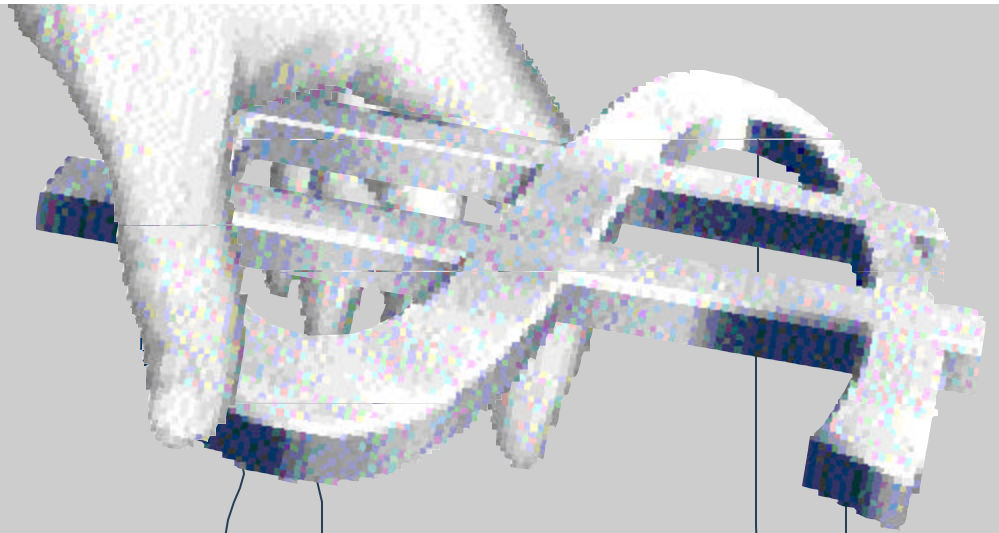
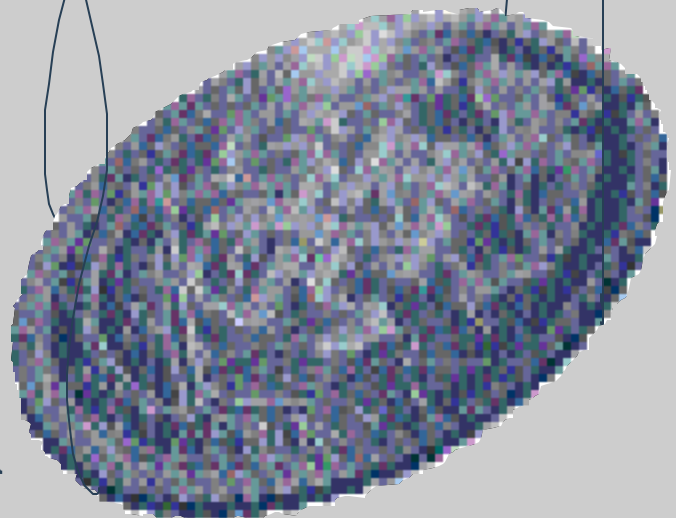


SEPTEMBER 1998
VOLUME I: REPORT



A DECADE OF
REFORM
1988 - 1998

New York City
Campaign Finance Board



A DECADE OF
REFORM

**Volume I:
Report**

September 1998



**NEW YORK CITY
CAMPAIGN FINANCE BOARD**



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Preface

This report comprises two volumes. Volume 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 1997. (See N.Y.C. Administrative Code §3-713(1).) Volume II contains the appendices to Volume I. An Executive Summary of the Board's mandated report is also available that contains highlights of the report and includes recommendations made by the Board for improvements in the Program and State law governing campaign financing.

The Board plans to issue an additional volume of this report in 1999. That volume will include a separate quantitative compilation of computerized campaign finance data for Program participants from 1989, when the first elections were held under the Program, to 1997.

Financial data for candidates who were not participants in the Campaign Finance Program, and who therefore did not file financial statements with the Campaign Finance Board, are presented in these volumes as reported by the candidates to the New York City Board of Elections. The Campaign Finance Board has made every effort to present "non-participant" data accurately, but the difficulty of obtaining complete filings and interpreting data required to be submitted to the Board of Elections may render comparisons with Campaign Finance Board data unreliable. See Chapter 1, note 23, of this report for a discussion of the limitations of non-participant data.

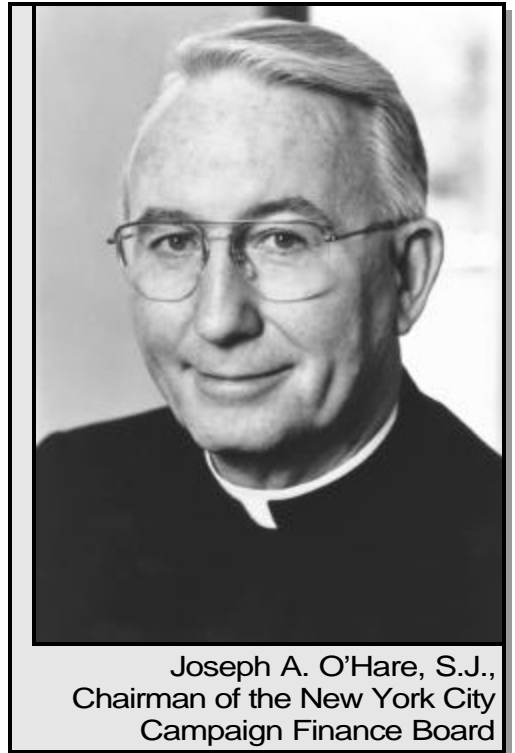
Foreword

This report of the New York City Campaign Finance Board on the 1997 municipal elections is the fourth such report published by the Board, in fulfillment of its mandate to review, after each election, the role of the Campaign Finance Program in the electoral process. The purpose of these reviews is to assess the strengths and limitations of the Program and make recommendations for whatever legislative or regulatory changes could help the Program better achieve its objectives. Those objectives, simply put, are to reduce the influence of private money on elections and to increase the information available to the voters of New York City.

As the title of the present report indicates, this fourth report coincides with the tenth anniversary of the Campaign Finance Act, which was passed by the City Council and signed into law by the Mayor in February 1988. It seems appropriate, then, for the report to have a double focus: a review of the 1997 campaign and an assessment of the ten-year history of the Program.

The Program enacted into law in 1988 offered public funds to match private contributions to those candidates who chose to enter the Program and accept its specified limits on contributions and expenditures. Participation in the Program also required candidates to report detailed information about the sources of their contributions as well as their expenditures. The assigned limits to contributions and expenditures varied according to the office sought: the city-wide offices of Mayor, Comptroller, and Public Advocate; the five Borough Presidents; and the City Council. The purpose of the matching funds formula was to enhance the importance of smaller contributions from local residents. Since participation in the Program would be voluntary, bonus matching funds were available to candidates in the Program who were competing against candidates who chose not to participate.

In addition to the information made available to the public through the Program's disclosure requirements, the Campaign Finance Board also publishes for each primary and general election a Voter Guide describing all candidates who may be on the ballot, including those who choose not to participate in the Program. This mandate of the Board was not in the original legislation that created the Campaign Finance Program but was a proposal of the Charter Revision Commission approved by the voters in November 1988.



Joseph A. O'Hare, S.J.,
Chairman of the New York City
Campaign Finance Board

In the 1997 municipal elections, the Campaign Finance Board was also responsible for administering a new program of mandated debates that had been enacted into law by the City Council and the Mayor as a result of widespread disappointment after the 1993 elections, when the principal mayoral candidates, after debating at great length about the conditions for a debate, never did meet in any face-to-face encounter. Public sentiment, reflected on the editorial pages of the City's newspapers, was strong that candidates who received public matching funds to support their campaigns had an obligation to meet their opponents in the kind of public debate that presumably would better educate the voters about the choices they were to make on Election Day.

While supporting the value of scheduled debates among the leading candidates for citywide office, the Campaign Finance Board had reservations about linking the obligation to debate to the receipt of public funds. Instead, the Board proposed that a commitment to debate should be sought at the very start of the electoral process, with the pressure of public opinion as the only sanction on candidates who might later attempt to renege on that commitment. In public hearings on the proposed debate legislation, it was clear that the Board's reservations were not shared by all, and many good-government groups testified in favor of linking the obligation to debate with the receipt of public funds.

The actual experience of the debate program in the 1997 elections did not confirm the original misgivings of the Board. A number of other issues, however, do need to be resolved, in particular, how to balance the desire that the debates be as inclusive as possible with the recognition that fringe candidates participating in the debates can receive disproportionate attention and undermine the purpose of a serious exchange among the principal candidates. The Board and its staff, at a later date, will address the problems encountered in the debate program in the 1997 campaign. There can be no doubt, however, that mandatory debates in 1997 did succeed in giving the voting public an opportunity to see the candidates exchange views on the principal issues in the campaign in serious, sustained discussions, an opportunity that was absent from past municipal campaigns and almost certainly would not have taken place in 1997 if it were not for the new debate legislation.

With the introduction of the mandated debate program, along with developments in technology and improvement in procedures, the Board has been successful in steadily increasing the quantity and quality of information available to the voting public over the ten years since the Campaign Finance Program was first introduced into the political culture of New York City. Contemporaneous filing now encourages candidates to report their fundraising activities early in the election cycle, before they have even designated the office they will seek. Electronic filing also facilitates the timely disclosure of fundraising activity. Public computer terminals at the Board's offices provide access to this information to the public, whether working journalist or interested citizen. By the time this report is published, the data collected by the Board will be available in a searchable format to users of the Internet. The publication of the Voter Guide, in English and Spanish, and for certain districts in Chinese, has posed an enormous challenge to our staff to maintain the highest standards of timeliness and accuracy. As a result of their efforts, however, the Voter Guide has been hailed as a model of voter education.

If considerable progress has been made over the last ten years in fulfilling the mandate of voter education, the Board recognizes that the progress made in reducing the influence of money on campaigns has been less decisive. The Board continues to be encouraged by the testimony of first-time candidates that they could never have mounted a campaign without the matching funds they received. At the same time, the analysis of the sources of financial support for candidates in the 1997 election reveals several disturbing trends: an increase in corporate contributions, which accounted for more than 27 percent of all contributions raised, and a continued dependency on high-end contributions, as well as a concentration of financial support from Manhattan, with vastly reduced participation in the form of contributions from citizens in the other boroughs. While the Campaign Finance Program seeks to encourage a more democratic form of fundraising (more modest contributions from a broader range of citizens), just 15 percent of all contributors to the 1997 mayoral campaigns gave 75 percent of all the money raised. More money was raised outside New York City for citywide offices than was raised in the Bronx, Brooklyn, Queens, and Staten Island combined. A more democratic form of fundraising, of course, is admittedly not the most efficient way to raise money. Professional fundraisers, for universities and other not-for-profit institutions, will always concentrate on major-gift prospects. Other values are at stake in political fundraising, however, and the Board recommends a change in the public funds matching formula to further enrich the significance of the more modest contribution, without necessarily increasing the time candidates must spend in raising money.

Each of the Board's three previous reports—*Dollars and Disclosure* (1990), *Windows of Opportunity* (1992), and *On the Road to Reform* (1994)—advanced recommendations for legislative changes that we believed, as a result of our review of the campaign just completed, would strengthen the Campaign Finance Program. Electoral reform must be a continuous process; even the best-intentioned reform can have unforeseen consequences. Furthermore, candidates and campaign managers are by nature competitive people; they will agree to play by the rules but will test the rules to see if any competitive advantage can be found. In the 1997 campaign, as in previous campaigns, journalists asked whether candidates had violated “the spirit of the Program,” if not the letter of the law? The question seems misplaced. Testing the limits of the law is the campaign's right; recommending revisions to the law is the Board's responsibility.

In that spirit, then, on the occasion of the tenth anniversary of the Campaign Finance Act in February 1998, the Campaign Finance Board recommended a set of legislative changes in the Act that we believed, based on a decade of experience with the Program, would make a good law better. Among the most important of these recommendations are the following:

- Reduce the contribution limit for citywide candidates to \$5,000, rather than the \$8,500 limit that will go into effect in 2001 if there is no change in the law;
- Prohibit contributions from corporations, unions, and partnerships, while requiring that political committees that make contributions to campaigns file disclosure statements with the Board;
- Change the formula for matching funds, matching a \$250 contribution three times, for example, to increase the value of small contributions, a change that,

one hopes, could lead to greater participation on the part of citizens living outside of Manhattan;

- Reduce the threshold amount necessary to qualify for public funds in order to further encourage candidates of more modest resources;
- Require that contributions to transition and inaugural expenditures also be governed by appropriate limits and disclosure requirements;
- Restrict, during the campaign season, officeholders' use of governmental resources in ways that may promote their campaigns;
- Require electronic filings from all but the smallest campaigns; and
- Give the Campaign Finance Board the authority to set a later "opt-in" deadline.

These recommendations and others are spelled out in greater detail in Chapter 12 of this report.

As this report goes to press, interest in making improvements in New York City's Campaign Finance Program is evident on several fronts. In early July, the Speaker of the City Council proposed legislative changes that incorporate many of the recommendations the Board proposed in February and repeats in this report. A newly-established Charter Revision Commission voted later in the month to make campaign finance reform one of three questions the Commission would study to recommend changes in the City Charter. A third group of interested citizens has proposed a "Clean Money" initiative that would introduce a limited but radical change in the Campaign Finance Program.

The Board welcomes this healthy interest in campaign finance reform, even when it cannot endorse all of the particular proposals of different groups. Before debating the merits of different proposals, the Board believes it would be useful to distinguish the kind of changes in the Program that would merit inclusion in the City Charter, as opposed to changes that would be more appropriate for local legislation passed by the City Council, as well as those changes that might best be left to the discretion of the Campaign Finance Board itself.

For example, provisions in the City Charter that recognize and protect the distinctive character of the Campaign Finance Board as an independent City agency, unlike mayoral agencies, could avoid conflicts of interest, or at least the appearance of conflicts of interest, in future campaigns. The nonpartisan character of the Board is essential to its credibility, and Charter provisions concerning the manner of appointments to the Board could guarantee a certain insulation of the Board's necessary activities from the partisan political pressures of any given moment. Similarly, a Charter provision protecting funding for the Voter Guide, like the existing provision protecting the Public Fund for payments to the candidates, would also be helpful. On the other hand, setting appropriate contribution and expenditure limits, and establishing matching funds formulas, seems more appropriate for Council enactment, since these may need to be adjusted more regularly than the rhythm of Charter Revision would allow. Finally, allowing the Board the discretion to fix the required opt-in date would allow for greater administrative efficiency and would better accommodate the needs of candidates.

On this, its tenth anniversary, we believe the New York City Campaign Finance Program has proven its value. This should be a source of satisfaction and pride to the original architects of the Program in 1988, Mayor Edward I. Koch and Peter F. Vallone, then the Majority Leader of the City Council and now its Speaker, and the Corporation Counsel at the time, Peter Zimroth, whose office played such an important role in drafting the original legislation. The Program has been supported by both of the Mayors who succeeded Mayor Koch and by all the distinguished successors to Peter Zimroth. During the last ten years, the New York City Program has attracted national and even international attention. Over 50 state and local jurisdictions in the United States, including Alaska and Hawaii, have requested information or assistance from the Board, particularly in the matter of computerizing campaign data. Our offices have welcomed visitors from Australia, Japan, South Africa, the United Kingdom, and several Latin American countries.

The Board is under no illusion that campaign finance reform alone will so improve our electoral process that the confidence of the voting public is restored and greater participation on the part of our citizens is revived. The arcane electoral laws of New York State, for example, continue, even after limited improvements, to make access to the ballot difficult for candidates and access to campaign information difficult for voters. But campaign finance reform is a critical piece of the puzzle, and the experience of the last ten years represents a resource, we believe, for the continued improvement of the political culture of New York City. At the risk of demonstrating the hubris that some think characteristic of New Yorkers, we believe that the Board's history over the last decade has some lessons for the State and the Nation, as well.

Finally, on behalf of those who have served with me on the Board over the last ten years, I want to thank and congratulate the staff of the Campaign Finance Board for setting a standard of excellence in public service for all New Yorkers. The Executive Director, Nicole A. Gordon, has led the staff over the past ten years with unmatched integrity and high competence. She has been assisted throughout by highly dedicated colleagues, Carole Campolo, the Deputy Executive Director, Laurence Laufer, the Board's General Counsel, and Carol Ozgen, Director of Administrative Services. Andrew Levine, now Director of Campaign Finance Administration, has served in that department from the beginning, and Ken O'Brien, now Director of Systems Administration, has made a similar contribution over ten years in developing the technology so critical to the success of the disclosure requirements of the Program. Working with a succession of talented and generous members of the staff, the Board has confidence that the high standards of the past ten years will be continued over the next decade.

Joseph A. O'Hare, S.J.
Chairman, New York City Campaign Finance Board
Summer 1998

Chapter 1—The 1997 Elections

At the Races

The 1997 elections marked the fourth set of major citywide races for which New York City's pioneer Campaign Finance Program ("Program") was in effect. The Program has for ten years been the source for public matching funds for candidates who voluntarily accept contribution and expenditure limits and submit detailed disclosure of their campaign finances. (For a summary of Program requirements, see Fact Sheet 1.1.)


The number of candidates appearing on the ballot, as well as the number of participants in the New York City Campaign Finance Program, were up in 1997, probably at least in part because of the institution of term limits and ballot access reform. (See Chapter 2, "Program Participation.") The New York City Campaign Finance Board (the "Board" or "CFB") played a key role in many of these races by providing campaign finance data to the press and public, enforcing the Program's limits and other requirements, distributing public funds, administering the first-ever mandatory citywide debates, and distributing the Voter Guide. An overview of the major citywide and some Boroughwide and City Council races follows, to provide a backdrop for this report on the role of the Program in the 1997 elections.

CITYWIDE RACES

The citywide races raised many challenges in the implementation of the Board's mandates to administer the Program and a new provision requiring citywide participating candidates to debate (the "Debate Law").

The Mayoral Primary

Five candidates were on the ballot for the Democratic mayoral nomination: City Council member Sal Albanese, Manhattan Borough President Ruth Messinger, Roland Rogers, Eric Ruano-Melendez, and Al Sharpton. All were Program participants with the exception of Rogers, who missed the Program's "opt-in" deadline. Bronx Borough President Fernando Ferrer had originally been a candidate for Mayor, but changed his mind before ballot petitions were due and ultimately ran for re-election.

1988		1998
Lax contribution limits, no spending limits, limited disclosure requirements, reliance by candidates on private money alone, and no mandatory debates under State law.		Voluntary New York City Program marks ten years of contribution and spending limits, extensive computerized public disclosure, clean public matching funds, and newly mandated debates for citywide offices.
A Decade of Reform		

FactSheet

1.1

CAMPAIGN FINANCE PROGRAM CONTRIBUTION AND SPENDING LIMITS AND PUBLIC FUNDS REQUIREMENTS FOR THE 1997 ELECTIONS

Contribution Limits

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

Spending Limits

	Mayor	Public Advocate & Comptroller	Borough President	City Council
1994-1995*	\$90,000 [†]	\$90,000 [†]	\$60,000 [†]	N/A
1996*	180,000	180,000	120,000	\$40,000
1997 Primary Election	4,732,000	2,958,000	1,065,000	124,000
Total Primary Limit[‡]	5,002,000	3,228,000	1,245,000	164,000
1997 General Election	4,732,000	2,958,000	1,065,000	124,000

* Spending in excess of these amounts was charged against the first limit applicable in 1997.

[†] Effective June 23, 1994.

[‡] If no primary election was held and a primary election spending limit was not otherwise applicable, the amounts set forth in this row were applicable instead for the general election.

In return for abiding by the above limits and meeting the relevant threshold below...

Thresholds

	Mayor	Public Advocate & Comptroller	Borough President	City Council
Dollar Amount	\$250,000	\$125,000	\$10,000-46,013*	\$5,000
Number of Contributors	1,000	500	100	50

* For borough president, the threshold dollar amount is equal to the number of persons living in each borough (based on the 1990 census) multiplied by two cents, or ten thousand dollars, whichever is greater. The dollar amount for each borough is: Bronx, \$24,076; Brooklyn, \$46,013; Manhattan, \$29,751; Queens, \$39,032; and Staten Island, \$10,000.

...candidates could qualify to receive public matching funds up to...

Maximum Public Funds*

Mayor	Public Advocate	Comptroller	Borough President	City Council
\$2,366,000	\$1,479,000	\$1,479,000	\$532,500	\$40,000

* Per election, in election year.

Disclosure

Candidates who join the Program must submit detailed campaign finance information including names, addresses, and employer and occupation information for contributors and for intermediaries (who deliver contributions from others to the candidates).

The 1997 elections included a historic new element in citywide races: the introduction of mandatory debates onto the political landscape. For the first time, participating candidates who were on the ballot for citywide office were required to debate in order to meet their Program obligations. The four Program participants took part in primary debates on August 19 and September 7. (For a discussion of the new debate program, see Chapter 7, “Debates ’97.”)

Messinger held a commanding lead in pre-election polls, but on the night of the primary, September 9, preliminary election results reported by the Associated Press indicated that none of the candidates had received the 40 percent needed to avoid a run-off primary election. The top two, Messinger reportedly with 39 percent, and Sharpton with 32 percent, prepared for a run-off that would take place two weeks later—if the initial reports of results held. (The other candidates, Albanese, Ruano-Melendez, and Rogers, received 21, 5, and 3 percent of the vote, respectively.)

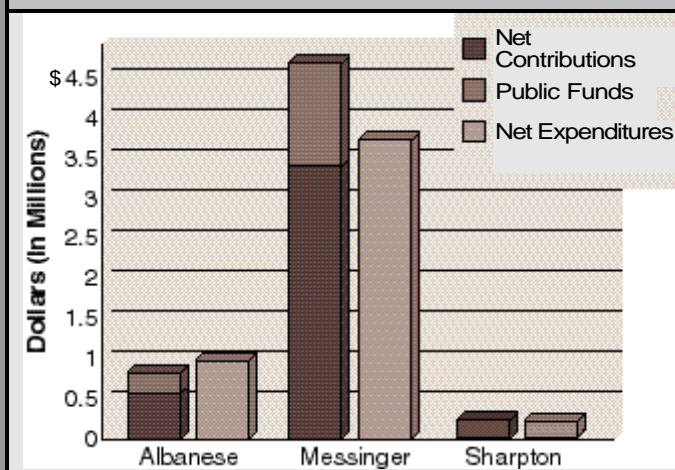
While the City Board of Elections (“City BOE”) counted absentee ballots,¹ the CFB proceeded with preparations for a run-off. Under the Campaign Finance Act (the “Act”), run-off candidates receive a lump-sum payment equal to 25 percent of the matching funds they have already received in the primary period. For Messinger, this meant an additional \$320,402. Sharpton, however, had received no payment because he failed to meet the threshold to qualify for matching funds, and he was therefore not entitled to any funds for a run-off election. (The obvious unfairness created by application of this public funds formula for a run-off primary is addressed in Chapter 12, “Board Recommendations.”) These two Democrats also had their contribution limit raised from \$7,700 to \$11,550, and a separate run-off expenditure limit became available for all mayoral candidates, including those who were not involved in the run-off. Thus, Giuliani, as well as Messinger and Sharpton, had an additional run-off spending limit of \$2.37 million—half of the Program’s per election spending limit for Mayor—for the two-week period between the primary and the anticipated run-off. There was some criticism of the law’s provision for extending the increased spending limit to candidates not directly involved in the run-off. A *Newsday* article said, “Giuliani...wins big-time from the runoff because it authorizes him—and, in theory, the other candidates—to spend an extra \$2.37 million as of Tuesday.”² This was an advantage to Giuliani’s campaign, which was the only campaign that had the resources to make practical use of the additional spending limit. On the other hand, the rationale for the provision giving Giuliani an extra run-off primary expenditure limit was confirmed by the nature of the run-off period debate between Messinger and Sharpton, which was almost exclusively directed against Giuliani and not by the Democratic candidates at each other.

Under the Campaign Finance Act, run-off candidates receive a lump-sum payment equal to 25 percent of the matching funds they have already received in the primary period.

As required by the Debate Law, two debates were scheduled between Sharpton and Messinger for the anticipated run-off election, but only one, on September 15, actually took place. After counting absentee ballots—and after the first run-off debate had been held—the City BOE declared Messinger the primary winner with 40.19 percent of the vote on September 18, nine days after the primary election and three days before the second scheduled run-off debate, which

Chapter 1

**FIGURE 1.1
MAYORAL PRIMARY ELECTION
CAMPAIGN FINANCES**



Source: NYC Campaign Finance Board data

was canceled. The anticipated run-off election—which would have been the first for a mayoral race in 20 years—did not take place.

The fundraising capacity of the candidates varied greatly. In advance of the primary election, Messinger received \$3.4 million in contributions and just under \$1.3 million in public funds, and spent approximately \$3.7 million. (For a further breakdown of these totals and other campaign finance data, see Volume II, Appendices B through I.) Sal Albanese, the only other participant to receive matching funds, took out a \$200,000 loan in anticipation of receiving public funds and qualified to receive his first payment just four days before the primary election. He received approximately \$569,000 in contribu-

tions and \$254,000 in public funds, and his campaign spent \$968,000 on the primary election. By contrast, Al Sharpton raised \$225,000 in contributions and spent \$211,000 on the primary election. (See Figure 1.1.) Eric Ruano-Melendez reported receiving only a \$20 in-kind contribution in the primary election.

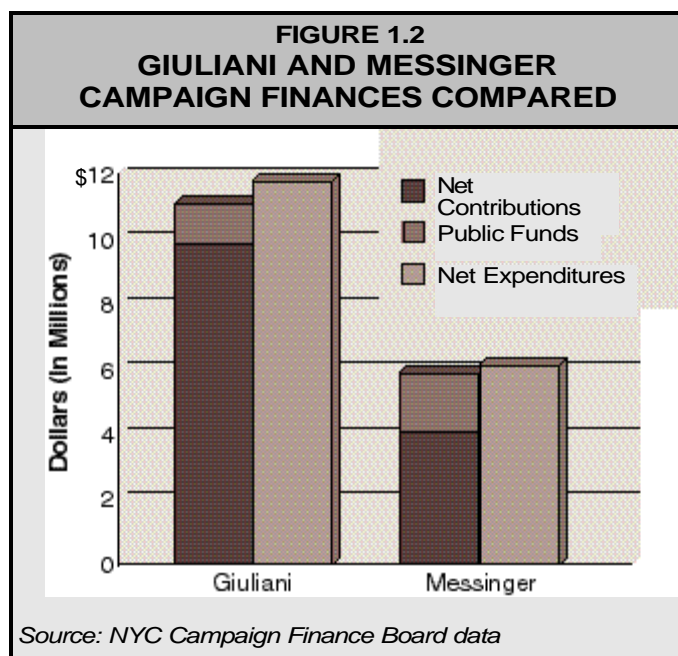
In money spent per vote received, Sharpton's was the most efficient of the major campaigns, spending only \$1.61 per vote (for the 131,848 votes he received). The Albanese campaign spent \$11.19 per vote (for 86,485 votes), and the Messinger campaign \$22.49 (for 165,377 votes). Spending per vote in the 1997 primary was significantly less than in the 1993 elections, when Mayor David Dinkins spent \$19.99 per vote in a less competitive race.

The Mayoral General Election

The general election saw Democratic nominee Ruth Messinger go against another Program participant, incumbent Mayor Rudolph Giuliani, who was seeking his second term as the Republican and Liberal candidate. (Mayor Giuliani ran a joint campaign with Public Advocate candidate Jules Polonetsky. See below for issues that are raised when candidates run as a ticket.) Also appearing on the general election ballot were Fusion candidate Dominick Fusco, Right to Life candidate Peter J. Gaffney, Socialist Workers Party candidate Olga Rodriguez, and Sal Albanese, who, after losing the Democratic primary, appeared on the Independence line. Giuliani achieved a convincing victory, garnering 58 percent of the 1,357,448 votes cast, 17.3 points more than second-place Messinger. On the other hand, voter turnout for the election (as a percentage of registered voters) was the lowest in memory for a citywide mayoral race.³

As Figure 1.2 indicates, the Mayor was able to raise and spend far more money than Messinger. He raised a total of \$9.88 million, without having had to face a primary opponent and received

\$1.21 million in public funds, while Messinger raised \$4.11 million for both of her elections and received \$1.78 million in public funds. After her competitive primary victory, Messinger only had resources to spend \$2.39 million on the general election. Giuliani, who was not involved in a primary, spent a total of \$11.81 million. Giuliani spent \$6.40 per vote, if his cost is calculated based only upon spending during the general election period. On this basis, Messinger spent \$4.35 for each vote she received in the general election. (Under the Act and CFB rules, a sizable portion of the Giuliani campaign spending up until September 18 was attributable to the separate \$4.73 million primary and \$2.37 million run-off spending limits.) If spending in the entire election period is included, Giuliani spent \$15.06 per vote, while Messinger spent \$11.12 per vote in the general election.



It is notable that, in spite of Giuliani's overall fundraising advantage, he actually received less in public matching funds than did Messinger. As discussed in Chapter 5, "Public Funds," once a candidate meets the threshold, contributions from New York City residents are matched dollar-for-dollar up to \$1,000. Messinger's public funds advantage reflects the fact that she received many more individual contributions from residents of New York City than Giuliani did. This suggests that the public funds program—which matches candidate resources in a way that reflects popular support expressed through small contributions—did not prevent a lopsided funding advantage in the 1997 mayoral elections. The Board has proposed legislation that would further increase the value of small contributions from individual New York City residents. (See Chapter 12, "Board Recommendations.")

Throughout the election season, Board staff continually audit the campaign finance records of each participating campaign. One item the auditors examine is compliance with the contribution limit, including whether contributors are affiliated with one another and thus subject to a single contribution limit. Board rules treat affiliated contributors as a single entity for contribution limit purposes. The Board determined that the Giuliani campaign had received 157 over-the-limit contributions, including many from affiliated entities that, when aggregated, violated the limit. The Board assessed a total of \$242,930 in penalties against the Giuliani campaign in two unanimous rulings and required the campaign to return \$384,551 for the portion of the aggregated contributions that exceeded the limit. (For a discussion of the assessment of these penalties, see Chapter 9, "Compliance and Enforcement.")

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Both mayoral debates held for the general election were highly successful as substantive exchanges on topical issues.⁴ The first debate, on October 9, included Giuliani, Messinger, and Olga Rodriguez, the Socialist Workers Party candidate. In the second “leading contenders” debate, on October 29, the public saw Giuliani and Messinger go head-to-head. Both debates were carried live on television and radio and were widely viewed by the public. (See Chapter 7, “Debates ’97.”)

Taxpayer-Financed Advertising. The 1997 elections again highlighted the need for legislative reform in the area of taxpayer-financed advertisements featuring incumbents up for election. Officeholders have a legitimate interest in using taxpayer money to communicate with their constituents about governmental matters. A problem arises, however, when it appears that government-financed advertising is crossing the line to promote an office-holder’s campaign during an election period.

In late 1996, Messinger used resources available to her as Manhattan Borough President to air radio advertisements opposing Mayor Giuliani’s “mega-stores” zoning plan, and in early 1997 Giuliani was featured in City-funded advertisements promoting tax-free clothing week. Both were criticized by the media and watchdog groups, although no formal complaints were filed with the Board on the basis of these two sets of advertisements.⁵ In joint letters, both the New York Public Interest Research Group (“NYPIRG”) and Common Cause/NY took the candidates to task for spending government funds on what appeared to be advertisements intended to promote their campaigns.⁶

Then, in August, the Messinger campaign filed a formal complaint with the Board, alleging that government-paid radio and television advertisements that began airing in June 1997 and featured Mayor Giuliani announcing the elimination of two-fare transit zones in New York City constituted an in-kind contribution from the City of New York and an expenditure by the Giuliani campaign.⁷ Consistent with previous determinations, the Board dismissed the complaint, restating its longstanding position that before the use of a governmental resource can be considered a contribution to a campaign, another agency with appropriate jurisdiction (such as the Conflicts of Interest Board) must first determine that the use of that governmental resource by the candidate was improper.⁸ There had been no such previous ruling in this case.

The Board reiterated its call for legislation to deal with this issue.⁹ Indeed, since 1990, the Board has supported strict controls before an election on publicly-funded communications by candidates for public office.¹⁰ Soon after the Board’s determination was issued, City Council Speaker Peter Vallone and Council member Sal Albanese introduced a bill that would prohibit such advertisements during the year of the election.¹¹ At the time this report went to press, Speaker Vallone had confirmed his intent to have this legislation passed in the immediate future.

Incumbent officials have enormous public resources at their disposal, which, if they want, can be inappropriately used contrary to the State Constitution to support

their campaign activities...The Commission on Government Integrity...recommended...a general ban on the use of public resources for campaign activities, a ban during a predefined pre-election period on mass mailings and other communications at public expense and a strong agency to enforce the law, educate the public and formulate specific guidelines.

—John Feerick, *Chair of the New York State Commission on Government Integrity*¹²

Public Advocate

Throughout the campaign, incumbent Mark Green, a Democrat, remained the favorite to win re-election. In the primary election, he easily defeated non-participant Roger Green, a Democratic State Assembly member from Brooklyn, who, although he appeared on the ballot, had stopped campaigning weeks before the primary. Mark Green's main competitor in the general election was Republican and Liberal candidate Jules Polonetsky, also a Democratic State Assembly member from Brooklyn. Both Green and Polonetsky were participants in the Program, and both presented difficult policy issues for the Board to grapple with in its implementation of the Campaign Finance Act and Rules.

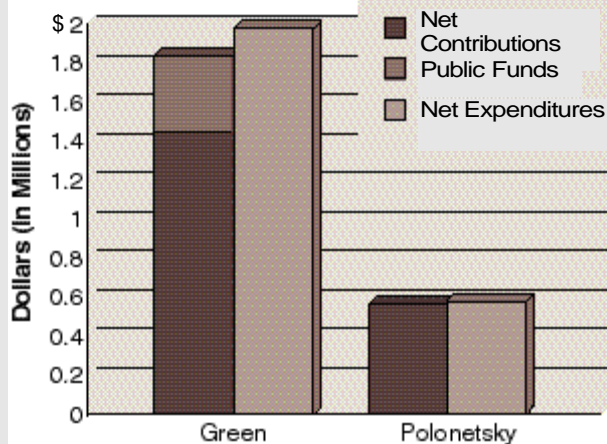
There were also three lesser-known candidates in the race: Socialist Workers Party candidate Shoghi Fret, who participated in the Program, and two non-participants, Right to Life candidate Daniel J. Buckley and Fusion candidate Ismael Betancourt, Jr.

Mark Green Runs for Two Offices Simultaneously. While running for re-election as Public Advocate, Mark Green also began conducting a campaign for the United States Senate election in 1998. Two separate political committees with separate bank accounts were created. As both committees operated on behalf of the same candidate, however, they planned to share various expenditures and engage in joint fundraising activities. The Green campaign requested an advisory opinion, asking how to apportion these expenditures using an allocation account for shared expenditures.

Because one campaign was subject to the requirements of the Program and one was subject only to Federal law, the issue raised difficult administrative questions. The Board decided that shared expenditures must be accurately allocated to each committee, and that payments made for each campaign must correctly reflect the allocation.¹³ In addition, the opinion states that joint fundraising activities for two campaigns were permitted, but joint fundraising at a single "event" was prohibited by the Board's Rules.¹⁴ Later, however, the Board amended the Rules in response to candidate comments to allow for joint fundraising at a single event, provided that the committee participating in the Program submit a cover letter disclosing which contributions resulted from the event.¹⁵

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**FIGURE 1.3
GREEN AND POLONETSKY
CAMPAIGN FINANCES COMPARED**



Source: NYC Campaign Finance Board data

The opinion notes that the candidate had the burden of proving that claimed federal expenditures were not for the City election and thus exempt from Program limits.¹⁶ The Board requested additional information before addressing the committee's proposal to apportion the cost of joint fundraising activities according to the ratio of funds received by each campaign. Following a subsequent submission by the Green campaign, Board staff advised that this burden had not been carried and that the full cost of joint fundraising events and mailings would be subject to the City expenditure limit. In reaching this result, Board staff reasoned that since candidates who are not running for two offices simultaneously must attribute the entire cost of fundraising events to their City campaigns, it would be unfair to allow the Green

campaign for Public Advocate to exempt part of the cost of its comparable event from the campaign's City expenditure limit. Further, this result required that funds placed in the allocation account to pay for joint events could not derive from aggregate contributions exceeding the City contribution limit.¹⁷

Polonetsky and Giuliani—Running Together. Similar issues arise when two candidates running together as a ticket engage in joint fundraising. In a joint news conference, Polonetsky and Giuliani announced that they would run together on the Republican and Liberal lines.¹⁸ An advisory opinion was issued to clarify how the Act's contribution limits would apply when candidates running as a ticket engage in joint fundraising and make joint expenditures.¹⁹ The opinion states that these candidates must show that they had received enough contributions from sources that do not exceed either candidate's contribution limit (when contributions to both candidates are aggregated) to account fully for the payments and reimbursements each candidate must make for his or her "fair share" of any joint expenditures. As applied to the Giuliani-Polonetsky ticket, this meant that when the Polonetsky campaign reimbursed the Giuliani campaign for the Polonetsky campaign's share of joint expenses, the Polonetsky campaign would have to demonstrate that it had sufficient contributions from sources that had not already given the maximum to Giuliani to account fully for the reimbursement, and vice versa. (For a discussion of joint spending by candidates running as a ticket, see Chapter 4, "Expenditures.")

Fundraising and Expenditure Comparison. As Figure 1.3 shows, Green raised and spent far more than Polonetsky. As Figure 1.3 also indicates, Green received over \$385,000 in public funds, while Polonetsky failed by election day to reach the threshold to receive public funds.²⁰

Green and Polonetsky participated in one general election debate together, along with Shoghi Fret, the Socialist Workers Party candidate. A “leading contenders” debate was not held for the office of Public Advocate because only one candidate, Green, reached the 15 percent threshold (in either of two separate public opinion polls) to support participation in that debate. (For a discussion of the use of polling to determine “leading contenders,” see the Public Advocate Debates section in Chapter 7, “Debates ’97.”)

Mark Green eventually won the election with 74 percent of the vote. Polonetsky received 24 percent. He was later named the Commissioner of the New York City Department of Consumer Affairs by Mayor Giuliani, a post once held by Mark Green.

Comptroller

Program participant Alan Hevesi, the Democratic incumbent, was favored to win re-election. His competition was Annemarie McAvoy, a Republican who entered the race too late to join the Program, Independence candidate Genevieve Torres, Right to Life candidate Donald Young, Fusion candidate Donal Yarbrough, and Socialist Workers Party candidate Wendy Lyons. Hevesi raised \$1,959,275 for his re-election campaign and spent \$2,053,787. He received \$247,054 in public funds, but announced at the Board’s “leading contenders” debate on October 27 that he would return some of the money, because McAvoy “ha[d] not launched a \$3-million attack.”²¹ He ultimately returned \$172,600.

The first general election debate for Comptroller, which could include only Program participants, involved Hevesi, Torres, and Lyons. Hevesi and McAvoy were the only candidates to qualify as “leading contenders,” and they therefore met in a second debate on October 27, 1997. Hevesi won re-election with 76 percent of the vote. McAvoy garnered 20 percent.

BOROUGHWISE AND CITY COUNCIL RACES

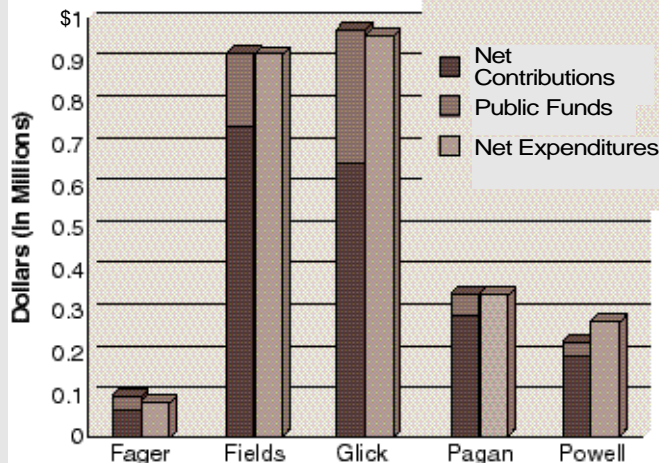
These races confronted the Board with some unusual circumstances for the first time—such as a decision by one participant to switch offices for which he was a candidate well into the campaign season. They also illustrate the range of fundraising and spending seen in local contests for elective office, as well as the role of private and public funds when one candidate for office chooses not to participate.

Borough President

All four incumbents seeking re-election as Borough President won easily.²² Of these four, only Howard Golden, from Brooklyn, did not join the Program. Howard Golden’s only opponent in the election who participated in the Program was Dennis Dillon. (There were four non-participating candidates.) As Golden was a high-spending non-participant (spending \$390,000), Dillon received matching funds at the accelerated rate of 2-for-1. (See Chapter 5, “Public Funds” on the “bonuses” given to participating candidates facing high-spending non-participants.)

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FIGURE 1.4
MANHATTAN BOROUGH
PRESIDENT PRIMARY ELECTION
CAMPAIGN FINANCES



Note: Candidate for Manhattan Borough President George Spitz claimed no contributions or expenditures, and received no public funds.

Source: NYC Campaign Finance Board data

Manhattan. This was by far the most competitive Borough President campaign in 1997. When Manhattan Borough President Ruth Messinger decided to run for Mayor, a number of veteran elected officials and two civic activists sought to succeed her. Politicians in the race for the Democratic nomination included City Council members C. Virginia Fields, Antonio Pagán, and Adam Clayton Powell and State Assembly member Deborah Glick. Joining them in that race were education advocate John Fager and George Spitz, who promised to eliminate the office if elected. All the candidates in the Democratic primary were in the Program. After a spirited race, Fields won the nomination with 42 percent of the vote, followed by Glick with 30 percent. The other candidates finished as follows: Powell, 15 percent; Pagán, 8 percent; Fager, 3 percent; and Spitz, 2 percent. All the candidates received public funds except Spitz, who neither raised nor spent any money on the

campaign. The totals of the candidates' fundraising, expenditures, and public funds receipts are shown in Figure 1.4.

Fields faced Republican Abe Hirschfeld in the general election. Hirschfeld did not participate in the Program and spent almost \$2.3 million, more than twice the Program's \$1,065,000 general election expenditure limit for Borough President.²³ This entitled Fields to receive matching funds at an accelerated 2-for-1 rate. Fields raised \$984,000, received \$264,000 in public funds, and spent \$1,345,000 for the primary and general elections combined. Despite Hirschfeld's high spending, Fields won the election convincingly, polling 69 percent of the vote to Hirschfeld's 26 percent.

The Bronx. A wide-open race for Bronx Borough President was expected when incumbent Fernando Ferrer originally announced that he would run for Mayor. Then Ferrer abandoned his race for Mayor and ran for re-election. City Council member Israel Ruiz remained in the race. The race was vitriolic, with the Ruiz campaign suggesting in a letter to the Board that Ferrer's abandoned mayoral bid was "a ruse to raise money and get publicity when the intent, all along, was to run for re-election as Bronx Borough President[.]"²⁴ The Ferrer campaign denied both these charges.²⁵

The Ruiz campaign requested an advisory opinion to clarify which expenditures made by Ferrer's aborted race for Mayor should be attributed to his campaign for Borough President. The

Board ruled that, with certain exceptions, all expenditures that were made were presumptively subject to the Borough President spending limit.²⁶ The exceptions included expenditures that would not have led to any discernible benefit to Ferrer's Borough President race, such as money spent on the parts of mayoral polls and opinion research that would not be of use for a Borough President race.²⁷ The Board also ruled that Ruiz's claims that Ferrer's initial mayoral bid had been deceptive had not been supported with any evidence.²⁸

Ferrer won the Democratic nomination, gaining 87 percent of the vote against 13 percent for Ruiz. Ferrer went on to win the general election easily against three opponents.

City Council

As with the other offices, the 1997 elections for City Council saw an increase both in the number of candidates appearing on the ballot and in the number of Program participants. The imminence of term limits seems to have inspired some challengers to establish name recognition in anticipation of "open" Council seats in 2001.

Term limits seem to have inspired some challengers to establish name recognition in anticipation of "open" Council seats in 2001.

Council District 2. The 2nd Council district in lower Manhattan was an "open seat" and had one of the most fiercely competitive races of the entire 1997 election. The incumbent, Antonio Pagán, ran instead for Manhattan Borough President. The Democratic primary pitted Judy Rapfogel, Chief of Staff for New York State Assembly Speaker Sheldon Silver, against community activist Margarita Lopez.²⁹ Both participated in the Campaign Finance Program, and both candidates received substantial amounts in public matching funds.

Initially, Rapfogel was thought to be the winner of the primary. But eight days later, the City BOE announced that Lopez had won the primary by 49 votes out of 2,697 cast. Lopez went on to win the general election against Rapfogel, who appeared on the ballot on the Liberal line, and Republican Betty Lugo. Over the entire election cycle, Lopez raised only slightly less money than Rapfogel, but she received considerably more in matching funds (\$65,984) than Rapfogel (\$40,283). Lopez received an average of \$99 from 1,243 contributors, totaling \$122,784. By comparison, Rapfogel raised \$124,901 from 451 contributors, averaging almost \$277 per contributor. This accounted for Lopez's edge in public funds payments.

Council District 4. The last two elections in Manhattan's 4th Council district generated significant media attention because of the high spending of non-participant Republican Andrew Eristoff. He won the seat in a February 1993 special election after incumbent Carolyn Maloney was elected to the United States House of Representatives. Eristoff spent nearly \$1 million on that election and the one that followed in November 1993. Eristoff spent \$808,803 in 1997 to defeat Democrat Eva Moskowitz in the general election with 52 percent of the vote to her 47 percent. In contrast to Eristoff, Moskowitz raised \$219,672, accepted \$40,000 in public funds,

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and spent \$259,707.³⁰ In terms of cost per vote, Eristoff spent \$41.78 for each vote he received, and Moskowitz spent \$15.07 per vote.

Council District 10. The race in Manhattan's 10th Council district saw three candidates challenge incumbent Guillermo Linares for the seat he won in 1993, becoming the City's first Dominican-American elected to the City Council. His strongest opponent, School Board member Roberto Lizardo, raised \$55,146 and received \$40,000 in public funds.³¹ Linares raised much more money, receiving \$146,016 in contributions and \$32,675 in public funds for the primary election. Linares won the primary election easily, receiving 65 percent of the vote to Lizardo's 26 percent.

Council District 17. Incumbent Federico Perez, who did not participate in the Program, was up for re-election for the Council seat he won in a special election in February 1997, when he was a Program participant. His main opposition in the Democratic primary was also the person who challenged him during the special election, former State Assembly member Pedro G. Espada, a Program participant. This race saw the only incumbent up for re-election lose to a challenger. Espada outspent Perez on the primary \$51,314 to \$34,855, and won by 17 percentage points. Espada went on to win the general election, easily defeating Perez, who ran on the Liberal line, and two other candidates.

Council District 20. The race to challenge incumbent Julia Harrison for her seat in Queens' 20th Council district was noteworthy for the number of candidates who ran against her and for the amount of money they raised. Harrison, who did not participate in the Program, was initially opposed by four candidates in the primary election. All were in the Program: librarian and former District Leader Ethel Chen, who raised \$44,682; Community Board President Pauline Chu, who raised \$56,833; businessman John Liu, who raised \$128,936; and community activist Debra Markell, who raised \$22,520. As Harrison was a non-participant who triggered the bonus (she spent \$31,225 on the election), all the participants facing her received public funds at a 2-for-1 matching rate. For the primary election, these participants together have received \$105,358 in public matching funds. (At press time, final audits had not been completed for all these candidates, and some might receive additional public funds.)

In the month before the primary, Harrison successfully challenged Ethel Chen's petitions, and Chen was removed from the ballot for the Democratic primary (although she appeared on the Independence line in the general election). Harrison won a convincing victory, gaining 49 percent of the votes in the Democratic primary. John Liu received 19 percent, Pauline Chu 17 percent, and Debra Markell 15 percent of the vote. Harrison went on to defeat Ethel Chen, Pauline Chu (who ran on the Conservative line), and non-participant Chun Soo Pyun, a Republican, in the general election.³²

Council District 42. Priscilla Wooten, a Democrat who has represented East New York's 42nd Council district since 1982, allied herself with Republican Mayor Rudolph Giuliani.

Charles Barron was a participant in the Campaign Finance Program, but Wooten was not, and her spending in the race (\$79,284) triggered the 2-for-1 bonus rate for Barron. Barron ultimately received \$30,182 from the Board for his primary race. In the end, however, Priscilla Wooten retained her seat easily, winning with 62 percent of the vote in the primary. She had no significant opposition in the general election.³³

Council District 43. Sal Albanese's decision to run for Mayor meant that this Bay Ridge contest was for an open seat. The Council district had, overall, one of the most competitive and highest spending Council races in the City. Five candidates participating in the Program spent a total of \$664,571 in two highly competitive primaries and a spirited general election race and received a total of \$201,644 in public matching funds.

The Democratic primary included three Program participants: Arthur Aidala, an assistant district attorney in the Kings County DA's office, and two private sector attorneys, Cody McCone and Joanne Seminara-Lehu. Aidala raised and spent the most money, receiving \$72,541 in contributions and \$38,431 in public funds and spending \$85,232 on the election. McCone followed close behind in fundraising, receiving \$66,516 in contributions and an additional \$22,135 in public funds. He spent \$77,261 on the race. Seminara-Lehu raised the least, receiving \$58,432 in contributions, but with an additional \$37,864 in public funds, she surpassed McCone in total funds available for the race. Spending \$77,919, Seminara-Lehu emerged victorious, garnering 42 percent of the vote to Aidala's 39 percent and McCone's 20 percent.

In the Republican primary, former State Senator Robert DiCarlo, a Program participant, went up against local businessperson and former police officer Marty Golden, also a Program participant, and Anthony Ceretti, a non-participant. Although the Republican race was not as close as the Democratic primary, it was competitive.³⁴ Golden raised \$122,725 for the primary and received \$40,000 in public funds. He ultimately spent \$140,171. DiCarlo raised much less, receiving \$29,398 in contributions and \$16,384 in public funds, spending a total of \$45,774 on the race. When the votes were counted, Golden had won with 60 percent of the vote.

The general election saw high levels of fundraising, spending, and public funding on both sides. Seminara-Lehu raised \$61,604 in contributions and received \$21,163 in public funds. She spent \$110,804 on the general election. Golden received \$80,289 in contributions and \$25,667 in public funds for the race and spent \$127,323. Golden picked up the endorsements of the Mayor and the *New York Post*, while Seminara-Lehu received the nod from the *New York Times*. The general election results were among the closest for the City Council, with Golden receiving 55 percent of the vote to Seminara-Lehu's 45 percent.

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Council District 51. On May 28, 1997, United States Representative Susan Molinari announced that, effective August 1, 1997, she was resigning from Congress.³⁵ Shortly thereafter, the Executive Committee of the Republican Party chose Council member Vito Fossella to run for Molinari's seat in the general election.³⁶ This left Fossella's 51st Council district seat open, and Stephen Fiala was chosen by the Executive Committee to run for City Council as the Republican candidate.³⁷ In the meantime, other candidates had already entered the race, including two candidates who joined the Program: Democrat Anthony Pocchia and the Green Party's Henry Bardel. Once Fiala entered the race he attempted to join the Program, but he was unable to do so because it was after the April 30th deadline.

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Thus, facing a non-participant, Pocchia petitioned the Board to grant his campaign the 2-for-1 matching rate based on the belief that Fiala had received at least \$30,000 in contributions. Fiala then brought legal action against the Board, requesting that the New York State Supreme Court order the Board to permit him to join the Program and that the Board be enjoined from awarding the 2-for-1 matching rate to any candidate for the 51st Council district.³⁸ As Fiala's City BOE filings did not yet indicate that he had raised or spent the necessary \$30,000 to warrant awarding the Pocchia campaign the 2-for-1 matching rate, the Board conducted a hearing shortly after the court proceedings began. The Board found that the Pocchia campaign had not demonstrated that Fiala raised or spent \$30,000 and determined not to award the Pocchia campaign the 2-for-1 matching rate at that time.

The next day, the court denied Fiala's request to join the Program.³⁹ The Board continued to monitor the Fiala campaign's City BOE filings and conducted its own investigation into the in-kind contributions the Pocchia campaign alleged Fiala had been receiving from the county Republican party. On October 29, 1997, two weeks after the hearing and the Court's decision, the Board found that Fiala's contributions had risen to a level that triggered the 2-for-1 matching rate for the Pocchia campaign. Despite the additional public funds that were made available to the Pocchia campaign, Fiala won the general election with 55 percent of the vote.

This race brought to light one of the difficulties arising from the Program's fixed opt-in date. In its 1994 post-election report, the Board recommended that the Act be modified to grant the Board rulemaking power to change the deadline and to address anomalous situations like the one in this district.⁴⁰ This suggestion is included again in the Board's current recommendations to the City Council as it considers improvements to the Campaign Finance Act. (See Chapter 12, "Board Recommendations.")

CONCLUSION

The 1997 municipal elections saw incumbents, almost across the board, retain their seats. All three incumbents for citywide office were re-elected quite easily, as were all but one of the City Council incumbents. (For a discussion of the competitiveness of the 1997 elections, see Chapter 5, "Public Funds.") In certain districts, however, competition was fierce. The open seat for

Manhattan Borough President, for example, attracted a large group of viable candidates that resulted in a very competitive primary election. As occurred during the 1991 elections, the open seats in the City Council and Manhattan Borough President races remained the focal points of competition in the 1997 elections. Unlike the case in 1991, when the Council was redistricted, the existence of open seats in 1997 was likely the result of the term limits law, which appears to have motivated some incumbents to vacate their seats to run for higher office. This law will have the effect of barring most incumbents from running for re-election in 2001, leaving many more open seats up for grabs.

Through the Board's enforcement of its contribution and spending limits, the Program has reduced the influence of money on political campaigns. The public has also greatly benefitted from the quick and comprehensive disclosure of campaign finance data submitted to the Board and information provided in the Voter Guide and through the new debates requirement. The distribution of public funds, however, has proved to be less decisive in making campaigns more competitive. To strengthen this aspect of the Program, the Board has recommended that smaller contributions from individual New York City residents be matched at a higher rate. The proposal would have the effect of placing a greater emphasis on small contributions and increasing the total of public funds distributed, which should increase competitiveness. (For more about this proposal, see Chapter 12, "Board Recommendations.")

NOTES

- ¹ The City BOE cannot effectively begin counting absentee ballots until several days after a primary election. See New York Election Law §§8-412 (1), 9-209 (1).
- ² Dan Janison, "A Plus or Minus for Ruth?," *Newsday*, September 18, 1997, A3.
- ³ New York City Board of Elections, *1997 Annual Report of the Board of Elections of the City of New York*.
- ⁴ See, e.g., Robert Hardt Jr., Susan Rubinowitz, David Seifman, and Tom Topousis, "Ruth gets Rudy hot under collar in their last debate," *New York Post*, October 30, 1997, 2; and Adam Nagourney, "Giuliani and Messinger Debate Over the Past, Present and Future," *New York Times*, October 10, 1997, A1.
- ⁵ On November 19, 1996, a complaint was filed by Council member Andrew Eristoff against Ruth Messinger with the Conflicts of Interest Board concerning these advertisements. On December 16, 1996, the Conflicts of Interest Board dismissed the complaint. See Letter to Marla G. Simpson, General Counsel for the Office of the President of the Borough of Manhattan, from Mark Davies, Executive Director and Counsel of the Conflicts of Interest Board, dated December 16, 1996, on file at the Campaign Finance Board.
- ⁶ Letters to the Board from NYPIRG and Common Cause/NY dated February 6, 1997 and November 18, 1996, on file at the Campaign Finance Board.
- ⁷ Letter to the Board from Craig Kaplan dated August 11, 1997, on file at the Campaign Finance Board.
- ⁸ New York City Campaign Finance Board Administrative Proceeding No. 1997-1. See also Administrative Proceeding No. 1993-1, and Advisory Opinions Nos. 1989-1, 1989-27, and 1993-5. See also Chapter 9, "Compliance and Enforcement."

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- ⁹ *Ibid.*
- ¹⁰ See New York City Campaign Finance Board, *Dollars and Disclosure: Campaign Finance Reform in New York City*, September 1990 (hereafter “*Dollars and Disclosure*”), 145.
- ¹¹ N.Y.C. Council, Intro. No. 3 (1998) (*replacing* Intro. No. 1036 (1997)).
- ¹² *Hearings before the New York City Campaign Finance Board*, December 15-16, 1997 (hereafter “*Campaign Finance Board 1997 Hearings*”), vol. I, at 35-36 (testimony of John Feerick).
- ¹³ Advisory Opinion No. 1996-2.
- ¹⁴ *Ibid.*
- ¹⁵ New York City Campaign Finance Board Rule 3-03(c)(10), effective as of December 19, 1996.
- ¹⁶ Advisory Opinion No. 1996-2.
- ¹⁷ Letter to John Siegal, Treasurer of the Green campaign, from Laurence Laufer, General Counsel of the Campaign Finance Board, dated April 15, 1997, on file at the Campaign Finance Board.
- ¹⁸ See Eddie Borges, “Political Pandering: Jules Polonetsky Raises His Profile for ’98 by Backing Giuliani,” *Village Voice*, October 14, 1997, 26; and Dan Janison, “Public Advocate Race: Assemb. Polonetsky to seek to unseat Green,” *Newsday*, August 12, 1997, A31.
- ¹⁹ Advisory Opinion No. 1997-9.
- ²⁰ At press time, the Board’s post-election audit of the Polonetsky campaign was still in progress and it was not yet concluded whether the Polonetsky campaign had qualified to receive matching funds. Because an opponent, Roger Green, appeared on the primary election ballot, Mark Green received \$366,745 in public funds in advance of the primary election.
- ²¹ William Murphy, “Hevesi Will Give Back City Matching Funds,” *Newsday*, October 28, 1997, A26.
- ²² Ruth Messinger was the only incumbent Borough President who did not run for re-election.
- ²³ Non-participant filings are not audited by the CFB. Data for non-participants are included only for purposes of making general comparisons. Among the specific reasons these non-participant totals are *not* directly comparable with participant data are:
- a) The CFB was unable to obtain all City Board of Elections filings required of non-participants’ committees covering the entire period of their activity within the 1997 election cycle, particularly filings made early in the cycle. (Note: non-participants’ filings do not, of course, reflect presumptions that the CFB uses in framing an election cycle, which for the 1997 elections is, in general, considered to run from 1/12/94-1/11/98, or the bases on which the CFB distinguishes primary and general election periods.)
 - b) The totals shown are derived from summary information reported in City BOE filings and are complete only for the City BOE filings that were obtained by the CFB. Missing filings tend to lead to under-inclusive totals. Where a candidate had more than one authorized committee active in the 1997 election cycle, the totals shown here represent the sum of the multiple committees’ reported transactions for the filings obtained. Totals for participants are based on detailed transactions and may include transactions (e.g., transfers to and from political party committees) that would not, in general, be included in a non-participant’s contribution or expenditure totals.
 - c) A number of the filings obtained from the City BOE were not complete disclosure statements. For example, some filings were missing summary or detail pages; others contained illegible information or errors in arithmetic. Various inconsistencies were apparent in how information was reported by non-participants, such as the improper use of certain State Board of Elections forms (e.g., schedules for “housekeeping” transactions). Some of the City BOE filings covered multiple disclosure periods or included transactions from different disclosure periods.
 - d) The manner in which non-participants submit amended disclosure statements is different from the CFB protocols for amendment and resubmission.

- e) Some non-participants' filings may contain information relating to a previous election. This is not indicated in non-participants' filings in a clear and consistent manner. The contribution totals shown do not include surplus funds remaining from a non-participant's previous elections, which would have been available to the non-participant for expenditures in the 1997 election cycle.
- f) The City BOE filings contain various versions of disclosure forms that have been issued by the State Board of Elections. Additional variation among the filings may be the result of changes in the State Board of Elections forms and disclosure instructions over time and the fact that many committees continue to use superseded versions.
- ²⁴ Letter to the Board from Israel Ruiz, dated June 9, 1997, on file at the Campaign Finance Board.
- ²⁵ Jonathan P. Hicks, "Ferrer's Staff Improperly Aids His Bid for Re-election as Borough President, a Rival Says," *New York Times*, July 9, 1997, B3.
- ²⁶ Advisory Opinion No. 1997-6.
- ²⁷ *Ibid.* Based on the guidelines in this Opinion, the Board's audit staff determined that \$389,492 of Ferrer's expenditures at issue were not subject to the Borough President spending limit. Ferrer spent \$1,118,923 (excluding compliance costs and spending prior to June 23, 1994) before he decided to seek re-election, \$729,431 of which was applied to his Borough President expenditure limit.
- ²⁸ *Ibid.* at note 2.
- ²⁹ For an account of this race, see Ed Shanahan, "Machine vs. Reformer," *Village Voice*, September 3, 1997, 27; Clifford J. Levy, "Error May Change Result," *New York Times*, September 11, 1997, B4.
- ³⁰ An additional \$40,000 public funds payment was made available to her campaign for a primary election she initially appeared to have for the Independence party nomination, but she returned it voluntarily. Later, her primary opponent was removed from the ballot, and she would very likely have been required to return most, if not all, these public funds.
- ³¹ For an account of this race, see Jonathan P. Hicks, "For City Councilman, Celebrity Is Waning," *New York Times*, June 30, 1997, B3.
- ³² For an account of this race, see Celia W. Dugger, "Queens Old-Timers Uneasy as Asian Influence Grows," *New York Times*, March 31, 1996, 1.
- ³³ For an account of this race, see Robert Hardt, Jr., "Office-holders sweating out upstarts' challenges," *New York Post*, September 7, 1997, 22.
- ³⁴ DiCarlo made an issue during the campaign of the fact that his opponent had, until recently, been a Democrat. He stated in his 1997 Voter Guide statement, "I am a life long Republican and resident of our community. Unlike my primary opponent who was a lifelong Democrat until less than a year ago and who recently moved into this community from Staten Island." *New York City Campaign Finance Board 1997 Primary Election Voter Guide*, Brooklyn Edition, 65.
- ³⁵ See Frank Lombardi, "Molinari's news meets tough press," *Daily News*, May 29, 1997, 4; Adam Nagourney, "New Job Requirement for Molinari: Nonpartisanship," *New York Times*, May 29, 1997, B3; and "Susan Molinari makes a move," *New York Post*, May 29, 1997, 30.
- ³⁶ Jonathan P. Hicks, "Republican Feud Erupts Over Race for Molinari's Seat," *New York Times*, June 16, 1997, B1.
- ³⁷ Judy L. Randall, "Fossella vs. Vitaliano: A matter of varying styles," *Staten Island Advance*, July 6, 1997, B2.
- ³⁸ *Stephen J. Fiala v. New York City Campaign Finance Board*, No. 118152/97 (Sup. Ct. N.Y. Co. October 17, 1997) (Justice George B. Daniels).
- ³⁹ *Ibid.*
- ⁴⁰ New York City Campaign Finance Board, *On the Road to Reform: Campaign Finance in the 1993 New York City Elections*, September 1994 (hereafter "*On the Road to Reform*"), 127-128.

Chapter 2—Program Participation

The New “Politics As Usual”

Potential candidates for city office can, and should, join the city’s campaign finance program by April 30. Enrolling doesn’t require them to run, but missing [the] deadline blocks candidates from getting matching funds. The program limits spending and contributions and requires full funding disclosure. It also allows city-wide candidates to participate in mandated debates. In sum, everybody benefits.

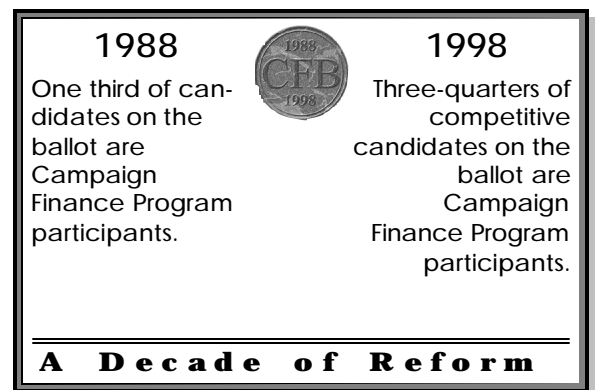
—*editorial, Daily News*¹

Once again in the 1997 election campaign, the Campaign Finance Program played an integral role in New York City’s political process.

One hundred and ninety candidates joined the Program in 1997, of whom 141 ultimately appeared on the primary or general election ballot. (See Fact Sheet 2.1; for a summary of Program requirements, see Fact Sheet 1.1.) The majority of all 229 candidates who were on the ballot, and three-quarters of the competitive candidates (those who received at least ten percent of the vote), joined the Program.²

All three incumbents for Mayor, Public Advocate, and Comptroller joined the Program. In addition, seven of the nine candidates (78 percent) for citywide office who received ten percent or more of the vote in a primary or general election were Program participants.³ One of those candidates not participating in the Program, Republican Comptroller candidate Annemarie McAvoy, said she would have joined but was unable to because she decided that she would run for office after the April 30th “opt-in” deadline.⁴

At the City Council level, 114 out of 181 candidates (63 percent) who appeared on the primary or general election ballot for the 1997 elections were Program participants. (See Figure 2.1 for a further breakdown of Program participation by election.) As with citywide candidates, the participation rate for those who received at least ten percent of the vote was higher, at 74 percent. Twenty-eight of the 43 Council incumbents who sought re-election, or 65 percent, were Program participants. In addition, all five Council members who sought a higher City office participated in the Program.⁵ If these Council members are



Fact Sheet

2.1

PROGRAM PARTICIPATION BY OFFICE

Year	Election/Office	Number of Participants	Participants on Ballot	All Candidates on Ballot	Percent On Ballot Participating
Citywide Election					
1997	Mayor	10	6	9	67%
	Public Advocate	3	3	6	50%
	Comptroller	3	3	6	50%
	Borough President	22	15	27	56%
	City Council	138	114	181	63%
	Undeclared	14	N/A	N/A	N/A
	Total	190	141	229	62%
1993	Mayor	5	4	7	57%
	Public Advocate	11	6	9	67%
	Comptroller	3	3	7	43%
	Borough President	11	7	15	47%
	City Council	136	87	132	66%
	Undeclared	20	N/A	N/A	N/A
	Total	186	107	170	63%
1989	Mayor	10	5	11	45%
	City Council President†	0	0	6	0%
	Comptroller	5	4	10	40%
	Borough President	7	6	15	40%
	City Council	34	33	97	34%
	Undeclared	1	N/A	N/A	N/A
	Total	57	48	139	35%
City Council Redistricting Election					
1991	City Council	256	136	239	57%
Off-Year Elections to Fill Vacancies					
1997	17th Council District‡	3	1	1	100%
1996	5th Council District	2	1	3	33%
	5th Council District‡	5	2	2	100%
1994	51st Council District	4	3	3	100%
	51st Council District‡	6	5	6	83%
1993	4th Council District‡	8	5	7	71%
1991	29th Council District‡	5	5	9	56%
	22nd Council District‡	4	1	1	100%
1990	1st Council District‡	2	2	7	29%

*On the ballot in either primary or general election.

†Office became Public Advocate.

‡Denotes Special Elections.

Source: NYC Campaign Finance Board and NYC Board of Elections data

added, then 69 percent of all Council incumbents running for an office covered by the Program opted in. This represents a decrease from the 78 percent of incumbent Council members who participated in 1993.

Of the 45 challengers to incumbents who received ten percent or more of the vote, 33, or 73 percent, joined the Program. Thus, among competitive candidates, roughly the same high percentage both of incumbents and of challengers at the Council level were participants.

WHY DO CANDIDATES JOIN?

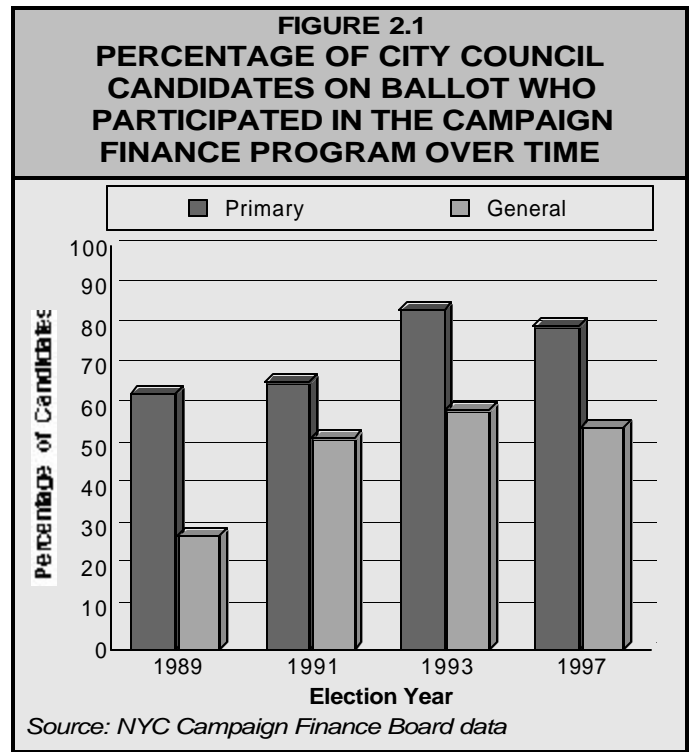
Candidates who participate in the Program subject themselves to much lower contribution limits than under State law and to expenditure limits, extensive campaign finance disclosure, and rigorous audits by CFB staff. So why do they join the Program?

Public Funds

One important reason candidates join the Program is the opportunity to receive public funds. Margarita Lopez, the newly-elected Democratic Council member from Manhattan's 2nd Council district, stated, "Due to [the Campaign Finance Program], I was able to run a campaign that was tied to a grassroots understanding of politics in this nation....[W]ithout the finances that the Board provided to me as a candidate that comes from a low income background, I would never have made it to office....I must say that was a big part of my winning the election."⁶ Cody McCone, an unsuccessful candidate for the 43rd Council district in Brooklyn, made the importance of Program participation clear when he said, "[i]f there were no public funding....available, I would not have been a candidate."⁷ (For a discussion of public funds, see Chapter 5, "Public Funds.")

Candidate Commitment to Good Government

By joining the Program and agreeing to its requirements, candidates send a clear message



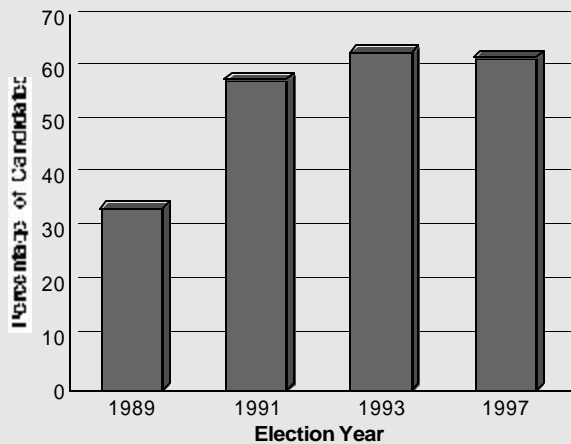
"[W]ithout the finances that the Board provided to me as a candidate that comes from a low income background, I would never have made it to office....I must say that was a big part of my winning the election."



Council Member
Margarita Lopez

Chapter 2

FIGURE 2.2
PERCENTAGE OF CANDIDATES FOR ALL OFFICES ON BALLOT WHO PARTICIPATED IN THE CAMPAIGN FINANCE PROGRAM



Source: NYC Campaign Finance Board; NYC Board of Elections data

that they not only believe in good government initiatives, but are willing to abide by strict limitations on their campaigns to demonstrate a commitment to reform. Not joining the Program often generates negative media attention. For example, the *New York Times* endorsed two candidates for City Council in large part based on their participation in the Program and their opponents' refusal to join.⁸ In the 1993 mayoral elections, Andrew Stein's fundraising practices were strongly criticized in the press, and may have been the overriding factor leading to his ultimate withdrawal from the race.⁹

The Program's New Debate Law... A Candidate's Opportunity to be Heard

Citywide candidates who joined the Program in 1997 had a new obligation and a new opportunity. In response to extensive criticism that the two major mayoral candidates in 1993, David Dinkins and Rudolph Giuliani, failed to debate each other even though they both received public matching funds, a law was passed in December 1996 that requires citywide candidates who are in the Program and on the ballot to participate in a series of public debates. (See Chapter 7, "Debates '97.") The debates served to help educate voters and allowed modestly funded candidates to get their message out to a wide audience. Candidates who did not join the Program were not guaranteed this opportunity.

Indeed, Comptroller candidate McAvoy expressed regret before the Board that "[t]he Republic[an] Party candidate, myself, could not participate [in the first general election debate] because I had not gotten into the race early enough."¹⁰ Roland Rogers, a candidate for Mayor who did not join the Program before the April 30th deadline, sued unsuccessfully to participate in the debates.¹¹ And, for the first time, three candidates from the Socialist Workers Party, Olga Rodriguez for Mayor, Shoghi Fret for Public Advocate, and Wendy Lyons for Comptroller, joined the Program. All three were citywide candidates who made no attempt to qualify for matching funds, which suggests that their motivation for joining the Program was to appear in the debates, which all three did.

The opportunity to debate will continue to be an important incentive for some candidates to join the Program. The Board's first experience with the debate program also suggests that measures should be taken to address situations in which candidates with marginal public support join the Program for the sole purpose of taking part in debates.

WHY DO CANDIDATES NOT JOIN THE PROGRAM?

Some candidates do not join the Program simply because they are not willing to abide by its contribution and spending limits or audit requirements. They may believe they have a better chance to win if they are free to use wealth of their own or can count on monied interests to support them. Republican Council member Andrew Eristoff of the 4th Council district in Manhattan has said the expenditure limits are too low for him to run effectively in a predominantly Democratic district.¹² (Indeed, the Board agrees that higher expenditure limits are warranted for Council races and continues to recommend specific increases, as it has in the past. See Chapter 12, “Board Recommendations.”) A few have an ideological objection to the public funding of campaigns. Democratic incumbent Council candidate Walter McCaffrey for the 26th district in Queens said in his 1997 Voter Guide statement, “*McCaffrey is not ripping off taxpayers by using their hard earned money to pay for his campaign!*”¹³ (Italics in original.) On the other hand, of course, candidates can join the Program without accepting public funds.

The April 30th Opt-in Deadline

Many candidates have criticized the April 30th deadline to join the Program.¹⁴ The date is well in advance of the time ballot petitions must be filed with the City BOE, and some candidates may not be in a “campaign mode” by that date. Joining the Program does not obligate an individual to run for office, but some potential candidates are reluctant to join before they are ready to telegraph their intentions. Some candidates decide to run only if a particular opportunity arises, such as when an incumbent chooses not to run for re-election. For example, the newly-elected Republican Council member for the 51st Council district, Stephen Fiala, testified at the Board’s public hearings that he decided to run only after fellow Republican Vito Fosella decided not to run for re-election in favor of running for a vacated congressional seat. Because these events occurred after April 30th, he had no chance to join the Program.¹⁵ He also pointed out that April 30th “falls before the major parties have their county committee meetings to designate their candidates.”¹⁶

The Board has repeatedly requested that it be given the authority to set a later deadline for joining the Program and to make rules that allow exceptions in cases such as Council member Fiala’s, which unfairly exclude candidates from the Program.

When Speaker Vallone announced that he would introduce comprehensive changes to the Campaign Finance Act, among those changes was a change in the opt-in date to June 1. (See Chapter 12, “Board Recommendations.”)

Some Candidates Receive No Tangible Benefit From Joining

All candidates, whether or not they participate in the Program, must file disclosure statements with

“If there were no public...funding available, I would not have been a candidate.”



City Council Candidate
Cody McCone

Chapter 2

the City BOE. Participating campaigns, however, also subject themselves to audits by Board staff and much more comprehensive disclosure requirements. If candidates believe that their campaigns will receive little benefit from joining the Program, they may not be willing to accept the additional responsibilities that participation entails, regardless of the fact that participation will promote the public interest of greater disclosure of campaign finances. For example, when a campaign faces no opposition, it cannot receive public matching funds for the election. Without the prospect of receiving these funds, the candidate may conclude that it is not worthwhile to subject the campaign to the additional requirements of the Program, including the expenses involved with compliance. But even when a campaign faces opposition, the candidate may conclude that he or she does not need the additional resources to win the election, and that it is therefore not beneficial to join. A number of the Board's recommendations for changes in the current law are geared to make participation even more attractive and to discourage non-participation to a greater degree. (See Chapter 12, "Board Recommendations.")

Lack of Awareness of the Program

A small number of neophyte candidates do not know the Program exists or are unaware of the April 30th deadline to join. Five of the seven non-participants who responded to a Board post-election survey cited this reason for not joining. While the Board goes to great lengths to inform the pool of potential candidates about the Program, the results of the survey underscore the importance of the Board's outreach program.

FUTURE PARTICIPATION

The Effect of Term Limits

In 1993, City voters approved a ballot referendum limiting municipal elected officials to two consecutive terms in office. This means that most current incumbents will not be able to run for re-election in 2001.¹⁷ History shows that more candidates run for office—and more candidates participate in the Program—when an incumbent is not running for re-election. In 1991, when there were 19 open Council seats because the newly-amended City Charter provided for expansion and redistricting of the City Council, there were many more candidates and participants than in subsequent election years, when most Council elections involved an incumbent. Indeed, it is not uncommon to see seven or more candidates running for an open seat. If current participation rates hold or increase, the experience of 1991 tells us that the 2001 elections will include more participants than ever before.

The Effect of Ballot Access Reform

In 1996, State laws were reformed to make it less onerous for candidates to appear on the ballot. It is likely this contributed to the dramatic increase in candidates appearing on the ballot in 1997 compared with 1993. Two hundred and twenty-nine candidates appeared on the ballot in the 1997 City elections, compared to 170 in 1993—a 35 percent increase. This suggests that poten-

tial candidates who had not previously run for public office because of the old ballot access laws will be more likely to throw their hats in the ring for the 2001 elections.

CONCLUSION

The high participation levels in the 1997 elections—three quarters of all competitive candidates—ensured that the Campaign Finance Program once again played an important role in controlling campaign financing and disclosure in New York City elections. The numbers and percentages of Program participants in City politics will increase even more if Board recommendations to make the Program more attractive are adopted (as appeared likely as this report went to press); a later opt-in date is enacted; and term limits and ballot access reforms have the expected consequences.

NOTES

- ¹ Editorial, “Good government,” *Daily News*, April 27, 1997, 54.
- ² See Fact Sheet 2.1. Among the more competitive candidates—the 149 who received at least ten percent of the vote—110 (74 percent) participated in the Program in the 1997 elections.
- ³ Overall, 12 out of 21 candidates (57 percent) who appeared on the primary or general election ballots for Mayor, Public Advocate, or Comptroller were Program participants.
- ⁴ *Campaign Finance Board 1997 Hearings*, vol. II, at 78 (testimony of Annemarie McAvoy).
- ⁵ The five Council members who ran for a higher New York City office were Sal Albanese for Mayor; Virginia Fields, Antonio Pagan, and Adam Clayton Powell for Manhattan Borough President; and Israel Ruiz for Bronx Borough President.
- ⁶ *Campaign Finance Board 1997 Hearings*, vol. II, at 138 (testimony of Margarita Lopez).
- ⁷ *Campaign Finance Board 1997 Hearings*, vol. I, at 163 (testimony of Cody McCone).
- ⁸ For the 4th Council district in Manhattan, the *Times* stated, “The incumbent, Andrew Eristoff, combines strong performance in most areas with an overriding flaw that prevents us from endorsing him. He is the most important consistent opponent of the city’s campaign finance program.” Editorial, “City Council Endorsements,” *New York Times*, October 30, 1997, A30.

In the 42nd Council district race between Priscilla Wooten and Charles Barron, the *Times* stated, “Ms. Wooten has refused to abide by the Campaign Finance Board restrictions....Mr. Barron has our endorsement.” Editorial, “Brooklyn Council Endorsements,” *New York Times*, September 4, 1997, A24.
- ⁹ See *On the Road to Reform*, 71-72.
- ¹⁰ *Campaign Finance Board 1997 Hearings*, vol. II, at 76 (testimony of Annemarie McAvoy).
- ¹¹ See *Roland Rogers v. New York City Board of Elections, et al.*, 97 Civ. 6609 (S.D.N.Y. Dec. 29, 1997) (Judge Shira A. Scheindlin), appeal docketed, No. 98-7132 (2d Cir. Feb. 3, 1998); *Roland Rogers v. Joseph A. O’Hare, S.J., et al.*, No. 115901/97 (Sup. Ct. N.Y. Co. Sept. 5, 1997) (Justice Robert Lippmann), application denied, No. 115901/97 (N.Y. App. Div. 1st Dept. Sept. 5, 1997) (Justice Milton L. Williams).
- ¹² Peter Duffy, “Money and Politics,” *Eastside Resident*, October 15-21, 1997, 6.
- ¹³ *1997 New York City Campaign Finance Board Voter Guide*, Primary Election (Queens), 45, and General Election (Queens), 57.

Chapter 2

¹⁴ The April 30th deadline applies to candidates seeking a party nomination. For candidates named only in a nominating petition or in a certificate of substitution, the deadline is seven days after the petition or certificate is filed with the New York City Board of Elections.

¹⁵ *Campaign Finance Board 1997 Hearings*, vol. II, at 87 (testimony of Stephen Fiala).

¹⁶ *Ibid.*, at 88.

¹⁷ Unless vacancies occur in the interim, all citywide offices, four of five Borough Presidents, and 40 of 51 City Council seats must turn over in 2001 because of the term limits law. See New York City Charter §§1137, 1138.

Chapter 3—Contributions

Political Capital


Overall fundraising declined in the 1997 election cycle, but high-end contributions continued to play a prominent role in New York City elections. The size of the average contribution increased significantly since 1993 for each municipal office covered by the Program. This is partly a reflection of the Program's higher contribution limits—which are adjusted every four years in accordance with the metropolitan area New York and New Jersey Consumer Price Index—but in any event contributors are giving to Program participants in ever-increasing amounts.

Certain trends, such as the increased role of corporate contributions and the dominance of funds from Manhattan and from outside New York City, continued. Donations from individuals continued to make up the majority of contributions, but the percentage of corporate contributions increased, accounting for more than 27 percent of total fundraising for participating candidates in 1997. Over the three citywide general elections held since the Campaign Finance Program began, the percentage of corporate contributions has increased steadily in each election (from 16 percent in 1989 to 24 percent in 1993 to 27 percent in 1997), while contributions from individuals have decreased.

Geographic analysis of fundraising shows that non-residents continue to have a stake in who holds City office: more funds were raised outside New York City for citywide offices than were raised in Brooklyn, the Bronx, Queens, and Staten Island combined.

Participating candidates raised \$29.5 million during the 1997 election cycle, a two percent decrease from 1993, when \$30 million was collected. Adjusted for inflation, the decrease was 11 percent.¹ The overall decrease in funds raised by participating candidates in 1997 was largely the result of the dearth of competitive races at the citywide level, traditionally the single greatest source of funds.

Once again, fundraising by mayoral candidates exceeded that of all other offices combined. Total funds raised by participating mayoral candidates decreased by 20 percent, however, from \$18.5 million in 1993 (or \$20.5 million in adjusted dollars) to \$14.9 million, despite the fact that there were twice as many mayoral candidates in the Program in 1997. (Although there were twice as many candidates, the general election was not close, as it was in

1988		1998
Citywide candidates can accept up to \$100,000 per contributor for the primary and general elections combined under New York State law.		Citywide candidates in the Campaign Finance Program could accept no more than \$7,700 for the entire four-year cycle for the 1997 elections.
A Decade of Reform		

Chapter 3

TABLE 3.1
TOTAL CONTRIBUTIONS TO PARTICIPANTS BY TYPE OF CONTRIBUTOR

	Election Cycle					
	1997		1993		1989	
Individuals	\$18,077,000	(61%)	\$20,391,000	(64%)	\$21,106,000	(75%)
Organizations	11,166,000	(39%)	11,435,000	(36%)	7,150,000	(25%)
Corporations	7,817,000	(27%)	7,632,000	(24%)	4,466,000	(16%)
Political Committees	1,614,000	(5%)	1,560,000	(5%)	1,235,000	(4%)
Partnerships	652,000	(2%)	834,000	(3%)	630,000	(2%)
Employee Organizations	687,000	(2%)	612,000	(2%)	473,000	(2%)
Other Organizations	396,000	(1%)	797,000	(3%)	346,000	(1%)
Total	\$29,243,000		\$31,826,000		\$28,256,000	

Note: Figures rounded to nearest \$1,000. Percentages may not add up to 100 due to rounding. Contributions from unspecified sources in 1997 totaled \$162,000. Figures are not adjusted for inflation. Because 1997 data are based on a different formula, data from previous elections may not be directly comparable.

Source: NYC Campaign Finance Board data

1993.) In contrast, for the non-citywide offices, fundraising increased. Contributions to Borough President candidates more than doubled. This jump was chiefly the result of the race for Borough President in Manhattan, where Ruth Messinger's seat was contested by numerous candidates. (Bronx Borough President Fernando Ferrer, a participant, made a mid-campaign switch from the mayoral race, which also contributed to the increase.) Overall fundraising by City Council candidates for the 51 district seats also increased significantly. Fourteen participating Council candidates each raised over \$100,000 in 1997, compared with only four in 1993.²

While the Program's contribution limits remained effective, particularly in comparison with State law, it became increasingly clear in 1997 that the time had come to "make a good law better."³

TABLE 3.2
TOTAL CONTRIBUTIONS TO PARTICIPANTS BY OFFICE

Election	Total Contributions (Number of Participants)				
	Mayor	Public Advocate	Comptroller	Borough President	City Council
1997	\$14,855,000 (10)	\$2,017,000 (3)	\$1,959,000 (3)	\$5,137,000 (22)	\$5,529,000 (138)
1993	18,450,000 (5)	2,890,000 (11)	5,070,000 (3)	1,930,000 (11)	3,500,000 (136)
1989	19,580,000 (10)	N/A	3,530,000 (5)	2,760,000 (7)	2,380,000 (34)

Note: Figures are not adjusted for inflation.

Source: NYC Campaign Finance Board data

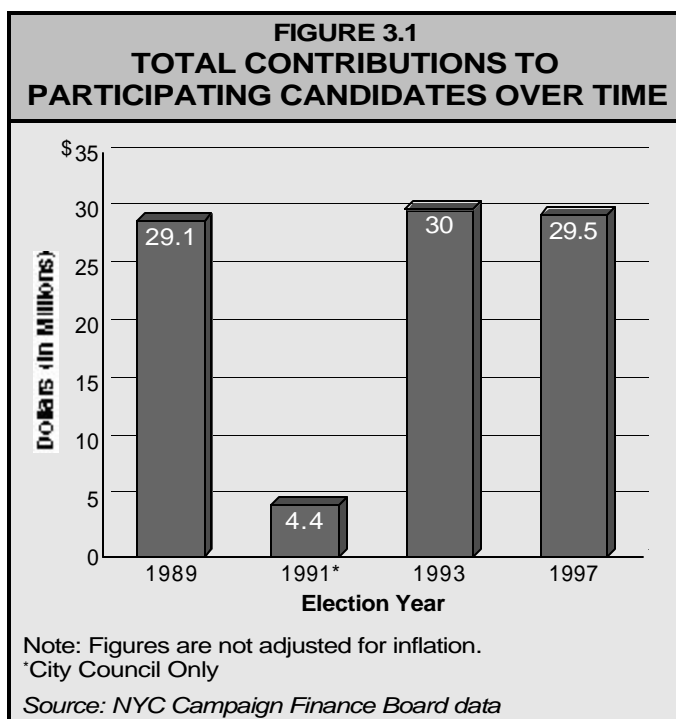
The 1997 elections saw a growing consensus on the need to reduce contribution limits and change the formula for matching contributions with public funds.⁴

THE GEOGRAPHY OF CAMPAIGN FUNDRAISING

New York City has five boroughs, but for most candidates seeking campaign funds in 1997, Manhattan was critical: Manhattan was the source for half of all money (individual and organizational) raised by participating candidates. (See Table 3.3.) This was most evident in citywide races, where Manhattan funds outstripped funds from all other boroughs combined by more than three-to-one. Mayoral candidates took 57 percent of their funds from Manhattan and 18 percent from Brooklyn, Queens, the Bronx, and Staten Island combined; Public Advocate candidates raised nearly two-thirds of their funds in Manhattan and only 14 percent from the other boroughs combined. Manhattan's dominance is not new: the borough accounted for 47 percent of total funds raised in 1993, more than any other geographic area, and 55 percent in 1989.

Manhattan's fundraising dominance is partly a reflection of its high concentration of corporations, organizations, and individual wealth. But even when individual contributions over \$500 and all organizational contributions are factored out, Manhattan continues to dominate, both in dollars raised and number of contributors. Manhattan residents may be the pool of potential contributors most targeted by candidates seeking campaign funds, or they may simply be wealthier. Certainly, Manhattan's prominence as a source of political funding is not limited to local races. When national politicians visit the City in quests for campaign cash, they come to Manhattan; in 1996, national politicians raised over \$32 million here.⁵ "The money center of national politics is in Manhattan," political consultant Hank Sheinkopf noted during the campaign. "It's the same for mayoral races."⁶

City Council candidates also raised more money in Manhattan than in any other borough, but here the predominance of Manhattan funds was far less pronounced. In fact, Council candidates raised considerably more in the four outer boroughs combined (\$2,785,835) than in Manhattan (\$1,943,291), a change from 1993.⁷ The fact that Manhattan was the site of several of the most competitive—and expensive—Council district races, notably in the 2nd, 4th, and 10th districts, suggests that Council candidates were very successful at raising funds in the outer boroughs.



Chapter 3

TABLE 3.3
TOTAL CONTRIBUTIONS TO PARTICIPANTS BY BOROUGH

Office	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Out of City	Total
Mayor	\$242,982	\$1,311,671	\$8,425,485	\$900,068	\$158,446	\$3,792,408	\$14,831,060
Public Advocate	31,276	142,596	1,260,522	79,824	26,482	476,142	2,016,842
Comptroller	25,160	158,690	897,511	223,145	14,400	632,869	1,951,775
Borough President	676,849	339,540	2,307,892	356,872	161,648	1,292,736	5,135,537
City Council	382,513	1,278,614	1,943,291	688,985	435,723	725,425	5,454,551
Total	\$1,358,780	\$3,231,111	\$14,834,701	\$2,248,894	\$796,699	\$6,919,580	\$29,389,765

Source: NYC Campaign Finance Board data

The second-largest source of contributions was Out-of-City contributors, accounting for 24 percent of all funds (individual and organizational) raised during the 1997 election cycle. Most of this funding came from the New York suburbs of Westchester and Long Island and from New Jersey. This represents a decrease in the percentage of Out-of-City giving from 1993, when it accounted for 32 percent of the total raised. Yet, Out-of-City money for the 1997 elections (23 percent) nearly equaled that of the four outer boroughs combined (26 percent), a matter of concern to election watchdogs. “A healthy local democracy requires more participation in financially supporting candidates from the hometown crowd,” said Gene Russianoff of NYPIRG. “But what this shows is that the candidates are going to where the money is.”⁸

Only contributions from New York City residents are eligible to be matched under the Program, but, in the view of many, non-residents have a legitimate interest in the local political process. At the Board’s 1997 post-election hearings, mayoral candidate Ruth Messinger noted, “[A]ll of my so-called non-City givers are people who spend the vast portion of their waking hours in the City,” adding that “the fact that they chose to live outside of the five boroughs was all the more reason why they should be actively involved in the governance of a city in which they did business.”⁹

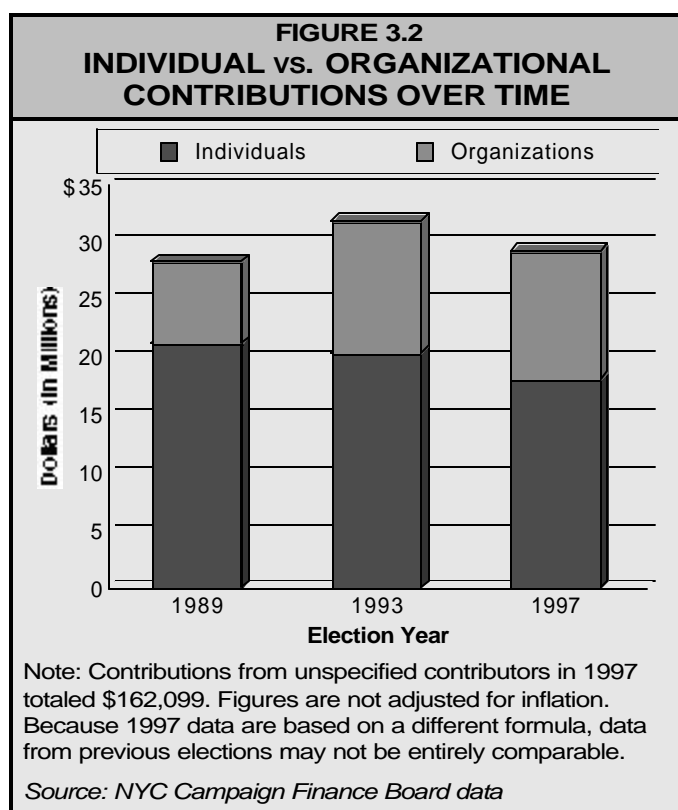
SOURCES OF SUPPORT: CONTRIBUTORS TO 1997 PROGRAM PARTICIPANTS

Contributions from individuals accounted for 61 percent of funds raised by Program participants in 1997, down slightly from 64 percent in 1993 and 75 percent in 1989. (See Table 3.1 and Figure 3.2 for a breakdown and comparison with previous elections.) Three-quarters of these contributions came from City residents. Organizations (including corporations, unions, partnerships, and political committees) accounted for 39 percent of funds raised by Program participants, up slightly from 36 percent in 1993 (and 25 percent in 1989). Seventy percent (\$7.8 million) of

organizational contributions came from corporations. Contributions from organizations were, on average, more than double the size of those from individuals: \$801 versus \$300.

Overall, the rate of contributions from political committees, partnerships, and employee organizations remained fairly steady, accounting for nearly ten percent of all contributions. Contributions from political committees (including PACs) played a larger role at the City Council (ten percent) and Borough President (seven percent) levels than they did at the city-wide level (four percent), a profile consistent with contributions from 1993.

Citywide candidates reported the highest percentage of funds raised from individuals (65 percent). Ruth Messinger received the highest proportion of funds from individuals of any city-wide candidate (84 percent), while Alan Hevesi received the lowest (52 percent). City Council candidates received 61 percent of their financial support from individuals, but a much higher percentage of these individual givers were City residents (87 percent versus 73 percent for city-wide candidates).



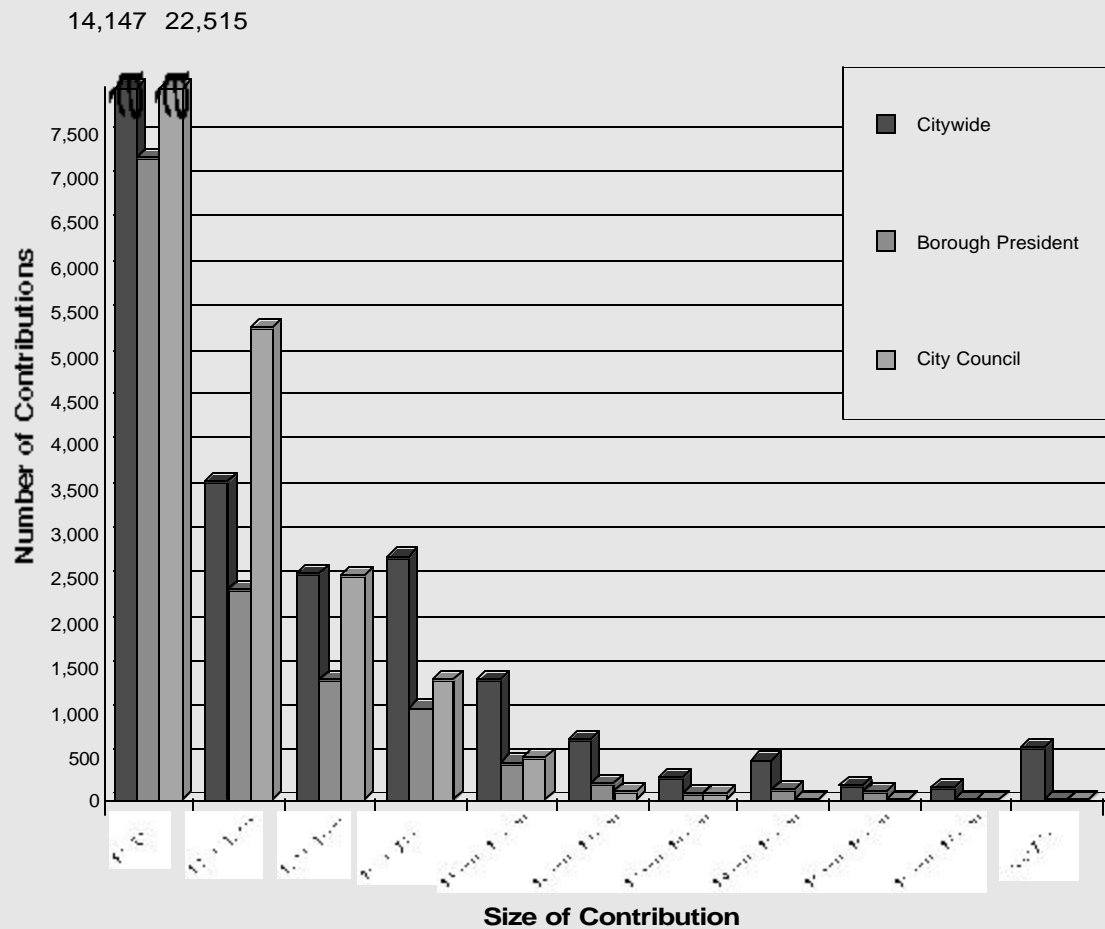
DOLLAR DISTRIBUTION: HOW THE MONEY IS RAISED

Large contributions played an increased role in the Program in 1997, particularly at the citywide level. As Figure 3.3 demonstrates, small contributions continue to account for the vast majority of the number of contributions received, but they make up a small percentage of the total funds raised. (See Figure 3.4.) Three-quarters of the contributions received by Program participants were under \$250, but these contributions accounted for 14 percent of the total dollars raised. Over 60 percent of the total funds raised by participants came in contributions of over \$1,000, yet these represented only seven percent of all contributions received. Meanwhile, contributions over \$5,000, representing only one percent of all contribution transactions, accounted for 25 percent of all money raised (compared with 24 percent in 1993). Citywide candidates relied on contributions over \$1,000 for nearly three-quarters of their fundraising. At the City Council level, however, the situation was reversed: over 75 percent of the total funds raised came in contributions of \$1,000 or less.

The mandatory increases in Program contribution limits have a role in the high-end giving: in 1997, 478 contributors gave the maximum amount (\$7,700) to citywide candidates.¹⁰ In 1993,

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FIGURE 3.3
FREQUENCY DISTRIBUTION OF CONTRIBUTIONS TO PARTICIPANTS BY AMOUNT



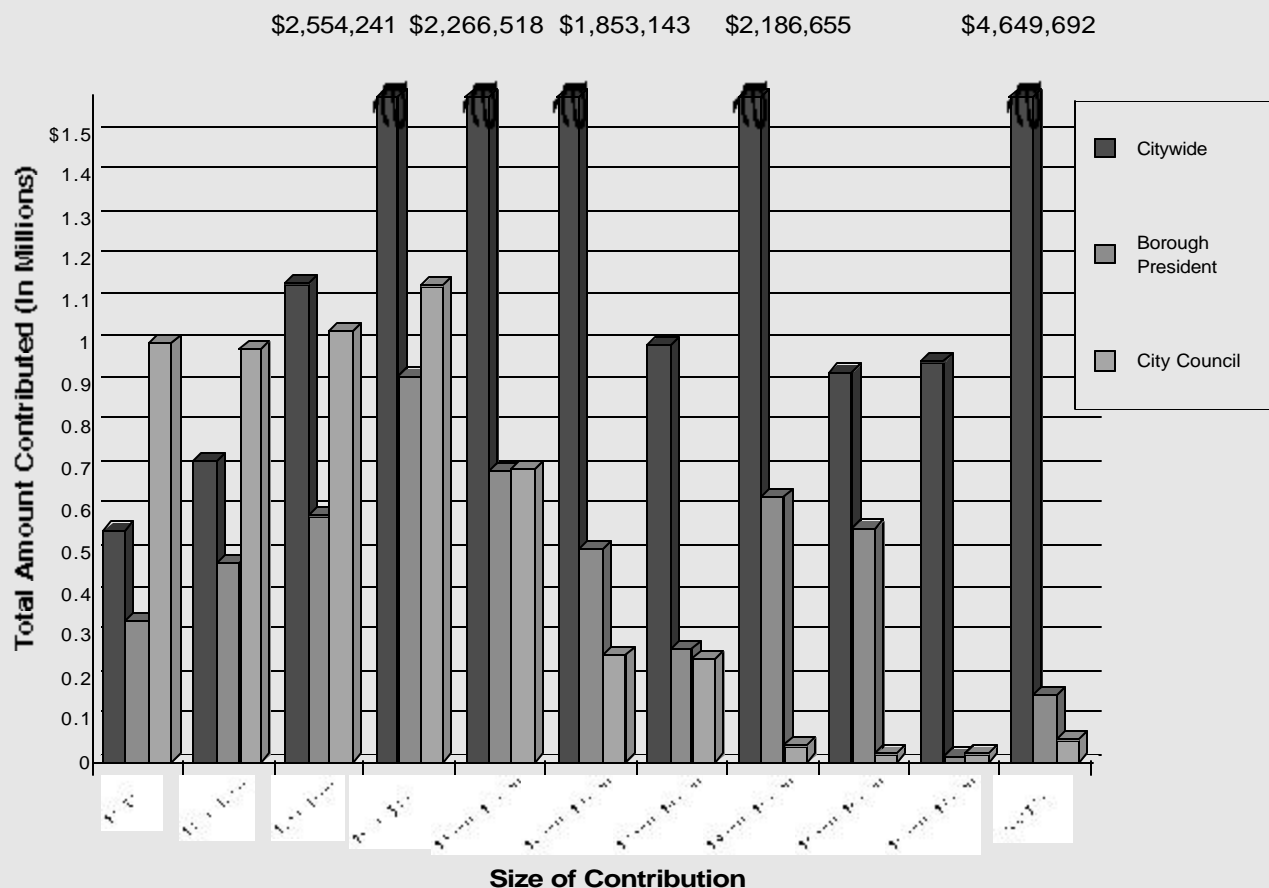
Source: NYC Campaign Finance Board data

671 contributors gave the legal limit (\$6,500) to citywide candidates. Although the number of contributors giving the full limit decreased in 1997, the number of contributors giving more than \$6,500 increased to 693, resulting in a somewhat larger total amount of giving reflecting the “top end”: \$5,815,622 in 1997, versus \$4,836,636 in 1993 (or \$5.3 million in adjusted dollars).

The strength of “top end” donations was particularly apparent in the mayoral race. Contributions over \$6,500 made up only 1.18 percent of the number of contributions received by Messinger’s campaign, but accounted for one-fifth (20.79 percent) of the total funds she raised. Contributions over \$6,500 represented 7.36 percent of the number of contributions received by Giuliani’s campaign, but accounted for more than a third (36.42 percent) of his total fundraising.

These figures indicate that most funds raised by participants continue to come from “high-end” sources. Despite the matching funds formula, which creates incentives to seek smaller contribu -

FIGURE 3.4
DOLLAR DISTRIBUTION OF CONTRIBUTIONS TO PARTICIPANTS
(1997 ELECTION)



Source: NYC Campaign Finance Board data

tions from larger numbers of individuals, it continues to be more profitable for candidates to seek large contributions. On the other hand, the lower the contribution limit, the more time candidates may be required to spend on fundraising. This has led to a number of proposals to change the matching funds formula in an effort to increase further the value of smaller contributions. (See Chapter 12, "Board Recommendations.")

One result of the rising contribution limits and the larger role of high-end contributions was a rise in the size of average contributions for each office covered by the Program. (See Figure 3.5.) In particular, Mayor Giuliani and Comptroller Hevesi demonstrated the fundraising power of incumbency. Giuliani received an average contribution of \$1,545 per contributor, versus an average of \$458 for his opponent, Ruth Messinger. Hevesi, whose opponent, Annemarie McAvoy, did not participate in the Program, had an average contribution of \$941.

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CORPORATE CONTRIBUTIONS IN THE 1997 ELECTIONS: THE GIVING GOES UP

Just ban corporate money from elections. It's common sense. It must become law.

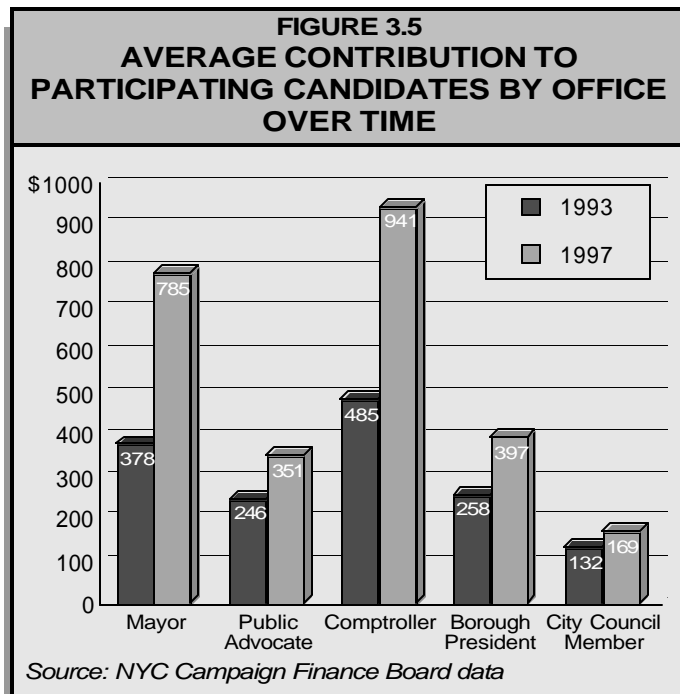
—*editorial, Daily News*¹¹

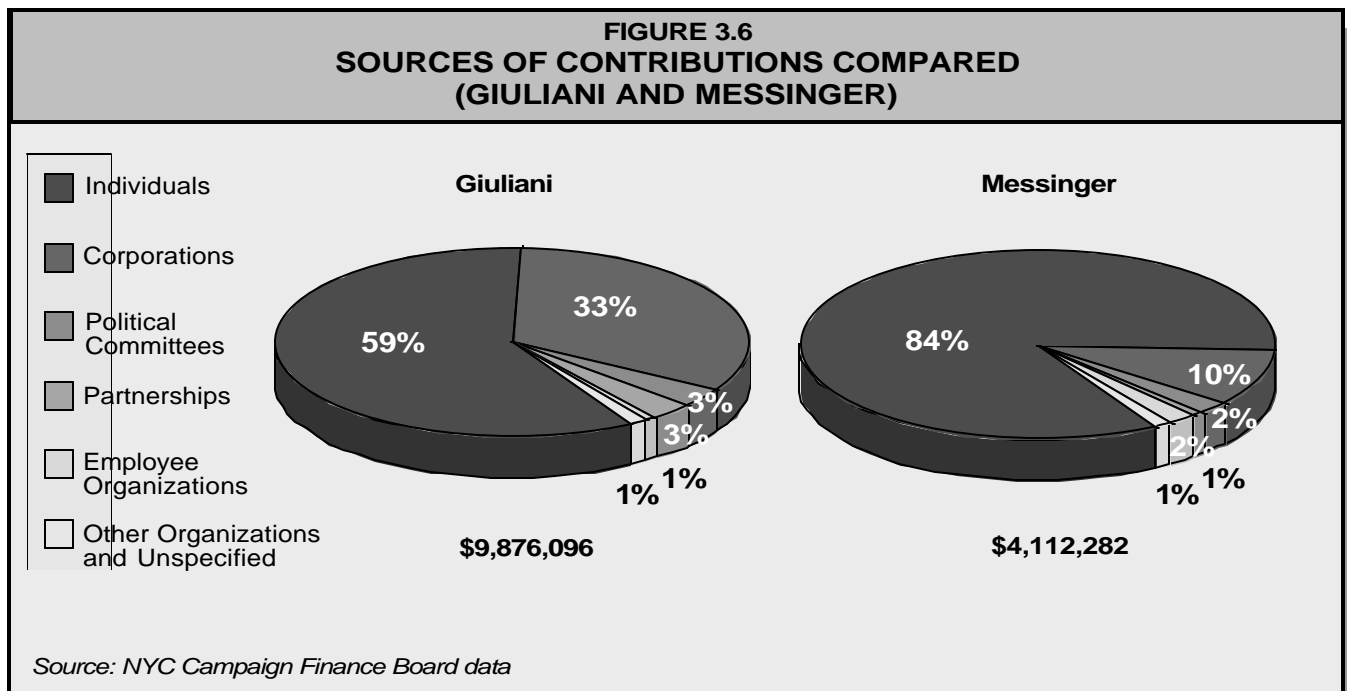
Corporate contributions to participating candidates reached an all-time high of \$7.8 million in 1997, accounting for 27 percent of all funds raised by candidates. By contrast, union giving (including contributions through union PACs) accounted for only 4.7 percent of all 1997 funds (\$1.4 million). Over the three citywide elections since the Campaign Finance Act was passed, corporate contributions have accounted for an increasingly larger share of the funds raised by participants, while individual contributions have decreased considerably, from 75 percent overall in 1989 to 61 percent in 1997. (See Table 3.1.) Corporate contributions represent the majority of funds raised from organizations, far outpacing political committees (\$1.6 million, including those from union PACs) and partnerships (\$652,000), as well as contributions reported as coming directly from union funds.

Corporate funds were also the subject of considerable attention in the 1997 elections when over-the-limit contributions to Mayor Giuliani's campaign, mainly from affiliated corporations and partnerships, resulted in the Board's assessment of \$242,930 in penalties against the campaign. (See Chapter 9, "Compliance and Enforcement.") As a result, the issue was much discussed in the media, leading Mayor Giuliani to suggest during the first general election debate that, "the answer to [the disagreement over Board rules regulating contributions from affiliated corpora-

tions] is, in the future, cut out corporate contributions."¹² Deputy Mayor Randy Mastro reiterated this suggestion at the Board's post-election hearings in December, and a proposal to ban corporate contributions for participating candidates was introduced in the City Council in February 1998. (See Chapter 12, "Board Recommendations," for a discussion of the CFB's proposal for excluding organizational contributions.)¹³ At press time, City Council Speaker Peter Vallone had introduced a bill that gives preferences to Program participants who decline corporate contributions.

Because many corporate contributors do business with the City, corporate giving raises the potential for buying influence. The long-standing concern over "pay-to-play" practices in City politics is fueled by the tendency of corporations





to direct their contributions to incumbents who hold decision-making power over lucrative City contracts. Noting Mayor Giuliani's edge over his potential challengers in securing corporate contributions, one investment banker explained: "The mayor has a tremendous advantage, as all incumbents do. Many people who are beholden to the mayor or do business with the mayor do not want to risk not being inside the tent."¹⁴

The record confirms that incumbents hold the advantage in political fundraising from corporations. For example, the 1997 Giuliani campaign received 33 percent of its funds from corporations, while Messinger received only ten percent from corporations. (See Figure 3.6.) The portion of Giuliani's contributions that came from corporations rose when he became an incumbent—from 28 percent in 1993 to 33 percent in 1997—while individual contributions dropped from 65 percent to 59 percent. Public Advocate Mark Green received 20 percent of his 1997 re-election funds from corporations, compared with 13 percent in 1993. Comptroller Alan Hevesi's corporate fundraising jumped from 20 percent in 1993—when he was a challenger—to more than 31 percent in 1997.

In spring 1998, however, it appeared that the trend toward larger corporate contributions might have peaked, as prominent fundraisers sought changes in the system. In May, the *New York Times* reported that Douglas Durst and Bruce C. Ratner, New York developers and large donors of campaign funds to local and national candidates, had joined with civic groups to seek radical changes in the City's campaign finance system.¹⁵ Ratner, a top contributor and fundraiser for Mayor Giuliani who gathered and delivered (or "bundled") \$108,850 in contributions for the Mayor's re-election campaign, expressed frustration with the "pay-to-play" perception in the City:

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I am not even sure that it necessarily makes that much of a difference, but you feel that you can't take the chance in many instances....Therefore, when you get a [fundraising] call, you feel like you have to come through.

—Bruce Ratner, quoted in *The New York Times*¹⁶

TOP CONTRIBUTORS: UNIONS TAKE THE LEAD

The top ten contributors reflect the increased role played by unions in 1997. (See Table 3.4.) The six highest contributors to participating candidates were unions, compared with three of the top ten in 1993, and only one of the top ten in 1989. (Contributions from unions and other employee organizations may come directly, or through the organization's political action committee.) Only one individual, developer Leonard Litwin, made the top ten list this year, compared with three in 1993. Although total contributions from unions and employee organizations remained fairly constant compared to 1993, that level of giving has been increasingly concentrated among fewer organizations.

In 1997, major contributors from past elections, such as District Council 37 of the American Federation of State, County, and Municipal Employees and the United Federation of Teachers, were joined by newcomers such as the Transport Workers Union, the Correction Officers

TABLE 3.4
TOP TEN CONTRIBUTORS TO 1997 PARTICIPANTS

Contributor	Number of Participants Receiving Contributions	Total Contributed*
Transport Workers Union	44	\$85,023
UFT COPE Local	31	61,272
Correction Officers Benevolent Association	25	54,900
Local 1199, Health and Human Service Employees Union	14	52,530
AFSCME Local 372	24	52,015
District Council 37 - AFSCME	36	50,087
Rent Stabilization Association	28	43,100
Leonard Litwin	14	39,100
Real Estate Board	25	36,800
First District Dental Society	14	35,225

*Note: Contributor entries reflect all contributions to participating candidates from these sources. The data in this table have not been audited to reflect affiliation as described in Board rules, and are simply a gross measure of total contributions made by entities with similar names.

Source: NYC Campaign Finance Board data

Benevolent Association, and Local 1199 of the National Health and Human Service Employees Union on the list of top contributors. At least one union official stated that this was part of a concerted effort to carve out a larger presence on the City's political landscape:

The Correction Officers' Benevolent Association, which previously has not been a political force, has donated \$7,500 to Ms. Messinger, \$3,750 to Mr. Ferrer, \$3,000 to Mr. Albanese and the maximum of \$7,700 to Mayor Giuliani. Boasted [union president Norman] Seabrook: "We will be able to pick the next mayor of the City of New York."

—Jesse Drucker, *New York Observer*¹⁷

At the time this report went to press, City Council legislation proposed to ban corporate contributions did not include a ban on union contributions. The Board believes that the proposed legislation should be amended to include union contributions. (See Chapter 12, "Board Recommendations.")

BUNDLES OF TROUBLE? **INTERMEDIARY ACTIVITY IN THE 1997 ELECTIONS**

The Program requires that participating candidates disclose individuals who collect contributions from others and deliver them to a candidate—a practice known as intermediating, or "bundling." Some campaign professionals believe that bundling is necessary in a system of limited contributions and should not be restricted by law. Others, however, believe bundling allows individuals to buy influence by collecting other people's contributions, that, under the Program, may be matched with public funds.

The Campaign Finance Board addressed the subject of bundling in June 1996 in a special report entitled *Bundles of Trouble?*¹⁸ The Board analyzed the impact of bundling in 1993, when reported intermediated contributions accounted for nearly one-fifth of the total funds raised by mayoral candidates. The Board found that intermediated contributions are generally larger than direct contributions, are less likely to come from New York City residents, and are frequently the result of fundraising among contributors who have relationships with each other (such as employees of the same company).

Tracking intermediary activity poses a number of challenges for candidates and the Board. As the Board noted in *Bundles of Trouble?*, "Because neither intermediaries nor contributors have direct disclosure obligations under the Act, what is known about intermediaries is based solely on what participating candidates' campaigns know and report."¹⁹ Additionally, candidates are only required to report those contributions that are "delivered" to the campaign by the intermediary. Of course, the Board audits campaigns' financial information and does identify some intermediated contributions that were not properly reported. In large part, however, disclosure of intermediary

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TABLE 3.5
1997 CONTRIBUTIONS TO PARTICIPANTS
THROUGH INTERMEDIARIES BY OFFICE

Office	Amount “Intermediated”	Number of Intermediaries	Percent of All Contributions
Mayor	\$3,225,547	374	22%
Public Advocate	160,870	42	8%
Comptroller	98,375	14	5%
Borough President	150,452	56	3%
City Council	74,698	60	1%
Total “Intermediated”	\$3,709,942	546	13%

Source: NYC Campaign Finance Board data

activity relies on the good faith of the participating candidates’ campaigns, and the figures discussed in this chapter must be evaluated accordingly.

Program participants reported \$3.7 million in intermediated contributions in the 1997 elections, or 12.6 percent of total funds raised. (See Table 3.5.) This is a decline in total amounts (but only a slight decline in percentages) from \$4.1 million (13.7 percent) in 1993 (or \$4.5 million in adjusted dollars) and \$4.6 million (16 percent) in 1989. Ninety-four percent of bundled contributions in 1997 went to citywide candidates, including almost \$3 million to Giuliani—nearly a third of his total fundraising.

A look at the top ten reported intermediaries in the 1997 elections (Table 3.6) shows that five of them are prominent New York City developers. Only one bundler who appeared on the 1993 list remained on the list for 1997: Eugene Petracca, a Giuliani supporter. Although no intermediary approached the \$284,150 raised by Dinkins fundraiser Edgar Bronfman in 1993, 1997 did witness a jump in fundraising by the top bundlers. Nine of the top ten intermediaries in 1997 each raised over \$80,000 for their candidates, an amount matched only by the top three in 1993.

Perhaps because intermediaries tend to be people with a business interest in the City, incumbents show far more in bundled campaign funds. Dinkins reported nearly twice as many bundled contributions as his rival Giuliani in 1993, and Giuliani reported more than ten times as many as Ruth Messinger in 1997 (\$2,986,493 vs. \$230,539). Comptroller Alan Hevesi’s bundled contributions alone account for nearly five times the total fundraising of his Republican opponent, Annemarie McAvoy. Public Advocate candidate Jules Polonetsky bucked this trend by reporting more than twice as many bundled contributions as incumbent Mark Green, but this may be an anomaly—the result of Polonetsky’s joint campaign with Mayor Giuliani.

Bundles of Trouble? made several proposals intended to shed further light on intermediary activity, including State legislation that would provide for more extensive disclosure and would stiffen penalties for coercion of contributions. The Board also drafted legislation for the City Council that would broaden the definition of “intermediaries” to include those persons who successfully solicit contributions—not just those who deliver them. The Board has generally limited its proposals on bundling to enhancing disclosure practices. The concern is that restricting intermediary activity—such as by limiting the amount that can be bundled or limiting the matching funds available for bundled contributions—might drive the practice underground, resulting in decreased disclosure.

TABLE 3.6
TOP TEN 1997 INTERMEDIARIES

Intermediary	Amount
Howard Koeppel	\$170,160
Kenneth Langone	136,100
Bruce Ratner	118,850
Sam Domb	118,021
Eugene Petracca	111,575
Ethan Geto	95,700
Carole Karpel	92,500
Joseph Spitzer	83,500
Saul Cohen	81,510
Jerome Gannon	58,000

Source: NYC Campaign Finance Board data

PARTY FAVORS: PARTY SPENDING AND THE 1997 ELECTIONS

Political parties may spend money in general elections without specifying particular candidates or races, a practice known as “generic spending.” These expenditures may include such “party-building” efforts as voter registration drives, get-out-the-vote activities, and monitoring polling stations. Parties may also raise funds for “housekeeping” purposes, such as maintaining a headquarters and staff. These party funds, also sometimes referred to as “soft money,” may, under State law, be raised in virtually unlimited amounts.²⁰

Soft money issues arose in 1997 when newspapers reported that the Giuliani campaign had directed contributors who had already given the maximum amount to the campaign to make contributions to the Liberal Party instead. *Newsday* reported in August:

Individuals are only allowed to give \$7,700 per election cycle to campaigns under [City] public financing rules. But the loopholes allow state parties to sidestep such limits and spend freely in support of those same candidates. The [Liberal] party, whose boss Ray Harding has been a close Giuliani adviser, does not ordinarily do the hundreds of thousands of dollars worth of fund raising that it has carried out this year in support of Giuliani and Assemb. Jules Polonetsky.

—Dan Janison, *Newsday*²¹

Later that week, the *Village Voice* reported thousands of dollars in donations to the Liberal Party from Giuliani supporters who had previously “maxed out” in contributions to the Giuliani cam-

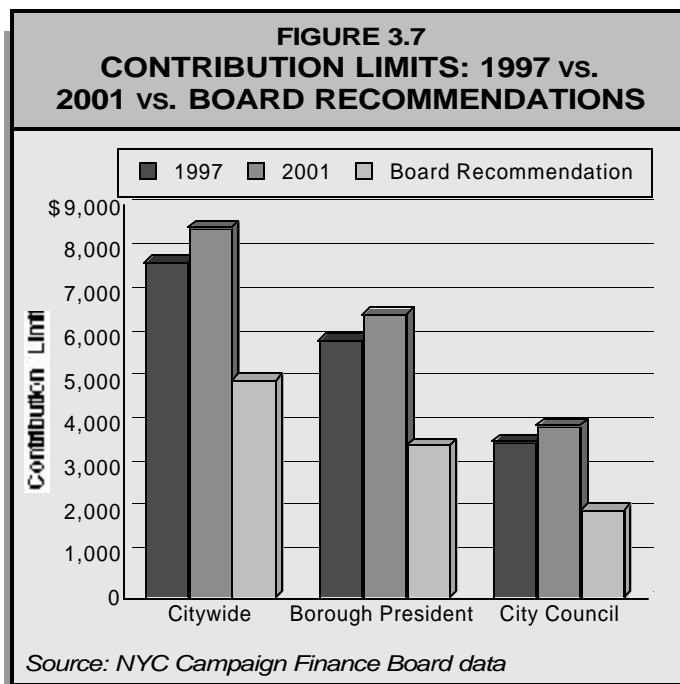
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paign, including \$31,100 from the law firm of Martin, Clearwater & Bell, and \$17,500 from Charlie Hughes, president of Local 372, a school workers union. Several contributors, according to the *Voice*, were encouraged by the Giuliani campaign to contribute to the Liberal Party.²²

There were no formal complaints of party spending—including by the Liberal Party—in violation of the Campaign Finance Act in the 1997 elections. Nonetheless, it is a subject that requires continued attention. The near-absence of state limitations on party activity means that the specter of soft money remains, and it is difficult even to track party committee expenditures intended to assist New York City candidates. The relatively muted appearance of party fundraising and expenditures in 1997 suggests, however, that the Board's rules and the negative publicity attendant on Democratic Party spending in 1993 might have curbed political party activity that otherwise could have undermined the Program's limits. (See Chapter 4, "Expenditures," for a discussion of this issue.)

CONTRIBUTION LIMITS AND COMPETITIVENESS

When Program participants face non-participants, certain elements of the Program are modified to enable the participants to wage meaningful, competitive campaigns. When a non-participating candidate has raised or spent a certain amount, the expenditure cap is lifted, and participants may receive matching funds at an accelerated rate (up to the usual maximum public funds limit). Nevertheless, participants must continue to abide by the Program's contribution limits, while non-participants abide only by the State contribution limits, which are generally much higher. This raises the question whether the contribution limits may, in certain circumstances, constitute an unfair handicap for Program participants.



Program participants, however, have not blamed the contribution limits, but rather the cap on matching funds and the rate at which contributions are matched, for any unfair disadvantage they may have experienced. (See Chapter 12, "Board Recommendations," for the Board's proposals on increased matching.) Indeed, average contributions to Program participants, particularly at the Council level, remained well below the limits in 1997. Eva Moskowitz, a participant, was defeated in a tight City Council race by non-participant Andrew Eristoff who, under State law, could spend unlimited amounts of his own personal funds. Moskowitz, having been greatly outspent by Eristoff, called for a removal of the matching funds cap but not of the contribution limits, saying that, "if anything, I think I might lower the limit."²³ Moskowitz did, however, note

that she had spent as much as 70 percent of her time soliciting funds, a commitment that she believed may have cost her the election. Although many good-government groups and editorial boards have recommended lowering contribution limits, Citizens Union recommended that the Board take a “hard look” at the possibility that the existing limits are too low. “Making limits too low...may require candidates to spend too much time raising funds and too little time informing the electorate about their position[s],” said Citizens Union representative John Proudfit.²⁴

CONCLUSION

Campaign finance regulation is always a work in progress, since both donors and fund-raisers have every incentive to find creative new ways to get around last year’s regulations.

—*editorial, The New York Times*²⁵

The Campaign Finance Board has long endorsed lowering the Program’s contribution limits, in the belief that higher limits increase the opportunity for undue influence. (See Figure 3.7.) Testifying before the City Council in February 1997, Chairman O’Hare said, “Limits this high [e.g., \$8,500 for citywide contests in 2001] raise the question whether the law will meet its central objective to reduce the risk and appearance that large campaign contributions buy undue influence.”²⁶ The Campaign Finance Board has recommended since 1992 that the contribution limits be lowered. The Board proposes in 1998 (as it did in 1994) that the limit for citywide candidates be lowered to \$5,000, Borough President candidates to \$3,500, and City Council candidates to \$2,000. (See Chapter 12, “Board Recommendations.”)

Legislative proposals announced by Speaker Vallone shortly before this report went to press would, if enacted, address many issues raised by the Board. Among these proposals is an increase in the public funds matching rate for qualifying contributions from 1-for-1 up to \$1,000 to 4-for-1 up to \$250, which would dramatically increase the value of small contributions and might help close the fundraising gaps among the boroughs. Similarly, the announcement that the City Council will lower the contribution limits to those recommended by the Board for most offices suggests that the concerns raised here about the dominance of high-end giving may be addressed this year.

Over the course of a decade of elections, the Campaign Finance Program has encouraged candidates to broaden their appeal for smaller contributions from more New York City residents in the hopes of receiving public matching funds.²⁷ Participating candidates have had to abide by contribution limits that, although higher than what the Board had proposed, were still far lower than most applicable State limits, which the Board has urged should be made uniform with the Program’s limits. In the meantime, lowering the limits under the Program, as is now likely to occur, is essential to keep large donations in check.

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NOTES

- ¹ Calculated on a 10.55 percent increase in the metropolitan New York-New Jersey regional Consumer Price Index from 1993 to 1997. Percentages obtained from the United States Department of Labor, Bureau of Labor Statistics. New York City Board of Elections records show that candidates on the ballot who were not in the Program raised approximately \$5.9 million, up from \$3.1 million (or \$3.4 million when adjusted for inflation) in 1993, but these data are not audited. See Chapter 1, “1997 Elections,” note 23. Consequently, all analysis in this chapter is based on data for participating candidates. (The 1993 Board of Elections figure also does not include Andrew Stein’s expenditures of over \$6.4 million for his aborted race for citywide office.)
- ² In 1989, when there were 35 seats on the City Council, nine candidates raised over \$100,000.
- ³ Editorial, “Time to Make a Good Law Better,” *New York Times*, March 2, 1998, 26.
- ⁴ See Clifford J. Levy, “2 Big Donors Join Fight Over Funds for Campaigning,” *New York Times*, May 8, 1998, A1; Jonathan P. Hicks, “Chairman of City Campaign Finance Board Calls for Sharp Changes in Rules,” *New York Times*, February 26, 1998, B1; Editorial, “How to make a good law better,” *Daily News*, March 10, 1998, 25; Doug Ireland, “Clean Out the Vote,” *Village Voice*, March 17, 1998, 17. See also Open letter of Ludovic Blain, Neal Rosenstein, and Gene Russianoff of NYPIRG, dated November 1997, on file at the Campaign Finance Board.
- ⁵ Albert R. Hunt, “On Campaign Finance, Everybody Does Do It,” *Wall Street Journal*, May 15, 1997, A23.
- ⁶ Tom Robbins, “Out-of-towners chip in,” *Daily News*, October 23, 1997, 20.
- ⁷ In 1993, outer-borough contributions to City Council candidates were greater than those from Manhattan, but by a much smaller margin: \$1,460,511 in Manhattan contributions (or \$1.6 million in adjusted dollars) compared with \$1,632,709 in outer-borough contributions (or \$1.8 million in adjusted dollars). (Note: 1993 figures do not include refunds.)
- ⁸ Clifford J. Levy, “In the Race for Mayor, The Suburbs Give Heavily,” *New York Times*, October 1, 1998, B2.
- ⁹ *Campaign Finance Board 1997 Hearings*, vol. I, at 116 (testimony of Ruth Messinger).
- ¹⁰ Some contributors gave more than the legal limit. See Chapter 9, “Compliance and Enforcement.”
- ¹¹ Editorial, “Two Men, Two Ideas,” *Daily News*, December 14, 1997, 62.
- ¹² Rudolph Giuliani, *First General Election Debate for Mayor*, October 9, 1997. For discussions of issues related to the Board’s penalty assessment, see David Seifman, “Rudy aide: Outlaw donations like one that cost us 220G,” *New York Post*, September 20, 1997, 7; Jesse Drucker, “Giuliani’s Friends Get Ready to Pay Up Almost \$1 Million,” *New York Observer*, September 22, 1997, 1; and Clifford J. Levy, “Fine Reflects How Donors Curry Favor,” *New York Times*, September 23, 1997, B1.
- ¹³ At the State level, the Board has previously recommended that organizational contributions to candidates be barred completely, which would affect giving to non-participants as well as to participants. See *Dollars and Disclosure*, 64, 144.
- ¹⁴ Philip Lentz, “Freddy, Ruth scrambling for NY business money,” *Crain’s New York Business*, May 5, 1997, 1.
- ¹⁵ See Levy, “2 Big Donors Join Fight Over Funds for Campaigning,” A1. The “Clean Money” proposal endorsed by Durst and Ratner would replace the Campaign Finance Act’s program of partial public financing with a system of 80 percent public financing. At press time, petitions were being circulated to place the proposal on the ballot in November 1998.
- ¹⁶ *Ibid.*
- ¹⁷ Jesse Drucker, “The Rudy Watch,” *New York Observer*, January 27, 1997, 8.
- ¹⁸ New York City Campaign Finance Board, *Bundles of Trouble?*, June 1996 (hereafter “*Bundles of Trouble?*”).
- ¹⁹ *Ibid.*, 5.
- ²⁰ Currently, individuals may contribute up to \$69,900 per year to each political party committee. New York Election Law §14-114(10). There are no limits on contributions to party housekeeping funds. Election Law §14-124(3).

- ²¹ Dan Janison, “Reiter Defends Fund-Raising,” *Newsday*, August 7, 1997, A32.
- ²² Wayne Barrett, “Married to Money,” *Village Voice*, August 12, 1997, 22.
- ²³ *Campaign Finance Board 1997 Hearings*, vol. II, at 73 (testimony of Eva Moskowitz).
- ²⁴ *Campaign Finance Board 1997 Hearings*, vol. II, at 40 (testimony of John Proudfit).
- ²⁵ Editorial, “Time to Make a Good Law Better,” *New York Times*, March 2, 1998, A26.
- ²⁶ Hicks, “Chairman of City Campaign Finance Board Calls for Sharp Changes in Rules,” B1.
- ²⁷ See also *Hearings before the New York City Campaign Finance Board*, December 8, 1993 (hereafter *Campaign Finance Board 1993 Hearings*), vol. I, at 32-33 (testimony of Rudolph Giuliani).


Chapter 4—Expenditures

How Money Talks

Participants in the Campaign Finance Program volunteer to subject their campaigns to spending limits, and the Board tracks compliance closely. In the 1997 elections, candidates, as in the past, continued to rely heavily on television, consultants, and the print media. In contrast to past elections, however, the 1997 mayoral elections were the first in the Program's history in which the two front runners did not spend an approximately even amount.

In 1997, Program participants spent \$37 million, compared to \$36.3 million in 1993 and \$33.9 million in 1989.¹ In inflation-adjusted 1997 dollars, participant spending actually decreased from \$40.1 million in 1993 and \$44.3 million in 1989.² Adjusting for inflation, spending by mayoral participants decreased by 12 percent from 1993, and spending by participants for Public Advocate and Comptroller declined by 42 percent and 69 percent, respectively, from 1993. This may have been the result of fewer elections for these offices in 1997 and less competition in the elections that did take place.³ Meanwhile, total spending by participants for Borough President and City Council, when adjusted for inflation, increased by 169 percent and 46 percent, respectively. In the case of Borough President, this was undoubtedly a reflection of increased competition and the mid-campaign switch by candidate Fernando Ferrer from a mayoral to a Borough President race. At the City Council level, increased spending may have been a reflection of a greater number of open seats (nine in 1997 versus three in 1993). Six of the eight open seats in 1997 resulted from decisions by incumbents to run for higher office. By contrast, in 1993 only one incumbent (Susan Alter) created an open seat by running for higher office (Public Advocate). (See Table 4.1 for non-inflation adjusted spending data across previous election cycles.)

Incumbents accounted for most of the spending early in the 1997 election cycle. Council incumbents, for instance, while making up only 21 percent of Council participants, accounted for 91 percent of the \$949,000 spent in the first three years of the election cycle by Council candidates.⁴ (By election day, in contrast, incumbent spending accounted for just 39 percent of total Council candidate spending.) The opportunity presented in races that lacked an incumbent was reflected in participant spending: spending per seat in open seat Council contests was more than twice the spending per seat in incumbent contests. (For information on yearly spending

1988		1998
No spending limits under State law.		Program participants subject to per election spending limits in 1997 of \$4,732,000 for Mayor; \$2,958,000 for Public Advocate and Comptroller; \$1,065,000 for Borough President; and \$124,000 for City Council.
A Decade of Reform		

Chapter 4

TABLE 4.1
TOTAL PARTICIPANTS'
EXPENDITURES BY OFFICE OVER TIME

Office	Election	Number of Participants*	Total Expenditures
Mayor	1997	6	\$19,250,000
	1993	3	19,760,000
	1989	5	23,800,000
Public Advocate†	1997	2	\$2,560,000
	1993	7	4,000,000
	1989	0	N/A
Comptroller	1997	1	\$2,050,000
	1993	3	6,070,000
	1989	4	4,100,000
Borough President	1997	12	\$5,920,000
	1993	5	1,990,000
	1989	6	3,250,000
City Council	1997	109	\$7,210,000
	1993	112	4,480,000
	1991‡	135	7,600,000
	1989§	33	2,740,000
Total for All Offices	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 that filed exemptions.

†Office was called City Council President in 1989.

‡Charter revision expanded the City Council from 35 to 51 seats; election for City Council only.

§City Council had only 35 seats in 1989.

Source: NYC Campaign Finance Board data

by participants, see “Appendix H” in Volume II of this report.)

HOW MONEY IS SPENT: MEDIA AND CONSULTING TOP THE LIST

In 1997, media spending remained the largest overall expenditure for all offices. For most candidates, the mass media—television, radio, and print—are the primary means of communicating with voters. (See Table 4.2.) As in 1989 and 1993, media spending made up roughly 40 percent of total expenditures by Program participants. The percentage of media spending dedicated to television decreased, going from 75 percent in 1989, to 70 percent in 1993, to 63 percent in 1997. (See Table 4.3.)

Campaign consultant fees were the second largest expenditure for Program participants, making up 11 percent of total spending. The quantity of consultant spending underscores the important role consultants play in modern campaigns. Consultants may strongly influence how a campaign interacts with the press and the public and are involved to a high degree in the planning of campaign strategy, media strategy, and the design and production of advertisements.⁵ The confluence of big media and high-fee consultants in City elections is not coincidental: “New York City campaigns are coveted by nationally known

consultants because they take place in a political off year and because the city is one of the most expensive media markets in the nation. Consultants are normally paid a percentage of their television ad buy, usually 15 percent.”⁶ Conversely, media spending figures in this analysis may be understated because payments to consultants are often for the purpose of subcontracting the purchase of radio and television air time on the candidates’ behalf. This spending ultimately devoted to media is often reported as a consultant expense, not a media expense.

In the mayoral race, although total media spending has decreased in every election since the Program began (\$10.5 million in 1989, \$8.5 million in 1993, and \$8.1 million in 1997), media spending as a percentage of all expenditures has remained constant at just above 40 percent. (See Tables 4.1 and 4.3.) The use of print media relative to radio and television was on the decline at

TABLE 4.2
TYPES OF EXPENDITURES BY PURPOSE CODE, 1997

Purpose Code	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
Media/Advertising*	\$8,078,677	\$1,209,284	\$1,632,262	\$1,430,498	\$2,605,182	\$14,955,903
Office	1,899,090	84,063	2,276	637,265	613,999	3,236,693
Staff	2,987,121	210,604	0	515,075	470,489	4,183,289
Consultants	2,295,657	140,056	204,000	1,109,701	488,407	4,237,821
Fundraising	1,710,104	564,565	88,757	809,153	772,603	3,945,182
Compliance	0	0	0	8,278	12,711	20,989
Polling	461,451	55,154	0	112,275	127,913	756,793
Petition	25,847	14,744	12,105	42,872	123,946	219,514
Constituent Services	9,985	0	0	55,874	286,294	352,153
Professional Services	206,973	35,828	30,000	177,855	363,657	814,313
Voter Registration	0	0	0	0	7,001	7,001
Other	1,467,541	177,784	24,939	653,868	766,001	3,090,133
Advances†	123,656	41,675	13,272	205,053	338,371	722,027
Political Contributions/ Transfers Out†	228,069	41,936	43,995	136,381	219,555	669,936
Investment Expenses†	0	50	0	32	18,704	18,786
Unknown†	5,588	7,422	1,625	43,282	46,749	104,666
Unitemized Expenditures†	3,926	0	651	1,249	51,167	56,993
Expenditure Refunds†	(252,968)	(25,591)	(95)	(19,141)	(100,283)	(398,078)
Total	\$19,250,717	\$2,557,574	\$2,053,787	\$5,919,570	\$7,212,466	\$36,994,114

*See Table 4.3 for breakdown of media and advertising expenses.

†Not categorized in prior elections.

Source: NYC Campaign Finance Board data

the mayoral level: print media's share of total media spending decreased from 15 percent in 1989, to nine percent in 1993, to only six percent in 1997.

Public Advocate television spending as a percentage of total spending for that office remained steady at 26 percent in 1993 and 27 percent in 1997, while print spending decreased from ten percent in 1993 to three percent in 1997. (See Tables 4.2 and 4.3.) The single participant submitting data in the Comptroller race, Alan Hevesi, reported spending 77 percent of all his funds on television advertising in 1997 and only two percent on print media. In 1993, Comptroller participants spent only 19 percent on television and 11 percent on print media, and, in 1989, 34 percent on television and seven percent on print media. When television spending and consultant fees are combined, the figures are 87 percent in 1997, 53 percent in 1993, and 49 percent in 1989.

On the Borough President and City Council levels, print was the preferred medium of most participants. In 1997, 23 percent of all Borough President spending went to print media, while only

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TABLE 4.3
MEDIA-RELATED SPENDING BY PARTICIPANTS BY ELECTION OVER TIME

	Mayor	Public Advocate	Comptroller	Borough President	City Council	All Offices
1997						
TV Ads	\$6,946,000	\$699,000	\$1,591,000	\$32,000	\$115,000	\$9,383,000
Print*	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
1993						
TV Ads	\$7,745,000	\$1,047,000	\$1,150,000	\$655	\$26,000	\$9,969,000
Print*	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†						
TV Ads	N/A	N/A	N/A	N/A	\$23,000	\$23,000
Print*	N/A	N/A	N/A	N/A	3,071,000	3,071,000
Radio	N/A	N/A	N/A	N/A	83,000	83,000
Total Media					\$3,177,000	\$3,177,000
1989						
TV Ads	\$8,802,000	N/A	\$1,391,000	\$776,000	\$300	\$10,969,000
Print*	1,527,000	N/A	282,000	771,000	833,000	3,413,000
Radio	143,000	N/A	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 rounded to nearest \$1,000.

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

†City Council races only.

Source: NYC Campaign Finance Board data

one percent of spending went to broadcast media. Thirty-four percent of all City Council spending went to print media, while two percent went to broadcast media.

A list of the top ten vendors to candidates shows that eight were involved in either consulting or media—including, not surprisingly, the U.S. Postal Service, which ranked sixth and was used by virtually every campaign.⁷ (See Table 4.4.) The top three vendors were consultant firms that served the three highest spending campaigns: Doner Public Affairs, Grunwald Communications, and Morris & Carrick Inc. handled media purchasing and campaign strategy for the Giuliani, Messinger, and Hevesi campaigns, respectively. Together, these consultants received over \$10.5 million for their services, representing nearly 30 percent of all spending by participants in the 1997 elections. On the City Council level, the top six vendors were consulting firms or media-related companies.

Campaign spending in 1997 largely followed patterns of previous years.⁸ These are described below for each office.

CITYWIDE

Incumbents accounted for the great majority of the \$24 million spent in citywide contests in 1997: \$16 million, or two-thirds, was spent by the three incumbents. A total of almost \$11 million was spent for media purposes by all citywide participants, mostly by incumbents, who spent \$8 million.

Mayor

Mayoral participants spent \$19.3 million (Messinger and Giuliani alone spent almost \$18 million), exceeding the total amount spent by Program participants for the four other covered offices combined.⁹ For the first time since the Program's inception, however, the spending disparity between the two front runners in both the primary and general elections was stark.¹⁰ (See Figures 4.1 and 4.2.) This, however, was a function of their fundraising ability, not the spending limits. Indeed, had spending (and contribution) limits not been in effect, the disparity might have been significantly greater. In 1989, when Ron Lauder ran for Mayor as a non-participant, he spent \$13.7 million (or \$17.9 million adjusted for inflation) in the primary alone, as against \$6.2 million spent by candidate Giuliani that year. The Lauder campaign's spending remains a record that has not yet been approached by any other mayoral campaign.

The race for Mayor has generally been the most media intensive of all contests. (See Table 4.3.) Overall media spending in 1997 declined by nearly \$2.4 million (or \$5.6 million in 1997 adjusted dollars) from 1989 media spending. (1989 saw two highly contested mayoral primaries and a very close general election.) Television was the medium of choice in 1997, as over 86 percent of mayoral candidates' media spending was on television.

The four participating Democratic mayoral candidates together spent \$1.2 million on television advertising for the primary election. (Ruth Messinger spent \$768,605 on television, while Sal Albanese spent over half his resources—\$412,750—on a last-minute television campaign.) Mayor Giuliani spent \$1.9 million on television during the primary election period. Giuliani outspent Messinger nearly two-to-one on television ads and ten-to-one on radio ads in the general election, as the Messinger campaign was hampered by a money shortage in the final days of the campaign.¹¹

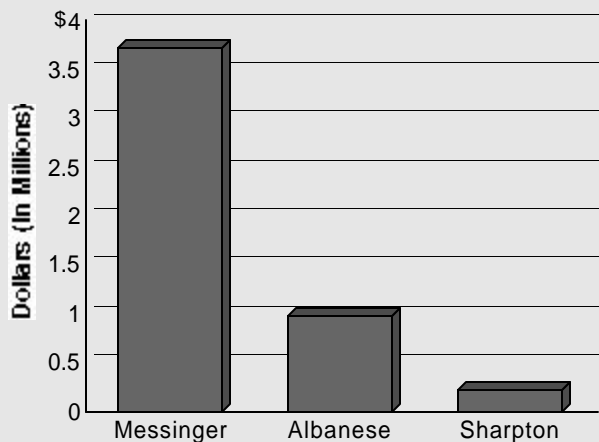
But media spending alone is not determinative of success at the polls. Al Sharpton spent little on media compared to his opponents and reported no television spending. He nonetheless fared much

TABLE 4.4
TOP TEN VENDORS*
(1997 ELECTIONS)

Vendor	Total
Doner Public Affairs	\$5,839,429
Grunwald Communication	2,515,699
Morris & Carrick	2,144,515
Automatic Data Processing	1,134,540
Trippi, McMahon & Squire	920,000
U.S. Postal Service	790,425
Sheraton New York	651,145
Zale Koff Garphics	483,744
Joe Slade White Communications	469,181
Mailhandlers Inc.	426,170
*Totals do not include transactions under \$5,000.	
Source: NYC Campaign Finance Board data	

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FIGURE 4.1
1997 DEMOCRATIC CANDIDATES'
PRIMARY SPENDING



Source: NYC Campaign Finance Board data

better on primary day than Albanese, whose spending on broadcast media was almost ten times that of Sharpton. Sharpton argued that his already high profile among voters obviated any need to spend heavily on media, stating that “unlike the other candidates, I don’t have to buy name recognition.”¹² Sharpton did, however, spend a greater portion of his campaign funds on consultants (47 percent) than any of his opponents.

Public Advocate and Comptroller

Public Advocate Mark Green and Comptroller Alan Hevesi, both incumbents in 1997, had minimal opposition. Green spent \$1,979,918 in the 1997 election cycle, while Alan Hevesi spent \$2,053,787. Both dwarfed their opponents’ spending and won re-election by huge margins.

Both candidates devoted the largest portion of their total spending to broadcast media. Green spent \$920,000 (or 46 percent) on broadcast media (split evenly between television and radio), while Hevesi spent \$1.6 million (or 77 percent) solely on television.

Public Advocate challenger Jules Polonetsky, whose bid for office cost \$577,656, was outspent more than three-to-one by his incumbent opponent. Polonetsky ran jointly with Mayor Giuliani and was the only non-incumbent participant among Public Advocate and Comptroller candidates to submit spending information. The Giuliani and Polonetsky campaigns shared certain campaign costs in accordance with the joint spending rules of the Program. (See “Joint Spending” below.)

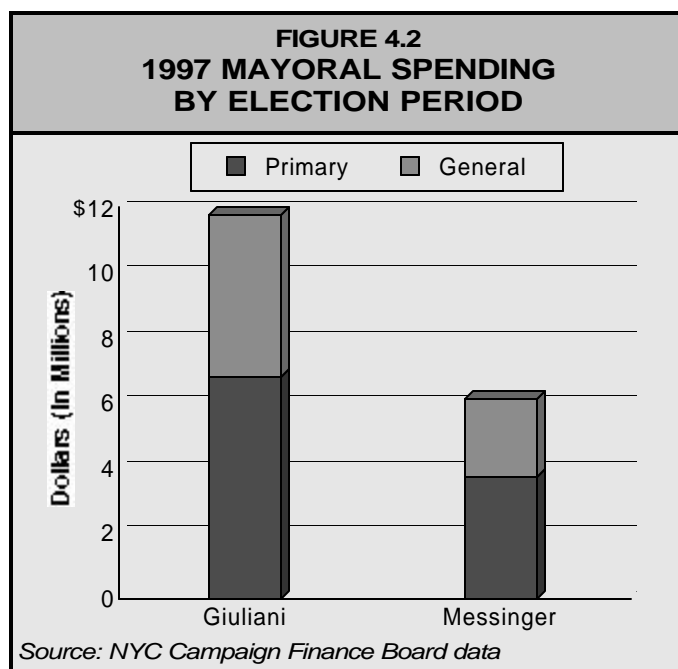
The degree to which Polonetsky’s spending patterns were influenced by this close connection with a highly popular incumbent Mayor, who attracted a large total of contributions, is not clear, but his spending patterns were markedly different from Green’s.¹³ For instance, Polonetsky spent much less than Green in areas such as fundraising (five percent, compared with Green’s 27 percent) and consultant fees (four percent, compared with Green’s six percent). But Polonetsky also spent \$216,075, or 37 percent of his total spending, on office expenses and campaign workers’ wages, while Green devoted only \$75,822 (or four percent) to these costs.¹⁴

BOROUGH PRESIDENT

Spending by Borough President participants reached an all-time high in the 1997 elections. This is in part because of Fernando Ferrer’s aborted bid for Mayor. At the time Ferrer decided to seek re-election instead of the mayoralty, his campaign had spent just over \$1.5 million. Following a request by Ferrer’s Borough President opponent Israel Ruiz, the Board issued Advisory Opinion

No. 1997-6, setting forth guidelines concerning how Ferrer's expenses should be allocated under the Borough President spending limits. Pursuant to this Opinion, the Board determined that all but \$389,492 of the \$1.5 million was subject to his Borough President spending cap.

In contrast to the 1993 elections, which featured no significantly competitive races for Borough President, the 1997 Manhattan race was the most expensive Borough President contest in Program history. There was a highly contested Manhattan Democratic primary, with six participants spending over \$2.5 million in the primary election alone. Republican non-participant Abe Hirschfeld spent \$2.3 million in a losing bid for the office, with the two participants in the general election spending over \$400,000 in that election.



In 1997, the total for media spending in Borough President races was \$1.43 million, or 24 percent of the total spent, while in 1993 media spending was only \$329,000, or 17 percent of total spending. Media spending in 1989 was \$1.57 million, accounting for nearly 50 percent of all expenditures by participating candidates for Borough President.

CITY COUNCIL

As in previous years, Council candidates in 1997 concentrated their media spending on campaign literature, printing, graphic design, and postage. Print media spending by the 138 Council participants accounted for \$2.46 million, or 34 percent, of total spending. In comparison, television and radio costs made up a very small percentage of overall spending. (See Tables 4.1 and 4.3.)

The largest categories of spending for City Council participants after print media were fundraising (11 percent), office expenses (nine percent), and consultant fees and campaign workers' salaries (both seven percent). Campaigns that used consultants usually had bigger wallets, spending nearly twice as much as those that did not. (Factoring out campaigns with no reported spending, campaigns that hired consultants spent an average of \$80,356, compared with an average of \$47,455 for campaigns having no consultants.)

Among participants who reported spending, primary election winners spent an average of \$63,758 in the primary period, compared with \$52,814 for those who finished second in a primary. In contrast, general election winners were outspent by second place finishers, \$36,479 to \$42,186 during the general election period. Over the four-year election cycle, however, general election winners spent an average of \$99,900, compared with \$60,482 for candidates who placed second in

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the general election. In many cases, the more competitive races were the Democratic primaries, perhaps explaining the greater primary election spending by eventual general election winners.

Nevertheless, as in 1993 the strongest predictor of success was not total spending, but incumbency.¹⁵ All but one of the 43 incumbents running won re-election, even though six of these incumbents were outspent by one or more of their challengers.¹⁶ Nor were spending levels necessarily a reliable guide in predicting the outcome of open seat contests, as over half the winners of the nine open seat contests were outspent by at least one of their opponents in the primary or general election.¹⁷

City Council candidates who devoted large portions of their resources to print media were open seat contest winners (averaging 55 percent) and runners-up in both open seat and incumbent races (38 percent). But incumbents themselves devoted an average of only 23 percent of their resources to print media, suggesting that incumbents had much less of a burden of establishing name recognition through the media. Incumbents may also have benefitted from other sources of name recognition, such as constituent newsletters. It is interesting that incumbents did spend a far greater part of their resources on fundraising (averaging 20 percent, compared to six percent for runners-up and five percent for open seat winners).

As in 1993 the strongest predictor of success was not total spending, but incumbency.

HIGH SPENDING BY POPULAR INCUMBENTS

The Campaign Finance Program's spending limits do not generally distinguish between spending by incumbents and by challengers.¹⁸ Experience suggests that incumbents often spend significantly more than what is necessary for re-election. In the 1997 elections, for example, strong citywide incumbents spent amounts that were out of proportion to the level of competition they actually faced at the polls. (Mayoral incumbent Giuliani outspent challenger Messinger nearly two-to-one and won by a 17 percent margin; Public Advocate Mark Green outspent challenger Jules Polonetsky more than three-to-one and won by a three-to-one margin; and Comptroller incumbent Alan Hevesi outspent challenger Annemarie McAvoy more than one-hundred-to-one, and won by a nearly four-to-one margin.)

One possible reason incumbents spend at these levels is to promote themselves in anticipation of a future run for higher office. There was speculation in the *New York Times*, for instance, that Hevesi was "using the campaign largely to buff his image in preparation for a mayoral run in 2001."¹⁹ Mark Green was initiating a campaign for a U.S. Senate race in 1998 at the same time that he sought re-election, and Mayor Giuliani created State and Federal committees soon after Election Day to raise money for a possible future run for higher office. Political consultant Hank Morris told the *Daily News*, "Politicians are smart to strike while they're popular, because you never know how long it's going to last."²⁰

NEW AND EARLIER SPENDING LIMITS

In 1994, the Board adopted spending limits for the first two years of the four-year election cycle for all offices except City Council.²¹ (In previous years, Program spending limits had only covered spending in the last two years of the four-year election cycle.) Spending in excess of these amounts did *not* violate the Act or Board Rules, but was charged against the first applicable election-year limit. (See Chapter 12, “Board Recommendations,” for a description of the Board’s proposal to consolidate spending limits.)

In the first two years of the 1993 election cycle, \$2.0 million was spent by participants running for the four offices covered by the early limits. But spending in the first two years of the 1997 election cycle was greater than spending in the first two years of the 1993 election cycle for those offices, totaling \$2.7 million, \$1.89 million of which was non-exempt spending covered by the first- and second-year limits. Four candidates in the 1997 cycle went beyond these new figures: Giuliani and Messinger as mayoral candidates by \$622,279 and \$323,246 respectively; Green as a Public Advocate candidate by \$141,505; and Ferrer as a Borough President candidate by \$287,318. As noted above, this spending was not in violation of the Act, but was applied toward the candidates’ election year spending limits, as required by law. Thus, the amount these candidates could spend in the election year was reduced by a total of \$1.37 million.

WHEN SPENDING LIMITS ARE LIFTED

To provide a level playing field for Program participants, spending limits are removed for participants when the contributions or expenditures of a non-participating opponent reach a certain level. In 1997, the spending limits of three Borough President candidates—Virginia Fields, Ruben Vargas, and Dennis Dillon—were lifted. Fourteen City Council participants facing high spending non-participants also were deemed eligible for “bonus” provisions and had their spending limits removed. Of those, only Council candidate Eva Moskowitz, who lost to incumbent Andrew Eristoff in the general election, spent more than the office limit after the limits were suspended, highlighting the fact that most participants did not have sufficient funds to take advantage of this provision. (Of the others, only John Liu, who lost to incumbent Julia Harrison in the primary election, even approached the suspended spending limit amount.) Thus the Board is recommending an accompanying increase in public funding. (See Chapter 5, “Public Funds,” and Chapter 12, “Board Recommendations.”)

EXEMPT EXPENDITURES

Certain types of spending are classified as “exempt” from Program spending limits, including expenditures necessary to comply with State election law and the Program’s disclosure and record-keeping requirements.

The portion of spending claimed as exempt varied greatly among candidates in the 1997 elections. For example, Mayor Giuliani claimed 15 percent of his spending was exempt, much more

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than his opponents claimed. (Messinger claimed five percent, Sharpton 0.2 percent, and Albanese one percent.) Comptroller Hevesi claimed 2.5 percent of his expenditures as exempt, while Green and Polonetsky claimed nine percent and four percent, respectively. Borough President participants claimed less than two percent of their spending as exempt, with the exception of Ferrer (23 percent),²² who began his race as a mayoral candidate, and Antonio Pagan (15 percent). At the City Council level, 67, or more than half the 109 candidates reporting spending, claimed less than one percent of their spending as exempt.

There is concern that excessive exempt claims may enable candidates to evade the Program's spending limits.

There is concern that excessive exempt claims may enable candidates to evade the Program's spending limits. The 1993 Dinkins campaign was assessed penalties by the Board for exceeding the primary spending limit by \$160,000. Of the Dinkins campaign's primary spending, \$74,011 in expenditures was determined to be incorrectly claimed as exempt. (The Dinkins campaign classified roughly 16 percent of its total spending as exempt, but during the primary, the campaign's exempt spending approached 25 per-

cent, or \$1.3 million.) Similar questions were raised by the press about Mayor Giuliani's exempt expenditures in 1997.²³ A *New York Times* columnist stated that "it is one of the paradoxes of the campaign finance law that one way candidates can try to bend the law is to claim they are trying extra hard to follow it."²⁴

Following the 1993 Dinkins campaign's experience, the Board adopted rules in 1995 requiring candidates to substantiate up front exempt claims above a certain amount. In addition, the Board issued Advisory Opinion No. 1996-1 clarifying what qualifies as an exempt expenditure for compliance costs. Prior to the 1997 elections, the Board produced new training materials that describe the Board's rules and procedures for exempt expenditures in detail and provided these to participating campaigns.

The Board recommends narrowing substantially the range of expenses that may be claimed as exempt, while raising spending limits slightly to account for the changes. (For details on this and other proposals regarding spending limits, see Chapter 12, "Board Recommendations.")

FRIENDS IN NEED: INDEPENDENT AND JOINT SPENDING IN THE 1997 ELECTIONS

The Act defines "independent spending" as spending by individuals or organizations that a candidate does not "authorize, request, suggest, foster, or cooperate in."²⁵ Although truly independent spending is not restricted under the Program, spending by entities other than a candidate's campaign committee may effectively boost another candidate's contributions and spending above the limits. *Friends In Need: Joint and Independent Spending by Candidates*, a report issued by the Board in January 1997, addressed the situation in which one candidate's spending benefits another candidate.

The Board determined that since “each candidate’s campaign files separate disclosure statements...it is not always clear to the public when candidates are pooling their resources or making expenditures that benefit another candidate.”²⁶ To remedy this, the Board imposed a new reporting requirement to simplify the classification of this spending: participants must now identify the candidates supported or opposed by any expenditure that is made to benefit another candidate, and state whether or not that expenditure is independent.

Joint spending, or spending involving cooperation between two or more campaigns, is explicitly permitted under the Act, provided the benefit each campaign derives from a joint activity is proportional to the amount expended for that activity. To the extent a participant derives a disproportionate benefit, the participant is considered to have received an in-kind contribution from the other candidate involved.

The most prominent example of joint spending in the 1997 elections was “Fusion ’97,” the joint ticket of Mayor Giuliani and Public Advocate candidate Jules Polonetsky. Giuliani campaign manager Fran Reiter described the nature of “Fusion ’97” in the *New York Times*: “The campaigns will be very intertwined, because that’s what it means to run as a ticket. But there will be no intertwining of monies. Each campaign will pay its own share.”²⁷ The “Fusion ’97” campaigns shared some resources such as office rent, telephone and utilities, personnel, print media, and advertising signs. The Giuliani campaign listed expenditures to the Polonetsky campaign totaling \$24,815. Some portion of this sum presumably reflects the Giuliani campaign’s proportionate share of “joint” expenditures paid for by the Polonetsky campaign, subject to review during routine post-election audits. Similarly, the Polonetsky campaign listed expenditures of \$54,506 paid to the Giuliani campaign.

PARTY FAVORS: CLOSING THE SPENDING LOOPHOLE

Controlling party spending has become a key issue of campaign finance reform efforts at every level of government. It is widely recognized that “soft money”—raised in virtually unlimited amounts by political parties and often spent for the direct benefit of their nominees—poses a threat to contribution and spending limits. Soft money is particularly troubling in states such as New York, where regulations on party spending and fundraising are especially lax. Currently, contributors may give up to \$69,900 annually to political party committees and unlimited amounts to party “housekeeping” accounts.

Generic spending by parties for election-related purposes, such as voter registration drives and poll watching, is not restricted under the Program. The soft money loophole arises when party spending is directed to a specific candidate’s election efforts.

Spending by State parties in the 1993 elections was a source of great controversy. Rudolph Giuliani, then the Republican nominee for Mayor, filed a complaint with the Board alleging that funds spent by the New York State Democratic Committee for advertising that promoted the re-election campaign of then-Mayor Dinkins should be regarded as a contribution to the Dinkins

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campaign. Dinkins filed a similar complaint against Giuliani regarding certain spending by the State Republican party. The Board eventually declared the Giuliani complaint moot after the Dinkins campaign reimbursed the State party for the expenditure.²⁸ The Dinkins campaign's claim against Giuliani was dropped by the campaign after the election.

To address the issue, the Board published a report entitled *Party Favors* in January 1995,²⁹ analyzing spending by New York State political parties in the 1993 elections and outlining recommended refinements of the Board's existing guidelines on party spending. Subsequently, the Board adopted rules in 1996 codifying when party expenditures in support of the party's nominee are considered in-kind contributions to that candidate.³⁰ (See Chapter 12, "Board Recommendations" for more about the Board's proposals on party spending.)

In contrast to the 1993 mayoral elections, there were no charges of party spending benefitting specific candidates in the 1997 elections.³¹ (Indeed, there were no reports of any kind of "independent" spending activity in support of individual candidates.) The harsh criticism leveled at political parties and their nominees for controversial party spending in the 1993 elections may have restrained the candidates and the parties. Months before the 1997 primary election, the eventual Democratic and Republican mayoral nominees pledged "not [to] encourage political parties or other groups to get involved in the election in a way that would violate the letter or the spirit of the board's rules," and New York State Democratic Party Chairwoman Judith Hope stated that her organization was "not contemplating any activities that could even raise questions."³²

The Board continues to urge the adoption of its recommendations set forth in *Party Favors*, including proposals for changes in State law that would reduce contribution limits to parties and require parties to increase disclosure in order to facilitate tracking of their "candidate-specific" expenditures.

A "POROUS WALL": INCUMBENTS AND GOVERNMENT RESOURCES

Doing away with city-funded ads featuring incumbents, who cloak campaign propaganda in the guise of city boosterism is...a must.

—editorial, *Daily News*³³

The 1997 elections highlighted the questionable use of government resources by incumbents during an election season. In the mayoral race, City-funded advertisements costing over \$1 million were decried as "not-too-subtle attempt[s] to boost...name recognition"³⁴ and "undercover campaign commercial[s]."³⁵ (See Chapter 1, "The 1997 Elections," and Chapter 9, "Compliance and Enforcement," for a discussion of taxpayer-funded advertisements in the mayoral elections.)

A similar debate centered on an incumbent's ability to send mail to constituents at the City's expense. Intended for official government communications, including newsletters and other con-

stituent mail, this resource creates a potential for an incumbent to gain an unfair spending advantage over challengers. The distinction between constituent communication and election-related campaign literature is not always clear. Council member Ronnie Eldridge stated that “we must prohibit government finance[d] ads featuring City candidates from being broadcast during the election year. These ads essentially provide City funded publicity for current office holders to the detriment of challengers.”³⁶

The Board has testified in support of proposals that would set a period of time before an election during which publicly-funded communications could not bear the name, voice, or likeness of a candidate for public office. Such a ban would be an important first step in addressing what the *New York Times* called “the often porous wall separating the political from the governmental.”³⁷

CONCLUSION

The Program spending limits are designed to contain excessive spending in elections that might otherwise involve only the best-funded candidates.

Spending has been restrained by the Program during past citywide elections, but 1997 was the first year since the Program’s inception that saw lopsided spending by the two front runners for mayor. (This is a function of the candidates’ ability to raise funds, treated in Chapter 3, “Contributions,” and Chapter 5, “Public Funds.”) This does not mean, however, that the spending limits were without effect. Without spending limits, the disparity in spending could have been much greater.

The Board has several proposals to improve upon the current spending limits. One proposal to consolidate the limits would greatly simplify compliance for Program participants and potential candidates. Another proposal would increase the spending limit for City Council participants, reflecting the higher cost of races in some more expensive districts. Legislative proposals under consideration by the City Council at the time this report went to press do not address the Program’s expenditure limits.

NOTES

- ¹ Spending in 1997 by non-participants was over \$5.5 million, but these data are not audited. See Chapter 1, “The 1997 Elections,” note 23.
- ² Calculated on a 30.84 percent increase in the metropolitan New York-New Jersey regional Consumer Price Index from 1989 to 1997 and a 10.55 percent increase from 1993 to 1997. Percentages obtained from the United States Department of Labor, Bureau of Labor Statistics.
- ³ The 1997 Public Advocate primary was not actively contested, as it was in 1993. There was no Comptroller primary or run-off primary election in 1997, both of which occurred in 1993.

Chapter 4

- 4 There were no spending limits in effect for City Council for 1994 or 1995, the first two years of the 1997 election cycle. The \$24,000 Council candidate limit for 1998-1999 (the first two years for the 2001 election cycle), was adopted by Board Rule 1-08(d)(iv) in September 1997.
- 5 Philip Lentz, "Robust Spending in '97 Elections Bolsters Vendors," *Crain's New York Business*, March 16, 1998, 3.
- 6 Philip Lentz, "Apple of Consultants' Eye," *Crain's New York Business*, September 9, 1996, 3.
- 7 Exceptions are campaigns that reported virtually no expenditures or fail to report any mailing costs.
- 8 In 1993, the top spending categories for participants were media (39 percent), followed by consultants (12 percent), campaign workers (11 percent), fundraising (11 percent), and office expenses (five percent). The 1989 breakdown was media (43 percent), consultants (seven percent), campaign workers (seven percent), and fundraising (four percent). When media and consultant spending are combined, they remain constant as a percentage of total spending for 1989 and 1993, at approximately 50 percent. Office expenses in 1989 included postage and accounted for seven percent of expenditures.
- 9 Spending data for mayoral candidates do not include the spending of Bronx Borough President Fernando Ferrer. Originally a declared candidate for the Democratic mayoral nomination, he later dropped out to run for re-election. (For more on Ferrer's candidacy, see Chapter 1, "The 1997 Elections.") Ferrer spent \$1.5 million prior to dropping out of the mayoral race in May 1997. If Ferrer had remained in the mayoral race, total spending for the office would have been significantly higher.
- 10 The 1989 mayoral primary election spending of Democratic incumbent Ed Koch was \$3.7 million, compared with \$3.2 million spent by challenger Dinkins. Overall spending by the two front runners in the general election was \$8 million for Dinkins, and \$6 million for Republican candidate Giuliani, who spent \$3 million of his total in the primary election period. In the 1993 mayoral contest, Dinkins spent \$10.9 million (including \$6.7 million in the primary election), while Giuliani spent \$8.7 million (including \$5.4 million in the primary election).
- 11 See, e.g., Adam Nagourney, "Money Sends Messages That Messenger Couldn't," *New York Times*, November 1, 1997, 40.
- 12 Adam Nagourney, "Early Money: Mayor Leads All Opponents," *New York Times*, January 11, 1997, 27.
- 13 Polonetsky's spending was somewhat different from that of his running mate Mayor Giuliani as well. As a percentage of total expenditures, the Mayor devoted nearly twice as much to fundraising (nine percent), three times as much to consultants (11 percent), and half as much to combined office expenses and workers' wages (21 percent).
- 14 It should be noted that work done on behalf of a campaign by volunteers is considered neither a contribution to nor an expenditure by the campaign, and thus does not figure in the reported amounts of campaign spending. See Administrative Code §3-702(8)(i).
- 15 See *On the Road to Reform*, 13.
- 16 In the first district, incumbent Kathryn Freed, who spent \$93,533 in the primary election, was outspent by challenger Jennifer Lim, who spent \$113,570 in the primary election; in the 17th district, non-participating incumbent Federico Perez (\$34,855) was outspent by challenger Pedro G. Espada (\$62,787); in the 19th district, incumbent Michael Abel (\$78,382), was outspent by challenger Jerry Iannece (\$107,559); in the 20th district, non-participating incumbent Julia Harrison (\$43,073) was outspent by challengers John Liu, Ethel Chen, and Pauline Chu, each of whom spent above \$100,000; in the 37th district, incumbent Martin Malave-Dilan (\$44,215) was outspent by challenger Germania Taveras (\$142,510); and in the 45th district, incumbent Lloyd Henry (\$48,665) was outspent by challenger Kendall Stewart (\$75,747) in the primary election. Figures for non-participants are from City BOE data. (For a discussion of the difficulties inherent in determining non-participant figures, see note 23 in Chapter 1, "The 1997 Elections.") See Gary Jacobsen, *Money in Congressional Elections* (New Haven: Yale University Press, 1980), on the funding levels needed by challengers to mount effective campaigns.
- 17 In the 2nd district, open seat winner Margarita Lopez, who spent \$101,359 in the primary election, was outspent by Judy Rapfogel, who spent \$119,658 in the primary election; in the 14th district, open seat winner Adolfo Carrion, Jr., who spent \$104,319 for both elections, was outspent by Richard Soto, who spent \$127,060 for both elections; in the 38th district, open seat winner Angel Rodriguez, who spent \$50,136 for both elections, was outspent by Susan Loeb, who spent \$58,413 for both elections; and in the 51st district, non-participating open seat winner Stephen Fiala, who spent \$45,307 for both elections, was outspent by Anthony Pocchia, who spent

- \$74,077 for both elections. In the 41st district, non-participant open seat winner Tracy Boyland was barely outspent by non-participant Stanley Kinard.
- ¹⁸ For the 1997 elections, incumbents were able to spend on constituent services from their campaigns without regard to the Program's spending limits for the first three years of the election cycle. A 1996 rule change, however, repealed this exemption beginning in 1998.
- ¹⁹ Clifford J. Levy, "It's Hevesi, Financed and Visible, Against a Field That Isn't," *New York Times*, September 28, 1997, B1.
- ²⁰ Frank Lombardi, "Rudy raising funds—for '97," *Daily News*, March 29, 1994, 61.
- ²¹ The 1994-1995 spending limits for citywide and borough offices were intended to control spending throughout the election cycle. The Board adopted rules in 1998 establishing similar limits for City Council participants beginning in 1998. The \$24,000 limit for the first two years of the election cycle was based upon an analysis of spending on behalf of prospective candidates for City Council during 1994, 1995, and 1996, the first three years of the 1997 election cycle. Many Council members claim that campaign funds are often used for expenses incidental to holding political office, such as attending political dinners and other functions. These expenses are not exempt from the Act's spending limits and were meant to be accommodated within the \$24,000 limit. See New York City Administrative Code §3-706(5).
- ²² This does not include spending determined by the Board to be attributable to Ferrer's mayoral race under Advisory Opinion No. 1997-6.
- ²³ At the time this report went to press, the audit of the Giuliani campaign was still in progress. No conclusion had been reached that any exempt expenditures had in fact been incorrectly classified.
- ²⁴ Elizabeth Kolbert, "Following Campaign Finance Law at Any Price," *New York Times*, September 4, 1997, B1.
- ²⁵ New York City Administrative Code §3-702(8).
- ²⁶ New York City Campaign Finance Board, *Friends in Need: Joint and Independent Spending by Candidates*, January 1997 (hereafter "*Friends in Need*"), 8.
- ²⁷ David Firestone, "Big Donors to Giuliani Campaign Asked to Assist 'Running Mate,'" *New York Times*, July 19, 1997, 22.
- ²⁸ New York City Campaign Finance Board Determination No. 1993-8 (October 19, 1993).
- ²⁹ New York City Campaign Finance Board, *Party Favors*, January 1995 (hereafter "*Party Favors*").
- ³⁰ Board Rule 1-08(f)(4).
- ³¹ Clifford J. Levy, "Rules Stiffened For Spending On Candidates," *New York Times*, July 7, 1997, B1. See also Chapter 3, "Contributions." Andrew Eristoff's campaign for City Council in the 4th Council district suggested that "the Campaign Finance Board does not chart the independent expenditures the Democratic establishment could easily provide [his opponent] Moskowitz—things like phone banks, volunteers and free printings. Eristoff is not participating in the Program because he needs to make up for the fact that he doesn't have access to those resources." Peter Duffy, "Money and Politics," *Eastside Resident*, October 15-21, 1997, 6. At the same time, however, Eristoff's campaign did not file a complaint with the Board or produce evidence to support these claims. Moskowitz denied that she received such assistance. *Campaign Finance Board 1997 Hearings*, vol. II, at 70 (testimony of Eva Moskowitz).
- ³² Clifford J. Levy, "Rules Stiffened for Spending on Candidates," *New York Times*, July 7, 1997, B1.
- ³³ Editorial, "Two Men, Two Ideas," *Daily News*, December 14, 1997, 62.
- ³⁴ David L. Lewis, "City Funds for Ruth Ads Ripping Rudy," *Daily News*, November 15, 1996, 16.
- ³⁵ Editorial, "They All Do It—They're All Wrong," *Daily News*, August 16, 1997, 12.
- ³⁶ *1997 Campaign Finance Board Hearings*, vol. II, at 58 (testimony of Ronnie Eldridge). See also *1997 Campaign Finance Board Hearings*, vol. II, at 64 (testimony of Eva Moskowitz).
- ³⁷ David Firestone, "In Election Year, Debate Rages Over Using Public Money for City Ads," *New York Times*, June 20, 1997, B3.

Chapter 5—Public Funds

No Strings Attached

Public funds, the Program's central benefit to candidates, help level the political playing field by enabling candidates with limited financial means to wage more effective campaigns. By giving candidates the financial resources to reach a wider audience, public funds can also enhance the public's understanding of the political process and the issues. At the same time, public funds give incentives to larger numbers of people to participate in the political process by making small contributions, the value of which is increased by the matching program. Public funds also encourage candidates to seek contributions from a greater number of people, again involving more individuals in the political process.

There's no question that the existence of this Program enabled me to run a competitive race against my competitor in the general election....I was matched approximately \$70,000 which really enabled me to run the race that I wanted to run and talk about the issues and get the word out and publicize myself.

—*Joanne Seminara-Lehu, candidate from the 43rd Council district.¹*


Rules prohibit spending public funds on ballot petition litigation, contributions or loans to other candidates or political committees, or payments to a candidate or a candidate's relatives. If a campaign has money left over after an election, it must reimburse the CFB for any public funds up to the amount received before using the money for other purposes.

THE COST

The amount of money [distributed through the Program] is, in the budget of New York City...infinitesimal. You can't find it. It's a percentage of a percentage of a percentage of a percentage.

—*Mayor Rudolph Giuliani²*

Approximately \$6.4 million was paid to 82 Program participants in 1997.³ (See Figure 5.1.) By comparison,

1988		1998
Candidates must collect all campaign funds from private sources.		Public matching funds provide participating candidates with a "clean" source of funds to complement small, private donations.
A Decade of Reform		

Fact Sheet 5.1

PUBLIC FUNDS BY ELECTION

Citywide Elections

1997	Mayor	\$3,239,421
	Public Advocate	385,268
	Comptroller	247,054
	Borough President	880,483
	City Council	1,666,961
	Total	6,419,187
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
1989	Mayor	\$2,779,508
	City Council President*	0
	Comptroller	421,665
	Borough President	799,228
	City Council	507,764
	Total	4,508,155

City Council Redistricting Election

1991	City Council	\$2,660,514
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Off-Year Elections to Fill Vacancies

1997	The Bronx	
	17th Council District†	\$0
1996	Manhattan	
	5th Council District	\$81,375
	5th Council District†	63,208
1994	Staten Island	
	51st Council District	\$30,677
	51st Council District†	60,339
1993	Manhattan	
	4th Council District†	\$132,146
1991	Brooklyn	
	29th Council District†	\$137,650
	Queens	
	22nd Council District†‡	\$0
1990	Staten Island	
	1st Council District	\$10,155

* Office became Public Advocate.

† Denotes Special Election.

‡ Only one candidate was on the ballot.

Source: NYC Campaign Finance Board data

in 1993 approximately \$6.1 million (or \$6.7 million in inflation adjusted dollars) was paid to 66 participants, and in 1989, 37 participants received approximately \$4.5 million (or \$5.9 million in inflation adjusted dollars). In 1991, when the only seats up for election were for a newly-redistricted City Council, about \$2.7 million (or \$3.2 million in inflation adjusted dollars) was distributed to 111 participants. (See Fact Sheet 5.1.) Out of an annual City budget of over \$30 billion, this is indeed a small amount of money to improve local elections.

In 1997, as in 1993, City Council candidates received public funds equaling 30 percent of their total contributions, while for citywide candidates this figure was 20 percent. The 1997 and 1993 elections, however, represent a marked increase in the public funds made available to participating candidates. In 1989, public funds payments equaled only 21 percent of the total contributions to City Council candidates and 11 percent to citywide candidates. In contrast to these sets of elections, public funds paid in the 1991 elections for a newly-redistricted City Council equaled 54 percent of total contributions.

COMPETITIVE ELECTIONS?

[I]f I did not have access to additional funding through campaign financing, I probably would not have run for Borough President. I believe that the concept of [public] financing...allow[s] average citizens to run and actually compete for public office.

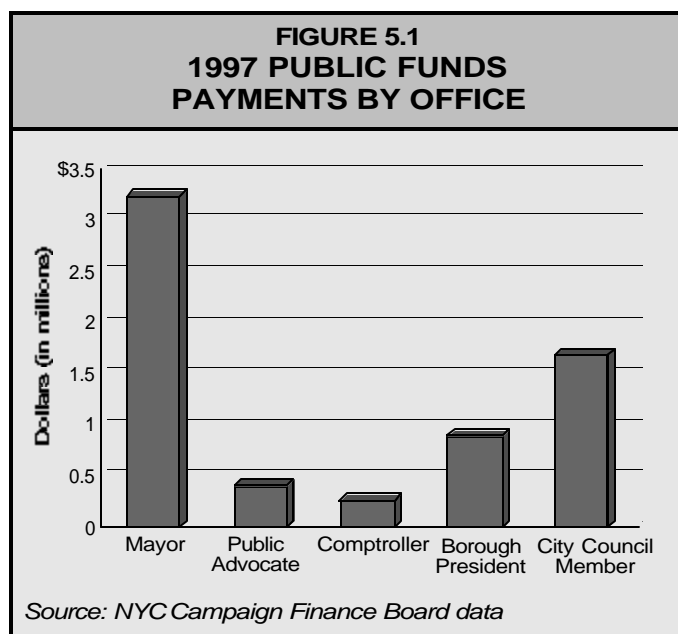
—Steve Higgins, candidate for Staten Island Borough President⁴

It is generally accepted that it is very difficult for a challenger to defeat an incumbent officeholder—indeed, in 1997 only one incumbent lost an election for City office. As public officials,

incumbents generally enjoy higher visibility than their opponents and are usually able to raise more money. In New York City, ample funds are critical for a campaign to get its message to voters.

The 1997 Mayoral Campaign

The 1997 mayoral campaign was different from the two previous mayoral elections held under the Program. In 1989 and 1993, the leading candidates all raised sufficient funds to spend close to the limit on their campaigns.⁵ In 1997, however, incumbent Mayor Rudolph Giuliani raised \$9,876,096 to Ruth Messinger's \$4,113,063 for the primary and general election periods. Messinger's fundraising advantage over her primary opponents was even more overwhelming. Prior to the primary, Messinger raised \$3,400,538, Sal Albanese raised \$568,870, and Al Sharpton raised \$225,289.



Despite Mayor Giuliani's huge fundraising advantage, however, Messinger actually received more in public funds: \$1.78 million (or \$1.46 million, if public funds received for the run-off payments are excluded), which represented 30 percent of her total campaign funds (or 26 percent if the run-off payment is excluded).⁶ Giuliani received \$1.21 million in public funds, or 11 percent of his total. This reflects the fact that Messinger received a much higher portion of her contributions from City residents and in small amounts. (See Chapter 3, "Contributions.")

Albanese's campaign received \$254,250 in public funds for the Democratic primary, or 31 percent of his total fundraising. Because of difficulties in meeting the threshold, he received this money only four days before the primary and actually took out a \$200,000 loan 14 days earlier in anticipation of receiving the public funds. Albanese clearly did not think this level of public funding was enough. After the election he testified that the Program "does not level the playing field, particularly for citywide office, where TV is the most expensive in the world."⁷ He further suggested that serious candidates should receive "pre-election grant[s] from the Campaign Finance Board which will allow them to run their campaign and will eliminate the destructive money chase."⁸

The ultimate result of this year's elections—the re-election of all three citywide officials—contrasts with the frequent turnover at the citywide level that has occurred since the inception of the Program.

Chapter 5

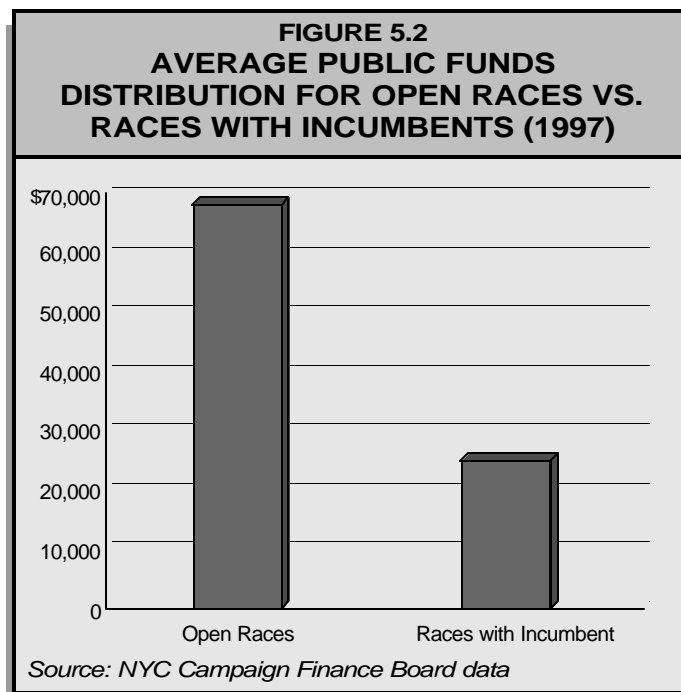
Borough President

Over the life of the Program, races for the office of Borough President have rarely been competitive and have involved low amounts of public financing. This year, the race for Manhattan Borough President was the one competitive race that involved significant public funds distribution, \$706,186 in total. Deborah Glick received the highest amount (\$322,074), while the eventual winner of the general election, C. Virginia Fields, received the second highest amount (\$263,877).

City Council

There is evidence that public funds have more meaning for City Council candidates than for candidates for other offices. Most Council races receive little media attention, making it difficult for challengers to establish name recognition. This puts a premium on promotional material paid for by the campaign, which means that public funds can be critical to those candidates who have not had the benefit of the public exposure an elected official receives.

Public funds make up a greater share of the funds available to City Council candidates than of the funds available to candidates for other offices. Public funds make up the greatest share of total funds available to challengers in City Council races. Among candidates meeting the threshold, public money made up 29 percent of challengers' total funds compared to 16 percent of incumbents' total funds. In elections in which both the incumbent and at least one challenger received public funds, challengers on average received more public funds as a proportion of their total funds (34 percent) than incumbents did (22 percent).



This higher proportion for challengers reflects their tendency to receive a greater percentage of their contributions from New York City residents and in smaller amounts. A proposal of the Board's, described in Chapter 12, "Board Recommendations," would match smaller contributions from individual New York City residents at a higher rate, thus rewarding candidates who seek these contributions to an even greater extent.

In 1997, just one incumbent Council member was defeated: Federico Perez, a non-participant who represented the 17th Council district, lost to Pedro Espada, a participant who did not receive public funds. Council races, like those for other offices, become much more competitive when an incumbent is not involved, and public funds distribution in 1997 reflected this.

Although the average payment to candidates remained roughly the same whether for seats occupied by incumbents or for open seat races, the total payout per seat was much higher in the open seat races (reflecting the higher number of candidates for open seats). On average, \$68,380 (\$12,560 per candidate) in public funds was distributed for City Council races not involving incumbents, in contrast to \$25,286 (\$12,349 per candidate) for races including incumbents. (See Figure 5.2.)

Similarly, in 1991, when there were 19 open seats, an average of \$84,010 (\$19,466 per candidate) in public funds was distributed for City Council races not involving incumbents, in contrast to an average of \$26,297 (\$15,878 per candidate) for races including incumbents. This strongly suggests that the 2001 municipal elections, when term limits go into effect, will see an increase in the amount of public funds distributed in City Council races.

It is not clear whether there is a significant connection between the winners of open seats and the candidates who received the most public funds. In 1997, out of ten open seat races, four of the winners were the candidates who also received the most in public funds. On the other hand, even candidates whose opponents received more in public funds indicated that receiving public funds had a “large” effect on their own campaigns.⁹

MEETING THE THRESHOLD

Program participants must demonstrate a minimum level of public support in order to qualify for matching funds. This threshold requirement is designed to protect taxpayer money and prevent the distribution of public funds to candidates who have no serious support in their communities.

There are two requirements for meeting the threshold: first, candidates must raise a certain amount of money (how much depends on the office sought) in matchable contributions. (Contributions must be at least \$10 to count toward the threshold.) The second requirement is that candidates must receive these contributions from a minimum number of residents within the area the candidate seeks to represent, whether that is a Council district, a borough, or the entire City. (See Fact Sheet 5.2 for the specific threshold requirements for each office.)

Many groups—including the CFB—believe that the threshold requirements should be relaxed. Gene Russianoff of the New York Public Interest Research Group said that “a major problem was that some serious candidates failed to qualify for matching funds, and that leads us to believe that some of the thresholds for qualifying are too high.”¹⁰ In 1997, Al Sharpton did not qualify for public funds and Sal Albanese barely reached the threshold, although Sharpton received 32 percent and Albanese 21 percent of the vote in the Democratic mayoral primary. Similarly, Public Advocate candidate Jules Polonetsky, who received 24 percent of the vote in the general election, fell just short of meeting the monetary requirement for the threshold prior to the election, and thus was ineligible to receive a pre-election payment.

Fact Sheet

5.2

PUBLIC FUNDS AND THRESHOLD REQUIREMENTS (1997 ELECTIONS)

Office	Maximum Public Funds Per Election	Threshold Dollar Amount	Threshold Number of Contributors
Mayor	\$2,366,000	\$250,000	1,000 New York City Residents
Public Advocate	\$1,479,000	\$125,000	500 New York City Residents
Comptroller	\$1,479,000	\$125,000	500 New York City Residents
Borough President			
Bronx	\$532,500	\$24,076*	100 Bronx Residents
Brooklyn	532,500	46,013*	100 Brooklyn Residents
Manhattan	532,500	29,751*	100 Manhattan Residents
Queens	532,500	39,032*	100 Queens Residents
Staten Island	532,500	10,000*	100 Staten Island Residents
City Council	\$40,000	\$5,000	50 Residents of Applicable Council District

*These amounts are based on 1990 Census figures for the population in each borough.

The Board has proposed legislation that lowers the threshold for each office but still requires campaigns to demonstrate that they have significant financial support. If the Board's proposed threshold requirements had been in effect for 1997, Polonetsky would have received a pre-election payment, and Sal Albanese would have received payment sooner. Al Sharpton, however, would still not have qualified for matching funds, having claimed only \$62,600 in matchable contributions. (For more about this proposal, see Chapter 12, "Board Recommendations.")

WHAT HAPPENS WHEN CANDIDATES DO NOT PARTICIPATE?

Candidates who do not participate in the Program are subject only to New York State Election Law, which, unlike the Program, has no spending limits and generally much higher contribution limits. To mitigate the disadvantage a Program participant may encounter when facing a high spending non-participant, the Act in this circumstance calls for matching contributions at the accelerated rate of two public dollars for every private dollar raised up to \$1,000. (The maximum amount in public funds a candidate can receive for an election does not change, however.) This bonus is triggered when the participant's non-participating opponent raises or spends half the expenditure limit, except in the case of City Council races, for which the non-participating opponent must raise or spend \$30,000 to trigger the bonus. Additionally, the Act provides that the participant's spending limit is lifted.

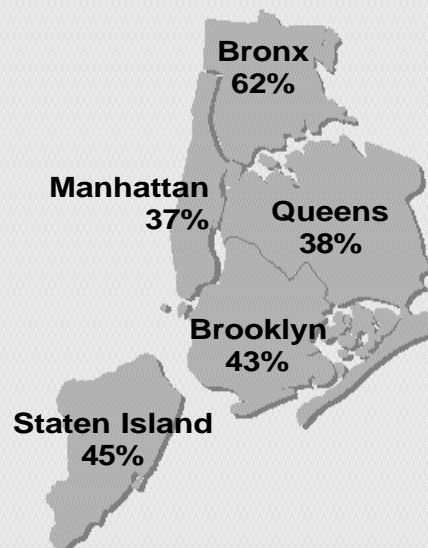
During the 1997 elections, 17 participants (ten in the primary election and seven in the general election) were deemed eligible for these “bonus” provisions. Eleven of these candidates (or 13 percent of the total of 82 total participants who received public funds) received accelerated public funding as a result, while four failed to meet the threshold to receive public funds, and two had already received the maximum funds payable at a rate of 1-for-1. The Board paid a total of \$728,139 in public matching funds to candidates who qualified for bonus matching, \$243,677 of which ultimately represented bonus payments above the amount these candidates would have received at the 1-for-1 rate. (See Table 5.1 for details.)

In some cases, non-participants spent such large sums that the Program’s bonus provision was not enough to offset the participant’s financial disadvantage. In the 44th Council district’s Democratic primary, incumbent Noach Dear spent \$544,954 to defeat Program participant Sandy Abby Aboulafia. Aboulafia was awarded bonus matching and her spending limit was removed, but as she testified before the Board, “There isn’t any way that I could compete with [Dear] with campaign finance only matching my grassroots fundraising 2-for-1. Certainly, 2-for-1 is a great help, but 4-for-1 would have been a more serious help.”¹¹ Aboulafia ultimately received nearly \$30,000 in matching funds payments from the Board and spent nearly \$45,000.

As indicated in Fact Sheet 5.2, the Board cannot exceed \$40,000 in public funds payments to a Council candidate per election (including bonus payments). Although few participants actually receive the maximum,¹² some have questioned whether \$40,000 is enough to compete against some of the City’s highest spending non-participating candidates. Eva Moskowitz, commenting on her race against Andrew Eristoff in the 4th Council district, said, “Forty thousand dollars when your opponent is spending \$749,000 just does not help that much. For other races, \$40,000 is a tremendous sum. For me it was really insufficient, and I would like to see that amount increased so that I have a better chance of being competitive....”¹³

The Board has recommended that the City Council increase the matching rate for bonus situations from 2-for-1 to 4-for-1, and increase the maximum amount of public funds that a participating candidate can receive. In addition, when a non-participating opponent is spending extraordinary amounts of money, the Board recommends that the participant be eligible to receive public funds payments at a 5-for-1 rate. These proposals are designed to help participants

FIGURE 5.3
PERCENTAGE OF PARTICIPATING
COUNCIL CANDIDATES NOT
MEETING THRESHOLD (1997)



Note: Only Council participants who appeared on the ballot are counted. Figures include participants who did not request public funds.

Chapter 5

TABLE 5.1
1997 RACES IN WHICH BONUS MATCHING WAS TRIGGERED

Office	Non-Participant Triggering Bonus Matching	Participants Eligible for Bonus Matching
PRIMARY ELECTION		
Council District 13	Michael DeMarco	George Medici
Council District 17	Federico Perez	Pedro Espada, Luis DeJesus
Council District 20	Julia Harrison	Pauline Chu, John Liu Debra Markell
Council District 28	Thomas White, Jr.	Allan Jennings, Jr.
Council District 32	Joseph Addabbo, Jr.	Thomas Gebert
Council District 42	Priscilla Wooten	Charles Barron
Council District 44	Noach Dear	Sandy Abby Aboulafia
GENERAL ELECTION		
Manhattan Borough President	Abraham Hirschfeld	C. Virginia Fields, Ruben Vargas
Brooklyn Borough President	Howard Golden	Dennis Dillon
Council District 4	Andrew Eristoff	Eva Moskowitz
Council District 24	Morton Povman	Walter Kowsh, Jr.
Council District 51	Stephen Fiala	Anthony Pocchia, Henry Bardel

Source: NYC Campaign Finance Board data

compete against high-spending opponents who are not bound by the Program's restrictions and to encourage even greater participation in the Program. (For details about this and other proposals, see Chapter 12, "Board Recommendations.") A recent City Council initiative that reflects many of the Board's recommendations provides for a 5-for-1 matching rate for participants who decline corporate contributions and who face high spending non-participants. Under the initiative, these participants would also receive an increased public funds maximum of 60 percent of the spending limit.

CONCLUSION

Over the ten-year life of the Campaign Finance Program, public funds have offered candidates with less access to monied sources a chance to run competitive campaigns. The role of public funds is likely to increase when term limits go into effect in 2001, because more public funds are generally distributed for races for open seats. A current City Council initiative, to match contributions at 4-for-1 up to \$250, if passed, would dramatically increase the role of public funds in elections and induce many more average citizens to take part in the political process.

NOTES

- ¹ *Campaign Finance Board 1997 Hearings*, vol. I, at 154 (testimony of Joanne Seminara-Lehu).
- ² *Campaign Finance Board 1991 Hearings*, vol. I, at 86 (testimony of Rudolph Giuliani).
- ³ The total amount paid in public funds and the number of participants receiving a payment through April 30th, 1998. At press time, public funds payments totaled \$6.64 million to 85 participants.
- ⁴ *Campaign Finance Board 1997 Hearings*, vol. II, at 110-111 (testimony of Steve Higgins).
- ⁵ In 1989, participating candidates David Dinkins, Ed Koch, and Rudolph Giuliani all raised sufficient funds to spend up to the limit in their respective primary elections. Ronald Lauder, a non-participant, spent well over the Act's expenditure limit in the Republican primary. The two main contenders in the general election, Dinkins and Giuliani, raised enough money to spend up to the general election limit. *See Dollars and Disclosure*, 84, 90. *See also* Chapter 4, "Expenditures."
- In 1993, Dinkins and Giuliani again both raised enough money to spend up to both the primary and general election limits. *See On The Road To Reform*, vol. II, Appendix C, 19.
- ⁶ Messenger received a \$320,402 payment for the anticipated run-off primary elections against Al Sharpton. Run-off payments are one-time payments equal to 25 percent of the total public funds received for the prior election.
- ⁷ *Campaign Finance Board 1997 Hearings*, vol. I, at 59 (testimony of Sal Albanese).
- ⁸ *Ibid* at 62.
- ⁹ *Campaign Finance Board 1997 Post-election Survey*.
- ¹⁰ *Campaign Finance Board 1997 Hearings*, vol. I, at 182 (testimony of Gene Russianoff).
- ¹¹ *Campaign Finance Board 1997 Hearings*, vol. II, at 128 (testimony of Sandy Aboulafia).
- ¹² Six Council candidates were eligible to receive the maximum amount of public funds for the primary: Pauline Chu and John Liu, in the 20th Council district in Queens; Martin Golden, in the 43rd Council district in Brooklyn; Roberto Lizardo, in the 10th Council district in Manhattan; Margarita Lopez, in the 2nd Council district in Manhattan; and Eva Moskowitz, in the 4th Council district in Manhattan. (See Chapter 1, "The 1997 Elections," note 30.) Four candidates were eligible to receive the maximum amount of public funds for the general election: candidate Una Clarke, in the 40th Council district in Brooklyn; John Fusco, in the 50th Council district in Brooklyn and Staten Island; Eva Moskowitz; and Jerome O'Donovan in the 49th Council district in Staten Island. Some of these candidates returned funds because they did not spend them. No citywide or boroughwide candidates qualified to receive the maximum amount of public funds.
- ¹³ *Campaign Finance Board 1997 Hearings*, vol. II, at 66-67 (testimony of Eva Moskowitz).

Chapter 6—Disclosure and Automation

Diskette to Internet

For ten years, the Campaign Finance Board has continuously improved the way campaigns submit data to the Board, the efficiency with which the Board processes and reviews the data, and the ease with which the public can gain access to the Board's comprehensive database. The database includes extensive contribution information, including contributor names, addresses, occupations, and employers; similar information about intermediaries (who deliver contributions to candidates from others); and detailed expenditure information. The Board also ensures the value of its database by confirming that the information is both timely and accurate.

Several innovations were implemented for the 1997 election cycle. The law imposed a new "contemporaneous disclosure" requirement for citywide and boroughwide campaigns wishing to preserve matching claims for contributions collected early in the election cycle. The Board enhanced its Candidate Software for Managing and Reporting Transactions ("C-SMART®") to enable campaigns to record all transactions and submit complete disclosure statements to the Board electronically. The Board's public disclosure resources now include a searchable database on public computer terminals at its lower Manhattan offices that contains all contributions made to Program participants during the 1993 and 1997 elections. The CFB also made its first foray into cyberspace when the agency's site on the World Wide Web went into operation in July 1997 at <http://www.cfb.nyc.ny.us>. By April 1998, candidates' summary data were online, and as of the summer of 1998, the Board's entire contribution database became available on the CFB Web site in a searchable format.

As a result of these innovations, the Board's technological disclosure capability is at the forefront among government ethics agencies. The Board's technical staff has been asked by representatives of many other jurisdictions to make its knowledge and experience available, and indeed is participating in a project of the Council on Governmental Ethics Laws ("COGEL") to develop a national standard for electronic filing of campaign finance information. (See Chapter 11, "The CFB as a Resource.")


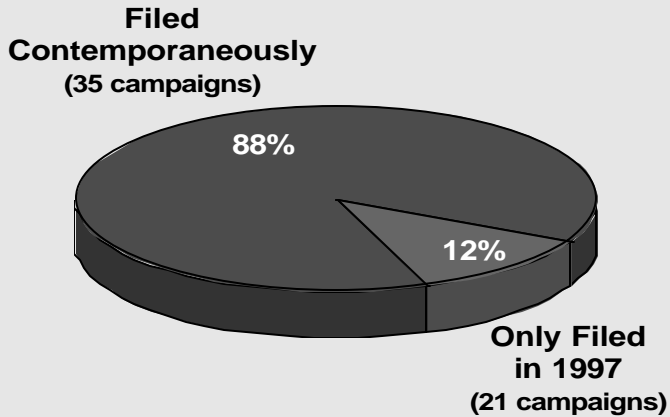
1988		1998
Public can examine candidates' financial data only on paper filings made with the City BOE.		Having computerized the financial data of Program participants and having made information available in a searchable format on paper, computer disk, and at the Board's Public Terminal, CFB inaugurates searchable database on the Internet.
A Decade of Reform		

FIGURE 6.1
PERCENTAGE OF TRANSACTIONS
BETWEEN 1/12/94 AND 1/11/97 FILED
CONTEMPORANEOUSLY



Source: NYC Campaign Finance Board data

CONTEMPORANEOUS DISCLOSURE: GETTING CURRENT DATA

Before the 1997 election cycle, candidates were not required to file disclosure statements with the Board until they joined the Campaign Finance Program in the election year. After joining the Program, candidates would submit data all at once, in late spring of the year of the election, on transactions that occurred during the first three years of the election cycle. This resulted in an overwhelming amount of old data arriving at the Board's offices at one time, making the first filing experience a difficult challenge both for candidates and for the Board.

Moreover, this late disclosure denied the

public the opportunity to scrutinize computerized financial information until well after the transactions had occurred.

In 1994, following a Board rulemaking effort, the Campaign Finance Act was amended to require prospective candidates for Mayor, Public Advocate, Comptroller, and Borough President to file contemporaneous disclosure statements semi-annually in order to preserve claims for matchable contributions received before the election year. Thus, contributions received during the first three years of the election cycle would no longer be matched unless reported contemporaneously. The law also allows, but does not require, prospective City Council candidates to file disclosure statements contemporaneously. The Board believes the requirement to file contemporaneously should be extended to Council candidates.

Campaigns that file contemporaneously benefit in a number of ways. First, by submitting campaign finance information every six months, they avoid the need to compile as much as three years of data retrospectively and then disclose it all in one massive statement. Second, ongoing submissions reduce the chance of misreporting individual transactions, thereby helping campaigns establish compliance with Program requirements early on. Third, the campaigns have a chance to work with the Board before they join the Program, which reduces potential compliance problems. As a result, many campaigns resolve questions about matching claims well in advance of the first scheduled payment of matching funds, thus increasing the amount of money they receive at the beginning of the campaign season. For the 1997 elections, 56 participating campaigns had financial activity before the election year. Sixty-three percent of these candidates filed contemporaneously, accounting for 88 percent of transactions for the pre-election year period. (See Figure 6.1.) All 14 participants running for citywide and Borough President offices having financial activity before 1997 filed contemporaneously. Exactly half of the City Council participants having pre-1997 transactions did so.

ELECTRONIC FILING: GETTING DATA TO THE CFB

When it enters campaign finance data into its computer system, the Board's primary concern is accuracy. The Board uses *key verification*, requiring two different data entry operators to enter each transaction originally submitted by candidates on paper. During the second round of data entry, the system requires the operator to reconcile any differences between the two entries. Key verification increases the amount of time and money spent entering data, but the high degree of accuracy is worth the cost when compared to other methods of assuring quality control of data. Nonetheless, the burden of key verification is among the factors that led the Board to seek more efficient alternatives for recording disclosure information, such as electronic filing.

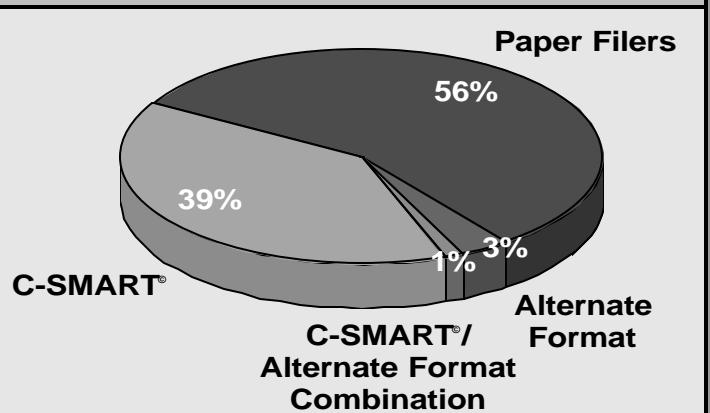
C-SMART®

The Board's candidate software, C-SMART®, was first distributed for the 1993 elections. C-SMART® allows campaigns to enter financial information and generate submission diskettes to file disclosure statements electronically. The Board then uploads data on these diskettes directly into its computer system. Campaigns can also use their own customized filing software, but that software must output a file format, according to CFB specifications, that is identical to the C-SMART® submission file.¹

The number of C-SMART® users increased substantially from 1993 to 1997, rising from 47 to 62, and the total number of electronic filers rose from 51 to 67. Electronic filing accounted for 72 percent of transactions submitted to the CFB for the 1997 elections, compared with 64 percent in 1993. (See Figures 6.2 and 6.3.)

Electronic filing significantly increases the speed with which disclosure filings are processed. The upload process can transfer 100 transactions per minute into the Board's system, which is ten times faster than a single data-entry operator can. There is also no need to key verify electronic submissions, as the data are taken directly from the candidates' diskettes. Reducing data entry in turn leads to significant cost reductions for the Board, and, by extension, New York City taxpayers. Electronic filing also improves the speed and accuracy of audit reviews and public funds payments and allows for rapid distribution of data to the public.

FIGURE 6.2
PERCENTAGE OF 1997 CANDIDATES
USING EACH DISCLOSURE METHOD

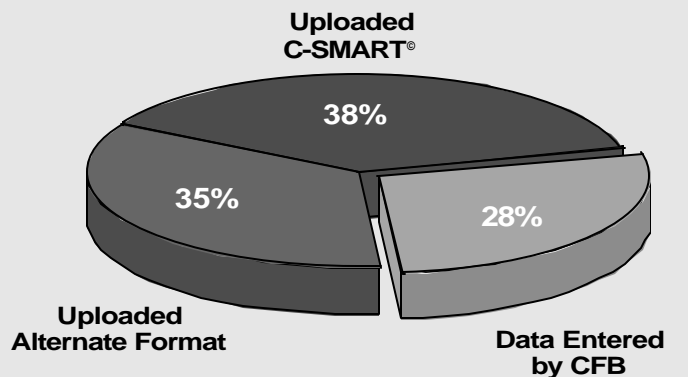


Note: Percentages may not add up to 100 due to rounding. (See Table 3.1.)

Source: NYC Campaign Finance Board data

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FIGURE 6.3
PERCENTAGE OF 1997 TRANSACTIONS
REPORTED BY DISCLOSURE METHOD



Total of 73% Transactions Filed Electronically

Note: Percentages may not add up to 100 due to rounding. (See Table 3.1.)

Source: NYC Campaign Finance Board data

C-SMART® makes it easier for campaigns to comply with the Program's requirements by warning of over-the-limit contributions, contributions missing employer information, and matching claims that are invalid as entered by the candidates. After a new contributor or vendor is entered, the program searches to see whether the same contributor or vendor has already been entered, so that campaigns do not have to enter the same name information twice. C-SMART® tracks contribution totals by automatically aggregating contributions from the same source, and it produces several special reports that can assist candidates in managing their campaigns, including contribution and expenditure lists, invalid matching claims reports, and a public funds payment threshold

report. Data entered into C-SMART® can also be exported to a word processing file to perform mail merges.

C-SMART® is upgraded periodically. For the 1997 election cycle, the software was expanded to generate all disclosure schedules required by the Board. In addition, any campaign that requested C-SMART® and that had previously participated in the Program received a diskette prepared by the Board including the names of all contributors to that campaign's earlier election. By typing two words into its computer, the campaign could import that information directly into the new C-SMART®.

The Board took other steps to make C-SMART® easier to use. In addition to a printed manual and online help, the Board added additional staff to the C-SMART® Hotline, which took calls 24 hours a day during the election season. The Board held six training sessions, attended by 45 campaign representatives, to assist with C-SMART® installation and use. Board staff also made site visits to campaigns when necessary.

Ninety-six percent of the campaigns that used C-SMART® and responded to the Board's post-election survey question on the usefulness of the software said it was "helpful" or "very helpful," with 65 percent of that group indicating "very helpful." Every campaign that used C-SMART® and the C-SMART® Hotline found the Hotline to be at least "helpful," and 59 percent of respondents considered the Hotline "very helpful." Elizabeth Gebert, treasurer for Thomas Gebert's City Council campaign, said she found it "much easier to maintain records and aggregate amounts. [It is] less time consuming than manual filing."² Other responses included comments that the "staff [was] quite knowledgeable, responsive, and sympathetic,"³ and "The

help...received using C-SMART®...was extraordinary. It's hard to believe that the CFB is a government agency! They are smart, courteous, solicitous, cooperative—totally wonderful!”⁴

The Board has already begun to enhance C-SMART® for the 2001 elections, in many cases incorporating improvements suggested by campaigns. The next version will improve the flow of the data entry process for several types of transactions and will enhance the flexibility and scope of the software's reporting capabilities by making the system searchable and adding built-in mail merge and export capacities.⁵ The use of C-SMART® is likely to increase greatly in the future, as more campaigns begin to use computers. The Board has also recommended that all but the smallest participating campaigns be required to file electronically for the 2001 election cycle. (See Chapter 12, “Board Recommendations.”)

C-SMART® AND NEW YORK STATE BOARD OF ELECTIONS FILING REQUIREMENTS

[M]y hat is off to the entire staff who worked on [C-SMART®], devised it, made it possible for [a] mere volunteer...to be able to manage...thousands and thousands of small contributions. It could not have been done...manually, and the C-SMART® software was absolutely invaluable....There is room for improvement, but I just wanted to commend you on that and if there is anything that you can do to try and get that software...accepted as the submission *franca* of the Board of Elections as well, it would make a tremendous difference. I can't tell you how angry I would get when I finished your report and felt like I had a handle on our finances and then had to manually rewrite...hundreds of transactions on...forms that looked almost identical, but that the Board of Elections said were not acceptable.

—*Lisa Kaplan, Treasurer for Council member Margarita Lopez's campaign.*⁶

The Board has continued to seek State Board of Elections (“State BOE”) permission for candidates to submit copies of CFB disclosure forms, in lieu of State BOE forms, when making filings required by the State to be made at the City BOE. This permission would eliminate the need for candidates to enter data onto two different sets of hard copy forms. Although the State BOE permitted use of CFB hard copy forms for filing at the City BOE in 1993, the State BOE withdrew its permission after it substantially revamped its disclosure forms (largely following the CFB's design) in 1994. In March 1998, the State BOE agreed to permit the filing of disclosure schedules generated by C-SMART®, but not the CFB's paper forms. When electronic filers run C-SMART® submissions, they will now be able to fulfill all their financial disclosure requirements just using the CFB's software.

The most pressing disclosure issue now facing the CFB involves the State BOE's newest mandate: to have a system for mandatory electronic filing at the State BOE for State campaigns in place by 1999. Although development of a State computer system that is wholly compatible with

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the CFB's has been ruled out by the State BOE, the CFB is discussing with the State BOE how it can develop its new system in a manner that allows it to accept C-SMART® electronic filings.

The group that would experience the greatest hardship if the State BOE cannot accept C-SMART® filings is candidates, who will be required to enter their campaign finance data twice, into two separate software programs. Those affected will be:

- State candidates who have used C-SMART® previously in City campaigns. If they then run for State office, they will not be able to use name records they had saved in C-SMART® and will have to re-enter those data onto State software.
- Former State candidates who then run for City office. If they previously used the State BOE's candidate software, they will not be able to transfer those data to C-SMART® and will have to re-enter them.
- When the State eventually requires *all* candidates to file electronically at local Boards of Elections, as seems inevitable, then any candidate in the Campaign Finance Program (or considering joining) will have to enter campaign finance information twice, once onto C-SMART® for filing with the CFB, and once onto State software for filing with the City BOE.
- Undeclared candidates who are considering joining the Campaign Finance Program and are at the same time considering a State race will also have to enter data twice.

As this report went to press, technical staff at both agencies had agreed on a schedule for the State BOE to adjust its system to accept C-SMART® filings after the State BOE has put its new computerization program in place.

INTERNAL SYSTEMS: PROCESSING DATA AT THE CFB

CFIS

The Campaign Finance Information System ("CFIS") is the City Charter-mandated repository of all financial disclosure information submitted to the Board. CFIS is a PowerBuilder application that has access to a Microsoft SQL-Server database. It stores candidates' financial information and allows the Board to run hundreds of reports for auditing, determining invalid matching claims, policy analysis, and public disclosure. For the 1997 elections, over 140,000 contribution, loan, expenditure, and other transaction records were entered or uploaded into CFIS.

The first version of CFIS was developed on a mainframe in the six months prior to the Program's implementation in the 1989 citywide elections. For the 1991 and 1993 elections, CFIS was retro-fitted to conform to improvements in the Program's disclosure forms and significantly enhanced to make the system more flexible and "user-friendly." As computer technology improved, the Board decided to redevelop CFIS as a PC- and client/server-based application in order to make data more accessible and to maintain agency control over the data and the devel-

opment environment for the 1997 elections, instead of relying on the central mainframe to house the master database.

After entering all 1997 election data into CFIS, the Board transferred data from the 1989, 1991, and 1993 elections into the new system from its mainframe. As a result, there are now over 500,000 transactions stored in CFIS.

PUBLIC DISCLOSURE: GETTING THE DATA TO THE PUBLIC

Truth loves open dealing.

—William Shakespeare, *Henry VIII*⁷

The Board has always viewed its mandate to make public disclosure of campaign finances as the starting point for other aspects of campaign finance reform. During the 1989 elections, the Board made computerized disclosure reports available to the public for the first time in New York City history. These reports listed all contributions reported by the two major mayoral candidates. By the following summer, reports were available for all participating candidates. In 1993, up-to-date reports for all participating candidates for all covered offices were available before the primary election, before the general election, and after the general election. For 1997, the Board again expanded the scope of its reports to include:

- Contributions to each candidate sorted by Contributor Name;
- Contributions to each candidate sorted by Employer Name;
- Contributions to each candidate sorted by Amount;
- Intermediated Contributions to each candidate sorted by Intermediary Name;
- Contributions across all candidates sorted by Contributor Name;
- Expenditures of each campaign sorted by Vendor Name;
- Expenditures of each campaign sorted by Amount;
- Expenditures across all candidates sorted by Vendor Name.

Two new resources have been developed to enable the public to perform analyses of the Board's database. The first is the Database-on-Diskette. For a one-time fee, subscribers receive a complete database for one election cycle and periodic updates containing all subsequent transactions. The data can be imported into any

"...I think it is good for the public to be able to come to see and know who supports you and the reasons for which they support you."⁸



Council Member
Una Clarke

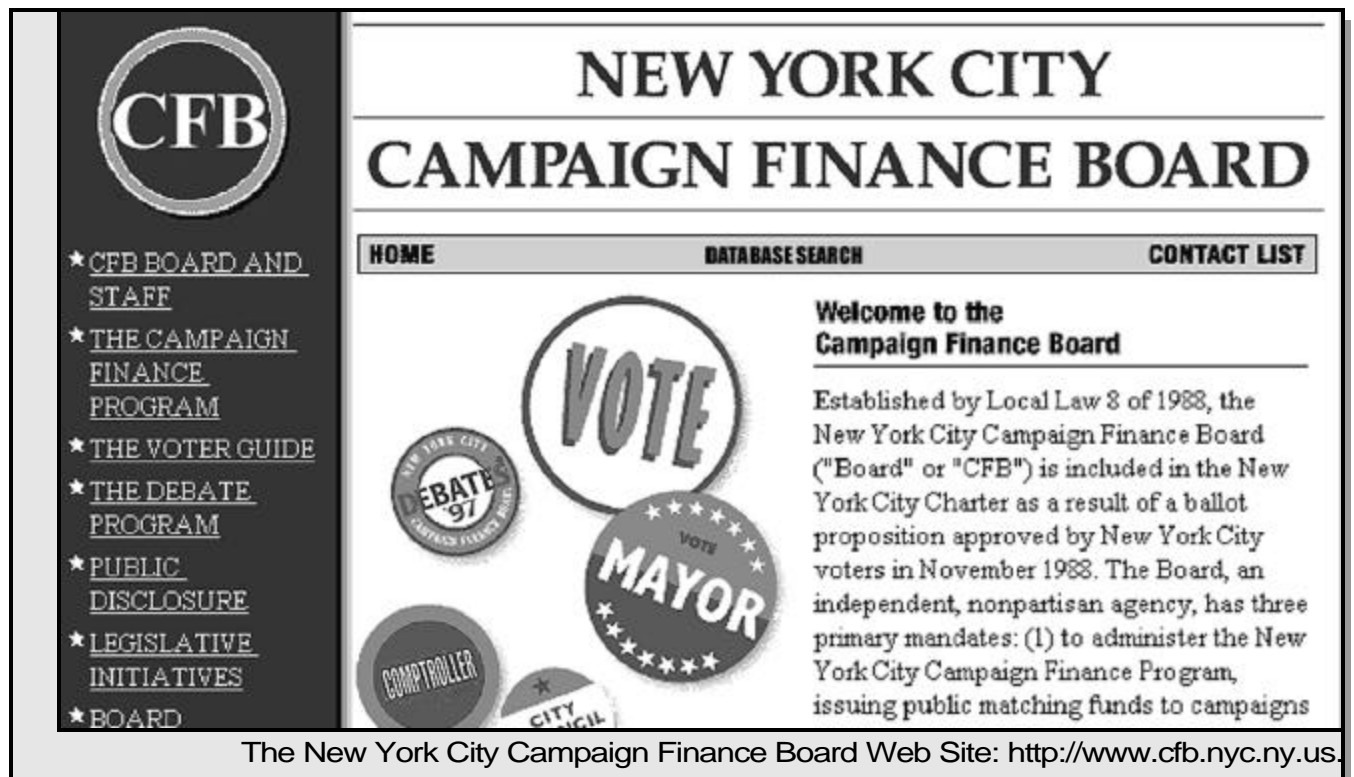
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database software for easy, customized analysis. In 1993, the Database-on-Diskette had premiered with contribution data only. For 1997, it was upgraded to include intermediary and expenditure information as well. Over 65 subscribers have received the 1997 elections Database-on-Diskette.

Another “first” for the 1997 elections was the easy-to-use Public Terminal. The Public Terminal gives users free access to the Board’s contribution database. Located in the reception area of the Board’s lower Manhattan offices, the Public Terminal has an intuitive search system that allows even inexperienced computer users to look up contributions by contributor name, contributor employer information, and candidate name. It covers both the 1993 and 1997 election cycles, and it is sufficiently flexible to account for similarly-spelled names and multiple candidates. The Board has recently added contribution data from the 1989 and 1991 elections to the Public Terminal, and expenditure and intermediary information will be included on the system as well. The Public Terminal also has New York State’s only continuous dial-in connection to the Federal Election Commission’s (“FEC”) campaign finance disclosure system for federal candidates.

The availability of these resources has made it possible for the media and many good-government groups to perform their own analyses of fundraising and spending in City elections. NYPIRG used the Database-on-Diskette to perform a geographic study of contributions received by zip code, from each borough of New York City, and from outside of New York City for the mayoral campaigns of Manhattan Borough President Ruth Messinger and Mayor Rudolph Giuliani.⁹ *Crain’s New York Business* examined expenditure patterns to look for trends over the last three elections and to identify the top industries and vendors.¹⁰ Similarly, the *New York Times* did a study of the Board’s computerized data a year before the election comparing the size, number, and sources of contributions received by Giuliani, Messinger, and Bronx Borough President Fernando Ferrer.¹¹ *Newsday* also used the Board’s electronic disclosure resources to study trends in the size of contributions, the percentage of corporate contributions received, and the amount in contributions that was received by major mayoral candidates between 1993 and 1997.¹²

The Board’s electronic capabilities are also used to support the work of government agencies performing other tasks, such as law enforcement. During a routine audit following the 1993 elections, Board staff found evidence that former Transit Police Benevolent Association President Ron Reale’s Public Advocate campaign had engaged in questionable campaign finance practices. After this evidence was presented to the United States Attorney’s Office for the Southern District of New York, a wider investigation culminated in the indictment, trial, and conviction of Reale and his former colleagues for a variety of crimes, including a scheme to defraud the Board of public funds. The Board provided numerous computer reports that were used in court as exhibits to document the illegal activity, and that the Board’s Director of Campaign Finance Administration, Andrew Levine, referred to in his testimony at trial. (See Chapter 9, “Compliance and Enforcement,” for a description of the Reale case and other enforcement matters.)



THE CAMPAIGN FINANCE BOARD WEB SITE: CYBER-DISCLOSURE

In July 1997, the CFB took its first leap into cyberspace, the future medium for public disclosure, when the Board established an Internet presence. The Board's site on the World Wide Web (<http://www.cfb.nyc.ny.us>) is built so that users with even the most basic Web-browsing programs can use it.

At first, the site had information about the Board and the Campaign Finance Program, including:

- a list of participating candidates, organized by office, borough, and district;
- information about the New York City Voter Guide, including late-breaking news on candidates' ballot status;
- the schedule for the first-ever mandatory debates for candidates for citywide offices;
- important information for candidates, such as filing deadlines;
- legislative initiatives recommended by the Board;
- contact numbers for CFB offices;
- a list of available CFB publications;
- biographies of Board members;

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- an *Update* section to alert users to new information available on the site; and
- an e-mail function, allowing users to give comments or request more information from the Board.

Since launching the Web site, the Board has added several improvements. In April 1998, summary information on contributions, expenditures, public funds payments, loans, miscellaneous receipts, outstanding bills, and the number of contributors for the campaigns of the 190 candidates who joined the Program for the 1997 elections was added. This information was updated after the first disclosure deadline for the 2001 election cycle (July 15, 1998) to include potential candidates for the 2001 elections. The most ambitious enhancement was made in the summer of 1998, as stated above, when the Board's contribution database was added to the site, in a searchable format, making it available to every Internet user for the first time.

The Board will continue to work to improve its Web site, and one of the major changes will be the expansion of the Voter Guide section. In 1997, the site described the Voter Guide and provided additional information that did not become available until after the Voter Guide was printed. By 2001, the Board plans to place all information that is included in the Voter Guide on the site, as well as updated information that becomes available after the press date for the Voter Guide.

LEADING REFORM: COLLABORATION WITH OTHER JURISDICTIONS ON COMPUTERIZATION

Because the Board has built the leading local campaign finance computer system in the nation, it continually receives requests for information and cooperation from other jurisdictions in the United States and around the world that have instituted, or are instituting, computerized data systems for campaign finance and ethics agencies. (See Chapter 11, "The CFB as a Resource.") In the past four years, representatives from, among other places, Rhode Island and Los Angeles, on the one hand, and Australia and Central America, on the other, have visited the Board to learn about its computer systems.

Demonstration copies of C-SMART[®] have been requested by dozens of jurisdictions, including the FEC and agencies in the cities of San Francisco and Seattle and the states of Alaska, California, Delaware, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Washington, and Wisconsin. The Board has also given demonstration copies of C-SMART[®] to jurisdictions outside the United States, including agencies in Canada and Japan. (See Appendix L for a list of jurisdictions that have made use of the CFB as a resource.)

Board members and staff are frequently invited to deliver speeches and participate on panels relating to ethics, campaign finance reform, and the operation of campaign finance administration, particularly with respect to campaign finance computerization. The Ethics and Campaign Disclosure Board in Iowa and the Los Angeles Ethics Commission brought in Daniel J. Sedlis,

then the Board's First Deputy Director, to consult on the development of candidate software and internal agency campaign finance databases. The Board collaborates on an ongoing basis with COGEL. Ken O'Brien, Director of Systems Administration at the Board, is actively involved, with other experts in the field, in COGEL's comprehensive effort to develop an Electronic Data Interchange ("EDI") format that would serve as the national standard for computerized campaign finance information. EDI would enable the direct comparison of financial disclosure statements from around the country and would permit individuals to track the filings of a candidate who has run for office at multiple levels of government or in different jurisdictions.

CONCLUSION

The CFB's systems...save all who participate time, money and the potential for embarrassment because campaign finance information is timely, accurate and accessible.

—*Project on Government Oversight*¹³

Computerized disclosure of campaign finances is central to the Board's mandate. The Board continues to publish comprehensive, hard copy public disclosure reports. But it is the continuing development of the Board's computerized systems, including C-SMART®, CFIS, the Database-on-Diskette, the Public Terminal, and now the CFB's searchable Web database that has given New Yorkers a campaign finance information resource second to none.

We would like to thank the Campaign Finance Board for playing a pivotal role in providing public interest and watchdog organizations with crucial campaign finance information. The computerized database of contributions is of highest quality and has made life much easier for our researchers who might spend days or weeks poring over the complex data. The Campaign Finance Board's employees are capable, well informed, and user-friendly. The Board is one of the premier public organizations in the City that is financed by the taxpayers.

—*David Levy, Citizen Action*¹⁴

NOTES

- ¹ Every campaign that uses a computer to create disclosure filings must do so in accordance with the Board's "alternate format" specifications or use C-SMART®.
- ² *Campaign Finance Board 1997 Post-election Survey* (Elizabeth Gebert, City Council candidate Thomas Gebert's campaign treasurer).

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- ³ *Campaign Finance Board 1997 Post-election Survey* (Kent Reichert, City Council candidate Cody McCone's campaign treasurer).
- ⁴ *Campaign Finance Board 1997 Post-election Survey* (Adele Cohen, candidate for City Council district 47).
- ⁵ The 1993 and 1997 versions of C-SMART[®] were built to work in the DOS operating system so that they could run on older computers still in use by some small campaigns. These DOS-based versions also ran successfully during the 1993 and 1997 elections on computers using every Windows operating system. For the elections in 2001, by which time it is anticipated that even small campaigns will use a Windows operating system, C-SMART[®] will be reconfigured to run on Windows.
- ⁶ *Campaign Finance Board 1997 Hearings*, vol. II, at 170 (testimony of Lisa Kaplan, City Council member Margarita Lopez's campaign treasurer).
- ⁷ Act. III, sc. 1
- ⁸ *Campaign Finance Board 1997 Hearings*, vol. II, at 95 (testimony of Council member Una Clarke).
- ⁹ News release, New York Public Interest Research Group, September 30, 1997.
- ¹⁰ Philip Lentz, "Robust spending in '97 elections bolsters vendors," *Crain's New York Business*, March 16, 1998, 3.
- ¹¹ David Firestone, "Giuliani Relies on Big Donors for 1997 Race," *The New York Times*, December 2, 1996, A1.
- ¹² John Riley, "Money Matters: Concern over influence as Rudy's donations mushroom," *Newsday*, October 26, 1997, A7.
- ¹³ *Re-Establishing Institutional Integrity at the FEC: Ten Common Sense Campaign Finance Disclosure Reforms*, Project on Government Oversight, March 5, 1998, Appendix A-1, "Lessons Learned from the New York City Campaign Finance Board."
- ¹⁴ *Campaign Finance Board 1997 Hearings*, vol. II, at 47 (testimony of David Levy from Citizen Action).

Chapter 7—Debates '97

Live from New York

In 1997, a new facet was added to the Campaign Finance Program: mandatory debates. As a result of a law signed in December 1996, candidates in the Program for citywide office are now required to participate in a series of public debates as a condition for receiving matching funds for their campaigns. The Campaign Finance Board is charged with administering the debate program, which includes choosing sponsors and ensuring that the debates are carried out in a strictly nonpartisan manner.


The Debate Law represents the most dramatic change in the implementation of the Campaign Finance Act since its adoption in 1988.

BACKGROUND: THE “DEBATE DEBATE”

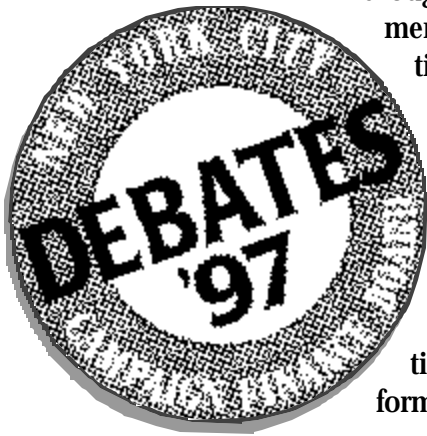
The 1993 mayoral race between incumbent David Dinkins and challenger Rudolph Giuliani is remembered, among other things, for the failure of the two candidates to meet in a public debate. Although political candidates often regard their decisions whether to debate their opponents as strategic, the public appears to favor debates. The conviction that New York City candidates should air their views in a public forum was strengthened in 1993 by the fact that both major candidates received public matching funds for their campaigns. The *Daily News* captured public sentiment in an editorial during the last week of the 1993 campaign, noting that “Both men took public money to run and then deprived voters of a potentially defining encounter....[The campaign finance law] should be rewritten to force debates in the future.”¹

The concept of a “mandatory” debate program is not new, but it has rarely been attempted in practice. Mandatory debate requirements for publicly financed candidates were enacted by New Jersey in 1989, Los Angeles in 1990, and Kentucky in 1992, with varying degrees of success. Legislation has also been introduced in the United States Congress that would impose similar requirements on Presidential candidates who receive public funds.

To address the issue in the context of the New York City Program, the Campaign Finance Board published *The Debate Debate* in June 1994, an issues paper that discussed

1988		1998
Candidates decide whether to debate—or not to debate.		Citywide candidates in the Program and on the ballot for the 1997 elections meet in a series of mandatory debates.
A Decade of Reform		

the situation and reviewed various approaches for addressing it. The Board solicited comments from key staff in New Jersey and Los Angeles regarding their jurisdictions' requirements.



Although the Board recognized the worthwhile intent of a debate requirement, the Board concluded that the obligation to debate ought not to be tied to the acceptance of public funds, for fear that candidates unwilling to debate might choose not to participate in the Program. The Board also noted that debates, a vehicle for public education, are not directly related to the CFB's mission of controlling the use of money in campaigns. Instead, the Board approached debates as analogous to its mandate to produce a Voter Guide, which is part of a larger voter education mandate contained in the City Charter. Thus, the Board proposed a voluntary debate program, not tied to Program participation or the receipt of public funds, following the inclusive, nonpartisan format of the Board's Voter Guide.²

The Board's proposal received considerable attention and support from Sal Albanese, Common Cause, and Citizens Union, among others, but the failure of the leading New York State gubernatorial candidates to debate later that year only increased the demand for mandatory debates. The Board followed its issues paper with the approval of proposed rules for the purposes of public comment in October 1995. These rules reflected the Board's view that a voluntary and entirely inclusive approach should be followed. At a public hearing on the proposed rules, held by the Board in December 1995, Deputy Mayor Randy Mastro, Public Advocate Mark Green, and the New York Public Interest Research Group all complimented the Board on its leadership in exploring the issue, but indicated their intention to seek a law mandating debates for candidates receiving public funds. "Since taxpayers are now contributing to our campaigns," testified Public Advocate Green, "I do not think it is too much to ask that they get to hear from the candidates."³

In the meantime, shortly after the Board issued its proposed rules, City Council Speaker Peter Vallone introduced a bill in October 1995 providing for mandatory debates tied to Program participation. Hearings on the bill were held in December 1995 and in October 1996. The bill was modified, largely adopting recommendations made by the Board in the context of the Council's clear intent to move forward with a mandatory debate program. The bill was passed unanimously by the Council in November 1996. Local Law 90, commonly known as "The Debate Law," was signed by Mayor Giuliani that December.

THE DEBATE LAW

The Debate Law requires candidates for Mayor, Public Advocate, and Comptroller who are Program participants and opposed on the ballot to appear in two debates before the primary election and at least one debate before the general election. (The debates are sponsored by organizations selected by the Board.) Candidates who are not in the Program may not appear in any of these three debates. A second general election debate is also held, which is limited to the

“leading contenders” for each office, selected on the basis of pre-determined, nonpartisan, objective criteria. Candidates who are not Program participants, but who meet the “leading contender” criteria, are permitted, but not required, to take part in this debate. The criteria for determining “leading contenders” are established by the sponsors in advance of the debate. Candidates in the Program who fail to appear in any required debate become ineligible to receive public funds, and must return to the Board any public funds already received for that election.⁴

The Debate Law also provides that candidates who are on the ballot and in the Program, but who do not satisfy the standard for “leading contenders,” and therefore cannot appear in the second general election debate, take part in an “alternative nonpartisan voter education program.”⁵

DEPARTMENT OF JUSTICE AND THE FEDERAL VOTING RIGHTS ACT

The New York City Law Department submitted Local Law 90 to the United States Department of Justice (“DOJ”) for pre-clearance under the Voting Rights Act in December 1996. In February 1997, the DOJ delayed granting pre-clearance and requested information from the City about what steps were planned to give the Spanish- and Chinese-language communities access to the debates. The Board satisfied the DOJ’s concerns by agreeing to give favorable consideration to sponsor applicants on the basis of their willingness and ability to promote access to the debates by Spanish- and Chinese-speaking voters. The CFB also agreed to include specific information about the debates in the Voter Guide (which is published in Spanish and Chinese, as well as English), and to make efforts to inform the Spanish- and Chinese-language media of the debate program. Pre-clearance was granted by the DOJ in April 1997.

DEBATE SPONSORS

As noted above, the debates are sponsored by organizations selected by the Board. In January 1997, the Board briefed and gathered suggestions from a number of potential sponsors—drawn from academic institutions, news organizations, good-government groups, and other community organizations—on the structure and requirements of the Debate Law. In February, the CFB sent out a call for debate sponsors to over 150 organizations, as well as a press release announcing the call for sponsors and the guidelines for applying. These groups were invited to apply, singly or in groups, to sponsor some or all of the debates.

The Board received 15 applications, that, in accordance with the Debate Law, were made available for public comment. (The Debate Law specifically provides for an opportunity for review and comment by potential candidates. The Board is required to give added weight to comments from candidates. Nonetheless, although several campaign representatives reviewed the applications, hardly any comments were received.) In choosing sponsors, the Board considered a number of factors, including: the applicant’s proposed venue; media and publicity plans; the proposed debate format; geographic diversity; and ability to reach the widest possible audience, including providing access to the debates to the Spanish- and Chinese-language communities. The Board

Fact Sheet

7.1

1997 CAMPAIGN FINANCE PROGRAM DEBATE SCHEDULE

Eleven debates and alternative voter education programs were held in 1997 pursuant to the Debate Law:

Mayoral First Primary Election Debate (8/19/97)

Sponsors: New York 1 News, St. Francis College, WNYC Radio, El Diario

Participants: Sal Albanese, Ruth Messenger, Eric Ruano-Melendez, Al Sharpton

Location: St. Francis College, Brooklyn

Duration: 90 minutes

Mayoral Second Primary Election Debate (9/7/97)

Sponsors: WABC-TV, League of Women Voters

Participants: Sal Albanese, Ruth Messenger, Eric Ruano-Melendez, Al Sharpton

Location: WABC-TV Studios, Manhattan

Duration: 60 minutes

Mayoral First Primary

Run-off Election Debate (9/15/97)

Sponsors: New York 1 News, St. Francis College, WNYC Radio

Participants: Ruth Messenger, Al Sharpton

Location: St. Francis College, Brooklyn

Duration: 90 minutes

Public Advocate First

General Election Debate (9/25/97)

Sponsors: New York 1 News, St. Francis College, WNYC Radio, El Diario

Participants: Shoghi Fret, Mark Green, Jules Polonetsky

Location: St. Francis College, Brooklyn

Duration: 60 minutes

Comptroller First

General Election Debate (9/29/97)

Sponsors: New York 1 News, New York Law School, WNYC Radio, El Diario

Participants: Alan Hevesi, Wendy Lyons, Genevieve Torres

Location: New York Law School, Manhattan

Duration: 60 minutes

Mayoral First General Election Debate (10/9/97)

Sponsors: New York 1 News, New York Urban League, WNYC Radio, El Diario

Participants: Rudolph Giuliani, Ruth Messenger, Olga Rodriguez

Location: Schomburg Center, Manhattan

Duration: 90 minutes

Mayoral Second General Election

Debate-Alternate Program (10/26/97)

Sponsors: WABC-TV, League of Women Voters

Participants: Olga Rodriguez

Location: WABC-TV Studios, Manhattan

Duration: 30 minutes

Comptroller Second General Election

"Leading Contender" Debate (10/27/97)

Sponsors: New York 1 News, New York Law School, WNYC Radio, El Diario

Participants: Alan Hevesi, Annemarie McAvoy (Non-Campaign Finance Program Participant)

Location: New York Law School, Manhattan

Duration: 60 minutes

Comptroller Second General Election

Debate-Alternate Program (10/28/97)

Sponsors: New York 1 News, WNYC Radio

Participants: Wendy Lyons, Genevieve Torres

Location: New York 1 Studios, Manhattan

Duration: Approximately 15 minutes

Mayoral Second General Election

"Leading Contender" Debate (10/29/97)

Sponsors: WABC-TV, League of Women Voters

Participants: Rudolph Giuliani, Ruth Messenger

Location: WABC-TV Studios, Manhattan

Duration: 60 minutes

Public Advocate Second General Election

Debate-Alternate Program (10/30/97)

Sponsors: New York 1 News, WNYC Radio

Participants: Shoghi Fret, Jules Polonetsky

Location: New York 1 Studios, Manhattan

Duration: Approximately 15 minutes

Debates sponsored by New York 1 News and WABC-TV were televised by those stations. All debates were broadcast live on WNYC Radio. Some or all of the debates were also re-broadcast on television by Crosswalks, Channel 13, and C-SPAN.

also considered the applicants' ability to be flexible in their plans, an important consideration given the often unpredictable nature of New York City elections. Board members and staff reviewed the applications and conducted interviews with the help of Bill Small, former president of NBC News, who served *pro bono* as a consultant to the Board.

The Board held interviews with a selected number of applicants, eight of which were eventually chosen to be sponsors. To enhance administrative feasibility and at the same time obtain diversity in the sponsorship of the debate program, the Board grouped various sponsors together. One group, consisting of Channel 7-Eyewitness News ("WABC-TV") and the League of Women Voters of the City of New York, sponsored the second primary election debate, the second general election debate, and the alternative voter education program for Mayor. The other group, consisting of New York 1 News, WNYC Radio, *El Diario-La Prensa*, the New York Urban League, New York Law School, and St. Francis College, sponsored the six other debates for Mayor, Public Advocate, and Comptroller, as well as the alternative voter education programs for Public Advocate and Comptroller.

A Memorandum of Understanding ("MOU") between the agency and the sponsor groups constituted the formal sponsorship agreement. The MOU set forth in detail the terms and conditions agreed upon for the 1997 debates, including the schedule, formats, and panelists. It also formalized the criteria the sponsors would use for determining "leading contenders," described below.

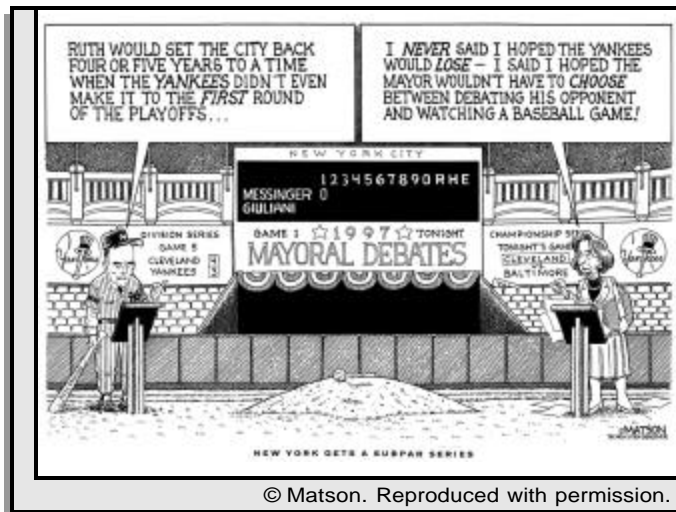
THE DEBATES

Debates '97, as the first mandatory debate program was named, began in August with the first mayoral primary debate and continued through the end of October. It presented a total of eight political debates and three alternative voter education programs for New York City voters.

Mayoral Debates

The first mandatory debate in New York City history—the first Democratic primary debate for Mayor—took place at St. Francis College in Brooklyn on August 19, 1997. The participants were Sal Albanese, Ruth Messinger, Eric Ruano-Melendez, and Al Sharpton. The debate was moderated by New York 1 News anchor Lewis Dodley, who solicited questions for the candidates from a panel of journalists from New York 1 News, WNYC Radio, and *El Diario-La Prensa*. Ruano-Melendez, an engineer with the City's Department of Environmental Protection, fulfilled the requirements for participating in the debate program (certification with the Program and appearance on the primary election ballot), despite very little name recognition and virtually no formal campaign organization. After Ruano-Melendez sang a portion of "The Star-Spangled Banner" in his concluding remarks, columnists and rival candidates criticized his "distracting" presence. (See "Issues to be Addressed," below.)

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Roland Rogers, a candidate on the ballot for the Democratic mayoral nomination who missed the April 30th deadline to join the Program, requested that the Board allow him to join the debate. Because the Campaign Finance Act does not allow the Board to permit late filers to enter the Program, and because the Debate Law does not allow candidates who are not in the Program to be in the primary debates, the Board had no choice but to reject Rogers' request. Rogers then sued the Board and the debate sponsors (among others), claiming violations of his equal protection rights. He requested an order from the state courts directing his inclusion in the debates, and,

when that effort failed, he filed a Federal suit to overturn the results of the primary election, as well as for damages arising from his exclusion. Although Rogers' suits were unsuccessful (the Federal action was still on appeal at press time), the litigation placed an additional burden on the Board and the sponsors at a critical point in the campaign season. It also led the Board to reiterate its request for legislation that would give it authority to set the deadline for joining the Program, a proposal originally made by the Board in 1992.⁶

A second Democratic primary debate for Mayor, sponsored by Channel 7-Eyewitness News and the League of Women Voters, was held on Sunday, September 7, with the same four participants. The debate was held at the WABC-TV studios in Manhattan and included questions posed to the candidates, videotaped beforehand, from New Yorkers throughout the five boroughs. It was moderated by WABC anchor Diana Williams and included reporters Jay DeDapper, Brian Lehrer, and David Ushery among the questioners. Two days later voters went to the polls. According to the initial stories run by the Associated Press, Ruth Messinger had not reached the 40 percent of the vote needed to avoid a run-off election with her next closest rival, Al Sharpton. In anticipation of a run-off on September 23 (if the final City Board of Elections tally confirmed that no one candidate had received 40 percent), the Board announced that, in accordance with the Debate Law, two run-off primary debates would be held.

Given the short time between the primary and the anticipated run-off election, the first run-off primary debate between Ruth Messinger and Al Sharpton was held on September 15, three days before the City BOE announced the results of its count of absentee ballots from the primary election. The run-off primary debate was notable for the opportunity given to the candidates to question each other. Messinger and Sharpton, however, used this format more to position themselves against the incumbent Mayor than to position themselves against each other. The final count from the City BOE, however, showed that Messinger had in fact received 40.19 percent of the primary vote, barely avoiding a run-off by a margin of several hundred votes. The City BOE declared Messinger the primary victor, and the CFB canceled the second run-off debate.

With Messinger established as the Democratic candidate for Mayor, the stage was set for her to meet Mayor Rudolph Giuliani (and others) in the general election debates. Several days prior to the first debate, Mayor Giuliani wrote to the Board, seeking to move the debate, scheduled for October 9, to another date or time in order to avoid a potential conflict with baseball's American League Championship Series. (At that time, there was a chance that the New York Yankees would participate.) "Beyond my own personal desire to see the game," wrote the Mayor, "there is no question the audience may well be vastly diminished."⁷ The Board and the sponsors conferred and agreed to reschedule the debate, if necessary, in order to ensure the widest possible audience. The Yankees' subsequent loss in the first round of the playoffs, however, made the potential rescheduling a moot point.

"...[T]he goal of the debate [is] to open up to the community so people in the community can see and hear the candidates."⁸



Dennis Walcott
President, New York Urban League

Another issue emerged before the October 9 debate when the Giuliani campaign objected to the participation of panelist Gerson Borrero, a political columnist for the Spanish-language newspaper *El Diario-La Prensa*, one of the debate sponsors. In a letter to the Board, Giuliani campaign manager Fran Reiter argued that, in his column, Borrero had "consistently voice[d] his opposition to Mayor Giuliani and his policies, often in the harshest, most personally critical terms imaginable." Citing several of Borrero's columns as evidence of his alleged inability to serve "in anything approaching a fair manner," the campaign requested that the Board order *El Diario* to name an alternate panelist.⁹ In its response, the Board pointed out that, according to the MOU signed with the sponsors, it was the sponsors' prerogative to provide panelists for the debate. *El Diario* declined to replace Borrero, and the debate went forward as scheduled.

The first general election debate for Mayor took place at the Schomburg Center for Research in Black Culture in Harlem. Moderated by Dennis Walcott, President of the New York Urban League, the debate featured, in addition to Mayor Giuliani and Ruth Messinger, Olga Rodriguez, the nominee of the Socialist Workers Party. (Although Sal Albanese appeared on the ballot as the Independence Party candidate, the Board did not require him to participate, because he was no longer an active candidate and was not seeking funds for the general election.¹⁰) Once again, as in the primary run-off debate, this debate included an opportunity for the candidates to pose questions directly to each other. In a 90-minute debate, the candidates argued about subjects ranging from personal character to campaign finance violations. The latter subject, a reference to the \$220,000 penalty assessed by the Campaign Finance Board against Mayor Giuliani's campaign committee, prompted the Mayor to suggest that "the answer to [disagreement over Board rules regulating affiliated corporate gifts] is, in the future, cut out corporate contributions."¹¹ (At the time this report went to press, corporate contributions were the subject of legislation introduced in the City Council.)

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More than half a million homes tuned in to see Rudolph Giuliani and Ruth Messinger meet on October 29 in the “leading contenders” debate held at WABC-TV television studios near Lincoln Center in Manhattan, once again moderated by Diana Williams and featuring reporters Jay DeDapper, Brian Lehrer, and David Ushery, as well as pretaped questions from New Yorkers throughout the five boroughs. This final 60-minute debate received the highest ratings of the debate program, scoring a respectable 7.5 rating and a 12 percent share of the local market. (Each rating point is equivalent to 67,500 homes.)

Public Advocate Debates

The first debate among candidates for Public Advocate took place on September 25 at St. Francis College in Brooklyn, where incumbent Mark Green was joined by Jules Polonetsky and Shoghi Fret, the 21-year old candidate of the Socialist Workers Party. (There was no primary debate for Public Advocate. There was a Democratic primary for the office, but only one candidate was a Program participant.)

Perhaps the most noteworthy aspect of the Public Advocate debates was the failure of Jules Polonetsky, the Republican-Liberal candidate who was part of Mayor Giuliani’s “fusion ticket,” to obtain the minimum 15 percent needed in the independent public opinion polls to qualify as a “leading contender.” (Of the two polls selected in advance by the sponsors, Polonetsky received eight percent in the New York 1/ *Observer* Poll, conducted by Blum & Weprin, and 8.2 percent in the Marist College Poll.) As a result, there was no second general election “leading contenders” debate because only Green qualified. Polonetsky, a state Assemblyman from Brooklyn, had opened his campaign for Public Advocate as Mayor Giuliani’s “running mate.” The *New York Times* noted, after the fact, that his campaign “never seemed to gain steam.”¹² Nonetheless, little more than two weeks later, Polonetsky received 24 percent of the general election vote. (See “Public Opinion Polls” and “Leading Contenders,” below.)

Comptroller Debates

The first general election debate between Comptroller candidates took place at New York Law School in Manhattan on September 29. (There was no primary election for the office of Comptroller, and consequently no primary election debates.) Professor Ross Sandler, a former Commissioner of the Department of Transportation and Director of the Center for New York City Law at New York Law School, served as moderator. Incumbent Alan Hevesi, the Democratic nominee, faced Wendy Lyons, the Socialist Workers Party candidate, and Genevieve Torres, the Independence Party candidate. Annemarie McAvoy, who had not anticipated being the Republican nominee for comptroller and therefore missed the April 30th deadline for joining the Program, formally requested that the Board allow her to participate. Citing the constraints imposed by the Campaign Finance Act and the Debate Law, the Board refused her request.

McAvoy did get an opportunity to face off with Hevesi at the second general election “leading contenders” debate, which took place on October 27 at New York Law School. (McAvoy received

ten percent in the New York 1 News/*Observer* poll, which had a five percent margin of error, qualifying her for inclusion in the debate.) But despite the face-to-face pairing of the two leading contenders for Comptroller, the debate received only a brief mention in a single newspaper.¹³ It was at this debate that Hevesi announced he would be returning the bulk of the public matching funds for which he had qualified.

ALTERNATIVE PROGRAMS

Participation in the second round of debates for general election candidates was not limited to leading contenders. Program participants not deemed by the sponsors to be leading contenders took part in “alternative, nonpartisan voter education programs” mandated by the Debate Law.¹⁴ The format for these voter education programs was left up to the debate sponsors, who chose to feature the candidates in round-table discussions. Olga Rodriguez (the Socialist Workers Party candidate for Mayor) and several other minor-party candidates invited by the sponsors appeared on Channel 7-Eyewitness News’ Sunday morning political show. Similarly, Shoghi Fret and Jules Polonetsky took part in a round-table discussion on New York 1 News’ “The Road to City Hall,” along with other candidates invited by the sponsors. Comptroller candidates Genevieve Torres and Wendy Lyons also appeared on “The Road to City Hall.”

MEDIA COVERAGE

In addition to the news coverage of the debates by the local media, the Board undertook considerable efforts to ensure that the debates would reach the widest possible audience. WNYC Radio agreed to carry live broadcasts of every debate, and both New York 1 News and Channel 7 ran commercials advertising each debate. The Board arranged for many of the debates to be rebroadcast on Channel Thirteen-WNET and Crosswalks, the City-owned public affairs cable network. New York City’s first-ever mandatory debate program was publicized as early as spring of 1997 in a series of public service announcements produced by the Board for television and radio. Details of the plans for broadcasts and rebroadcasts were made available to the public on the CFB’s subway posters and in every press release issued by the Board. The Board produced campaign-style buttons to promote the program. The Voter Guide provided every registered voter with the complete, updated schedule for all the debates. Internet users could check on changes in the schedule by logging on to the Board’s Web site. The debates were also covered in the Spanish- and Chinese-language print media. *El Diario-La Prensa* gave considerable space to each debate, as did the Chinese-language *World Journal*. The final mayoral general election debate was seen nationwide on C-SPAN and was rebroadcast as far away as Russia.

THE DEBATE PROGRAM: ISSUES TO BE ADDRESSED

New York City’s first experiment with mandatory debates proved very successful, compelling candidates who received public funds to air their views in a public forum. The essential purpose of the Debate Law was met: both leading candidates for mayor met in televised debate, which

might well not have happened in the absence of the mandatory debate requirement. Sponsors and candidates agreed, however, that the debate program could be improved.

Who Should Debate? Political Discourse and Government Action

Perhaps the most controversial aspect of New York City's first experience with mandatory debates is the inclusive character of the Debate Law itself. Although participation in the debate program was limited, with certain exceptions, to candidates who joined the Campaign Finance Program and were opposed on the ballot, no additional qualifications were necessary. Candidates with significant standing in the polls were obligated by law to debate candidates with little name recognition and relatively unorganized campaign committees.

The Debate Law may even have served as the primary enticement for several candidates to join the Program, including some whose campaigns conducted little or no organized fundraising and who demonstrated, at best, marginal public support on Election Day. For example, no Socialist Workers Party candidate had ever joined the Program before. In 1997, three joined—one for each of the citywide offices, and each took part in the debates even though none filed itemized financial disclosure information with the Board or applied for matching funds for the campaign. Indeed, these “independent” candidates enjoyed the advantage of a later opt-in deadline (in August), allowing them more time than their mainstream opponents to decide whether to commit to the debates and other Program requirements.

Elizabeth Kolbert, a columnist for the *New York Times*, wrote that the “antics” of Eric Ruano-Melendez in the Democratic mayoral primary debates “undermined the stature and seriousness” of the other candidates. Kolbert asked “whether the provision that allowed Mr. Ruano-Melendez to participate...should be revised.”¹⁵ This sentiment was echoed by several observers, including both sponsors and candidates. At the Board's post-election hearings in December, Ross Sandler of New York Law School suggested legislative changes to the Debate Law that would “keep the debates useful.”¹⁶ Mayoral candidate Sal Albanese voiced agreement, asserting that the presence of “frivolous candidates” in the debates “took time away from [the] discussion.”¹⁷ Public Advocate Mark Green testified it was “distracting” to include “a candidate [with] absolutely no remotely possible way of winning.”¹⁸

Not all candidates on the ballot for the three citywide offices covered by the Debate Law joined the Campaign Finance Program in 1997. But Ross Sandler, moderator of both Comptroller debates, noted at the Board's post-election hearings, “They won't make that mistake again.”¹⁹ As mayoral candidate Henry Hewes demonstrated in 1989, after appearing in one debate, marginal candidates often have the most to gain from televised debates.²⁰ If the current standards for participation remain in place, debates for the 2001 elections, when term limits go into effect, could feature so many candidates that the value of the debates will be severely diminished.

Imposing additional qualifications on Program participants could, however, lead to other unappealing results. A fundraising threshold, as some have suggested, could exclude politically viable

candidates. Even a modest threshold of \$100,000 in matchable contributions, well below the fundraising level now required for mayoral candidates to qualify for public funds, would have prevented Al Sharpton from participating in the debates, despite the fact that he very nearly forced a run-off election. Similarly, continuing to limit participation to “leading contenders” by using an objective standard of measurement, such as polls, may provide only a snapshot of the race at a given point, the value of which is often difficult to gauge. It is even more challenging, on the other hand, to apply subjective standards fairly.



Should the Debate Law continue to allow all candidates on the ballot and in the Program to participate in the debates? Or should the law be modified to limit participation to candidates with a minimum level of support? Because of the prominent place held by debates in American elections, this question touches on issues well beyond those related to campaign finances. Debates occupy an important role in campaign strategy by providing, among other benefits, crucial television and media exposure. The Debate Law has sharply increased the visibility of the Board in electoral politics, and thus raises questions about government’s role in promoting political debates. To what extent is it proper for a government agency—even one that is strictly nonpartisan—to play a role in deciding which candidates may participate in a political debate?

In May 1998, the U.S. Supreme Court handed down its ruling in the case of *Arkansas Educational Television Commission v. Forbes*, in which the City of New York had filed a brief as a “friend of the court.” The Court held that public television stations may use their subjective editorial discretion to exclude candidates from televised debates, provided that “the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker’s views.”²¹ The Board had been awaiting the Supreme Court decision as this report was prepared, and will rely on the Court’s decision for guidance when it makes specific recommendations for improving the debate program at a later time.

The High Cost of Sponsorship

One particularly troublesome aspect of the Debate Law is the relative lack of legal protection for debate sponsors. The Debate Law provides that sponsors must agree to “indemnify and hold harmless” the City from any liabilities arising from “acts or omissions” on the part of the sponsors.²² In practice, the result of this provision was to expose the sponsors to the costs of litigation by disgruntled candidates, as happened in the case of Roland Rogers’ frivolous suit.

Several sponsors claimed that the legal fees resulting from their participation were greater than the actual production costs. Although the sponsors had no role in excluding Rogers from the

mayoral primary debates, they were named in the resulting lawsuit. This situation poses a potentially serious problem for the future of the debate program. Unpredictable legal costs could deter organizations from applying to sponsor future debates. The Debate Law should be revised to protect organizations that volunteer their time and resources.

PUBLIC INTEREST AND THE DEBATE PROGRAM

One disappointment of the debate program's first year was that the debates themselves did not always draw attention from media outlets other than those of the sponsors. Despite an extensive publicity campaign conducted by the Board and a history of strong support in the print media for the Debate Law, the debates for Public Advocate and Comptroller received little coverage in the City's daily newspapers. Although clearly a result of the non-competitive nature of the races (each featured popular, well-funded incumbents versus lesser-known opponents), the lack of coverage does raise questions about the public demand for debates for offices other than Mayor.

But several observers have called for extending the Debate Law to cover participating candidates for Borough President and City Council. Apart from the administrative burdens posed by such a proposal, the relative lack of attention paid to the Comptroller and Public Advocate debates suggests that the effectiveness of the Debate Law may not extend to the lower offices. The anticipated scope and competitiveness of the 2001 elections should, however, result in an increased demand for nonpartisan public debates for all offices covered by the Campaign Finance Program.

PUBLIC OPINION POLLS AND "LEADING CONTENDERS"

The Debate Law's method for choosing "leading contenders" is deliberately vague, stating only that sponsors shall make the determination on the basis of "objective, nonpartisan, and nondiscriminatory criteria." While placing the responsibility for selecting "leading contenders" with the sponsors, the law poses a formidable challenge for the Board as well. Thus, the Board retained polling consultant Peter Harris, of Peter Harris Research Group, Inc., to assist the Board in ensuring correct implementation of this aspect of the law.

In 1997, the sponsors, in consultation with the Board, selected criteria for determining "leading contenders" that relied on polling data compiled by two professional polling organizations, chosen in advance, that agreed to adhere to certain technical standards in the MOU between the Board and the sponsors. "Leading contenders" were defined as those candidates on the ballot who received 15 percent or more in either of the two polls, within the margin of error. In addition, the Board decided that, in the event that only one candidate met the criteria for "leading contenders," there would be no "leading contenders" debate.²³

Because of the nature of political polling, the use of polls to determine "leading contenders" is problematic. Jules Polonetsky did not meet the qualifying standard in either poll, and consequently, no "leading contender" debate for Public Advocate took place. On Election Day, however, Polonetsky received 24 percent of the vote. *Newsday* political columnist William Murphy pointed

out this discrepancy. "It can be argued," he said, "that the polls accurately reflected voter sentiment at the time they were taken," but he thought it unlikely, given the difference between the poll results and the actual vote. If the polls had underestimated his support, "Polonetsky might have been done dirty by being denied a debate," Murphy said.²⁴

It is not uncommon, however, when a challenger faces a popular and well-known front runner, for the "undecided" voters to swing to the challenger on Election Day. In the 1996 presidential election, for which many pollsters predicted a margin of victory for Bill Clinton as high as 18 percent, the actual margin was only 8 percent. The actual voting results in 1997 also reflected a very low voter turnout. Board consultant Peter Harris pointed out that for this election the system had worked well as designed: the major-party candidates for each office met face-to-face in at least one debate. Although Polonetsky did better than polls had predicted, the election yielded a nearly 50-point margin of victory for incumbent Mark Green. While any candidate would hope to do better on election day after appearing in a debate with the front runner, these results perhaps indicate that Polonetsky never had a meaningful chance to win.²⁵ The question remains, however, for future sponsors: is there a better method for choosing "leading contenders?"

CONCLUSION

Perhaps the most objective measure of the success of the new debate program lies in the simple fact that, for the first time since at least 1989, the leading candidates for Mayor, Public Advocate, and Comptroller all met in televised debates. The Campaign Finance Board will make specific recommendations for amendments to the Debate Law in the near future. In the meantime, it can be said with confidence that, notwithstanding important issues that need to be addressed, the essential goals of the debate program were met in its first iteration in 1997.

NOTES

- ¹ Editorial, "Debate Flop Shows Campaign Law Loopholes," *Daily News*, October 31, 1993, 42. See also Gail Collins, "Two Big Babies," *Newsday*, October 20, 1993, 1.
- ² New York City Campaign Finance Board, *The Debate Debate*, June 1994 (hereafter "*The Debate Debate*"); New York City Charter §1052(b).
- ³ *Hearings before the New York City Campaign Finance Board*, December 7, 1995, at 70 (testimony of Mark Green).
- ⁴ See New York City Administrative Code §3-709.5(1) and (5).
- ⁵ *Ibid.*
- ⁶ New York City Campaign Finance Board, *Windows of Opportunity: Campaign Finance Reform and the New City Council* (Executive Summary), July 1992 (hereafter "*Windows of Opportunity*"), 28.

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- ⁷ Jonathan P. Hicks, “On Debate Night, the Mayor Wants to Be a Fan, Not a Candidate,” *New York Times*, October 5, 1997, 40.
- ⁸ *Campaign Finance Board 1997 Hearings*, vol. II, at 13 (testimony of Dennis Walcott).
- ⁹ Letter from Fran Reiter to Nicole A. Gordon, Executive Director of the Campaign Finance Board, dated October 6, 1997, on file at the Campaign Finance Board.
- ¹⁰ See Advisory Opinion No. 1997-13.
- ¹¹ Rudolph Giuliani, *First General Election Debate for Mayor*, October 9, 1997.
- ¹² Clifford J. Levy, “Hevesi and Green Are Re-elected; Fields Gets Borough Post,” *New York Times*, November 5, 1997, B4.
- ¹³ William Murphy, “Hevesi Will Give Back City Matching Funds,” *Newsday*, October 28, 1997, A26.
- ¹⁴ See Administrative Code §3-709.5(5)(c).
- ¹⁵ Elizabeth Kolbert, “At Race’s End, Folly at Forum is a Metaphor,” *New York Times*, September 8, 1997, B1.
- ¹⁶ *Campaign Finance Board 1997 Hearings*, vol. II, at 33 (testimony of Ross Sandler).
- ¹⁷ *Campaign Finance Board 1997 Hearings*, vol. I, at 67 (testimony of Sal Albanese).
- ¹⁸ *Ibid.*, at 135 (testimony of Mark Green).
- ¹⁹ *Campaign Finance Board 1997 Hearings*, vol. II, at 32 (testimony of Ross Sandler).
- ²⁰ See *The Debate Debate*, 2.
- ²¹ *Arkansas Educational Television Commission v. Forbes*, __U.S.__ (1998).
- ²² See Administrative Code §3-709.5(5)(a)(v).
- ²³ See Advisory Opinion No. 1997-7.
- ²⁴ William Murphy, “Weighing Power Of the Polls,” *Newsday*, November 7, 1997, 34.
- ²⁵ Memorandum of conversation with Peter Harris, dated November 11, 1998, on file at the Campaign Finance Board.

Chapter 8—The Voter Guide

The Candidates at a Glance


Not until I received a copy of the Voter Guide published by the Campaign Finance Board did I even know that there were so many candidates who had declared this season for mayor (six), public advocate (three), comptroller (two), Manhattan borough president (nine) and the City Council.

—*E.R. Shipp, Daily News*¹

Once again, the 1997 primary and general election Voter Guides proved to be a valuable nonpartisan resource for millions of City voters. Each candidate for municipal office—regardless of party affiliation, participation in the Campaign Finance Program, or political viewpoint—had the opportunity to submit a 350-word statement, biographical information, and a photo for publication in one or both Guides, as appropriate. The Voter Guide is mailed to every registered voter in New York City eligible to vote in the covered election. For many candidates, publication of their statements in the Voter Guide is a significant opportunity, perhaps their only opportunity, to reach a targeted audience—eligible voters—with their message. This is accomplished in one comprehensive mailing, at no cost to the candidates. The fact that the Guide is published in English, Spanish, and Chinese (pursuant to City and Federal law) means that candidates are also able to reach significant populations that do not speak English. (See “The Voter Guide in Translation,” below.)

Voter pamphlets are recognized as a leading source of voter information,² and many New York City Voter Guides were spotted being taken into voting booths on Election Day. “I would like to add my name to those others who have thanked you for providing the informative booklet ‘Voter Guide.’ It is a provider of facts with convenience,” City resident Elizabeth Kovalski wrote the Board.³

The main purpose of the Voter Guide is to provide a nonpartisan forum that presents information about candidates running for municipal office and local ballot proposals. It gives all candidates, regardless of their resources, the opportunity to reach a targeted audience. Candidates may submit a statement for the Voter Guide whether or not they are participants in the Campaign Finance Program. The Guide notes which candidates are Program participants.

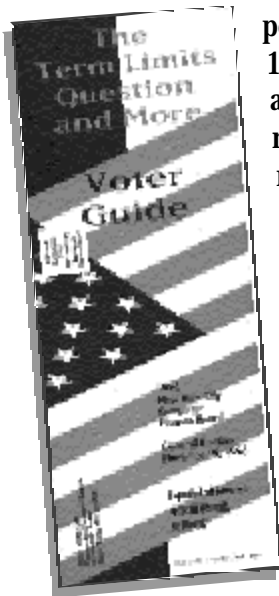
1988		1998
No publication providing candidate statements and information directly to every voter's household.		Over 20 million non-partisan Voter Guides have been produced by the Campaign Finance Board covering five city-wide and three special elections.
A Decade of Reform		

Chapter 8

The Campaign Finance Board has produced five sets of citywide Voter Guides since 1989, when the first set of primary and general election Guides was distributed. The 1996 Term Limits Voter Guide was the first ever published by the Board to cover only ballot proposals in an “off-year” City election. The 1997 Voter Guide covered a regular municipal election involving numerous City offices.

Although the 1996 Term Limits Voter Guide was the first Guide the Board published solely to provide information on City ballot proposals (as distinct from candidates running for municipal office), the Board anticipates that it will not be the last. As this report went to press, the Publications staff is beginning production for the 1998 Voter Guide, covering ballot proposals currently anticipated to be submitted by a recently convened Charter Revision Commission, the City Council, and/or a coalition of good government groups. It seems likely that the Board will produce Voter Guides more and more frequently because of the growing interest in the use of local referenda.

THE 1996 VOTER GUIDE



The year 1996 was unusual for Voter Guide production. A major City ballot proposal was being drafted to amend the Term Limits Law passed by referendum in 1993. In addition, although no municipal elections were anticipated, there was an election held for the 5th Council district when incumbent Charles Millard resigned. Primary and general election Voter Guides containing candidate statements and voting information were produced and mailed to all district 5 voters.

The 1996 Voter Guide, “Term Limits and More,” was devoted solely to covering ballot initiatives—a first for the CFB. For nearly three million voters, it provided “pro” and “con” arguments prepared by the Board based on statements made by organizations and community leaders. “Pro” and “con” statements were solicited from the public, and many were printed in the Guide. The Guide also included information on two ballot issues submitted to the City Clerk on campaign finance reform and debates, both of which were ultimately ruled off the ballot. In addition, the 1996 Term Limits Voter Guide included the official text and summary for the State’s Clean Water/Clean Air Bond Act ballot proposal that was up for a vote in the general election.

The Board’s efforts did not go unappreciated. Mr. Joseph LaBarca of the Bronx wrote to the Board in November 1996: “I and probably millions of New Yorkers are so glad to receive the Voter Guide....It really gave me a clear understanding about the term limits issue, and of the effectiveness of it....Both of my parents read this booklet too, even though my mother is not registered to vote. But don’t worry, me and dad went to the polls to cast our vote—one democrat and a republican.”⁴

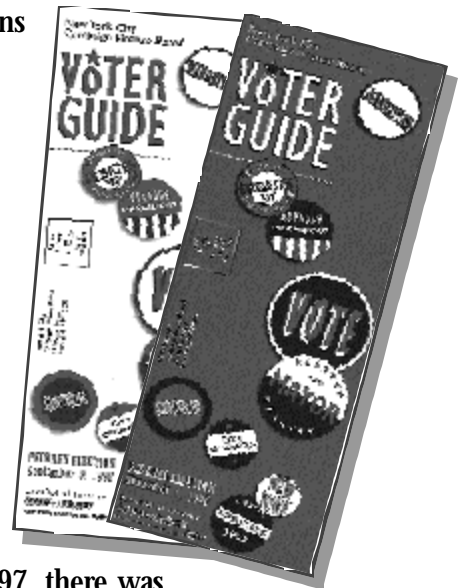
THE 1997 VOTER GUIDE

Each edition of the 1997 Voter Guide contained:

- a biography, statement, and photograph for each candidate who completed and returned the Candidate Submission Kit before the print deadline;
- a description of the Campaign Finance Program and the five municipal offices covered by it;
- an explanation of how and where to register to vote, and who may be eligible to vote in a given election;
- information about the new mandatory debate program, Debates '97, including an up-to-date schedule;
- instructions on the use of voting machines;
- “Candidates at a Glance” pages, listing every candidate in each race covered by the Voter Guide, whether or not the candidate submitted a Voter Guide statement; and
- a detailed Council district map for the voter’s borough.

The general election Guides also contained plain-language versions of the City and State ballot proposals that at press time were expected to be on the general election ballot. In the past, the Board had been able to include “pro” and “con” statements prepared by interested parties and by the Board. The 1997 edition, however, did not include “pro” and “con” statements on the sole City ballot proposal that might have appeared on the ballot: creation of a Department of Animal Affairs. The late deadline for submitting petitions to the City Clerk to place proposals on the ballot prevented the Board from soliciting and printing “pro” and “con” statements in this instance. As it turned out, this proposal was ruled off the ballot.

The Board is not mandated to provide information regarding State ballot proposals, but as a public service, the Board routinely provides proposal language for State ballot questions. In 1997, there was a State ballot proposal addressing whether a Constitutional Convention should be convened to revise and amend New York State’s constitution. The Board was urged by civic groups to cover this ballot question in detail, and the Board agreed that City voters would be particularly interested in this proposal. (The Board does not ordinarily provide “pro” or “con” statements on State proposals.) As a full treatment was unrealistic given the time constraints, the Board instead published contact information for four organizations that had taken a public stand on the issue (two “pro” and two “con”), noting that readers could obtain further information from these groups about the Constitutional Convention ballot proposal.



FactSheet 8.1

THE VOTER GUIDE

In 1997, the Board produced 1.89 million primary Voter Guides and 2.66 million general election Voter Guides, for a total of 4.55 million. Of the 212 candidates who submitted statements to the Board, 201 appeared in one or more of the 1997 Voter Guides. For the 1993 elections, 4.3 million Voter Guides were printed. One hundred and eighty-five statements were submitted, and 155 candidates ultimately appeared in the Guide. In 1991, when the Voter Guide covered the 1991 City Council elections, which occurred in an off year due to 1989 Charter revisions, over 3.6 million Guides containing 186 candidate statements were distributed to New York City voters. In 1989, the first year of publication, about 4.7 million copies of the Guide were distributed. Over 130 candidate profiles appeared in the 1989 primary election and/or general election edition—and that was before Charter revisions increased the number of City Council Districts from 35 to 51.

Reaching Out

CFB staff makes an effort to reach out to every candidate in every race. Representatives of the CFB speak at community meetings to alert the public to the Program and the Guide. A large mailing is sent out in the spring to political organizations and community groups, urging them to alert potential candidates to the Voter Guide. Submission kits are mailed to incumbents and all candidates known to the Board because they have contacted the CFB about the Program, announced their candidacies in the newspaper, or in some other fashion have come to the Board's attention as potential candidates. Following this mailing, CFB staff continues to monitor these sources for additional potential candidates. Kits are also made available at the offices of the City Board of Elections, where a sign urges candidates to submit statements for the Voter Guide. A CFB staff member is present at the City BOE until midnight on the petition deadline date to hand out submission kits to any candidates who may still be unaware of the Guide.

These efforts succeed in reaching the vast majority of candidates, but unfortunately a few candidates either reported that they did not receive information about the Guide or ignored the letters and telephone calls they received from the CFB. In these cases, the Board annotates the candidate's name in the "Candidates at a Glance" page with the footnote, "This candidate did not submit a Voter Guide statement."

In 1997, the CFB added a new option for Voter Guide submissions. Each submission kit contained a 3½" computer diskette with detailed instructions on how the candidate could submit his or her statement and biographical information on disk, rather than on paper alone. This new approach was a great success for the staff and popular with candidates as well—64 percent of the candidates chose to submit on disk. CFB staff members were able to process statements submitted on disk immediately, a huge time savings compared to keying in the statements and extensively proofreading the results for accuracy before processing for print can begin.

Inclusion—Who Gets in the Guide

All candidates who submit statements and are anticipated to appear on the ballot at press time are included in the Voter Guide. (Although CFB staff stays apprised of ballot status on a daily basis to

ensure that the Guide is as up-to-date as possible, court decisions on final ballot status often come down as late as the day before an election, well after the printing deadline for the Voter Guide.) The Board follows an inclusionary policy, which means that candidates are excluded from the Guide only if they have terminated their candidacies or on the basis of information received from City BOE staff indicating that the candidate has no legal basis for appearing on the ballot (e.g., a petition is submitted with one signature when 7,500 are required). Sometimes this means that candidates who do not actually appear on the ballot appear in the Guide, but the Board believes that its inclusionary policy is necessary to ensure fairness to candidates. Excluding a candidate who belongs in the Guide is far more detrimental to the candidate and the voters than overinclusiveness.

THE VOTER GUIDE IN TRANSLATION

A 1992 amendment to the Federal Voting Rights Act requires that the Voter Guide be printed in Chinese and distributed to election districts that have a certain percentage of Chinese-speaking residents.⁵ In the case of New York City, this includes specific election districts in Brooklyn, Queens, and Manhattan. The affected districts are identified for the CFB by the City BOE, which must also translate the ballot into Chinese pursuant to the Voting Rights Act.

In 1997, to save the expense of preparing six separate Chinese-language Voter Guides, one primary Voter Guide and one general election Voter Guide were prepared in Chinese covering all candidates running for offices in Brooklyn, Queens, and Manhattan. These Chinese editions also provided Council district maps for all three boroughs. Over 212,000 Chinese Voter Guides were produced in 1997.

Translation of the Voter Guide is a demanding task, both for CFB staff and for the translators hired by the Board. It requires specialized computer equipment to handle Chinese characters and to format the Chinese-language Guide to the Board's specifications. The quality of the translation is crucial, as a poorly translated Guide could be misleading (or simply unhelpful) to voters. For 1997, the Board contracted with additional "quality assurance" translators, who proofread the translated text and helped to update the Board's internal glossary in a manner consistent with the Board's policy to use "common usage" Spanish and Chinese. This appears to have been a worthwhile endeavor: of the many calls and letters received from the public by the Board, none involved any criticism regarding the quality of the translation. The fact that the Voter Guide is translated at all into languages other than English, however, has been the single most frequent complaint received by the Board from the general public.



DISTRIBUTION

To save printing and mailing costs, primary Voter Guides are mailed only to people who will have the opportunity to vote in the particular election covered by the Guide. For example, most registered Republicans, Conservatives, and Liberals did not receive primary election Voter Guides in 1997 because in most districts these parties were not holding primaries for any of the five covered offices.

Computer tapes are provided by the City BOE that contain complete voter registration information. These tapes are sorted (once for each election), and a National Change of Address search is performed on each tape to update the mailing addresses. A “household sort”—which ensures that only one Guide is sent to members of a family sharing the same address and surname—is also performed on each tape. This process has been effective in reducing the number of Guides that are printed and mailed.

Bulk Distribution, Advertising, and Publicity

The Board makes the Voter Guide available at over 40 sites throughout the City, including public libraries, borough halls, universities, citizen groups, and the YMCA. The Board also ran an advertising campaign, encouraging voters to “Read It, Use It, Vote!” in English, Spanish, and Chinese. Posters appeared throughout the City’s subway and bus systems alerting the public to the mailing of the Guides. Public service announcements aired on television and radio, and a special distribution was made to the media. Hundreds of residents called the Board’s offices requesting individual copies, and dozens of community groups, churches, and educators requested multiple copies for voter education purposes. A special hotline, recorded in Mandarin, Cantonese, and Toisinese, offered a list of sites where the Chinese Voter Guide was available.

ASSISTANCE FROM OTHER AGENCIES AND ORGANIZATIONS

As always, successful production and distribution of the 1997 Voter Guide required cooperation with many other organizations, both public and private. The City Board of Elections supplied the CFB with a computer tape of registered voters’ addresses, as mentioned above, and gave continually updated ballot status information crucial to producing an accurate Guide. Staff from the Mayor’s Office of Immigrant Affairs and Language Services helped evaluate the Spanish and Chinese translation services contractors. The maps appearing in the center of the 1997 Guide were supplied by the League of Women Voters of the City of New York. Public libraries, educational institutions, civic and community groups, churches, and local businesses around the City helped to ensure the widest possible reach for the Guides, either by making copies available to local constituents or by actively distributing Guides as part of voter education and registration efforts.

CONCLUSION

For nearly a decade, the Voter Guide has provided information to New York City voters about the voting process, ballot proposals, and the candidates running for office in one comprehensive, easy-to-use brochure. It has afforded all candidates for Mayor, Public Advocate, Comptroller, Borough President, and City Council—whether or not they are participating in the Program, whether they are incumbents or challengers, and regardless whether they are nominated by major parties or running as independents—the opportunity to present their message to the voters. The result is that since 1989, voters have been better informed than ever before when they go to the polls. At less than 50 cents per copy to produce and mail, the Voter Guide is a bargain for democracy in New York City.

NOTES

- ¹ E.R. Shipp, “Call this ‘Primary Colorless,’” *Daily News*, September 9, 1997, 39.
- ² See Schotland, *Elective Judges’ Campaign Financing: Are State Judges’ Robes the Emperor’s Clothes of American Democracy?* 2 *Journal of Law & Politics* 57,128 (1985), citing *Knowledge & Judicial Voting: The Oregon and Washington Experience*, 67 *Judicature* 234, 239-40 (1983); *Judicial Accountability vs. Responsibility*, 65 *Judicature* 470, 474 (May 1982); *Voters in Contested, Nonpartisan Judicial Elections*, 36 *Western Pol. Q.* 241, 252 (June 1983); *Polls: Are They Valid Tools?*, *Ore. Bar Bull.* 10,11 (April 1982). These sources demonstrated that voter pamphlets are consistently rated as the preferred source of information about candidates.
- ³ Letter of Elizabeth Kovalski to Joseph A. O’Hare, S.J., Chairman of the Campaign Finance Board, dated November 7, 1997, on file at the Campaign Finance Board.
- ⁴ Letter of Joseph LaBarca to Joseph A. O’Hare, S.J., Chairman of the Campaign Finance Board, dated November 13, 1996, on file at the Campaign Finance Board.
- ⁵ Translation of the Guide into Spanish is required under the New York City Charter §1053, and translation into Spanish and Chinese is required by the Federal Voting Rights Act, 42 U.S.C. §1973, *et seq.*

Chapter 9—Compliance and Enforcement

Following the Money

In enforcing the campaign finance law and regulations, it is important to address certain kinds of violations during the campaign period. A delay in reaching a determination on over-the-limit spending, for example, can undermine the effectiveness of any ultimate enforcement of this campaign finance restriction. The Board's primary objectives in the area of enforcement are to uphold the contribution and spending limits, ensure timely disclosure of campaign finance records, and safeguard the distribution of public funds. The Board's Candidate Services Unit ("CSU") is in regular contact with campaigns throughout the election cycle to ensure that they file disclosure statements on time and correctly. CSU also responds to candidates' inquiries about Program compliance, sometimes referring those inquiries to the Board's Legal Unit.

The Board determines whether violations of the Act have occurred in several ways, including by reviewing information submitted by campaigns or otherwise brought to the Board's attention, auditing campaign records both during and after an election, and investigating complaints brought by opposing campaigns. The Board's staff also relies upon media reports for information about campaign activity. In 1997, the Board added compliance analysts to assist the Audit and Accounting staff in conducting investigations of campaigns, including field trips to examine campaign records.

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 against individuals for violations of the Act by prosecutorial offices, as discussed below. Finally, the Board is authorized by law to publicize violations of the Act, and a number of the enforcement actions described in this chapter received significant press and editorial attention.¹

1997 ENFORCEMENT SUMMARY

The 1997 election cycle was notable for a number of improvements in the Board's enforcement methodology. There was a clear increase in the regularity and overall quality of statements filed, apparently as a result of more efficient procedures to notify campaigns of lateness and deficiencies in their filings. Penalties for violations of the Act were also assessed more swiftly, and the administrative appeals process was streamlined.

1988		1998
No meaningful penalties for candidates who violate state election law.		Substantial civil penalties and criminal sanctions pursued and obtained under Campaign Finance Act and federal fraud provisions.
A Decade of Reform		

Chapter 9

Overall, 35 candidates appeared before the Board or submitted written appeals of preliminary Board determinations.

As of May 1998, the Board had assessed civil penalties against 52 campaigns for late or deficient filings or for accepting contributions that exceeded Program limits.² A total of \$257,925 in penalties was assessed,³ of which \$227,070 was paid by campaigns. An additional \$25,250 was withheld from public funds payments to satisfy penalty assessments, and at press time approximately \$5,000 was still owed to the Board. Additional penalties may be assessed, pending completion of the Board's post-election audits.

Late or Deficient Filings

As in the 1993 elections, the most common violation in 1997 was the late filing of disclosure statements, or, in some cases, no filing at all. The Board emphasizes timely filing because lateness severely limits the public's ability to study the information that, by Charter mandate, the Board is charged to make available. Of equal importance, lateness compromises the Board's ability to monitor a campaign's compliance with other Program requirements. The Board notifies campaigns when a filing is past due or is otherwise deficient for reasons such as missing information or an unreadable computer diskette. Penalties are based on the length of delay in filing or correcting the deficiency. Although some may consider the Board's enforcement procedures to be too inflexible and bureaucratic, the Board's procedures provide a significant inducement to candidates to file in a timely fashion. Before recommending penalties to the Board, Board staff routinely considers mitigating factors in order to avoid unreasonable assessments, and candidates who appeal a finding of violation on occasion find the penalty reduced or waived after consideration of their arguments. Overall, the Board's efforts were extraordinarily successful: virtually all required filings were received for the 1997 elections.

Contribution Limit Violations

Each campaign goes through extensive review by the Board's audit staff for violations of the contribution limit, one of the central features of the Act. This review includes the aggregation of contributions from affiliated companies and controlling individuals, which the Act treats collectively as one contributor. As of May 1998, ten candidates had been cited for 183 violations of the Act's contribution limits and were assessed penalties totaling \$248,655. (There were \$242,930 in penalties assessed against the Giuliani campaign alone for 157 violations of the contribution limits, which the campaign paid in part from its committee's funds, and in part through deductions from public funds payments due to the campaign.)

COMPLAINTS

The Board was presented with three formal complaints during the 1997 election cycle, compared to 13 during the 1993 cycle. Two were directed at Shirley Saunders' campaign for the 12th Council district by her opponent, Lawrence Warden, and individuals associated with his cam-

paign. Both complaints were dismissed because the complainants did not provide sufficient supporting evidence for the allegations.⁴ The other formal complaint was filed by the Messinger campaign against the Giuliani campaign, which resulted in a formal Board determination, discussed below. In addition, a number of informal (unverified) complaints were received and were addressed in the course of the Board's audit process, and, finally, the Board issued determinations generated on its own.

FORMAL BOARD DETERMINATIONS

Improper Use of Government Resources

In August 1997, The Friends of Ruth Messinger, Ruth Messinger's authorized campaign committee for Mayor, alleged that a government-financed radio advertisement was in effect a political advertisement for incumbent Mayor Giuliani and therefore constituted an in-kind contribution to and an expenditure by Friends of Rudy Giuliani, his authorized campaign committee. (City funds were used to pay for a series of advertisements in which Mayor Giuliani announced the elimination of two-fare transit zones.) Following numerous precedents from previous elections, the Board concluded that an agency with appropriate jurisdiction, such as the Conflicts of Interest Board, would first have to find that the use of government funds for the advertisements was improper before the Board could determine whether the activity was an expenditure or contribution under the Act.⁵

Although the Board dismissed the complaint for lack of jurisdiction, the Board noted that it had previously recommended a ban on the use of public resources for campaign activities and a black-out period on officeholder mass mailings and other communications at public expense, preceding an election.⁶ (For a discussion of this proposal, see Chapter 12, "Board Recommendations.")

Contribution Limit Violations

In September 1997, following a hearing at which campaign representatives testified, the Board issued a formal determination finding 134 instances in which the Giuliani campaign had violated the Program's contribution limits. Most of the violations for which penalties were assessed involved contributions from affiliated sources that must be aggregated under a single contribution limit. A penalty of \$220,000 was assessed and paid. In addition, the campaign was required to refund \$356,651 in over-the-limit contributions.

In its determination, the Board noted that its staff, pursuant to standard procedures, had been reviewing financial disclosure statements from all Program participants since July 1994. The Giuliani campaign had received written communication about possible contribution limit violations beginning in February 1996. Some of the over-the-limit contributions were refunded expeditiously, but many others were not addressed until the campaign was informed that penalties were being recommended. The Board accepted that the Giuliani campaign demonstrated a

Chapter 9

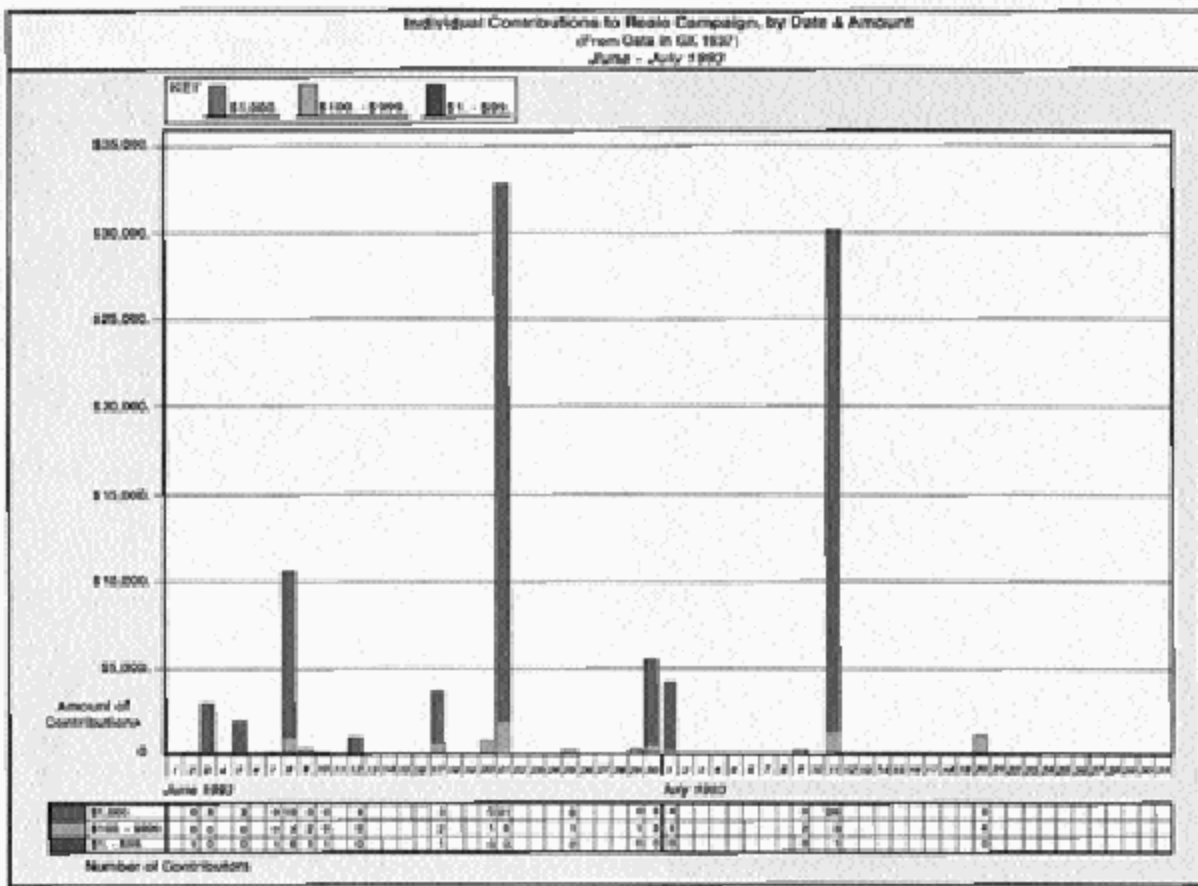


Chart based upon NYC Campaign Finance Board data used as evidence in Reale trial to show pattern of dates and amounts of \$1,000 campaign contributions claimed to be matchable.

“plausible basis for its belief” that contributions by individuals who are not majority shareholders in corporations would not be considered violations on the basis of the affiliation rule, and thus reduced by 29 the number of violations initially cited by staff.

In October 1997, the Board addressed a second set of 19 contribution limit violations against the Giuliani campaign. The Board assessed a penalty of \$22,930 for these violations, again primarily related to the affiliation of contributors, which the Board deducted from the campaign’s public funds payments, and the campaign refunded to contributors \$27,900 that exceeded the contribution limit.

CRIMINAL AND CIVIL CASE RESOLUTIONS

Ron Reale

Highly-publicized charges arose out of the post-election audit of Ron Reale’s 1993 campaign for Public Advocate. CFB auditors discovered, among other things, that a series of contributions

by money order, purportedly from different individuals, had been purchased from the same bank, were sequentially numbered, and were filled out in similar handwriting. Reale's campaign committee, Friends of Ron Reale, had received \$163,771 in public matching funds for the 1993 primary and general elections. These public monies were in effect stolen by the Reale campaign, because they were disbursed on the basis of contribution claims that were entirely fraudulent. Specifically, matching claims were made for supposed individual contributions, when in fact the individual "contributors" in whose names the contributions were made either never made any contributions at all or were illegally reimbursed with money from other sources.

The CFB referred the case to the United States Attorney's Office for the Southern District of New York, where the evidence became a part of a larger federal case against Reale, who had been the President of the Transit Police Benevolent Association ("TPBA"). James Lysaght and Peter Kramer (of Lysaght, Lysaght & Kramer) and Richard Hartman, two lawyers and a labor consultant, were also charged with having been involved in a scheme against the union. The four were indicted on charges of racketeering and conspiracy and were convicted of multiple felonies. The defendant TPBA officers had paid Lysaght, Lysaght & Kramer inflated fees and retainers from TPBA benefit and trust funds under the defendants' control in order to receive kickbacks. These funds included accounts into which were deposited the dues of TPBA members and payments by the New York City Transit Authority for health, annuity, and civil legal representation benefits for Transit Police officers. Reale's and Hartman's convictions included conspiracy to defraud the Board, the use of interstate wire communications in connection with the scheme to defraud the Board, and participating in a racketeering enterprise, an objective of which was the use of the TPBA to funnel money secretly to Reale's campaign for Public Advocate. The Board's Director of Campaign Finance Administration, Andrew Levine, testified for three days during the trial. On June 30, 1998, Reale was sentenced to seven years in prison and Hartman to five years. The Board anticipates recouping the funds that were distributed to the Reale campaign.

The *New York Times* noted at the time of the indictment that, "it [was] the strict regulations of the city board that appeared to have tripped up Mr. Reale...."⁷ By letter dated February 10, 1998, United States Attorney Mary Jo White thanked the Board, stating that it had provided "invaluable assistance" throughout the investigation and prosecution of the case and that Andrew Levine's testimony "was very professional and assisted the jury in understanding complex campaign finance rules and procedures, and the campaign fraud perpetrated in this case."⁸

Another union official implicated in Ron Reale's 1993 frauds was former Housing Patrolmen's Benevolent Association President Jack Jordan, who pleaded guilty to perjury for his attempt to cover up the money order scam by providing false testimony before a federal grand jury. On March 9, 1998, Federal District Court Judge John Sprizzo sentenced Jordan to five years probation with six months home confinement, along with a \$2,000 fine.

Chapter 9

Ernest Emmanuel

Ernest Emmanuel was a Council candidate for the 45th Council district in Brooklyn who appeared on the 1997 general election ballot on the Liberal Party line and lost. His campaign allegedly submitted contribution cards with forged signatures for which public matching funds were sought. Again, as a result of routine audit procedures, CFB staff identified questionable materials and alerted the United States Attorney's office. In November 1997, the United States Attorney's Office for the Southern District of New York indicted Emmanuel, charging him with obstruction of justice—a felony—because of his attempts to squelch postal inspectors' investigations into the allegations. On May 22, 1998, Emmanuel pled guilty to all counts in the indictment. At press time, he was scheduled to be sentenced in federal court in September 1998.

George Sarant

In April 1997, George Sarant, the former director of the Hellenic American Neighborhood Action Committee ("HANAC"), a Queens social service agency, pled guilty in federal court in Manhattan to participating in a scheme in 1995 to make illegal contributions to the congressional campaign of Kerry Katsorhis through the use of nominee contributors (contributions made in the name of someone other than the actual source). In the course of the United States Attorney's investigation, which the Board assisted by providing data reports, it was discovered that Sarant had used nominee contributors for other candidates, including several participants in the Campaign Finance Program, and that several hundred dollars in public matching funds had been claimed on the basis of those contributions. Sarant refused to cooperate with the Board's efforts to identify all nominee contributions of which he had knowledge. At his sentencing, the Board argued that his refusal constituted a failure to accept responsibility for his actions and warranted an enhanced sentence. Judge Miriam Goldman Cedarbaum ordered Sarant to disclose to the Board information regarding those contributions after he completes his eight-month sentence of incarceration.

John O'Hara

In May 1997, having been prosecuted by the Brooklyn District Attorney's Office, John O'Hara was convicted by a jury of seven election and penal law felonies relating to his 1993 campaign for a City Council seat in a district in which he did not reside. O'Hara had included a false address on his certification to join the Program, and the Board ultimately disbursed over \$9,000 in public matching funds for his campaign. The Board's Director of Campaign Finance Administration, Andrew Levine, testified during the trial. At the Board's request at O'Hara's sentencing in July 1997, Kings County Supreme Court Justice Priscilla Hall ordered O'Hara to pay to the Board full reparations for the \$9,192 in public funds disbursed, as well as a civil penalty of \$5,000.

Hazel Dukes

In May 1998, in a settlement that avoided the need for civil action, Hazel Dukes reimbursed the Board \$1,500 for public funds paid to Program participants on the basis of contributions she made or arranged with funds belonging to Velma McLaughlin and for investigative costs incurred

by the Board in this matter. The settlement stemmed from a criminal action commenced by the Manhattan District Attorney's Office, in which it was alleged that Dukes had stolen funds from an Off Track Betting credit union account belonging to McLaughlin. Dukes pled guilty in New York County Criminal Court to attempted grand larceny and received a sentence of a conditional discharge and restitution to McLaughlin. In an affidavit that accompanied her payment to the Board, Dukes admitted that she used some of those funds for contributions to the 1993 campaigns of Annette Robinson and David Dinkins.

CONCLUSION

Thorough audits and investigations and prompt action during the election season have been crucial to the integrity of the Board's enforcement efforts.

[T]he CFB has been nonpartisan, impartial, independent, patronage-free and fearless since its creation in 1989.

—Jack Newfield, *New York Post*⁹

NOTES

- ¹ See, e.g., Editorial, "The Mayor Signs Off," *New York Times*, August 19, 1997, A26; Editorial, "They all do it—they're all wrong," *Daily News*, August 16, 1997, 12 (use of government resources); Editorial, "Pay the Fine Graciously," *New York Times*, September 20, 1997, A14 (penalty assessment).
- ² Seven additional candidates were also found to have violated Program requirements but were assessed no penalties.
- ³ This includes penalties for two candidates, totaling \$515, which were later waived after the Board deemed their candidacies inactive.
- ⁴ See letters from Karen Zweig to Edward Wolf and Lawrence A. Warden, dated April 9, 1998, on file at the Campaign Finance Board.
- ⁵ Board Determination No. 1997-1; see also, e.g., Board Determination No. 1993-1 and Advisory Opinions Nos. 1989-1, 1993-5.
- ⁶ *On the Road to Reform*, 132; *Dollars and Disclosure*, 145.
- ⁷ Clifford Levy, "Finance Data Raised Doubts of City Board," *New York Times*, January 26, 1997, B26.
- ⁸ Letter of United States Attorney Mary Jo White to the Campaign Finance Board dated February 10, 1998, on file at the Campaign Finance Board.
- ⁹ Jack Newfield, "Time to Vote Out Board of Elections," *New York Post*, September 24, 1997, 6.

Chapter 10—Structure and Administration

Inside the CFB

The board...shall conduct all...activities in a strictly non-partisan manner.

—*New York City Charter*¹

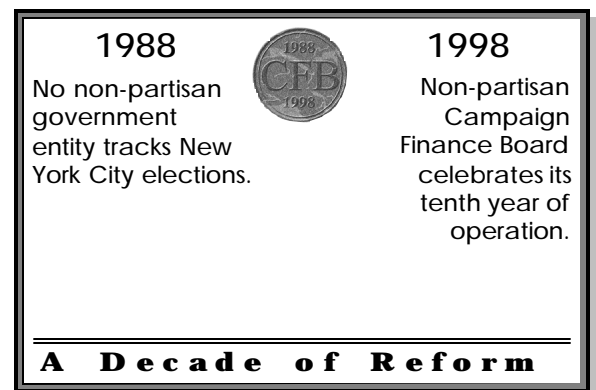
Essential to its ten-year record of success has been the nonpartisan character of the Campaign Finance Board. The impartial enforcement of the Act and Rules has been a hallmark of the Board since its inception in 1988, and the Board's reputation for effectiveness—in comparison, for example, with the bipartisan Federal Election Commission—is largely a result of the culture it has developed.

The City Charter, which directs that the Board operate in a nonpartisan manner, and the Campaign Finance Act, which prohibits Board members from engaging in partisan activity, established the basis for this culture. These legal injunctions have been expanded upon by the Board, through its "Ethical Guidelines," to a general restriction (covering all Board members and staff) on political activity related to the five offices covered by the Act. These ethical standards have become an essential component of the agency's operations.

STRUCTURE OF THE BOARD

As the *New York Times* noted during the past election season, the Campaign Finance Board "operates under enormous pressure in New York's hard-driving election milieu."² In its first ten years, the contemplated independence of the Board has emerged as perhaps the single most critical aspect of the Campaign Finance Act.

The Board has five members, including the Chairman. Two members are chosen by the Mayor, and two are chosen by the Speaker of the City Council. Neither the Mayor nor the Speaker can appoint two members from the same political party. The Chairman is appointed by the Mayor in consultation with the Speaker. Board members serve staggered, fixed terms, and, once appointed, cannot be removed at the will of the appointing authority. Some Board members have served past their five-year



Chapter 10



The New York City Campaign Finance Board (from left): Bill Green; Executive Director Nicole A. Gordon; Chairman Joseph A. O'Hare, S.J.; and Martin S. Begun

terms when a new appointment was not immediately named, as provided for by the New York Public Officers Law.³

The Chairman of the Board is Joseph A. O'Hare, S.J., a Democrat. The President of Fordham University, he has also served in past administrations on the New York City Charter Revision Commission and the Mayor's Commission on Appointments. Chairman O'Hare was appointed to his first five-year term by Mayor Koch in June 1988.

On December 30, 1993, Mayor Dinkins named Thomas J. Schwarz to replace Chairman O'Hare, whose term had expired the previous March and who had continued

to serve without appointment. This came after the Board had assessed a penalty of \$320,000 against Mayor Dinkins' unsuccessful re-election campaign. The retributive impression left by the move led the *New York Times* and others to call for the resignation of Dinkins' appointee.⁴ Mr. Schwarz stepped down after eight days, and Mayor Giuliani reappointed Father O'Hare to his second term on January 10, 1994. In April 1998, Mayor Giuliani again reappointed Chairman O'Hare, then to a third term.

Martin S. Begun, a Democrat, is the President of MSB Strategies, Inc. and the President of the Jewish Community Relations Council of New York. He is a former senior Associate Dean of the NYU School of Medicine and Vice President of External Affairs for NYU Medical Center. Appointed in March 1996 by Speaker Vallone, he filled the seat formerly held by Joseph Messina, a Democrat and President of the Motor Vehicle Accident Indemnification Corporation. Mr. Messina was appointed by the Speaker to fill an unexpired term in 1988, and was then reappointed to a five-year term in 1991.

Bill Green, a Republican and former United States Representative who represented New York's 15th Congressional district for nearly 15 years, was appointed by Mayor Giuliani in July 1994, filling the vacancy left by the death of Robert B. McKay, an appointee of Mayor Koch. Boardmember Green was reappointed by Mayor Giuliani to a five-year term in April 1995.

Joseph R. Erazo, a former Board member, was Executive Director of the Nassau County Medical Center and a Democrat when he was appointed by Mayor Giuliani in September 1997 to replace Vaughn Williams, a Democrat and partner in the law firm of Skadden, Arps, Slate, Meagher, and Flom, who was appointed in 1992 by Mayor Dinkins and continued to serve for several months past his term, until the appointment of Mr. Erazo. Mr. Erazo resigned from the Board in June of 1998, when he became Executive Director of Correctional Health Services at

the Health and Hospitals Corporation. The seat occupied by Mr. Erazo was vacant at the time this report went to press.

The manner of former Board member Erazo's appointment in September 1997 was a subject of some controversy. Mr. Erazo arrived unexpectedly to take his seat on the Board near the end of a public meeting on September 18, during which the Board was hearing arguments regarding over-the-limit contributions received by the Giuliani campaign. Although the Board had been notified in a letter from the Mayor dated August 13, 1997, that Mr. Erazo was appointed to the Board "pending the successful completion of [his] Department of Investigation background check," the Board had not received notice of the completion of the background check by the time of the September 18th meeting.⁵ In fact, the Department of Investigation ("DOI") confirmed by telephone that morning that Mr. Erazo's background check had not yet been completed. Accordingly, Chairman O'Hare declined to seat Mr. Erazo in Mr. Williams' place on the Board for the public meeting and vote. (Later that afternoon, a letter was transmitted to the Board confirming completion of the DOI background check, and Mr. Erazo took his place on the Board.) Several civic groups and editorial boards protested the circumstances of the appointment.⁶

Former Board member James I. Lewis, a Liberal, is an Assistant Professor of History at City College of New York. He was appointed in 1988 by Speaker Vallone to a one-year term (as provided by law), and then reappointed to a five-year term in 1989, which expired in March of 1994. Thereafter, he served without appointment until his resignation in June of 1997. The seat Mr. Lewis occupied was vacant at press time.

The original Board members included Frank Macchiarola, Robert B. McKay, and Sonia Sotomayor. Mr. Macchiarola, a former New York City schools chancellor, resigned to run for New York City Comptroller and, having served as Dean of Cardozo Law School, is now President of St. Francis College in Brooklyn. Robert B. McKay, a former dean of New York University Law School, served until his death in July 1990. Sonia Sotomayor served on the Board until 1992, when she was appointed a federal judge in the United States District Court for the Southern District of New York. She was recently nominated by President Clinton to serve on the United States Court of Appeals for the Second Circuit.

STRUCTURE OF THE STAFF

In addition to administering the Campaign Finance Program and producing the Voter Guide, this year the Campaign Finance Board was given a new mandate: to administer the first-ever mandatory debates for participating citywide candidates. Successful implementation of these three challenging tasks was made possible by the close coordination of the Board's seven primary staff units, which perform a wide range of functions, including those described here:

The **Administrative Services Unit** manages the Public Fund and supervises the entry of candidates' financial data into "CFIS," the Board's Campaign Finance Information System.

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Administrative Services oversees the agency budget, personnel, facilities management, and office automation. Administrative Services also helps each of the other units with general office services, including the reproduction of public disclosure reports and maintaining complete and accurate records of every aspect of the Program.

The **Auditing and Accounting Unit** monitors campaigns' compliance with the Campaign Finance Program and determines payments of matching funds by verifying claims. The Board's team of auditors begins its review of campaign finance data well in advance of the election. In an important change from 1993, campaigns that elect to file contemporaneously with the CFB (in order to preserve matching claims for contributions received throughout the election cycle) submit their disclosure forms to the Board during the first three years of the election cycle. Auditing and Accounting then reviews these filings and advises campaigns how to correct errors before formally joining the Program. The unit also conducts field audits, during which auditors visit campaign offices to obtain compliance and record-keeping information. The Board's Payment Coordinator oversees the public funds payment process, making recommendations for payments to the Board. After the election, Auditing and Accounting performs a comprehensive final audit of each campaign's financial activity. The final audit has four main objectives: to ensure compliance with Program expenditure and contribution limits; to verify that there has been complete and accurate disclosure of all financial transactions; to make sure that the correct amount of public funds was distributed to each campaign, and, when appropriate, to recover excess funds; and to ensure that each campaign maintained accurate and up-to-date financial records. This unit also works closely with the Board's Legal Unit and other enforcement agencies when legal action is taken against a campaign.

The **Candidate Services Unit** ("CSU") works with each participating campaign to assist it in complying fully with Program requirements. CSU conducts candidate information seminars to familiarize potential candidates with the benefits and requirements of the Program. In 1997, CSU conducted seven candidate information seminars in five boroughs, in addition to numerous presentations to community boards and organizations throughout the City. CSU also conducted 14 "compliance seminars" after the Program's opt-in deadline to guide campaign staff through compliance and record-keeping requirements.

The Candidate Services Unit processed over 2,100 financial disclosure statements and amendments in the 1997 election cycle.

Campaigns also receive other assistance, including the *1997 Campaign Finance Handbook*, an easy-to-read guide intended to help campaigns with filing requirements and to provide an overview of the compliance and public funds payment processes. During the election season, each campaign is assigned a CSU liaison, who serves as that campaign's primary contact with the CFB. In 1997, each member of the unit assisted an average of 38 candidates. CSU staff reviewed each filing and processed over 2,100 financial disclosure statements and amendments in the 1997 election cycle. In the post-election surveys distributed by the Board, 93 percent of the candidates responding found the CSU staff to have been "fairly helpful" or "very helpful" during the campaign; one candidate described CSU as "highly professional and enormously helpful."⁷

The **Legal Unit** works closely with the Board, the Executive Director, and the other staff units in interpreting Program requirements, addressing complaints lodged against campaigns, and ensuring compliance with the Program. Legal staff, at the Board's direction, draft advisory opinions, Board determinations, legislative proposals, Rules changes, and represent the agency in legal proceedings. Fourteen advisory opinions were prepared by the Legal Unit in 1997, addressing issues ranging from expenditure limit violations to the propriety of campaign spending on post-election parties. This year, Legal staff also helped implement the new debate program and advised the Board on matters such as the selection of debate sponsors. Legal staff coordinates work with outside enforcement agencies when criminal prosecution is commenced against a campaign.

The **Press Unit** educates the media and the public about the work of the Campaign Finance Board, including the Campaign Finance Program, the Voter Guide, and the debate program. The Press Unit is chiefly responsible for disseminating candidate information to the public and coordinates the public disclosure of candidate finances with the Systems Unit to provide timely, computerized campaign data. The Press Unit produced more than 50 press releases, advisories, and statements in 1997 alone, containing information about the Program, participating candidates, and public funds payments. During the 1997 election year, the Press Unit fielded over 850 media inquiries, ranging from requests for electronic searches of the Board's database to detailed questions about the functioning of the Program and the decisions and policies of the Board.

The Press Unit also has primary responsibility for the administration of the debate program, working closely with sponsors, the media, and candidates. Press staff wrote and produced public service announcements encouraging potential candidates to join the Campaign Finance Program and publicizing the Voter Guide and the debate program.

Finally, this unit has charge of public forums and conferences sponsored by the Board, described in Chapter 11, "The CFB as a Resource."

The **Publications Unit** produces the Board's printed materials, including informational brochures, issues papers, the Board's mandated post-election reports, and the acclaimed New York City Voter Guide. In the past four-year cycle alone, Publications staff produced Voter Guides for the 1994 51st Council district general election, the 1996 Manhattan 5th Council district primary and general elections, the 1996 term limits referendum, and the 1997 primary and general elections. The Voter Guide represents one of the CFB's most challenging projects. In 1997, the Guide included 212 candidate statements and photographs, ballot referenda, and voting information. More than 4.5 million Guides were produced in three languages. Publications also produced educational materials for candidates and publicity materials for the Voter Guide and the debate program, including posters that appeared throughout the subway and bus systems.

The **Systems Administration Unit** is responsible for the installation and maintenance of all hardware and software for the Board, including local area networks and file servers. Systems staff installs and supports all computer applications used at the Board. Staff members also plan, develop, test, maintain, and update a variety of custom applications, including C-SMART®, the

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The Systems Administration Unit provided a 24-hour help line for C-SMART® users during the campaign season.

candidate software; CFIS, the internal database; the Public Terminal; and the World Wide Web site described in more detail in Chapter 6, “Disclosure and Automation.” Systems provides extensive user support for C-SMART®, including training sessions and a 24-hour help line during the campaign season. The Board’s Web site was enhanced in the summer of 1998 by making the Public Terminal available on the Internet. Having computerized every aspect of its public disclosure mandate, from providing

for electronic filing to public disclosure on the Internet, the Systems Unit has developed the most comprehensive computerized campaign finance system of any locality in the country.

STAFF SIZE: DOING MORE WITH LESS

The successful implementation of the Campaign Finance Program in the 1997 elections required that the Board accomplish more work with a significantly smaller staff than in 1993. The Board’s 36 staff members in 1997 were supplemented by up to 16 “seasonals,” staff members who join the agency for the eighteen-month peak period around the elections. This represents a 12 percent reduction in overall staff size from the 1993 elections and a 22 percent reduction in full-time staff.

Careful management and the integration of the latest information technology have helped the CFB to meet the challenges of its mandates despite limited resources. This is important to the CFB, committed as it is to managing a program of public financing efficiently, in a manner that yields benefits far outweighing the costs.

With its limited financial and staff resources, the Campaign Finance Board in 1997 monitored the campaign finances of 190 candidates and potential candidates; distributed over \$6.4 million in public matching funds; produced and mailed over 4.5 million Voter Guides; and, with the help of sponsors, administered the first-ever series of mandatory public debates for candidates for Mayor, Public Advocate, and Comptroller. One observer has called it a “model for oversight of elections...[w]ith just 30 employees and a \$2 million annual budget....”⁸

RECENT INNOVATIONS

The 1997 election cycle saw a number of innovations at the Campaign Finance Board in addition to the new debates mandate, described in Chapter 7, “Debates ’97.”

Contemporaneous disclosure, a change effected by Local Law No. 37 of 1994, enabled the Board to review financial information as contributions are collected throughout the election cycle and has had an enormous impact on the agency’s ability to conduct effective and detailed audits of campaign information. It has also permitted more timely and accurate public funds payments. The agency’s campaign finance disclosure software, C-SMART®, has also been considerably revamped since the 1993 elections and now enables campaigns to monitor their own compliance as they input campaign finance data, greatly enhancing the speed and accuracy of public disclo -

sure. As of 1997, campaigns can file all reporting schedules electronically with C-SMART®, and information may be imported into and exported from C-SMART® with ease. Disclosure was also enhanced by the debut of the Board's own World Wide Web site (at <http://www.cfb.nyc.ny.us>), containing summary information on the 1997 campaigns, as well as detailed information about the agency, the Campaign Finance Program, the debate program, and the Voter Guide. Beginning in the summer of 1998, the contribution data contained on the Public Terminal were also available on the Internet in a searchable format, through the Board's Web site.



Newsday featured Director of Systems Administration Ken O'Brien demonstrating the Public Terminal in August 1997.

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The Public Terminal, which debuted in 1995, is a user-friendly resource that allows the public to search contribution records. In 1997, the Public Terminal was in great demand, as reporters, candidates, and voters used the system to research the sources of support for the various participating candidates. In August 1997, *Newsday* featured the Public Terminal in an article contrasting the Board's computerized disclosure system with the state's "file cabinet" system. "At the Campaign Finance Board," wrote reporter Amy Cooper, "[r]esearchers can also search online for all of the political contributions made by a single donor. At the Board of Elections, the same task could take many hours."⁹

Computerization also improved the efficiency with which the Board's Publications Unit produced the 1997 Voter Guide. This year, candidate statements were received on computer disk, greatly increasing the speed and accuracy of the process.

THE CAMPAIGN FINANCE BOARD: A RESOURCE AND A MODEL

Ten years of experience in instituting campaign finance reforms have made the CFB a sought-after authority on the subject. Other jurisdictions have come to consider the CFB a primary resource when establishing their own campaign finance reforms. (See Chapter 11, "The Campaign Finance Board as a Resource.") The media have come to rely on the Board's database when covering local and international politics. Thus, among many media reports relying on Board data was a report aired on the ABC television news program "20/20" in February 1998, which used the Board's database to feature contributions made to City Council candidates by the Transport Workers Union. Farther away, as London prepares for its first-ever mayoral election, reporters from that city contacted the Board to learn how other major cities conduct and finance their own elections.

The CFB's role took on an added dimension in 1997 when Andrew Levine, the Board's Director of Campaign Finance Administration, testified at the trial of 1993 Public Advocate candidate and

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Transit Police Benevolent Association President Ron Reale. CFB auditors had discovered irregularities in Reale's campaign finance disclosure reports, which led to federal convictions of Reale and others for various crimes. (See Chapter 9, "Compliance and Enforcement.")

EVALUATING PROGRESS

After each election, the Board prepares a detailed evaluation of the impact and performance of the Campaign Finance Program. This process begins with surveys distributed to participating and non-participating candidates after the election and post-election hearings, to which all interested parties are invited. The hearings, held in December, are one opportunity for candidates to address the Board directly on the strengths and weaknesses of the Program. The Board relies upon the candidate surveys and testimony at the hearings, together with other information gathered formally and informally, to prepare the Board's mandated report to the Mayor and the City Council. This is the Board's fourth such comprehensive report. (Interim issues papers on specific items of concern are prepared in similar fashion. See Appendix M, "Board Publications" for a list of these papers.)

The response of candidates to the Program continues to be overwhelmingly positive, although several candidates in 1997 pointed to the continued need for legislative enhancements that the Board itself had also identified. (See Chapter 12, "Board Recommendations.") Councilwoman Una Clarke testified at the 1997 post-election hearings:

I think that for all of the right reasons, the Campaign Finance Board continues to be the one agency in government that I think is responsive and open....[Y]ou should continue to do all you can to refine both the reporting system and to encourage those who would be candidates, as well as those who are incumbents, to abide by the rules, so that there will always be a level playing field.¹⁰

Public Advocate Mark Green also testified about the Board's implementation of the Program and the new debate law:

I don't know of a better Federal, State, or municipal campaign finance law, or better enforcement than the law and the administrative mechanism that we have here in place.¹¹

Former Manhattan Borough President and mayoral candidate Ruth Messinger, a three-time participant in the Program for two different offices, concluded that she was glad to have participated and "would do so again." Ms. Messinger also offered a critique of the Campaign Finance Act:

I think that after ten years, the law is showing its age, and that a number of changes are needed to make the Act better able to deal with the realities of the campaigns of the late 1990's, not to mention those of the 21st century.¹²

CONCLUSION

The effectiveness of the Campaign Finance Program depends on the impartial administration of the Program by the Board. As the Feerick Commission noted ten years ago, in its examination of campaign finance at the state level, “[w]ithout an effective, independent enforcement agency reforms will be as meaningless as criminal laws without police.”¹³

The nonpartisan culture of the Board has been the key to the continued effectiveness and reputation of the agency and its programs. Among other proposals, the Board has accordingly recommended a change to the Act that would delay the appointment of new Board members to vacancies still open in April of the election year until after the height of the campaign season. In the meantime, the commitment of the Board members themselves and of the appointing authorities as well as the demands of the public and the press have ensured that the Board's nonpartisan culture is maintained.

NOTES

- 1 New York City Charter, §1057.
- 2 Editorial, “Pay the Fine, Graciously,” *New York Times*, September 20, 1997, A14.
- 3 New York Public Officers Law §5.
- 4 Editorial, “Wake Up, Mr. Schwarz,” *New York Times*, January 7, 1994, A30.
- 5 Letter of Mayor Rudolph Giuliani to Joseph Erazo dated August 13, 1997, on file at the Campaign Finance Board.
- 6 See Clifford J. Levy, “Finance Board Accepts Giuliani's Choice for Seat,” *New York Times*, September 20, 1997, B2; *New York Times*, “Pay the Fine, Graciously,” A14; Elizabeth Kolbert, “The Vote the Mayor Couldn't Get,” *New York Times*, September 22, 1997, B1; Editorial, “The Mayor's Campaign Overkill,” *New York Times*, September 26, 1997, A26. See also Editorial, “Situation normal—all fouled up,” *Daily News*, September 19, 1997, 42.
- 7 *Campaign Finance Board 1997 Hearings*, vol. II, at 68 (testimony of Eva Moskowitz).
- 8 Jack Newfield, “Time to Vote out Board of Elections,” *New York Post*, September 24, 1997, 6.
- 9 Amy Cooper, “Cyber-Slick vs. File Cabinet,” *Newsday*, August 4, 1997, A32.
- 10 *Campaign Finance Board 1997 Hearings*, vol. II, at 97 (testimony of Una Clarke).
- 11 *Campaign Finance Board 1997 Hearings*, vol. I, at 120 (testimony of Mark Green).
- 12 *Ibid.*, at 95 (testimony of Ruth Messinger).
- 13 New York State Commission on Government Integrity, *Restoring the Public Trust: A Blueprint for Government Integrity* (December 1988), 12.

Chapter 11—The CFB as a Resource for Other Jurisdictions

Putting Reform on the Map

This is one of the good things that people come to New York City to copy and to look at as a way of organizing their elections.

—Mayor Rudolph Giuliani[†]

WORKING WITH OTHER JURISDICTIONS


Perhaps the single most telling indicator that New York City's Campaign Finance Program has succeeded in reforming the local political landscape is the extent to which other jurisdictions look to New York City as a model.

When the Program began in 1988, CFB staff visited the Federal Election Commission in Washington, D.C., and the New Jersey Election Law Enforcement Commission to learn what the CFB could do as it began its operations. Just as those agencies assisted the CFB ten years ago, the CFB has assisted scores of other agencies both within and outside the United States as the New York City Program has established itself and came to be known beyond its jurisdictional borders.

The assistance the CFB has been able to offer has taken various forms. The Board and staff have appeared at conferences; demonstrated CFB systems and audit programs; traveled to other jurisdictions to testify at hearings and to lend technical support to start-up programs; researched and provided data for journalistic and academic purposes; contributed to professional journals; offered commentary on draft legislation; and made the Board's resources, such as publications, disclosure data, and CFB candidate software, widely available.

Among the international visitors to the Board have been representatives from Japan and New Zealand, various countries in Central and South America, and Australia. (After a visit to the Board's offices and subsequent communication by letter, the Tokyo Institute for Municipal Research published a 90-page book in Japanese entitled, "The Campaign Finance Program in New York City.")

One of the most gratifying events in the Board's ten-year history was the recent visit of South Africa's Chief

1988		1998
New York State lags far behind other jurisdictions in field of campaign finance reform.		New York City Campaign Finance Program is a national and international model for reform.
A Decade of Reform		

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Mandla Mchunu, South Africa's Chief Electoral Officer (center), with Fred Wertheimer, President of Democracy 21 (third from right), Trina Rand of the National Democratic Institute (at far right), and staff members of the Campaign Finance Board.

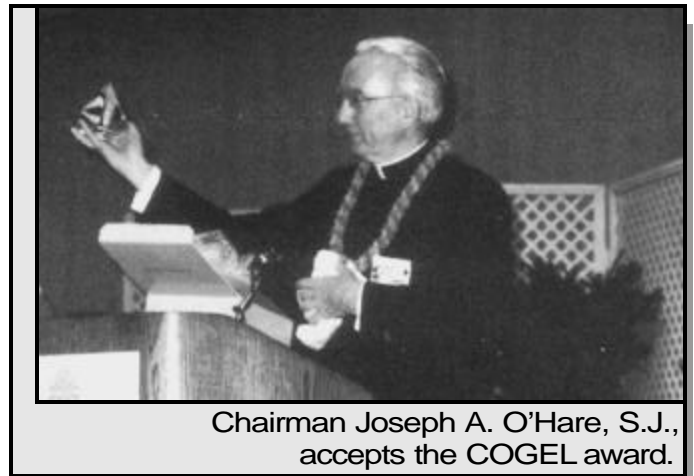
Electoral Officer, Mandla Mchunu. Accompanied by Fred Wertheimer, President of Democracy 21 and the former President of National Common Cause, Mr. Mchunu spent a full working day at the CFB's offices with staff from every department, in an effort to apply information about New York City's Program to a new public financing system to be put into place in South Africa, where this financing is now required under a new Constitution.

CFB staff are particularly pleased to make themselves available for new enterprises such as that in South Africa, as a large number of the agency's senior staff have been at the CFB since its inception and understand the challenges faced by a start-up operation.

The CFB also appreciates the efforts required in jurisdictions that are revisiting their established systems, as the City's experience has underscored the importance of continual revision of well-intentioned reforms that can be weakened over time. Thus, CFB staff responded in person and with written comments when the prestigious Commission on Standards in Public Life, appointed first by then-Prime Minister John Major and re-appointed by Prime Minister Tony Blair of Great Britain, solicited reaction to its preliminary studies of political party spending as it evaluates how campaigns are financed.

On a broader basis, particularly within the United States, CFB staff have been very active at the Council on Governmental Ethics Laws ("COGEL"), the umbrella organization for ethics and campaign finance agencies in the United States and Canada. Board Chairman Joseph A. O'Hare, S.J., was the recipient of COGEL's highest award in 1994, when he addressed the organization's annual membership conference on "The Education of a Board Chairman." Executive Director Nicole A. Gordon served as President of COGEL in 1996, and the CFB played an integral role in the 1996 annual COGEL conference in Philadelphia. Ken O'Brien, the CFB's Director of Systems, now serves in COGEL's effort, together with other experts in the computerization of campaign finance data, to develop an Electronic Data Interchange format as a national standard for computerized campaign finance information. Numerous CFB staff have attended and made presentations at annual COGEL conferences, on topics ranging from the challenges of producing multi-lingual voter materials to electronic disclosure to meaningful enforcement of campaign finance laws. Among other coalitions that have solicited Board representation at their conferences are the Chicago Civic League ("Dollars & Democracy: The Search for the Common Good") and the Iowa League of Women Voters ("More Sunlight for Iowa: A Bright Future for Campaign Disclosure").

On an individual basis, Board staff have worked with colleagues from New Jersey to Iowa to Texas to California. Indeed, staff from the CFB were sent to some of these states (at the other jurisdictions' expense) to work with them as they developed local programs. Many civic groups have also come to study the CFB's systems, including the Project on Government Oversight ("POGO"), which released a report on improving the federal disclosure system including an appendix entitled, "Lessons Learned from the New York City Campaign Finance Board."² Similarly, a report published by the Center for Responsive Politics entitled "Plugging in the Public: A Model for Campaign Finance Disclosure," featured New York City's disclosure system prominently.³ (See "Appendix L" to this report for a list of other groups.)



With respect to local efforts to institute campaign financing systems, Board staff have testified before the Westchester County Legislature and a Nassau Charter Revision Commission studying public financing of local campaigns. Board representatives have addressed many other commissions and agencies in other states, and have had a presence on the federal landscape as well. In the summer of 1997, the Board was invited to submit written testimony to Senator Fred Thompson's Senate Committee on Governmental Affairs, investigating allegations of federal campaign finance abuses in the 1996 elections.

Within New York City, both local law enforcement agencies and international conferences have sought out Board representatives to speak generally on corruption in government and more specifically on investigative techniques to uncover campaign finance irregularities.

Finally, the Board and staff are often invited to address diverse local audiences, from civic groups, local community boards, and senior citizens' groups, to high schools, undergraduate, and graduate schools (including Fordham Law School and the Columbia School of Journalism). In June of 1998, Chairman Joseph A. O'Hare, S.J., addressed the Board of New York City's distinguished Citizens Union. In February 1998, the CFB gave a demonstration of the Board's work to a visiting delegation of cadets from the United States Military Academy at West Point. Executive Director Nicole A. Gordon addressed the inaugural Trager Public Policy Symposium at Brooklyn Law School in March 1997, relating the experience of ten years of "life in the trenches."⁴ In this way, the Board participates in a public education process that alerts students of government and voting citizens to campaign finance reform issues.

Consultation is, of course, a two-way process. The CFB keeps abreast of developments in other jurisdictions to ascertain the "state-of-the-art," whether in terms of policy and experience or administrative developments. When the Board developed its position on mandatory debates as

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Executive Director Nicole Gordon greets a delegation of West Point cadets.

an aspect of a voluntary campaign finance system, for example, it not only performed legal research and collected information on existing government-sponsored debate programs, but it also held a “hearing” with the involvement of two government administrators having experience in this area: Fred Herrmann, Executive Director of the New Jersey Election Law Enforcement Commission; and Ben Bycel, then Executive Director of the Los Angeles City Ethics Commission.⁵

The CFB also works with other New York City agencies, such as the New York City Board of Elections. Without the assistance of the City BOE, the Voter Guide simply could not be published. In addition to providing computerized lists of New York City voters, information relevant to the Chinese editions of the Voter Guide, and ballot status information that allows the CFB to determine which candidates’ statements to include, the City BOE permits staff to leave candidate submission kits for petition filers to pick up during the days preceding the ballot petition submission deadline. Finally, the City BOE allows CFB staff to be present as ballot petitions are filed to ensure that all candidates submitting ballot petitions know of the Voter Guide. (See Chapter 8, “Voter Guide,” and Chapter 10, “Structure and Administration,” for more on the CFB’s outreach efforts.) The City BOE also assists the CFB on disclosure matters, including information on the filings of candidates who are not in the Program. Various other City agencies, including the New York City Law Department, the Department of Information Technology and Telecommunications, the Mayor’s Office of Immigrant Affairs and Language Services, and the City Publishing Center of the Department of Citywide Administrative Services, have assisted the Board.

Finally, cooperation with various law enforcement agencies has been of benefit both to the CFB and to the law enforcement community. The CFB’s work with these agencies, both state and federal, has led to indictments and convictions in a number of matters, most notably that of Ron Reale, former President of the Transit Police Benevolent Association. (See Chapter 9, “Compliance and Enforcement.”) Information provided in the context of regulatory agency and bar association evaluations has formed a basis for federal rulemaking and the issuance of studies on lawyers’ contributions to candidates.⁶

PROGRAMS

Over the years, the Campaign Finance Board has addressed public forums and presented educational programs, over and above its outreach efforts to educate and train potential candidates for public office. (See Chapter 10, “Structure and Administration.”)

Among the groups addressed by Board members and staff as speakers, panelists, or conference members have been the National Civic League, George Soros' Open Society Institute, and the Women's City Club of New York. On its own initiative, the Board sponsored a debate in April 1995 at the Columbia University School of Law between John Bonifaz of the National Voting Rights Institute and Ira Glasser of the American Civil Liberties Union called, "Democracy vs. Free Speech: Does Campaign Finance Reform Promote Either One?". The Board also sponsored a conference in February 1996, together with the New School for Social Research, entitled, "Whose Democracy Is It?", featuring panel discussions on the role of money in politics, party spending, ballot access, and possible solutions to vexing problems presented in these contexts.

In November 1998, the Board, with the Association of the Bar of the City of New York, will be co-sponsoring a program on local reforms that might be imported to the federal level, tentatively titled, "From the Ground Up: Local Lessons for National Reform." Unlike many discussions of the challenges of campaign finance schemes, this conference, to feature the major figures in the national discussion, will focus not on what could be done, but on reform programs already in place across the country, the practicality of reform, and the feasibility of bringing local lessons to bear at the federal level.

It is through public efforts such as these that the Board hopes to help increase the awareness of New Yorkers and others about issues related to the financing of election campaigns.

CONCLUSION

Ten years ago, when the Board was charged with building the New York City Campaign Finance Program from scratch, it took advantage of the resources available to it from around the country. A decade later, having developed a national (and international) reputation as a model for campaign finance reform and administration, the Board itself is called upon for assistance by jurisdictions that are not only geographically distant, but that operate in the context of different forms of government.

NOTES

- ¹ Mayor Rudolph Giuliani, press conference, January 6, 1994.
- ² *Re-Establishing Institutional Integrity at the FEC: Ten Common Sense Campaign Finance Disclosure Reforms*, Project on Government Oversight, March 5, 1998, Appendix A-1, "Lessons Learned from the New York City Campaign Finance Board."
- ³ Center for Responsive Politics, "Plugging in the Public: A Model for Campaign Finance Disclosure" (1996), at 14-15, 28-29, 34-35.

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- ⁴ The papers delivered at this symposium were subsequently published. *See* Gordon, “The New York City Model: Essentials for Effective Campaign Finance Regulation,” *6 Journal of Law and Policy* 79 (1997). For a list of other publications, *see* Appendix M to this report.
- ⁵ *See The Debate Debate*, at 16-17.
- ⁶ *See, e.g.*, Securities and Exchange Act Release No. 33868 (April 7, 1994) and *On the Road to Reform*, p. 27.

Chapter 12—Board Recommendations


Making a Good Law Better

The following recommendations are made on the basis of public hearings conducted by the Board; candidate surveys; formal and informal comments from candidates and their staffs, government reform advocates, and others; and the evaluation of data collected by the Board on the 1997 elections. Also taken into account is the general experience the Board has had in administering the Program in City elections held in 1989, 1991, 1993, 1997, and in various special elections to fill vacancies. Finally, the Board has relied on legal and factual research and information collected from other jurisdictions.

It is the Board's view that comprehensive change on a range of key points must be enacted to correct deficiencies that have become apparent over the years and to respond to changes in political practices and practical realities that diminish the effectiveness of the Act in its current form.

When this report went to press, the City Council was about to begin consideration of a comprehensive set of legislative proposals announced by Council Speaker Peter Vallone, Public Advocate Mark Green, and City Council Governmental Operations Committee Chair Mary Pinkett at the beginning of July 1998. A number of the proposed changes reflect a number of recommendations made by the Board, as detailed in this chapter. The announced proposals include:

- 1) Lowered contribution limits for all offices. Limits for citywide offices would be lowered from \$8,500 to \$5,000. Limits for Borough President would be lowered from \$6,500 to \$3,500. For City Council, they would be lowered from \$3,950 to \$2,500.
- 2) Increased public funds payments at a 4-for-1 matching rate up to \$250 for candidates who agree not to accept contributions from corporations.
- 3) Increased maximum public funds payment to City Council candidates.
- 4) Increased matching (at 5-for-1) and increased maximum public funds payment (up to 60 percent of the applicable spending limit) to participating candidates opposed by well-financed non-participating candidates.

1988		1998
New York State declines to pass legislation requested by New York City's Mayor that would provide for a public matching funds program to reform City elections.		New York City Council considers sweeping changes in its ten-year-old New York City Campaign Finance Act as a necessary step to ensure the continued effectiveness of pioneer reform Program.
A Decade of Reform		

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- 5) Registration with the Campaign Finance Board by political committees that make contributions to Program participants.
- 6) A change in the opt-in date to join the Campaign Finance Program from April 30th to June 1st in the election year.
- 7) Application of regulations (like those governing contributions to Campaign Finance Program participants) to transition and inaugural expenses of all candidates elected to municipal office, regardless whether they participated in the Program.
- 8) Regulation of advertisements that include elected officials paid for with government funds during the election period.

A. RECOMMENDATIONS FOR CHANGES IN THE PROGRAM

To improve the effectiveness of the Campaign Finance Program, the Board proposes that the Campaign Finance Act be amended as set forth below. Recommendations made by the Board in 1994 that have not yet been acted upon and that are reiterated below are noted with an asterisk (*). Recommendations that the Board believes would represent a significant simplification for candidates are noted by the symbol (S).

1. Reducing Undue Influence

(a) Contribution limits.* In determining the appropriate amount for contribution limits, the Board's objective has been to reduce the risk that large contributions could exercise undue influence, without unduly impairing participating candidates' ability to raise funds to wage competitive campaigns. High contribution limits were of concern to candidates as well as government watchdog groups at recent post-election public hearings. For example, Public Advocate Mark Green contrasted the 1997 contribution limit for the office of Mayor (\$7,700) with the \$2,000 federal limit on individual contributions to candidates and concluded that the Program's contribution limits are significantly too high.¹

Experience during the past four elections indicates that most contributions received by Program participants, especially at the City Council level, are well below the Act's current limits. On the other hand, however, contributions at the highest end account for nearly 40 percent of the total funds raised at the mayoral level. It is the Board's conclusion, therefore, that reducing the current contribution limits would serve to diminish the reality and perception of undue influence created by large contributions. At the same time, particularly when taken together with the increased matching rate proposed below, this would not have unreasonable adverse effects on participants' ability to wage competitive campaigns. The Board recommends lowering the contribution limits as follows:

Board Recommendations

<u>Office</u>	<u>Current Limit²</u>	<u>1997 Contribution Limit</u>	<u>Recommendation</u>
Citywide	\$8,500	\$7,700	\$5,000
Borough Pres.	\$6,500	\$5,900	\$3,500
City Council	\$3,950	\$3,550	\$2,000

Table 12.1 below illustrates the effects of the Board's proposed contribution limits, had they applied in the 1997 elections. It shows that only four percent of contributors to the 1997 mayoral race exceeded the proposed limit of \$5,000. These few contributors, however, accounted for 37.5 percent of the total money collected by mayoral candidates, a highly disproportionate share. A limit of \$5,000 on contributions to 1997 mayoral campaigns would have reduced real and apparent influence of this small number of contributors, while reducing the candidates' total fundraising by just 11.8 percent. This reduction would have been mitigated by the Board's proposed increase in the matching rate, discussed below. The Board recommends that the contribution limit for candidates making contributions and loans to their own campaigns be three times the limit proposed by the Board for other contributors.

(b) Matching Rate. As public funds are perceived as a "cleaner" source than private contributions for financing campaigns, the Board recommends changing the contribution matching rate from the current 1-for-1 rate up to \$1,000 to a 3-for-1 rate up to \$250. The amount of any contribution over \$250 would not be matched. Were these changes to go into effect, the new matching rate together with anticipated changes in fund-raising strategies would in all likelihood entirely offset losses caused by the lower contribution limits, while furthering the

**TABLE 12.1
PROJECTED EFFECT OF PROPOSED
CONTRIBUTION LIMITS AS APPLIED TO 1997 ELECTION DATA**

Office	Contributors Exceeding Proposed Limit		Total Amount Contributed by Contributors Exceeding Proposed Limit		Amount by Which Contributions Exceed the Proposed Limit	
	Number	Percent	Amount	Percent*	Amount	Percent*
Mayor	763	4.0%	\$5,565,568	37.5%	\$1,750,568	11.8%
Public Advocate	65	1.1%	471,562	23.4%	146,562	7.3%
Comptroller	69	3.3%	497,951	25.4%	152,951	7.8%
Borough President	280	2.2%	1,512,661	29.5%	532,661	10.4%
City Council	187	0.6%	616,414	11.3%	242,414	4.4%

*Percentage of all contributions.
Source: NYC Campaign Finance Board data

TABLE 12.2
NET CHANGE IN 1997 CAMPAIGN FUNDS IF
RECOMMENDATIONS HAD BEEN IN EFFECT

Office	Net Change in Total Contributions if Proposed Contribution Limits were in Effect	Net Change in Individual Contributions if Proposed Contribution Limits were in Effect	Net Change if Proposed 3:1 Matching Rate were in Effect*
Mayor	-\$1,750,568	-\$1,236,473	+\$1,068,955
Public Advocate	-146,562	-119,342	+286,817
Comptroller	-152,951	-94,301	+127,161
Borough President	-532,661	-192,852	+775,937
City Council	-242,414	-79,381	+1,670,414

*Based on actual public funds paid, not including payments made at the 2-to-1 bonus matching rate and payments made for run-off primary elections. Projected increase factors in proposed increased maximum per election public funds payments, as described in subsection 2, "Public Funds."

Source: NYC Campaign Finance Board data

Program's goal of "democratizing" fundraising by providing financial incentives for candidates to collect smaller contributions from City residents.³ (See Table 12.2.)

Proposing an increased matching rate for smaller contributions, mayoral candidate Ruth Messinger stated, "...it is the single most powerful step the Board could take to de-emphasize the impact of big money on campaigns."⁴ This change would also help ameliorate the disparity shown in last year's mayoral race, in which more than a quarter of all funds raised originated outside the City and more than half were raised in Manhattan. Individuals living in the Bronx, Brooklyn, Queens, and Staten Island combined accounted for less than 15 percent of the funds raised during the 1997 election cycle.

Figure 12.1 illustrates the preponderance of contributions coming from Manhattan, as well as the fact that in the outer boroughs small contributions play a comparatively larger role. The Board's proposed matching rate of 3-for-1 up to \$250 could boost the role of smaller contributions from Brooklyn, Queens, the Bronx, and Staten Island.

(c) Organizational Contribution Restrictions.⁵ In the first general election mayoral debate in 1997, Mayor Giuliani proposed, as a solution to campaigns' confusion about affiliated corporations and partnerships, that corporate contributions be banned altogether.⁵ Earlier this year, the City Council Speaker, Peter Vallone, the Public Advocate, Mark Green, and several other Council members introduced legislation (Int. No. 92) to prohibit candidates in the Program from accepting contributions from corporations. The Board believes that such a corporate ban, unless modified, is inadvisable.

If contributions from corporations are simply banned, the role of bundling and political action committees may increase. It would be a step backward for the Program if the Board lost the ability to track the actual source of contributions as PACs replace corporations, and it is therefore imperative that a mechanism be provided to allow for better public scrutiny of any new potential situations for undue influence. In addition, a corporate ban must be coupled with a ban on contributions by partnerships and labor unions, both for reasons of fairness and to enhance the goal of simplification.

If a corporate contribution ban is pursued, the Board urges that it be extended to prohibit participating candidates from accepting contributions from all organizations, other than political committees that register and file disclosure reports with the Campaign Finance Board. This change would put the City Act on a par with federal law in this area. Moreover, it would go further in reducing the need to invoke contributor affiliation rules, although it will by no means entirely obviate the need for tracking relationships among contributors. The filing requirement would make available to the public, for the first time, state-of-the-art computerized disclosure about the underlying sources of political committee giving in New York City.

Although the reduced contribution limit and the organizational contribution restriction would have a negative effect on candidates' fundraising, the increased matching rate would have ameliorated candidates' losses had these changes been in effect in the 1997 election cycle. (See Tables 12.2 and 12.3.) Of course, as noted above, if these changes are adopted, it is to be expected that campaigns will adapt with new fundraising strategies that will close the gap entirely.

2. Public Funds

(a) Increased Maximum Public Funds for Council Candidates.* Under current law, the maximum amount of public funds City Council candidates can receive is significantly lower than half the spending limit (the level at which the maximum is set for the other offices). The Board recommends that the current \$40,000 maximum available in public funds for Council candidates be increased to \$70,000. During the 1997 elec-

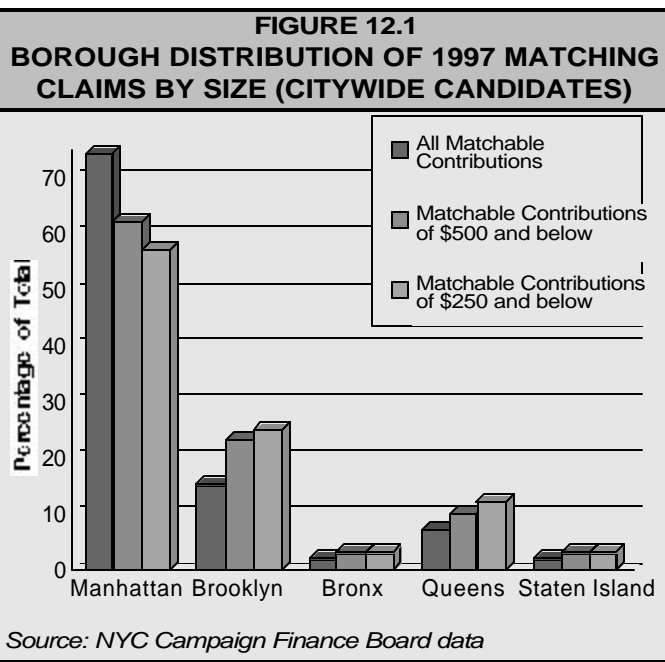


TABLE 12.3
NET CHANGE IN 1997 CAMPAIGN FUNDS IF PROPOSED BAN ON ORGANIZATIONAL CONTRIBUTIONS HAD BEEN IN EFFECT

Office	Net Change
Mayor	-\$4,543,294
Public Advocate	-578,707
Comptroller	-735,617
Borough President	-2,144,472
City Council	-1,549,979

Source: NYC Campaign Finance Board data

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tions, seven candidates, all running for City Council, received the maximum public funds payable in either the primary or general election. Had the proposed 3-for-1 matching rate up to \$250 been in effect, 38 candidates would have received the \$40,000 maximum public funds in at least one election. Under the proposed higher matching rate and the higher public funds maximum, 16 candidates would have received the maximum payment of \$70,000 in at least one election.

(b) Public Funds Cap for Small Primaries. The Board recommends that public funds payments be capped at \$10,000 for a participating candidate in a primary election in which the total number of eligible voters is under 1,000 (unless the candidate is in another primary in which the number of eligible voters is 1,000 or greater). This proposal is intended to protect the Public Fund when the number of voters to whom a candidate must appeal is very limited. There were nine such primary elections in 1997. During the 1997 elections, one candidate received more than \$10,000 in public funds for running in a small primary. John Sollazzo ran on the Independence Party line in the 50th Council district. The total number of votes cast in this primary for the two candidates who ran was 22. Sollazzo received \$19,409 in public funds for the primary, a payment that was highly disproportionate given the number of voters eligible in this primary. For the general election, as the Democratic and Independence nominee, Sollazzo received an additional \$5,213 in public funds. Because he qualified to receive public funds in the general election as well and did not receive the maximum payment for a single election, Sollazzo did not in this case receive additional public funds by reason of his participation in the minor party primary.

3. Protection for Participating Candidates Opposed by Well-Financed Non-Participants

(a) Increased Rewards.* The Board recommends increasing the current accelerated public funds payments for participating candidates opposed by non-participating candidates who raise or spend more than one-half of the spending limit (or more than \$30,000 in the case of candidates for City Council) from the current 2-for-1 to a 4-for-1 matching rate for each one dollar of matchable contributions. The maximum public funds payable in a “bonus” situation would be capped in each election as follows:

<u>Office</u>	<u>Recommended Maximum Public Funds Per Election in “Bonus” Situation</u>
Mayor	\$4,500,000
Public Advocate & Comptroller	1,875,000
Borough President	937,500
City Council	70,000

In 1997, 11 participants in the Campaign Finance Program received “bonus” matching payments at a rate of 2-for-1. These 11 candidates, including two for Borough President and nine City Council candidates, received a total of \$648,139 in public funds. Under the proposed 3-for-1 matching rate together with a 4-for-1 bonus matching rate and the proposed increase in the public funds maximum for City Council candidates, this total figure would have nearly doubled.

(b) Addressing Extraordinary Spending by Non-Participants.* Evidence indicates that in situations in which non-participant spending reaches extremely high levels, the bonus for participants currently available has not offset the extremely lopsided financial advantage enjoyed by candidates with seemingly unlimited private resources. While money is not the sole determinant of the outcome of elections, gross disparities in spending can influence the results of races as well as feed public perceptions of unfairness. Thus, the Board recommends an additional bonus mechanism, whereby extraordinary fundraising or spending by a non-participant above a higher trigger would entitle participants to receive additional funds.

This trigger would be equal to three times the regular maximum public funds payment in an election. When a non-participant raises or spends more than this higher trigger, opposing participants would become eligible to receive matching funds at a 5-for-1 payment rate for contributions up to \$250, up to a total amount that is two times the maximum public funds payment.

<u>Office</u>	<u>If a non-participant raises or spends more than...</u>	<u>...participants become eligible to receive matching funds at a 5-for-1 rate, up to:</u>
Mayor	\$9,000,000	\$6,000,000
Public Advocate & Comptroller	3,750,000	2,500,000
Borough President	1,875,000	1,250,000
City Council	210,000	140,000

During the 1997 election cycle, four non-participants raised or spent more than these limits: Abraham Hirschfeld for Borough President, and Noach Dear, Andrew Eristoff, and Walter McCaffrey for City Council. Under the proposed extra bonus scenario, these candidates’ opponents, C. Virginia Fields, Sandy Abby Aboulafia, and Eva Moskowitz respectively, would have received higher public funds payments at a rate of 5-for-1.⁶

4. Threshold: the Minimum Dollar Amount*S

The Board recommends setting the threshold dollar amounts at the following levels:

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<u>Office</u>	<u>Current</u>	<u>Recommendation</u>
Mayor:	\$250,000	\$150,000
Public Advocate and Comptroller:	\$125,000	\$100,000
Borough President:	\$10,000-46,013 ⁷	\$30,000
City Council:	\$5,000	\$3,000

Lower thresholds would make public funds available to more candidates, and earlier in the race. Had this change been in effect in 1997, the Albanese mayoral campaign would have received its public funds earlier, and the Polonetsky Public Advocate campaign might have received public funds before the election. In addition to modifying the threshold dollar amounts for each office, the Board proposes two revisions in the public funds threshold. First, alter the current district residency component to require Council candidates to raise contributions from 50 individual contributors in the borough(s) in which they are running, rather than in the Council district. This will enable City Council candidates to appeal to a wider audience for threshold contributions, while retaining the requirement that they demonstrate sufficient local support. Second, eliminate the \$10 requirement for the dollar amount component of the threshold, while retaining it for the resident number component.

5. Spending

(a) Consolidate Separate Calendar Year Spending Limits.*^S Currently, the Campaign Finance Act and the Board Rules establish the spending limits shown in Table 12.4.

TABLE 12.4
SPENDING LIMITS CURRENTLY ESTABLISHED
BY CAMPAIGN FINANCE ACT AND BOARD RULES

Limits	Mayor	Public Advocate & 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
<u>Primary Election†</u>	<u>\$5,231,000</u>	<u>\$3,270,000</u>	<u>\$1,177,000</u>	<u>\$137,000</u>
Total Primary Limit‡	\$5,501,000	\$3,540,000	\$1,357,000	\$201,000
General Election‡	\$5,231,000	\$3,270,000	\$1,177,000	\$137,000

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

†These limits have been adjusted since 1997 to reflect changes in the Consumer Price Index.

‡If a primary election expenditure limit is not applicable, the amounts set forth in this row apply for the general election instead.

Source: NYC Campaign Finance Board data

The Board recommends simplifying the spending limits by consolidating the various calendar-year expenditure limits into two limits, one for the primary election and one for the general election. The two spending limits would cover the entire four-year election cycle: the primary election spending limit would cover the period beginning with the first year of the election cycle through the primary election, after which the general election spending limit would apply.⁸ The primary election limit would apply to spending during the primary campaign period by each candidate who joins the Program, even if there is no primary election in any party for the office he or she seeks. This change would simplify the Program and would put incumbents and challengers on a more equal footing with respect to spending limits. The amounts proposed for the consolidated limits are set forth below at (c).

(b) Exempt Expenditures.*^S Exempt expenditure claims for compliance costs are hard to verify and subject to abuse. Variations across offices and between campaigns make it difficult to establish what constitutes “reasonable” exempt spending, as opposed to false and inflated claims in violation of the Act. The Board therefore recommends eliminating all categories of exempt expenditures, other than expenditures for elections not covered by the Act and for specified legal fees. The recommended spending limits, set forth below at (c), are intended to account for the elimination of most exempt expenditure categories.

(c) Spending Limits.* The Board found that candidates for the offices of Public Advocate and Comptroller spent substantially less than their expenditure limits would have allowed for the 1993 and 1997 elections. In contrast, the spending of several candidates for the offices of Mayor and City Council member came very close to the limits. Therefore, taking into consideration changes in the Consumer Price Index, consolidation of limits, and the elimination of most exempt expenditure categories, the Board recommends the following expenditure limits:

<u>Office</u>	<u>Recommended Limits per election</u>
Mayor	\$6,000,000
Public Advocate & Comptroller	2,500,000
Borough President	1,250,000
City Council	225,000 ⁹

6. Deadline for Joining the Program*^S

Largely because of the contemporaneous disclosure legislation adopted by the Council in 1994, it is now administratively feasible to extend the deadline for joining the Program. Thus, the Board recommends that it be permitted to adopt rules to extend the legal deadline for joining the Program. This change would not permit the Board to set a deadline that is earlier than the cur-

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rent April 30th deadline in the election year. Rather, it would permit the Board to make the opt-in deadline later, as it becomes administratively feasible to do so, in order to avoid excluding serious candidates from the Program.

The Board also recommends that it be authorized to provide for alternative deadlines, in which case the Board would make later initial public funds payments to candidates who do not join until the later deadline. This change would give the Board additional 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. The recommended deadline for filing a certification for a special election to fill a vacancy should be on the seventh day after the proclamation of the special election.¹⁰ In an “extraordinary circumstance” (the death of a candidate in the election, the resignation or removal of the person holding the office sought, and the submission to the Board of a written declaration by an officeholder that terminates his or her campaign for re-election), the Board recommends that candidates be permitted to join the Program upon prompt application to the Board (*i.e.*, within seven days of the precipitating circumstance).

This proposal would encourage greater participation and correct anomalies that have prevented candidates from joining when they ought to have been permitted to do so. For example, newly-elected Council member Stephen Fiala was unable to join the Program in 1997 because former Congresswoman Susan Molinari’s decision to resign from Congress and former Council member Vito Fossella’s decision to run for her seat did not occur until after April 30th. Mr. Fiala brought legal action against the Board, advocating that the deadline be extended. “Candidates who enter the race after April 30th, like myself, are excluded from the Program,” Fiala said. “The current deadline does not have a rational relationship to any other deadline in the election calendar.”¹¹ Designating petitions are first circulated in June and are not filed with the City BOE until July.

Attention to this issue is especially critical given the relationship between the Debate Law and the opt-in deadline. Last year the Republican candidate for Comptroller was excluded from the Program and the first general election debate because she entered the race after April 30th. Of great significance is that a later deadline will help forestall the kind of debilitating lawsuit the Board and the debate sponsors faced last year when a mayoral candidate who failed to meet the April 30th deadline, which required his exclusion from the primary election debates, sought to enjoin the debate at the last moment.

Annemarie McAvoy testified at the Board’s public hearings:

I was the Republican candidate for Comptroller....I came into the race late, and I think that a problem the Campaign Finance Board has is that people who come

into a race late are penalized, and that, I don't think, is what the intent...is.... A major problem...was that I wasn't able to participate in the first debate....

—Annemarie McAvoy¹²

The Act currently sets a later opt-in date for candidates named solely in an independent petition or certificate of substitution. Although only a few candidates have availed themselves of this opportunity, these candidates theoretically have the strategic advantage of “surveying the field” to see whether their opponents have joined the Program before they have to decide whether to join themselves. These candidates may be more inclined to do so now that there are mandatory debates. During the 1997 elections, for example, three Socialist Workers Party candidates joined the Program, taking advantage of the later opt-in deadline for independent candidates (in August). These three candidates, one for each of the citywide offices, took part in the debates, but none filed itemized financial disclosure information with the Board or applied for matching funds for their campaigns. In contrast, no Socialist Workers party candidate had ever opted in to the Program before. The Board believes a fairer approach would be to subject all prospective candidates to the same deadlines, regardless of the manner in which they seek nomination or election, with the narrow exceptions discussed above.

7. Disclosure

(a) Intermediaries.* The Board recommends changing the current definition of “intermediary” to include not only individuals or entities who deliver contributions to a candidate, but also those known to have successfully solicited contributions for the candidate, excluding professional fundraisers and campaign staff workers.

(b) Contemporaneous Disclosure.^S Prospective candidates for citywide office and Borough President now file disclosure statements before they join the Program in order to preserve matching claims for 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 is not linked to preserving matching claims. The Board also recommends that supporting documentation for matchable contributions claims be required to be submitted to the Board together with these disclosure statements.

(c) Electronic Filing.^S The Board recommends that most campaigns in the Program be required to file their financial disclosure statements on computer disk, just as a new State law now requires for all statewide and State legislature candidates beginning in 1999. Sixty-seven campaigns made electronic filings with the Board for the 1997 elections, accounting for nearly three-quarters of all financial transactions entered into the Board's computer database. Electronic filings have saved the Board tens of thousands of dollars in data entry costs, helped expedite review of more accurate

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public matching funds claims, and improved the ability of campaigns to monitor their own compliance. Board rules would provide an exception for small campaigns not using a computer.

(d) Registration and Disclosure by Political Committees. As part of its recommendation to prohibit contributions from organizations, the Board recommends that an exception be made for contributions from political committees that register and file disclosure statements with the Board.

(e) Separate Committee for Covered Elections.*^S In order to reduce the possibility that contributions in excess of the Act's limits will be used illegally, the Board recommends that participating candidates establish separate committees for elections covered by the Program's requirements. Furthermore, to simplify and clarify public disclosure, the Board recommends that participants be permitted to authorize only one committee for primary and general elections covered by the Program and held in the same calendar year.¹³ The Board also recommends prohibiting participating committees from accepting transfers (except for a one-time transfer from a committee the participating candidate previously authorized for the same election). The amount of any transfers would be relevant in determining whether a candidate may defer filing disclosure statements because of minimal financial activity.

8. Run-off Primary Elections

The Board recommends changing the current provisions for contribution and spending limits, and public funds payments in run-off primary elections and certain other elections. Specifically, the Board recommends that the increase in the contribution limits for these elections be repealed and that the limit on expenditures be reduced from one-half to one-tenth of the amount of the expenditure limitation applicable in the previous election. Every participating candidate on the ballot in these elections should be eligible to receive in public funds an amount equal to one half of the amount of the proposed expenditure limitation. This would override the current payment of 25 cents for each public fund dollar paid in the previous election. This change would provide an equal amount of public funds to each participating candidate in a run-off election and set spending limits at a more appropriate level for a two-week campaign period.

	<u>1997 Run-off Expenditure Limit</u>	<u>Proposed Expenditure Limit</u>
Mayor	\$2,366,000	\$600,000
Public Advocate & Comptroller	\$1,479,000	\$250,000

9. Appointments to the Board

To promote the smooth functioning of the Board in administering the Program in an election year, the Board recommends that appointments to the Board made after April 1st in an election year not take effect before the following December 1st, when the new appointee would succeed a member who is holding over after the expiration of his or her term. This would protect against the possible appearance that an appointment immediately preceding an election was intended to influence Board decisions, and it provides a mechanism for ensuring continuity at the Board's busiest period.

10. Transition and Inaugural Expenses*

Successful candidates for City office have, in recent years, undertaken activities for purposes of commencing their term of office. These "transition" and "inaugural" activities have included the hiring of government officials, inaugural parties, and retention of public relations professionals. The financing of these activities is not regulated either by State law or by the Campaign Finance Program. Although Board rules now provide for voluntary disclosure by entities raising and spending funds for transition and inaugural activities, the Board did not receive any financial filings from such entities for 1997-1998.

The lack of regulation of transition and inaugural activities increases the likelihood and the appearance that wealthy special interests will have undue influence over New York City's elected officials. In enacting the Campaign Finance Act, the City Council recognized that both the possibility of privilege and favoritism and the appearance of impropriety harm the effective functioning of government. The Board recommends that a local law be enacted regulating the private financing of transition and inaugural activities which would:

- Require that candidates register with the Board a separate entity for financing the cost of transition and inauguration (candidates could not register a political committee as a transition or inauguration entity);
- Require disclosure of contributions and spending;
- Establish contribution limits;
- Ban acceptance of donations by organizations, except for donations by political committees that register and file disclosure statements with the Board;
- Treat loans that are not repaid by the inauguration date as donations; and
- Require transition and inauguration entities to file disclosure statements with the Board.

The Board further recommends that the proposed local law apply to every candidate elected to the office of Mayor, Public Advocate, Comptroller, Borough President, or City Council member, regardless whether the candidate participated in the Campaign Finance Program during the preceding election.

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11. Use of Government Resources by Elected Officials During the Election Year

During the 1997 elections, the Messinger campaign filed a complaint against the Giuliani campaign alleging that a government-financed radio advertisement had the effect of a political advertisement for the incumbent Mayor and therefore constituted an in-kind contribution to and an expenditure by Friends of Rudy Giuliani. The Board dismissed the complaint for lack of jurisdiction, noting, consistent with its previous rulings:

The Board has recognized that the use of governmental resources by elected officials during the months preceding an election poses a complex and important issue that should be addressed by legislation. Indeed, the Board sought and received testimony on this issue at its public hearings after the 1989, 1991, and 1993 elections and has repeatedly stated its support for appropriate reforms, such as a ban on the use of public resources and employees' on-the-job time for campaign activities and a black-out period for officeholder mass mailings and other communications at public expense preceding an election.¹⁴

(For a fuller description of the Determination, see Chapter 9, "Compliance and Enforcement.")

Shortly after the Board's Determination was issued, Council Speaker Peter Vallone and Council member Sal Albanese introduced legislation to prohibit officers and employees of the City who are candidates for an elective office from appearing in the year of an election in television, radio, or printed advertisements on behalf of the City of New York that are funded with government resources. The bill would not prohibit "ordinary communications" between officers and employees of the City and the public, or between elected officials and their constituencies, except for a period of 30 days prior to a primary or general election.

The Board recommends changes in this proposed legislation, including:

- Commencement of the ban on mass mailings by elected officials 60 days before a primary election; and
- Provision for express jurisdiction with the City Conflicts of Interest Board to determine violations and separate jurisdiction with the Campaign Finance Board to determine whether the funding of the communication constitutes a contribution or expenditure under the Act. To foster efficient enforcement, the Campaign Finance Board would first consult with the Conflicts of Interest Board before proceeding in these cases.

12. Other Board Recommendations¹⁵

Following a recommendation made in the Board's report on the 1989 elections, the Board recommends that candidates be permitted to appear at campaign events (sponsored by entities not affiliated with the candidate) without having the cost of the event deemed an in-kind contribution to the candidate. This recommendation would not apply to events at which funds are solicited for the candidate.

The Board recommends changing the deadline for repaying unspent campaign funds (up to the amount of public funds received) from June 30th in the year after the election to either the closing date for the final disclosure statement or the day the final audit report is issued, as would be set forth in Board rules.

A candidate disqualified from the ballot should be permitted to use public funds previously received to pay off previous campaign expenses. This clarification would resolve a conflict between two sections of the Act.

Following the recommendations proposed for narrowing exemptions from spending limits, the Act should be amended to specify “legal fees” as the subject of the current prohibition against using public funds to challenge or defend ballot petition challenges. The Board recommends restoring language on this prohibition that was mistakenly omitted from a 1990 amendment.

The Act should be amended to include a codification of a 1994 Corporation Counsel opinion on the appropriate base year for determining changes in the Consumer Price Index for the quadrennial adjustment of the Act’s contribution and spending limits.

B. STATE INITIATIVES

1. Disclosure*

(a) Proposed Legislation. The Board recommends amending State law so that all candidates for the offices of Mayor, Public Advocate, Comptroller, Borough President, and City Council member, regardless whether they join the Program, would be required to submit to the CFB the same 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 are 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 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 (A.4318-B/S.3312-C) has been introduced in the Assembly by Assemblyman Eric N. Vitaliano and in the Senate by Senators Roy M. Goodman, Frank Padavan, and John J. Marchi. It has been approved by the full Assembly in previous sessions, but has never been voted out of committee in the Senate.

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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 State-wide offices and for the State Legislature, beginning in 1999. 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 ten-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.

(b) Compatibility of State and City Electronic Filing Systems. Currently the State BOE is in the process of developing its newly mandated electronic filing system. The Board strongly recommends that the new State BOE system be designed to accept disks generated by the CFB’s C-SMART® candidate filing software and alternate formats meeting the CFB’s specifications, so that candidates from New York City will not potentially be faced with incompatible electronic filing requirements. In March, the City Council unanimously passed a resolution in support of systems compatibility. The technical staffs of the CFB and the State BOE have agreed upon a schedule by which the State BOE will make adjustments to the system it is developing so that the system can accept C-SMART® filings. (See also Chapter 6, “Disclosure and Automation.”) The Board also recommends that candidates be permitted to file CFB disclosure forms with the City BOE in lieu of corresponding State BOE forms.

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 proposed bill 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. In no other jurisdiction are publicly financed candidates subject to lower contribution limits than their non-publicly-financed opponents. This bill (A.3945-B/S.442-A) has been introduced by Assemblyman Vitaliano and Senator Goodman. It has been approved by the full Assembly in previous sessions, but has never been voted out of committee in the Senate.

3. Other Issues

The Board also supports changes in State law to:

City Council Resolution No. 133

Whereas, The City Council adopted the landmark New York City Campaign Finance Act in 1988, providing for a computerized database accessible to the public that would contain the detailed campaign finance information filed by participating candidates; and

Whereas, The New York City Campaign Finance Board has successfully developed and maintained this computerized database, has provided free software to enable campaigns to make electronic filings, has established a public terminal to facilitate review of information disclosed by campaigns, and will soon place campaign finance data on the Internet in a searchable format; and

Whereas, The Campaign Finance Board's comprehensive system of computerized disclosure and electronic filing is the product of extensive investment, testing, and refinement over the course of a decade of City elections, during which time it has earned New York City a national reputation in the field of computerized campaign finance disclosure and served as a model for other jurisdictions; and

Whereas, The State Board of Elections administers campaign finance disclosure requirements, for which it has adopted paper forms that are largely modeled on the forms devised by the Campaign Finance Board for computerized disclosure in New York City; and

Whereas, Campaigns in the New York City Campaign Finance Program must use State Board of Elections forms for filings required at the Board of Elections in the City of New York because the State Board of Elections does not currently permit the filing of corresponding Campaign Finance Board forms in lieu of its forms, and thus campaigns meeting the more extensive City disclosure requirements must consequently file two different sets of forms with two different agencies; and

Whereas, Pursuant to Chapter 430 of the Laws of 1997, the State Board of Elections is required to develop an electronic reporting system for candidates for State office to be put into effect beginning in 1999; and

Whereas, Political Committees required to make electronic filings with the Campaign Finance Board or the Board of Elections, or both, should not be faced with incompatible filing specifications that increase their record keeping and filing burdens, and any new software specifications issued by the State Board of Elections should be flexible enough to enable campaigns to use one filing software to make any and all required electronic filings at both the State and City levels; and

Whereas, Software used by campaigns filing with the Campaign Finance Board may be adapted for filings suitable for the State and City Boards of Elections; and

Whereas, Ultimately, a single integrated computer network of campaign finance information filed by candidates throughout New York State would facilitate the enforcement of Election Law requirements and would greatly improve the public's access to information about the financing of political campaigns; and

Whereas, It would be inefficient and wasteful of taxpayer dollars to create a new State electronic filing system that does not build on the ten-year foundation established by New York City's comprehensive computerized campaign finance disclosure system, now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Board of Elections: (1) to coordinate with the New York City Campaign Finance Board to ensure that the filing specifications of the new State system will be fully compatible with the filing specifications of the existing City system, such that campaigns will need to use only one kind of software to meet all applicable electronic filing requirements, and (2) to permit campaigns for the New York City offices of Mayor, Public Advocate, Comptroller, Borough President, and City Council to file Campaign Finance Board disclosure forms with the Board of Elections in the City of New York, in lieu of corresponding State Board of Elections forms.

Adopted by the City Council
unanimously, March 18, 1998

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- 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;¹⁶
- 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
- Place Board employees in the unclassified civil service, as are Board of Elections employees.

C. ISSUES UNDER CONSIDERATION

In the coming months, the Campaign Finance Board will make additional recommendations for improving the Debate Law. A recent U.S. Supreme Court decision held that a “debate was a nonpublic forum, from which [a state-owned public television station] could exclude [a candidate on the ballot] in the reasonable, viewpoint-neutral exercise of its journalistic discretion.”¹⁷ This decision may allow for amendments to modify the Debate Law’s candidate inclusion provisions and thus to address some issues that arose in last year’s debates. (For a description of the Debate Law and the Board’s experience in administering debates, see Chapter 7, “Debates ’97.”)

In addition to the legislative changes outlined in this chapter that would simplify the law and facilitate compliance with Program requirements, the Board will also consider proposing changes to streamline its procedures and further reduce technicalities, including reducing requirements for small campaigns and addressing how participants can be assisted in paying off debt after the election before final payment of public funds.

The Board will also closely monitor trends in this current (2001) election cycle, given the advent of term limits, to see whether further changes in CFB rules, or legislative proposals, may be appropriate.

CONCLUSION

The New York City Campaign Finance Act is an excellent starting point, but for a campaign finance reform law to continue to be effective it must be periodically updated and revised to reflect changing circumstances. The Board’s recommendations at the local level would, among other things, decrease the influence of campaign contributions, make it easier for candidates to qualify for and receive public funds, ban organizational contributions, improve electronic disclosure, limit the use of government resources by incumbents during the election season, and regulate candidate transitional and inaugural activities. At press time, it appeared that the City Council would be acting on many, but not all, of the Board’s proposals.

The Board’s proposed State legislation would apply Campaign Finance Program reporting requirements and contribution limits to all candidates for the municipal offices covered by the Program. Its recommendations would also ensure that the State BOE develops its new computerized campaign finance reporting system so that it is compatible with the CFB’s proven and

established system, consistent with a unanimous City Council resolution. At press time, it appeared that State legislation was not imminent, but that the State BOE in the meantime would be working with CFB staff on the matter of compatible filings.

The Board urges the appropriate legislatures to act on its recommendations now, at the beginning of the 2001 election cycle, to ensure that all prospective candidates are on the same footing as early as possible and to give the voters of New York City the full benefits of the changes recommended by the Board.

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

Martin S. Begun
Bill Green

NOTES

- ¹ *Campaign Finance Board 1997 Hearings*, vol. I, at 126 (testimony of Mark Green).
- ² Pursuant to the Act, these limits, applicable to the elections in 2001, were increased in February 1998 to reflect changes in the Consumer Price Index.
- ³ In special elections, contributions would be matchable at a 3-for-1 rate up to \$125.
- ⁴ *Campaign Finance Board 1997 Hearings*, vol. I, at 99 (testimony of Ruth Messinger).
- ⁵ Rudolph Giuliani, First General Election Debate for Mayor, October 9, 1997.
- ⁶ Fields received \$91,497 in the general election at the 2-for-1 rate; at 5-for-1 she would have received \$187,975. Moskowitz received \$40,000 in the general election at the 2-for-1 rate; at 5-for-1 she would have received the proposed maximum of \$140,000. Aboulafia received \$29,642 in the primary at the 2-for-1 rate; at 5-for-1 she would have received \$63,755. Walter McCaffrey was unopposed in the primary and general elections.
- ⁷ Set according to borough population in the last census.
- ⁸ A separate spending limit would apply to candidates in a special election to fill a vacancy.
- ⁹ Although candidates in the typical Council race rarely spend at this level, this single limit must accommodate 51 districts with varying characteristics, including circumstances in some districts that precipitate high spending.
- ¹⁰ For primary and general elections held to fill a vacancy following a special election, the opt-in deadline would be no earlier than 30 days after the special election, rather than the extremely short seven-day period currently provided.
- ¹¹ *Campaign Finance Board 1997 Hearings*, vol. II, at 88 (testimony of Stephen Fiala).

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¹² *Ibid.*, at 75 (testimony of Annemarie McAvoy).

¹³ A separate committee would be required for a special election to fill a vacancy.

¹⁴ Board Determination No. 1997-1.

¹⁵ In addition to the foregoing recommendations, the Board recommends that the following technical amendments be made to the Act to implement the changes fully: adding a new term “participating committee” to replace the term “principal committee” throughout the Act; prohibiting the use of public funds for making transfers; and deleting the requirement that a participating candidate’s authorized committees all have the same treasurer. Additional technical amendments are recommended in the Board’s proposed omnibus bill, submitted to the Mayor and the City Council on February 25, 1998.

¹⁶ *See Party Favors*.

¹⁷ *Arkansas Educational Television Commission v. Forbes*, ___ U.S. ___ (1998).

