the very brief time between the primary election and the date of the run-off election.

(e) Repeal the Requirement that Sponsors Indemnify the City

At post-election hearings after both the 1997 and 2001 elections, debate sponsors cited their indemnification obligation and lack of legal protection under the law as potential disincentives to sponsoring a debate in the future. In 1997, a candidate who was not a participant in the Program sued both the Board and the debate sponsors challenging his exclusion from the debates as unconstitutional. Although the lawsuits proved to be without merit, sponsors incurred substantial expenses defending themselves. In 2001, the indemnification provision discouraged some 1997 sponsors from participating in the 2001 Debate Program and made it more difficult for the Board to obtain sponsors, particularly sponsors who would broadcast the debates. (*See* "The Debate Program" in Chapter 8.) Therefore, the Board proposes removing the requirement that a sponsor agree to indemnify the city for any liability arising from the acts or omissions of the sponsor. Instead, the city would indemnify the sponsors for any liability arising from the acts or omissions of the sponsor or the city in connection with the debates.

8. Appointments to the Board

To promote the smooth functioning of the Board in administering the Program in an election year, the Board recommends changing the commencement date for the term of each Board member from April 1st to December 1st. This would protect against the possible appearance that an appointment during the period immediately preceding an election was intended to influence Board decisions, and it provides a mechanism for ensuring continuity at the Board's busiest period.[26]

9. Restrictions on Use of Governmental Funds and Resources During the Election Year

The City Council passed an amendment to the Charter (Section 1136.1) prohibiting certain uses of government funds and resources by city employees or officers for political purposes.[27] (*See* "Use of Government Resources" in Chapter 9.) The Board recommends that the current law be strengthened by lengthening the prohibition on the use of government resources for mass mailings before an election from 30 to 90 days, but without impinging on an elected official's need to respond to constituents who have been in contact with his or her office. The Board also urges banning altogether the use of government resources for distributing gifts to promote an officeholder's candidacy. The Board further recommends that the Conflicts of Interest Board be granted explicit authority to investigate and determine whether violations of this section have occurred, and, if a violation has been detected by the Conflicts of Interest Board, that the Campaign Finance Board be given the authority to investigate and determine whether a prohibited use of government resources also violates the Campaign Finance Act.[28]

PROPOSED STATE INITIATIVES

After the 1997 elections, the Board drafted proposed legislation to amend New York State Election law regarding disclosure and contribution limits for non-participants. The Board continues to recommend those changes. Copies of the proposed legislation are available from the Board's Legal Unit.

1. Disclosure

The Board recommends amending State law so that all candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member, whether or not they join the Program, be required to submit to the CFB the same kind of detailed financial disclosure statements now filed by participants in the Program. The Board believes this amendment is necessary so that New York City's computerized campaign finance disclosure system can provide to the public the same detailed information about all candidates running for these offices. This change would also facilitate Board determinations that a non-participating candidate has raised or spent funds above a level that requires accelerated public funds payments and the removal of spending limits for participating opponents under the Act.

The bill developed by the Board 1) recognizes that the citywide elections would be more equitable if opposing candidates were subject to the same disclosure requirements and public scrutiny, 2) permits all candidates who run for these offices to get free computer software specifically designed for filing campaign finance information with the Campaign Finance Board and with the City Board of Elections, and 3) would not impose new filing requirements on small campaigns that raise or spend funds at levels below the exemption levels specified in the Campaign Finance Board's current rules. This bill, introduced in 2001 in the Assembly by then-Assemblyman Eric N. Vitaliano (A.6680) and in the Senate by then-Senator Roy M. Goodman (S.1029), was approved by the full Assembly in previous sessions but was never voted out of committee in the Senate. When this report went to print, the bill had not been reintroduced in either the Assembly or Senate in 2002.

In 1994, the Board had also recommended "a five-year experiment to make the Board the computerized clearinghouse for all campaign finance information currently required to be filed by candidates for local public office or party position in New York City and the political committees that support them." Since then, State law has been amended to require electronic filing by committees filing with the State Board of Elections, including on behalf of candidates for statewide offices and for the State Legislature beginning in 1999. The Board is pleased that the State Board of Elections developed its filing system in a manner that permits filing of C-SMART-generated forms.

The most practical and cost-effective approach for extending this electronic filing requirement to New York City filers would be to use the Campaign Finance Board's existing state-of-the-art database infrastructure and administrative protocols for electronic filing. Given the city's 14-year investment in computerized disclosure at the CFB, a different requirement for electronic campaign filing in New York City would be duplicative and wasteful of public tax dollars, as well as an imposition on candidates.

2. Contribution Limits

The Board recommends that State law be amended to require all candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member to abide by the contribution limits set by the Campaign Finance Act. The Board's proposal would subject candidates for these offices who do not join the Program to the same contribution limits that apply to those candidates who do join. The bill would end the disparity between the contribution limits that apply to opposing candidates by having the city's limits, which are generally lower, cover all candidates for these five city offices. Currently, the state contribution limit for the primary election for citywide candidates is at least $4,900, up to $14,700. (The limit is based on a formula of $0.05 x the number of enrolled voters in the candidate's party.) The limit for the general election is $30,700.[29] In no other jurisdiction are publicly-financed candidates subject to lower contribution limits than their non-publicly financed opponents. The most recent version of this bill was introduced by then-Assemblyman Vitaliano in 2001 (A.6679). It has been approved by the full Assembly in previous sessions, but was never voted out of committee in the Senate.

3. Other Issues

The Board also supports changes in State law to:

- Address possible "soft money" problems by lowering the limit on contributions to political parties and by improving accounting and disclosure requirements for party spending on behalf of candidates;
- Lessen the unfair competitive advantage enjoyed by candidates who have funds remaining from a previous election by prohibiting the use of surplus funds for future elections; and
- Shifting the primary date from September to June, which would allow candidates to receive public funds earlier in the year.[30]
- Increasing the penalties for violating Section 14-120 of New York State Election Law, which prohibits candidates from accepting contributions made in the name of another, or so-called "nominee" contributions.

ISSUES UNDER CONSIDERATION

1. Transition and Inaugural Spending

In 1998, the New York City Charter and the Campaign Finance Act were amended to require successful candidates for city office to disclose the activities undertaken to commence their term in office. The new law applies to all successful candidates for the offices of mayor, comptroller, public advocate, borough president, and City Council member whether or not they participate in the Campaign Finance Program. The Board is in the process of reviewing and analyzing the information submitted by successful 2001 candidates. In the coming months, the Board will make additional recommendations clarifying and simplifying these requirements.

2. Run-off Primary Elections

The two run-off Democratic primary elections for mayor and public advocate highlighted certain limitations of the Board's current rules regarding Program requirements for run-off primaries. In the coming months, the Board will be undertaking to revise and propose for public comment changes to its rules regarding disclosure of and accounting for run-off primary finances.

3. Rules and Operations

As discussed above, a number of administrative items are being addressed through possible rules changes. At press time, the Board had adopted the first set of proposed changes in its rules.

ISSUES OF CONCERN

There are certain issues of concern that, if resolved, would further the Program's goals of leveling the playing field among candidates and making candidates more responsive to New York City citizens rather than to special interests. The resolution of these issues is in some cases not best resolved by Board rule or even changes in the law. The Board nonetheless urges that thought be given to what legal and extra-legal means might be available to address these areas.

1. Nominally Opposed Elections

The Act provides that candidates who are unopposed in a covered election are not eligible to receive public matching funds for that election. There is, however, no prohibition on public funds for participating candidates, even up to the maximum amount allowable, when the opponent provides only token opposition. Some participants face candidates, or are themselves, appearing on a third party line, but not running an active campaign. This problem was widely acknowledged at the Board's post-election hearings.[31] It seems wasteful of government resources to provide public matching funds to candidates who have only minimal opposition and therefore need not expend much to become elected.

In the past, the Program has relied on self-policing and public pressure to minimize this problem. This issue, however, has been a problem from the Program's inception when in 1989, Ruth Messinger, running for Manhattan borough president, was criticized for taking public funds when she faced only token opposition.[32] The problem was commented upon in a number of 2001 elections. For example, the *Daily News* criticized Herbert Berman, Betsy Gotbaum, and Scott Stringer for accepting public funds when they were not running serious campaigns or were facing only token opposition. The *Daily News* wrote: "[s]elf-control and selflessness would be welcome from . . . other politicians. Doing the right thing is its own reward."[33]

In 1990, the Board found that judging whether opposition was serious or token was a political issue best left to the voters.[34] The Board cannot use a subjective standard, and an objective standard raises many problems, *e.g.*, a well-known incumbent may spend very little, avoiding the trigger for public funds for an opponent; or a candidate may spend only late in the election cycle to delay triggering public funds for an opponent. The Board urges the City Council to consider what levels of opposition are meaningful, if legislation seems warranted. The press and the public ought also to review carefully the financial disclosures of candidates and highlight candidates who they think are receiving public funds but are not running an active campaign or are facing only token opposition.

2. Doing Business with the City

In 1998, the New York City Charter was amended to require the Board to propose rules to regulate campaign contributions from individuals and entities doing business with the city. The Board conducted research and solicited public comment on ways to effectuate this mandate and in December 1999 proposed three alternative methods for regulating these contributions. After receiving public comment from a number of sources, the Board determined not to adopt these rules. The Board realizes that contributions from individuals doing business with the city is a potential source of influence peddling. At present, however, it is unclear how the Board would even obtain the comprehensive information necessary to enforce any rule. Given, moreover, the numerous other requirements the Program imposes on candidates and the difficulties in defining and reporting these contributions, the Board believes that this problem would be better addressed by limiting the actions of the contributor rather than the recipient of the contribution, as is the case with the Securities and Exchange Commission's regulations on political contributions by securities industry personnel.[35]

3. Solicitations by Incumbents

In 2001, the Conflicts of Interest Board issued an advisory opinion concluding that the New York City Charter prohibits public servants with "substantial policy discretion" from asking anyone for contributions to a candidate for city elective office. This prohibition includes solicitations for the public servant who is himself a candidate for city elective office.[36] The Conflicts of Interest Board acknowledged that there is some unfairness to this Charter provision which by its terms does not apply to elected officials.[37] The Board notes that the solicitation of contributions by both elected officials and certain public servants is fraught, at best, with potential influence peddling, and at worst with coercion of contributors. While as currently written the Charter mandated this result, there should be a better way to address these problems than by eliminating the fund-raising ability of certain classes of candidates (or forcing them to resign their positions), while other candidates' fund-raising is unrestricted.

4. Candidate Misrepresentations

Several participants have raised concerns about false statements made by candidates in the CFB Voter Guide and in other campaign literature, including misrepresentations of educational and professional experience and endorsements.[38] The Board understands the frustration of candidates whose opponents continually include false biographical information and misrepresent endorsements in their campaign literature. Because of the constitutional implications of any law restricting candidate speech, it is unlikely that a law could be crafted which would both have meaningful force and meet constitutional muster. Further, such a law would place enormous burdens on the administering agency, the courts, and the candidates themselves. A better solution may be a voluntary certification with a civic organization that the candidates will adhere to certain standards in their campaign speech and refrain from dishonesty or personal attacks.[39]

NOTES

1 Although the percentage of contributions from these sources decreased, political committee and union contributions increased in absolute terms – from $1.6 million to $2.6 million and from $686,000 to $782,000, respectively. Unions and political committees comprise all but one of the top ten contributors across all candidates. (*See* Table 4.2 in Chapter 4.)

2 *A Decade of Reform*, 130-131. The Board recommended lowering the contribution limit for citywide candidates to $5,000, for borough president candidates to $3,500, and for City Council candidates to $2,000.

3 Thirteen percent is an overstated amount, because it includes contributions from the candidates (which are subject to a limit of up to three times the contribution limit) and outstanding advances (which are deemed contributions until repaid).

4 These figures do not include contributions over $4,500, which were either collected for the run-off elections or were illegal over-the-limit contributions. *Total* contributions over $4,000 accounted for 39% of the citywide candidates' total fund-raising, but represented only 6% of the total number of contributions for these candidates.

5 Reducing the contribution limit to $4,000 would represent a 2.7% loss to citywide candidates assuming that all contributors who gave contributions above $4,000 would give the maximum of $4,000. (*See* note 4 above for the basis for the calculation.)

6 This was calculated by applying a $3-to-$1 formula to the 2001 paid claims. (*See* "Cost of the Program" in Chapter 6.) This methodology is limited because participants would of course change their fund-raising strategies based on any change in the matching formula.

7 These numbers are approximations, based on a calculation of amounts actually paid in 2001 (excluding run-off payments).

8 By comparison, the maximum amount of public funds a mayoral candidate may receive increased only 33% in the same time period — from $2,366,000 to $3,150,400.

9 *A Decade of Reform*, 133-134.

10 Three current City Council districts include areas from two boroughs: district 8 (Manhattan and Bronx), district 22 (Manhattan and Queens), and district 50 (Brooklyn and Staten Island). Under the proposal, candidates running in these districts could meet the threshold by raising 100 matchable contributions from individuals residing in either borough.

11 This includes matching claims through December 31, 2001, and corrections made as part of the audit process.

12 *Campaign Finance Board 2001 Hearings,* vol. II, at 236 (testimony of David Yassky).

13 Los Angeles, with a population of 3.7 million, requires council candidates to raise $25,000 in contributions of $250 or less (100+ contributors) to qualify for public funds. Miami-Dade County, population 2.25 million, requires county commissioner candidates to raise contributions of between $15 and $250 from 200 registered voter residents. San Francisco, population 776,733, requires Board of Supervisor candidates to raise at least 75 contributions from city residents.

14 *See also Campaign Finance Board 2001 Hearings,* vol. II, at 355 (testimony of LeeAnn Pelham on Los Angeles' experience with non-participating mayoral candidate).

15 Pamphlets of the New York City Board of Elections, *Councilmanic District Enrollment Totals* (by borough), October 31, 2001.

16 This exception is narrowly tailored to allow for an unpredictable and often unavoidable election expense, given the ballot access laws in New York. These expenditures are also more easily documented and less subject to abuse.

17 While this is higher than the 2001 limit of $137,000 per election, it is lower than the inflation-adjusted $150,000 limit.

18 This average was calculated based on candidates who would have exceeded the spending limit but for their claimed exempt expenditures.

19 The average spending for a Council candidate was $126,900 for both the primary and general elections. (*See* "The Most Expensive Elections in New York City History" in Chapter 5.)

20 The Board also recommends that participants be required to file additional disclosure statements during the election year to achieve these same goals. At press time, the Board had adopted a rule providing for additional voluntary disclosure statement dates.

21 Previously, the deadline to join the Program was April 30th of the election year with a later opt-in date for candidates named solely in independent nominating petitions.

22 The Court dismissed the action. *See* Ostrom v. New York City Campaign Finance Board, 160 F.Supp.2d 486 (E.D.N.Y., 2001).

23 Currently, the Act provides for public funds payments of $0.25 for each dollar of public funds received for the preceding election and an enhanced spending limit of half the existing spending limit for an additional day of voting or an election held pursuant to court order, even though the resulting delay may be for a very truncated period, compared with the primary or general election period. *See* Administrative Code §§3-705(5), 3-706(1)(b).

24 Advisory Opinion No. 2001-12 (September 20, 2001).

25 Arkansas Educational Television Commission v. Forbes, 523 U.S. 666 (1998).

26 This recommendation requires a change in New York City Administrative Code §3-708(1) as well as in New York City Charter §1052(a)(1).

27 The Board notes that this is a problem on the State level also. *See* James C. McKinley, Jr., "Rivals are Angry that Pataki May Star in Tourism Ads," *New York Times*, February 27, 2002.

28 *Campaign Finance Board 2001 Hearings,* vol. II, at 246-47 (testimony of Rachel Leon), vol. II, at 321 (testimony of Laura Altschuler of the League of Women Voters).

29 These are the state limits for individual non-family members. In addition, corporations may contribute up to $5,000 to a citywide candidate per election. NYS Election Law §§14-114 and 14-116.

30 *Voting Matters in New York, Participation, Choice, Action Integrity,* Office of Attorney General Eliot Spitzer, February 12, 2001, 72. Another change that would ease the burden for candidates and the Board would be to fix the petitioning period further away from the primary election day.

31 *See, e.g., Campaign Finance Board 2001 Hearings,* vol. I, at 115-17 (testimony of Gene Russianoff and Neal Rosenstein), vol. II, at 213-14 (testimony of Oliver Koppell), vol. II, at 240 (testimony of Council member David Yassky), vol. II, at 294-295 (testimony of Betsy Gotbaum).

32 *Dollars and Disclosure,* 106.

33 Editorial, *Daily News*, Oct. 29, 2001, 40.

34 *Ibid.*, at note 32.

35 Securities and Exchange Commission Rule G-37 prohibits municipal securities brokers and dealers from engaging in municipal securities business with an issuer for a two-year period after a broker or dealer has made a contribution (over $250 per official per election) to an official of the issuer.

36 Conflicts of Interest Board Advisory Opinion No. 2001-1, January 30, 2001.

37 New York City Charter §2604(b)(12).

38 In 1992 and 1993, legislation was proposed in the New York City Council which would have imposed civil penalties, including the revocation of all public funds, on participants for false statements made by candidates in the Voter Guide. The bill was opposed by the CFB and was not passed.

39 *See e.g.*, Ethical Campaign Practices Ordinance, Section 2-11.1.1 of the Code of Miami-Dade County, Florida.

Notes to Appendices and Data

The notes below explain the appendices on the CD ROM included in the envelope at the back of this book. The CD includes Acrobat Reader software and several ".pdf" (Portable Document Format) files that will be automatically installed on your computer. Just insert the CD into your CD ROM tray and follow the setup instructions on your screen. To uninstall the ".pdf" files, reinsert the CD into the CD ROM tray and follow the instructions on your screen.

All appendices cover only candidates for the 2001 citywide elections. Data in both the report and appendices are cumulative for all committees for a given campaign. All data for Campaign Finance Program participants in the report and in all appendices are from the New York City Campaign Finance Board's Campaign Finance Information System ("CFIS"), as of April 30, 2002. Prior to that date, the CFB made efforts to have campaigns provide missing submissions and correct apparent reporting errors that were not corrected during the election cycle. Notwithstanding those efforts, CFIS is subject to change as a result of ongoing audits and additional amendments to filings received from campaigns. Figures are based on information as it is reported to the CFB by the campaigns and may not reflect conclusions about the data reached during the audit and enforcement process. Current data, as well as the CFB's searchable database, can be viewed on the CFB's home page, which is located at http://www.cfb.nyc.ny.us. Clicking on the CFB logo at the top of each appendix page in the .pdf files will access the CFB home page.

Data for non-participants are based upon State Board of Elections (State BOE) financial disclosure statements required under state law to be submitted to the Board of Elections in the City of New York (City BOE) and obtained by the CFB as of April 30, 2002. Non-participant filings are not audited by the CFB, and the CFB has no capacity to verify the accuracy or completeness of these filings. Data for non-participants are included only for the purposes of making general comparisons. Data for non-participants may not be comparable to participants' data for the following reasons:

- The CFB was unable to obtain all non-participants' disclosure statements and/or was unable to verify the completeness of filings that were obtained. In some cases, non-participants may have failed to file with the City BOE. In other instances, the filings may contain information relating to a previous election.
- The manner in which non-participants submit amended disclosure statements to the City BOE is different from CFB protocols for amendment and resubmission of data.

- Non-participants filing with the City BOE may have used various versions of disclosure forms issued by the State BOE.

Vote totals and party information for all candidates are as provided by the City BOE.

Where noted in the report, data for previous election cycles may be adjusted for inflation.

Appendix A: Campaign Finance Program Participants in the 2001 Elections

Appendix A presents an alphabetical list of participants by office sought for the 2001 election. An asterisk (*) indicates that the participant was on the ballot in either the primary or general elections. A plus (+) sign indicates the candidate was an incumbent in the office sought.

Appendix B: Totals for Candidates Appearing on the Primary Election Ballot

This appendix includes data for both participants and non-participants through the first post-primary filing. Because of the rescheduled primary, the 10-day post-primary disclosure statement was due to both the City BOE and the CFB on October 5, 2001, covering financial activity through October 1, 2001. In many cases, this statement includes primary day expenditures originally incurred on September 11th that were recreated by the candidates on September 25th, the date of the rescheduled primary. The report does not necessarily reflect expenditures attributable only to the primary election. In the case of some of the mayoral and public advocate candidates, it includes expenditures for the run-off elections. The appendix shows the candidate's name, Program participation status, net contributions, net expenditures, net public funds received for the primary (including returned funds) for participants, and votes received in the primary election. Candidates are grouped by the party for which they appeared on the primary ballot. Candidates participating in more than one primary appear accordingly, although contribution, expenditure, and public funds data are cumulative for all primary activity. Incumbents are noted with an asterisk (*), and candidates who qualified to receive public funds at a bonus matching rate are noted with a pound sign (#). A plus sign (+) indicates that the campaign filed its disclosure statements for the primary period as a small campaign, certifying minimal activity. N/A denotes no filing from the candidate or that the column does not apply. Specific information about the data is indicated by "Notes," listed at the bottom of the appendix.

For participants:

Net contributions includes itemized and unitemized monetary contributions, in-kind contributions, transfers received from a party or constituted committee ("Type 1"), and outstanding advances, less refunds and forgiven loans through the last primary disclosure statement submitted. Net contributions does not include any surplus funds from previous elections; transfers from non-covered committees which are reported as lump sum amounts (“Type 2”); any loans that are deemed contributions because they are outstanding after the last election, taken out after the election, or paid back by a third party; or any bills that are deemed contributions because they are outstanding for more than 90 days, paid back by a third party, or forgiven.

Net expenditures includes itemized and unitemized expenditure payments, in-kind contributions, transfers to a party or constituted committee, advances, and outstanding bills as of the last primary disclosure statement submitted, less expenditure refunds.

CFB payments consists of funds disbursed for the primary election, less returned funds.

For non-participants:

Totals represent cumulative contributions and spending through the last primary disclosure statement obtained from the City BOE.

A non-participant carries note 2 only when the CFB was unable to obtain any City BOE filings for that candidate.

Appendix C: Totals for Candidates Appearing on the General Election Ballot

This appendix includes data for both participants and non-participants through the January 15, 2002 periodic disclosure statement, which is the last for the 2001 election cycle. It shows the candidate’s name, party line(s), participation status, cumulative net contributions, cumulative net expenditures, cumulative public funds payments (for participants), and votes received in the general election. Incumbents are noted with an asterisk (*), and candidates who qualified to receive public funds at a bonus matching rate in the general election are noted with a pound sign (#). A plus sign (+) indicates the campaign filed all its disclosure statements as a small campaign, certifying minimal activity. N/A denotes no filing from the candidate or that the column does not apply. Specific information about the data is indicated by “Notes,” which are listed at the bottom of the appendix.

For participants:

Net contributions includes itemized and unitemized monetary contributions, in-kind contributions, transfers received from a party or constituted committee (“Type 1”), and outstanding advances, less refunds and forgiven loans for the entire election cycle. Net contributions does not include any surplus funds from previous elections; transfers from non-covered committees which are reported as lump sum amounts ("Type 2"); any loans that are deemed contributions because they are outstanding after the last election, taken out after the election, or paid back by a third party; or any bills that are deemed contributions because they are outstanding for more than 90 days, paid back by a third party, or forgiven.

Net expenditures includes itemized and unitemized expenditure payments, in-kind contributions, transfers to a party or constituted committee, advances, and outstanding bills as of the last disclosure statement submitted, less expenditure refunds.

CFB payments consists of public funds disbursed for the primary, run-off, and general elections.

For non-participants:

Totals represent cumulative contributions and spending through the last disclosure statement obtained from the City BOE.

A non-participant carries note 2 only when the CFB was unable to obtain any City BOE filings for that candidate.

Appendix D: Contributions and Other Receipts (participants only)

This appendix gives a detailed breakdown of participants' contributions and other receipts and totals by office.

Itemized contributions includes itemized monetary and in-kind contributions, transfers received from a party or constituted committee, and outstanding advances, less forgiven loans.

Unitemized contributions includes contributions of $99 or less that campaigns are not required to report by contributor.

Refunds represents contributions refunded by the campaign.

Total contributions is the sum of itemized and unitemized contributions, less refunds.

Other receipts shows total income derived from sources other than contributions or loans, such as interest and proceeds from sales or leases, but does not include public funds payments.

Funds from prior elections shows each campaign's reported opening balance on its first disclosure statement filed for the 2001 election cycle.

Total represents the sum of total contributions, other receipts, and funds from past elections.

Appendix E: Contributions by Type of Contributor (participants only)

Appendix E shows itemized monetary and in-kind contributions and outstanding advances, less refunds and forgiven loans by type of contributor as reported by campaigns. Contributor types are *individuals*, including the candidate and the candidate's family; *corporations*, whose contributions Program participants were prohibited from accepting after December 31, 1998; *employee organizations*, including unions and guilds; *political committees*, including party committees, political action committees, and candidate committees; *partnerships*; *other organizations*, denoting entities that campaigns did not assign to one of the preceding categories; and *unknown*, denoting contributions reported without any classification (by manual filers). The data as reported may not reflect audit findings of misreporting by campaigns. This appendix does not include surplus funds from previous elections; transfers from non-covered committees; loans that are deemed contributions because they are outstanding after the last election or paid back by a third party; or bills that are deemed contributions because they are outstanding for more than 90 days, paid back by a third party, or forgiven.

Appendix F: Loans (participants only)

This appendix shows total loans made and the number of lenders to a participating campaign. Advances to a campaign are reported separately from loans and are not accounted for in this appendix.

Number of lenders identifies the number of individuals or other entities that made loans to the campaign.

Total loans represents the total dollar amount of loans received.

Aggregate amount outstanding is the total loans, less any principal and interest repayments and loans forgiven by the lender. Negative aggregate outstanding amounts can result from the extent to which accrual of interest causes loan repayments to exceed the original loan amounts.

Appendix G: Candidate Payments Summary (participants only)

This appendix lists public funds disbursed to participating candidates in the primary, run-off, and general elections, and totals by candidate, office, and election type. It does not include funds returned to the CFB. Amounts may reflect withholdings from public funds in lieu of penalty payments made by a campaign.

Appendix H: Candidates' Financial Summary (participants only)

This appendix summarizes contributions, expenditures, public funds payments, and other campaign activity. It provides totals by office for all participants who appeared on the primary or general election ballot.

Net contributions includes itemized and unitemized monetary contributions, in-kind contributions, transfers received from a party or constituted committee ("Type 1"), and outstanding advances, less refunds and forgiven loans. Net contributions do not include any surplus funds from previous elections; transfers from non-covered committees which are reported as lump sum amounts ("Type 2"); any loans that are deemed contributions because they are outstanding after the last election, taken out after the election, or paid back by a third party; or any bills that are deemed contributions because they are outstanding for more than 90 days, paid back by a third party, or forgiven.

Number of contributors is the number of distinct individuals and other entities that have made itemized contributions to the campaign.

Other receipts is the total income derived from sources other than contributions, loans, or public funds payments, such as interest and proceeds from sales or leases. It also includes any transfer from a committee solely supporting the same candidate that is not taking part in this election.

Public funds payments lists funds disbursed to candidates for the primary, run-off, and general elections.

Public funds returned is the total amount of public funds returned, not including penalty payments.

Loans received is the total dollar amount of loans received.

Loans paid includes all payments of loan principal and interest and any loans forgiven.

Net expenditures (*except outstanding*) is the total itemized and unitemized expenditure payments, in-kind contributions, transfers to a party or constituted committee, and advances, less expenditure refunds.

Outstanding bills consists of the outstanding bills reported on the last disclosure statement filed.