

New Yorkers Make Their Voices Heard

A Report on the 2009 Elections



NEW YORK CITY CAMPAIGN FINANCE BOARD



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A Report on the 2009 Elections



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FOREWORD



Father Joseph P. Parkes, S.J.
Chairman of the
NYC Campaign Finance Board

The 2009 election year marked the twentieth anniversary of the first election held under the Campaign Finance Program. In that 1989 election, a three-term incumbent mayor failed to win re-election, as New York City voters elected the first African American mayor in the city's history. New Yorkers immediately saw the possibilities of politics under this new system — large contributions and special interest money were no longer the most important factors in city elections, and the value of grassroots support from average New Yorkers was magnified.

Five citywide elections have been held in the years since. The 2009 election season was no less remarkable, for many reasons.

With two-term incumbents able to run for re-election, many believed the 2009 elections would provide little drama, that incumbents would coast straight through Election Day towards their third terms. Quite the contrary, spirited challenges ensured that incumbents of every stripe were forced to engage their constituents and make their case to the voters. On Election Day, New Yorkers made their voices heard. The incumbent mayor, who opted to run outside the Program and spend more than \$100 million on his campaign, was re-elected by only a slim margin, surprising the pundits and pollsters. Five upstart challengers, each of whom participated

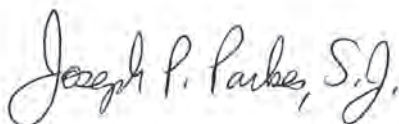
in the Program, defeated incumbent opponents in City Council elections — an unprecedented level of success for insurgents on the Council. The slate of officials elected in 2009 was the most diverse in city history.

The results made it clear that access to large contributions or personal wealth provides no guarantee of success. Instead, candidates who made an effort to concentrate their fundraising efforts towards average New Yorkers were rewarded. Legislation enacted before the election helped increase the value of small contributions in two significant ways. First, so-called “pay-to-play” contributions from people doing business with city government were made subject to new, low limits, eliminating a ready source of large, influence-seeking contributions. Second, the rate at which New Yorkers’ small contributions are matched with public funds was increased, from \$4-to-\$1 to \$6-to-\$1, providing an even greater incentive for candidates to focus on low-dollar fundraising. These important reforms helped set the stage for the modest upheaval the city experienced with last fall’s elections.

For these reasons and more, New York City’s program remains a national model for a well-functioning campaign finance system. Still, there are challenges for the Program and the CFB looming on the horizon. A hostile judicial environment for common-sense campaign finance regulation could transform those challenges into more serious threats. Third parties and outside groups have stepped up their independent spending in city elections. This spending is unlimited, and largely undisclosed. The U.S. Supreme Court decision in *Citizens United* has the potential to encourage corporations, unions, and other actors to increase their independent efforts on behalf of candidates. More disclosure is needed.

Other recent decisions regarding public financing systems have raised concerns about whether the Program will be able to continue to maintain its high levels of participation, especially when candidates must face high-spending, non-participating opponents. Our 2009 elections provided an unmistakable reminder of how a little extra help can go a long way. New York City’s program has thrived not because it replaces all private money with public funds but because it encourages candidates to raise private funds the right way: in small amounts, from the citizens whose approval they seek.

The Program’s generous provision of public funds combined with reasonable limits on private contributions and spending has ensured that participation in our system remains high. The more candidates who take part, the more effectively the Program can meet its goals. The leaders who created the public funds Program hoped it would encourage greater electoral competition, and reduce perceptions of corruption in city government. We believe that recent experience shows the Program has continued to advance these critical civic goals. After reading this report, we hope you agree.



Father Joseph P. Parkes, S.J.
Chairman

September 1, 2010



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INTRODUCTION

The independent, nonpartisan Campaign Finance Board (CFB) was created in 1988, with the mission of increasing citizens' voices in city elections, and reducing the influence of large, private contributions in the political process. The voluntary New York City Campaign Finance Program provides matching funds to qualifying candidates for mayor, public advocate, comptroller, borough president, and City Council in exchange for abiding by strictly enforced limits on their spending.

Over the more than 20 years since it was enacted, the city's Campaign Finance Act has been strengthened with requirements that all candidates must follow, whether or not they join the Program or seek public funds. All candidates must observe limits on the size of contributions they accept. All candidates must make complete and timely disclosures of their financial transactions to the CFB, and all campaigns are subject to rigorous auditing by the Board.

The Act requires the CFB to review and evaluate the Program's impact on New York City elections after the conclusion of each four-year election cycle. This mandated report to the Mayor and City Council includes the Board's proposals for further reforms and recommendations for legislative changes to the Act.

CFB MISSION STATEMENT

The Campaign Finance Board is a nonpartisan, independent city agency that serves the public interest by enhancing the role of New York City residents in the electoral process. Through its administration of the Campaign Finance Program, created in 1988, the CFB educates voters about the candidates and enables more citizens to compete for city office. The Program amplifies the impact of New Yorkers' small contributions by matching them with public funds, reducing the possibility and the perception of corruption associated with large contributions and unlimited campaign spending.

The CFB accomplishes its mission by:

- ❖ Administering the voluntary Campaign Finance Program, which sets spending limits and provides public matching funds to eligible candidates.
- ❖ Providing accessible, real-time public disclosure of campaign finances in city elections.
- ❖ Enforcing the Campaign Finance Act uniformly and without bias.
- ❖ Publishing and distributing the nonpartisan New York City Voter Guide.
- ❖ Coordinating the Debate Program for citywide candidates.

WHAT YOU WILL FIND IN THIS REPORT

Part I begins with a narrative review of the 2009 elections, through an in-depth look at races where the Program had the largest impact. It continues with an overview of the CFB's voter education mission, an examination of the CFB's disclosure and enforcement efforts, and concludes with a review of legislative action that impacted the Program's administration for the 2009 elections.

Chapter 1 tells the story of the candidates and campaigns who took part in the 2009 elections, with a close look at each office covered by the Program. Michael Bloomberg again opted out of the Program to run for re-election as mayor, and outspent his nearest challenger, William Thompson, by \$100 million. The closer-than-expected outcome of that election highlighted the importance of additional public funds that helped Thompson to get his message to the voters. Each of the major candidates for public advocate and comptroller — all veterans of city politics — participated in the Program, and the competition generated high levels of public interest in both races. Competition also increased markedly in the City Council elections, as challengers saw unprecedented success. In the end, voters elected the most diverse and representative Council in the history of the Program.

Chapter 2 reviews the CFB's **Debate Program** for the 2009 elections. Participating candidates for citywide office (mayor, public advocate, and comptroller) who qualify must debate their opponents in an open, nonpartisan forum, providing a chance for candidates to discuss the issues and communicate with voters from a level playing field. There were a total of 11 debates held during the 2009 Debate Program for the primary, runoff, and general elections. Though as a non-participant he was not required to attend, Bloomberg attended both CFB debates in the mayoral general election. Changes to the Debate Law helped ensure the debates were more relevant to voters, by strengthening the criteria for eligibility.

Chapter 3 describes the CFB’s nonpartisan **Voter Guide**, which is delivered to every New York City household with a registered voter before the primary and general elections. The Guide, which is produced in English, Spanish, Chinese, and Korean, is also published on the CFB’s website. All candidates — whether or not they participate in the Program — can submit information for publication, and the overwhelming majority of candidates appeared in the Guide. The Video Voter Guide provided a compelling companion piece; candidates’ video statements were made available through links in their online Voter Guide profiles, and aired on NYC-TV.

Chapter 4 details the various means by which the CFB provides comprehensive, real-time **public disclosure** of city candidates’ campaign finance information. The CFB’s online Searchable Database, introduced in 1998, received a major overhaul before the 2009 elections. The redesign improved access to information about candidates’ contributions and expenditures, allowing users to perform more powerful and detailed searches for candidates’ contributors, bundlers, and vendors.

The CFB’s rigorous enforcement ensures that taxpayer dollars paid to campaigns are used appropriately, and prevents candidates from taking advantage of their opponents by evading the rules. Recent **enforcement** actions are detailed in **Chapter 5**. The report reviews several issues raised during the 2009 elections, and reviews some long-running enforcement actions from previous elections that were resolved during the 2009 election cycle.

Relevant **legislative changes impacting the Program** are discussed in **Chapter 6**. Local Law No. 34 of 2007 enacted significant reforms to the Program that made a positive impact on the conduct of the 2009 elections. Strict, low limits on contributions from people doing business with city government helped erase perceptions of “pay-to-play” activity in city election fundraising. The matching rate for public funds was increased to \$6-to-\$1, providing greater rewards for candidates who raised funds from individual New York City residents in modest amounts. Among other changes, the law banned contributions from limited liability companies and partnerships, and attempted to limit the amount of public funds paid to candidates in non-competitive elections. The second half of Chapter 6 discusses with Local Law No. 51 of 2008, which extended term limits from two to three terms. The Board acted to ensure candidates who wished to participate in the Program had a practical way to do so after term limits were extended.

Part II takes a closer look at the Program’s impact on the city’s political system. It begins with series of analyses evaluating the CFB’s success at meeting its stated goals, as outlined in the mission statement. It takes an in-depth look at two of the issues that helped define the 2009 election — the new limits on “doing business” contributions and independent expenditures — and concludes with the Board’s recommendations for legislative action.

Chapter 7 provides a comprehensive analysis of the Program’s success at **meeting the goals** outlined in the CFB mission statement. Data on fundraising and spending reported by campaigns during the 2009 elections provides the basis for a rigorous set of analyses that focus on six distinct sets of questions:

- ❖ *Engagement*: How well is the Program encouraging campaigns to engage the broadest range of New York City residents in the political process?
- ❖ *Accountability*: Is the CFB ensuring that taxpayer funds paid to candidates are protected from waste or abuse?
- ❖ *Competition*: Is the Program promoting more competitive elections for city office?

- ❖ *Education*: Are the CFB’s voter education efforts effective?
- ❖ *Integrity*: Is the Program helping to reduce the possibility and perception of corruption?
- ❖ *Participation*: is the CFB encouraging and simplifying candidates’ participation in the Program?

The analysis shows the Program’s successes. Participation in the Program was high, and competition increased. More New Yorkers made small contributions, some with the help of new technologies that made it easier to connect with campaigns. Changes to the law meant that candidates were less reliant on large contributions.

Chapter 8 provides an in-depth look at the certification process for the **doing business database** (as mandated by the law), and an analysis of the impact of the new limits on campaigns’ fundraising during the 2009 elections. Though the limits took effect more than halfway through the four-year cycle, the initial analysis shows that contributors identified as doing business are still making contributions — but in smaller amounts than in previous elections.

Chapter 9 reviews the Program’s experience with **independent expenditures**, which are becoming more prominent in city races with each election. In a public financing program with voluntary spending limits, independent expenditures represent a persistent challenge. Spending that is truly independent is not counted against a candidate’s limit, yet it can still impact election outcomes. The Campaign Finance Act does not require disclosure of independent expenditures. Many predict that the U.S. Supreme Court’s decision in *Citizens United*, which struck down limits on independent spending in federal elections, could increase and encourage independent expenditure at every level of government. This unlimited, undisclosed spending in city elections represents a real threat to the Program’s efficacy.

The Board’s **recommendations** for legislative changes to the Program are found in **Chapter 10**.

The sections that follow include **notes on the data** used in this report, a **glossary of frequently used terms**, and some **facts and figures** covering the history of the Program.

Inside the back cover of the printed report is a CD containing several **appendices** to the report with summary data on the 2009 elections, available in Portable Document Format (.pdf) and comma-separated values format (.csv). The CD also contains **database files** (also in .csv format) comprising the entire set of transactions reported to the CFB by campaigns during the 2009 election cycle. Keys to the data are included.

Also contained on the CD is a companion document to this report, the CFB’s **Administrative Report for 2008–2009**. Produced this year for the first time ever, the Administrative Report provides a detailed look at the agency’s internal operations for the last two years of the 2009 election cycle.

This entire report is available in PDF format on the CFB’s website, www.nycfb.info, along with all the files provided on the companion CD.



1

THE PROGRAM AT WORK — THE 2009 ELECTIONS

OVERVIEW

The 2009 elections showed that the Campaign Finance Program is still vital and continues to keep New York City's electoral process strong. Despite the extension of term limits, more candidates ran for office than in 2005. Overall participation in the Campaign Finance Program remained high: 141 participants appeared on the primary election ballot, and 100 were on the ballot in the general election. The Board disbursed \$27.3 million in public funds to 139 candidates. Races were competitive across the board—fewer candidates ran without opposition on the ballot, five incumbent Council members were defeated, and in the mayoral race, a publicly financed candidate held the incumbent to a narrow victory despite a wide gap in resources. The average contribution size to participating candidates decreased. At the Council level, the average contribution size to participating candidates dropped more than 20 percent.

A race-by-race analysis highlights the successes and challenges for campaign finance regulation.

MAYOR

Figure 1.1— Campaign Finance Program Limits— Mayor

Contribution Limit	\$ 4,950	Maximum Public Funds	\$3,386,900
“Doing Business” Limit	\$ 400		
Spending Limit (out-year)	\$ 290,000	Public Funds Threshold	
Spending Limit (primary)	\$6,158,000	Dollar Amount	\$250,000
Spending Limit (general)	\$6,158,000	Number of Contributors	1,000

The mayor is the chief executive of New York City, responsible for the effectiveness and integrity of city government. Incumbent Mayor Michael Bloomberg was first elected in 2001, and re-elected in 2005. As Bloomberg’s second (and what was expected to be his last) term began in 2006, mayoral hopefuls were already fundraising and looking for support to succeed him in office. With a year remaining in his term, on October 2, 2008, Bloomberg announced that he intended to seek a third term.¹ The Mayor’s announcement of his support for a change to the term limits law to extend the number of terms allowed from two to three upended the 2009 elections. After a contentious debate, the City Council voted to extend term limits from two to three terms for current elected officials. Local Law No. 51 was enacted on November 3, 2008. [See *Chapter 6— Legislative Action.*]

The extension of term limits transformed the mayoral contest, as most candidates considering a run for the city’s top job promptly exited the race. Council Speaker Christine Quinn, “putting her own mayoral dreams on hold,” opted instead to run for re-election to City Council.² Brooklyn Borough President Marty Markowitz, who was contemplating a bid for mayor, also chose to seek re-election to his current office.³

Congressman Anthony Weiner, who placed second in the 2005 Democratic mayoral primary, launched his second run for City Hall in 2007. Weiner did not have to give up his seat in Congress to run for mayor, and did not choose to leave the race right away. On May 27, 2009, *The New York Times* published an op-ed under Weiner’s byline announcing he had chosen to end his mayoral campaign. In that article, Weiner questioned the Program’s ability to help a participant compete against wealthy, non-participating candidates:

The mayor is expected to spend \$80 million of his own money on the race, more than 10 times what candidates who have not opted out of the city’s public campaign finance program, as Mr. Bloomberg has, can spend in a primary. With spending like that, regular debates about real issues will probably take a back seat to advertising... The sad truth for a political candidate without deep pockets is that while money isn’t the only thing, it does matter.⁴

Primary Election

Figure 1.2—Primary Election—Mayor

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Tony Avella	\$ 293,937	\$ 0	\$ 286,315	69,774	21.1 %
Roland C. Rogers (NP)	\$ 1,885	—	\$ 205	25,591	7.7 %
William C. Thompson, Jr.	\$4,047,382	\$1,623,554	\$3,730,747	234,897	71.0 %

Note: Data for contributions and expenditures for the Primary Election are for all transactions dated through September 15, 2009.

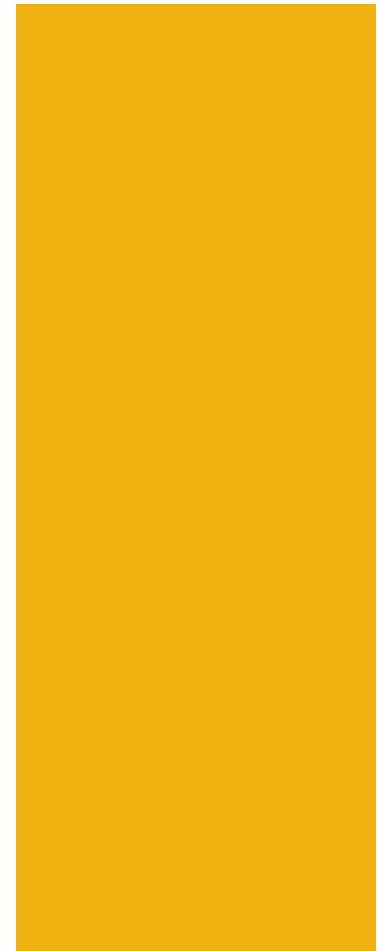
Ultimately, there were two participating candidates in the Democratic Primary. Although the term limits extension stirred speculation that William Thompson would run for re-election as comptroller, Thompson ultimately opted to stay in the race. He was opposed for the Democratic nomination by Council Member Tony Avella, who was the first candidate to announce a run for mayor, in 2006.⁵ Despite his early start, he did not qualify for public funds and his campaign had to rely on “good, old fashioned word of mouth to get him into the west side of City Hall.”⁶ Without much institutional support, Avella promoted his independence from big money, and focused on raising small contributions. While he failed to qualify for public funds, he did meet the criteria to participate in the two CFB-administered debates for the primary election. [See *Chapter 2—Debates.*]

Thompson began raising money in 2006 for a citywide office, though he did not file paperwork with the CFB declaring his candidacy for mayor until January 14, 2009. Thompson burned through cash early in the campaign quicker than his rivals. By July 2008, Thompson had spent approximately \$500,000 more than Weiner and \$700,000 more than Quinn.⁷ After his main competitors left the race, Thompson became the clear favorite for the Democratic nomination.

Thompson’s substantial lead in the polls allowed him to run a low-key primary campaign and look ahead to November. With just one viable opponent in the primary and a steady 30-point lead in the polls,⁸ he appeared to be saving his resources for his contest with Bloomberg.⁹ Thompson rarely acknowledged he was running in a primary. As early as June of 2009, his materials advised donors their contributions would be subject to the “eight-to-one match” of the Tier 2 bonus rate for the presumed gen-

CHART KEY

I	incumbent
NP	non-participant
<bold>	won election



eral election matchup against Bloomberg.* Though Avella waged a spirited campaign, he complained, “That seems to be his whole strategy, to just ignore my campaign and pretend we don’t exist.”¹⁰

Thompson’s focus was solely on the general election when his campaign requested in March that the Board remove his spending limit for the primary due to the spending of his presumptive opponent in the general election.† The Board denied the request, noting:

[A]lthough the Board understands the concerns raised by William Thompson’s mayoral campaign regarding the impact of high-spending non-participants on the ability of the Program to promote a level playing field among mayoral candidates, the Board cannot grant Mr. Thompson’s request to lift the primary election expenditure limit based on the expenditures of Michael Bloomberg, a high-spending non-participant who is not running and making expenditures in the same primary election as Mr. Thompson.¹¹

The primary election was held on September 15. Thompson received more than 70 percent of the vote. In his victory speech, Thompson coined the slogan he would carry forward into the general election: “It’s time for change New York... Eight years is enough!”¹²

General Election

Figure 1.3 — General Election — Mayor

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Michael R. Bloomberg (I) (NP)	\$108,375,000	—	\$108,371,688	585,466	50.7%
Stephen A. Christopher (NP)	—	—	—	18,013	1.6%
Joseph L. Dobrian (NP)	—	—	—	1,616	0.1%
Daniel B. Fein (NP)	—	—	—	1,311	0.1%
Jimmy McMillan	—	\$ 0	—	2,332	0.2%
Billy Talen	\$ 47,153	\$ 0	\$ 65,071	8,902	0.8%
William C. Thompson, Jr.	\$ 4,647,877	\$ 1,641,508	\$ 9,352,416	534,869	46.3%
Francisca Villar (NP)	\$ 10,527	—	\$ 10,527	1,996	0.2%

Note: Data for contributions and expenditures for the General Election are for all transactions through January 11, 2010 — the last day of the 2009 election cycle.

* Thompson’s solicitation noted that a \$25 ticket “is worth \$225 to the campaign because of the eight-to-one match.” See “Thompson boosts mayor, ignores Avella”, *Crain’s New York*, June 23, 2009. The Tier 2 Bonus rate is approximately \$8.57-to-\$1.

† When a non-participating candidate has raised or spent three times the spending limit, the Tier 2 bonus is declared for his participating opponent, one aspect of which is to lift the spending limit. (See Figure 1.4).

Figure 1.4 — Tier 2 Bonus Situation — Mayor

Matching Rate	Trigger Amount	Maximum Public Funds	Expenditure Limit
\$8.57 [†] –to–\$1	\$18,474,001	\$7,697,500	no limit
[†] This is an approximate formula. The CFB matches up to \$175 given by each eligible contributor based on the applicable bonus matching rate. Under Tier 2, the maximum public funds available per contributor increases from \$1,050 to \$1,500.			

With the Democratic nomination officially decided, the general election contest began in earnest on September 16. By then, Bloomberg had already spent upwards of \$58 million since January 2009 promoting his candidacy, triggering the Tier 2 bonus for his participating opponents. In the weeks following the primary election, Thompson attempted to raise his profile by running television advertisements, while Bloomberg continued to flood the airwaves and mailboxes across the city. Each candidate sought to place the focus on his opponent’s record.

Although Bloomberg had been advertising his campaign for nine months, he began a more targeted media campaign immediately following the primary election, with a mailer attacking Thompson for his record on education.¹³ Communications from Bloomberg’s campaign consistently returned to Thompson’s tenure at the Board of Education, which they characterized as a “failure.” *The New York Times* noted that these advertisements “highlight[ed] a familiar theme in Mr. Bloomberg’s re-election bid, portraying Mr. Thompson as a vestige of an old, broken system and suggesting that the mayor had capitalized on his political independence to institute positive reforms.”¹⁴

A consistent focus of Thompson’s campaign message was Bloomberg’s support for the extension of term limits. On the stump, Thompson told supporters that “Bloomberg’s complete and utter disregard for the democratic process was a defining moment for all of us.”¹⁵ It certainly helped define Thompson’s campaign, as the term limits issue was the centerpiece of his argument against the Mayor’s re-election, and “Eight is Enough” (referring to Bloomberg’s years in office) became his campaign slogan.¹⁶

Another focus for Thompson—and the media covering the race—was Bloomberg’s unprecedented campaign spending. In August, Thompson’s campaign filed a complaint with the Board alleging that Bloomberg had committed a violation of the Act and Board rules by failing to disclose millions of dollars in political contributions from his personal account. The Board found that these contributions should have been disclosed, but did not find a violation against the Bloomberg campaign. [See *Chapter 5 — Enforcement.*]

As Election Day approached, the *Daily News* reported that Bloomberg was spending nearly \$1 million a day, “shattering even his own records for pouring money into the race.”¹⁷

Meanwhile, Thompson struggled to fundraise. Although he qualified for public funds, he received well short of the maximum funds available. A large portion of his fundraising came from contributions from outside the city, which are not matched with public funds. Thompson raised only 52 percent of his contributions within New York City, the lowest percentage among citywide candidates. Thompson received \$3.3 million in public funds

in total, nearly \$1.1 million less than Bloomberg's 2005 opponent, Fernando Ferrer.* One reason Thompson may have been forced to focus on out-of-city donors is the challenge he faced rallying his local donor base to provide support against a popular, high-spending incumbent opponent. With just a month to go before the general election, *The New York Times* found more than 160 donors who contributed the maximum amount to Thompson's 2005 campaign for re-election as comptroller, but had not contributed to his mayoral campaign in 2009.¹⁸

Thompson did have the opportunity to raise his profile during the two CFB-administered debates. [See *Chapter 2 — Debates*.] The two debates provided Thompson a chance to appear with the incumbent on a level playing field, and gave him “free” air time — a resource he greatly lacked in comparison to his rival.¹⁹ Bloomberg saturated the airwaves over the summer; between June 1 and September 20, the Bloomberg campaign purchased more than 4,700 television advertising spots.²⁰ Thompson did not begin advertising on television until after the primary. When he did, he found it difficult to compete. As the general election began, between September 21 and October 19, television viewers saw almost two Bloomberg ads for every one of Thompson's. During that period, Bloomberg ran nearly 1,300 more television spots than Thompson.²¹

Despite anger over the extension of term limits and the Mayor's spending, Bloomberg was endorsed by *The New York Times*, the *Daily News*, and the *New York Post*, as well as the *Staten Island Advance* and good government group Citizens Union.²² With a long and diverse list of endorsers, the Bloomberg campaign began “to systematically dismantle the alliance of progressive and liberal groups that have historically coalesced around the leading Democratic candidate for mayor.”²³ 32BJ SEIU, United Food and Commercial Workers Local 1500, the Patrolmen's Benevolent Association, and Teamsters Local 237, among other labor organizations, endorsed Bloomberg.²⁴ He also received support from former Mayor Ed Koch, several Democratic Council members, and numerous ethnic and neighborhood newspapers, local personalities, and community organizations, rolling out a steady stream of endorsements during the election from more than 400 individuals and groups over the summer and fall.²⁵

Thompson received support from *El Diario*, the city's largest Spanish-language publication, and the *Amsterdam News*, the city's largest African American newspaper.²⁶ District Council 37 and other labor organizations, including the Uniformed Firefighters Association and the Transport Workers Union Local 100, endorsed Thompson.²⁷ While Thompson also had the endorsement of the Working Families Party (WFP), he did not enjoy the degree of assistance that the party gave other candidates.²⁸ Thompson also received support from some Democratic Council members, and an endorsement from President Barack Obama — which was delivered by the president's press secretary on a Friday afternoon, and did not mention Thompson by name.²⁹

The endorsement gap reinforced the Bloomberg campaign's strategy to make the Mayor *seem* unbeatable, what the campaign called an “air of inevitability.”³⁰ The reality, according to *The New York Times*, was different:

Inside the campaign, pollsters and consultants fretted over surveys that showed New Yorkers angry over term limits, anguished over the economy and eager for change. Their data showed that Mr. Bloomberg's re-election numbers were alarmingly low for a two-term incumbent, a fact the campaign consistently sought to shield from outsiders...³¹

* Ferrer's contributions were also evenly split between in and out-of-city contributions in 2005, as he too struggled to raise funds from the city's traditional Democratic donor base in his contest with Bloomberg. See CFB report, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, p. 15.

Still, Thompson's sometimes "chaotic" operation seemed to be outmanned by the more efficient, detail-oriented Bloomberg campaign. Many of the city's top political consultants and staffers were hired early in the campaign by Bloomberg, leaving Thompson to rely on "a group of mostly young aides, many with limited campaign experience in city politics or low-level titles on previous campaigns."³²

Through the end of October, the polls continued to show Bloomberg as a clear favorite. A public opinion poll from Marist released on October 30 showed Bloomberg ahead by 15 points, and a Quinnipiac University poll released the day before the election showed Bloomberg ahead by 12 points.³³ But as the polls closed on Election Day, and results were reported, most were surprised to learn that Bloomberg had garnered barely more than half of the vote. Thompson ended the election within 5 percentage points of Bloomberg, with 46.3 percent.

Many in the media observed that Bloomberg's thin margin of victory was due to "extraordinarily low turnout and an anti-incumbent mood."³⁴ Kenneth Sherrill, a political science professor at Hunter College in Manhattan, explained, "The polls didn't measure intensity... Bloomberg's problem was that the people who liked him didn't feel as strongly as the people who were unhappy. In low turnout elections, the people who feel most intensely dominate."³⁵

Tom Robbins of the *Village Voice* summarized the election as "an absolutely amazing failure of big money in a campaign."³⁶ Though Thompson was outspent by nearly \$100 million (about 16 times the expenditure limit), he was defeated by less than five percentage points. The experts wrote off Thompson's chances long before Election Day, but the results provided a stark reminder that elections are decided by votes, not polls.

CONCLUSION

In the wake of the 2001 mayoral election between Bloomberg and Mark Green, then-CFB Chairman Father Joseph A. O'Hare, S.J. wrote that "the critical question for the Program is whether a candidate participating in the Program and competing against a wealthy self-financed opponent who is not a participant will have sufficient resources to communicate a compelling message to the voters."³⁷ The Green campaign and others suggested that the results of the 2001 election had settled this question in the negative; the gap in spending had been so wide that there was no way to compete.

But Father O'Hare disagreed. In his view, the 35,000-vote margin was narrow enough to easily imagine ways that the outcome could have been different. "It seems reasonable to conclude that campaign decisions," he continued, "may have accounted for those 35,000 votes and more."³⁸ In other words, both candidates were in the position to succeed; the candidates themselves bear some responsibility for the outcome.

Bloomberg won re-election to his third term by a margin that was only slightly larger, about 50,000 votes. In the final analysis, the conclusion drawn by Father O'Hare in 2001 seems just as reasonable in 2009. While the Program cannot guarantee a participating candidate will always overcome a high-spending non-participant, the 2009 election shows that public funds can provide the resources to communicate a message effectively. While Bloomberg's spending gave his campaign an enormous advantage, the outcome was still firmly in the hands of the voters.

PUBLIC ADVOCATE AND COMPTROLLER

With incumbent Comptroller William Thompson running for mayor, and incumbent Public Advocate Betsy Gotbaum choosing not to run for re-election, the 2009 elections featured the first open races for citywide office since 2001. Each race produced a competitive primary election among experienced candidates and resulted in a runoff. For both races, fundraising, endorsements, union support, and get-out-the-vote networks played a large role in determining the outcome.

Figure 1.5— Campaign Finance Program Limits— Comptroller & Public Advocate

Contribution Limit	\$ 4,950	Maximum Public Funds	\$2,117,500
“Doing Business” Limit	\$ 400		
Spending Limit (out-year)	\$ 290,000	Public Funds Threshold	
Spending Limit (primary)	\$3,850,000	Dollar Amount	\$125,000
Spending Limit (general)	\$3,850,000	Number of Contributors	500

PUBLIC ADVOCATE

Figure 1.6— Primary Election— Public Advocate

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Bill de Blasio	\$1,591,138	\$1,773,722	\$3,295,959	119,467	32.6%
Eric Gioia	\$ 2,142,404	\$ 1,705,890	\$ 3,629,380	66,859	18.2%
Mark Green	\$ 542,336	\$ 958,632	\$ 1,471,738	115,508	31.5%
Norman H. Siegel	\$ 302,532	\$ 820,044	\$ 1,052,398	52,220	14.2%
Imtiaz S. Syed	\$ 45,035	\$ 0	\$ 56,953	12,820	3.5%

CHART KEY

I	incumbent
NP	non-participant
<bold>	won election

The public advocate is the city’s “ombudsman”. The public advocate’s main responsibility is responding to complaints from the public about government, and performing oversight of government agencies and programs. In the mayor’s absence, the public advocate acts as the mayor and in the case of a vacancy, acts as mayor until a special election is held. With the incumbent, Betsy Gotbaum, serving her second term, several candidates expressed interest in the job early in the election cycle. Council Member Eric Gioia raised more than \$1.6 million for the campaign by July of 2008,

and was considered a frontrunner along with Council Member John Liu, who had raised nearly \$2.8 million by the same date. Norman Siegel, a civil rights attorney, announced his third try for the office. Siegel claimed to be the only candidate in the field genuinely interested in the job of public advocate instead of using the seat as a springboard for higher office.³⁹

Though she became eligible to run for re-election, Gotbaum announced shortly after the term limits extension was enacted that she would not run, saying she “could not in good faith seek re-election, given how vociferously she had opposed” the change.⁴⁰ Though Gotbaum remained on the sidelines, the field for public advocate was changed. Council Member Bill de Blasio had started a campaign for Brooklyn Borough President in 2007;⁴¹ after playing a prominent role in the debate over term limits, he declared his candidacy for public advocate in November 2008. In February 2009, former Public Advocate Mark Green entered the race.*

Primary Election

As the only candidate previously elected to citywide office, Green enjoyed broad name recognition and jumped to an early lead in most polls, an advantage that would last right up to primary day.⁴² His entry may have caused at least one other candidate to stay away; Liu announced in March he would be a candidate for comptroller.

While de Blasio trailed in the polls, he quickly showed organizational strength with a list of important endorsements.⁴³ He received an “unusually early endorsement” from the Working Families Party (WFP) in March.⁴⁴ He continued to gain labor support throughout the spring and summer.

On July 23, de Blasio was removed from the ballot by the Board of Elections due to a technical error with his paperwork. Although he submitted 125,000 signatures, well in excess of the 7,500 required to appear on the ballot, a cover sheet listed 131 volumes of petitions instead of the 132 volumes he filed.⁴⁵ His removal sparked dialogue about the petition process and the difficulties of navigating New York State’s arcane ballot access laws. Wide coverage of the controversy and de Blasio’s efforts to restore his name to the ballot helped to elevate his citywide profile further. On July 28, de Blasio was reinstated to the ballot by the New York City Board of Elections.⁴⁶

In August, *City Hall News* published an investigative report raising questions about Data and Field Services (DFS), a “for-profit” consulting firm established by the WFP to provide services to candidates. The de Blasio campaign paid a total of \$194,658 to DFS over the course of the 2009 election cycle, and was a particular focus of media scrutiny into DFS’ operations. One example, from a *New York Times* editorial:

[Data and Field Services] charged City Councilman Bill de Blasio of Brooklyn \$5,000 for lists of voters. Officials from other campaigns have complained that sophisticated voter files like those used by the Working Families Party could cost \$25,000 to \$40,000. If there is such a differential — and lists can vary considerably — the extra should be counted as a campaign contribution and as part of the cap on allowed spending.⁴⁷

On September 2, The Board issued a warning in a statement declaring its understanding that DFS was an arm of the WFP and therefore, any activity undertaken by the WFP on behalf of campaigns who contracted with DFS would be presumed to be non-independent. [See *Chapter 5 — Enforcement.*]

* Green was the city’s first public advocate, holding the position from 1994 to 2001.

Despite Green’s late start and lower fundraising, he continued to lead in the polls in the days leading up to the primary, hovering near the 40 percent he would need to avoid a runoff.⁴⁸ With formidable organizational support from the WFP and labor unions, however, de Blasio built an extensive get-out-the-vote effort. According to *The New York Times*, de Blasio had over 1,000 volunteers throughout the city on primary day.⁴⁹ de Blasio’s organizational efforts overtook Green, surprising most observers by finishing ahead of the frontrunner. Gioia and Siegel finished third and fourth, respectively.

Runoff Election

In the low-turnout September 29 runoff, de Blasio’s organization propelled him to the nomination with 62.4 percent of the vote.

Figure 1.7 — Campaign Finance Program Limits — Public Advocate Runoff Election

Contribution Limit	\$ 2,475	Public Funds
“Doing Business” Limit	\$ 200	
Spending Limit	\$1,925,000	
		25% of public funds received for primary election

Figure 1.8 — Democratic Primary Runoff — Public Advocate

Candidate	Public Funds	Votes	% Vote
Bill de Blasio	\$443,431	145,413	62.4%
Mark Green	\$ 239,658	87,793	37.6%

General Election

In the general election, de Blasio faced Republican Alex Zablocki, a 26-year-old entrepreneur, and three other candidates: William Lee (Conservative), Maura DeLuca (Socialist Worker), and James Lesczynski (Libertarian). Zablocki raised and spent just under \$20,000 and did not meet the threshold to receive public funds or to appear in the official CFB debates. [See *Chapter 2 — Debates*]. de Blasio won with 77.6 percent of the vote to Zablocki’s 17.6 percent.

COMPTROLLER

Figure 1.9—Primary Election—Comptroller

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Melinda R. Katz	\$ 2,539,146	\$ 758,410	\$ 3,277,989	76,211	20.5 %
John C. Liu	\$2,930,309	\$ 1,080,176	\$3,986,806	140,356	37.8 %
David I. Weprin	\$ 1,830,167	\$ 928,771	\$ 3,147,417	39,581	10.7 %
David Yassky	\$2,000,623	\$1,794,012	\$ 3,965,141	114,762	30.9 %

The comptroller is the city’s chief financial officer, responsible for managing the city pension funds, keeping the mayor and City Council informed about the city’s financial condition, auditing city agencies, registering and auditing contracts, and issuing and selling city bonds. In 2008, the potential field of candidates for comptroller included three sitting Council members, a borough president, and a state assemblyman. State Assembly Member James F. Brennan ended his campaign in the fall of 2008.⁵⁰ Bronx

Borough President Adolfo Carrión, Jr., who had considered a run for mayor, announced in December 2007 he would run for comptroller instead.⁵¹ After being nominated by President Barack Obama to lead the White House Office of Urban Affairs in February 2009, Carrión left the comptroller’s race to assume his new job.⁵²

CHART KEY

I	incumbent
NP	non-participant
<bold>	won election

Primary Election

Councilman John Liu joined the field in March 2009,⁵³ leaving four sitting Council members as candidates in the Democratic primary election: Liu, Melinda Katz, and David Weprin, all from Queens, and David Yassky of Brooklyn. Though incumbent William Thompson was expected to run for mayor, the extension of term limits prompted speculation that he might change his mind and seek re-election as comptroller — which in turn prompted speculation that other candidates for his job would then step aside and run for re-election to their Council seats.⁵⁴ As the field of mayoral aspirants settled in the early spring, all four Council members chose to remain in the race for comptroller.

Early polls failed to identify a clear frontrunner, as the candidates worked to build a following beyond their respective Council districts. A Quinnipiac University poll conducted in June demonstrated that none of the four candidates polled higher than 20 percent, while 50 percent of likely voters remained undecided.⁵⁵

The candidates worked to define themselves over the spring and summer. Yassky garnered endorsements from Manhattan Democratic leaders, as well as his former boss, U.S. Senator Chuck Schumer.⁵⁶ Yassky eventually captured the endorsements of the *Daily News* and *The New York Times*.⁵⁷

Katz touted endorsements from several female elected officials, including former Congresswoman Geraldine Ferraro, current Congresswoman Yvette Clarke, and several of her colleagues on the City Council.⁵⁸ Katz also received the endorsement of the Bronx Democratic Party.⁵⁹ Katz’ campaign was boosted by support from real-estate interests, which many linked to her tenure as chairwoman of the City Council’s Committee on Land Use.⁶⁰

Weprin touted his long-time background in public finance, with a 20-year career in investment banking and experience as chair of the Council’s Finance Committee. A member of a well-known political family, Weprin earned endorsements from several established figures in city politics, including former Mayor David Dinkins and former Bronx Borough President Fernando Ferrer, as well as the Staten Island Democratic Party.⁶¹

Liu’s campaign focused on his experience as an actuary, his family and personal biography, and a broad ethnic appeal. As the first Asian American elected to the City Council, Liu’s campaign assembled a multi-ethnic coalition, bringing New York’s Asian communities together with “union members...gay activists, black pols and white party regulars.”⁶² Liu received the backing of the WFP in April 2009,⁶³ and outmaneuvered his colleagues from Queens to earn that borough’s Democratic Party endorsement.⁶⁴ On the campaign trail, Liu highlighted his background as a way to relate to the city’s minority communities, most controversially in an advertisement that told Liu’s story of working in a sweatshop as a child. The commercial caused a storm of media attention when the *Daily News* reported that Liu’s story was fabricated.⁶⁵ Throughout the campaign, however, Liu maintained the story’s authenticity.⁶⁶

All four primary contenders joined the Program, and each qualified for matching funds. Polls released days before the primary election showed no clear favorite,⁶⁷ with public funds helping level the field, no candidate held a prohibitive advantage in resources. On Primary Day, Liu finished ahead of his rivals, but failed to avoid a runoff, with 37.8 percent of the vote. Yassky qualified for the runoff with 30.9 percent.

Liu’s focus on ethnic outreach resulted in a significantly higher turnout among Asian American voters, many of whom voted for the very first time. In the three Council districts won by Asian Americans, turnout was between 17 and 18 percent, compared to the citywide average of 11 percent.⁶⁸ The Asian American Legal Defense and Education Fund conducted an exit poll showing that 20 percent of Asian American voters in the primary were newly registered.⁶⁹

Runoff Election

Figure 1.10 — Campaign Finance Program Limits — Comptroller Runoff Election

Contribution Limit	\$ 2,475	Public Funds
“Doing Business” Limit	\$ 200	
Spending Limit	\$1,925,000	
		25 % of public funds received for primary election

Yassky had been boosted toward the end of the campaign with late endorsements from the newspapers. After the primary, he received the endorsement of the third major metropolitan newspaper, the *New York Post*.⁷⁰ During the two-week runoff campaign, he focused on amplifying their message through mailings and TV advertisements. Liu, on the other hand, had the benefit of a strong get-out-the-vote operation, assisted by near-unanimous union support and a motivated base. In the end, it was Liu who emerged triumphant, with 56 percent of the vote to Yassky’s 44 percent. *Daily News* columnist Errol Louis noted that Liu earned his victory “by doggedly putting the Dinkins coalition back together, with an added jolt of pride — and votes — provided by Asian Americans eager to elect one of their own to citywide office for the first time.”⁷¹

Figure 1.11—Democratic Primary Runoff—Comptroller

Candidate	Public Funds	Votes	% Vote
John C. Liu	\$270,044	135,100	56.0%
David Yassky	\$ 448,503	106,106	44.0%

General Election

Liu faced minimal opposition in the general election. Although one opponent — Salim Ejaz, a former Nassau County auditor who ran on the Rent Is Too High Party line — qualified to debate Liu, none of his opponents qualified for matching funds. [See *Chapter 2—Debates*]. Liu faced four candidates in the general election, including: Ejaz, Joseph Mendola (Republican), Stuart Avrick (Conservative), and John Clifton (Libertarian). Mendola raised and spent just over \$20,000. Liu received 76.9 percent of the vote compared to Mendola’s 19 percent.

CONCLUSION

While the 2009 elections featured low voter turnout overall, more New Yorkers voted in the competitive primary races for public advocate (366,917) and comptroller (371,018) than in the Democratic primary for mayor (330,659).^{*} All the major candidates for public advocate and comptroller participated in the Program. With at least four experienced candidates in each race, many of whom were sitting elected officials and skilled fundraisers, overall contributions, expenditures, and public funds payments in the campaigns for public advocate and comptroller were higher than in any other election in the history of the Program.

^{*} Vote totals include votes cast for candidates on the ballot as well as write-in votes.

Public Advocate

ANALYSIS: CONTRIBUTIONS

Each public advocate candidate was successful at reaching small donors, and for all four contenders, the majority of contributions received were from New York City residents. The average contribution size for each of the leading candidates — de Blasio, Gioia, Green, and Siegel — was lower than the smallest average contribution among the candidates for comptroller. The public advocate candidates were generally more successful than their counterparts in the comptroller’s race at collecting matching claims, the small contributions from New Yorkers that are matched with public funds. (See Analysis, next page.)

Figure 1.12 — Contributions from New York City Residents, 2009 Election

	Average Contribution Size	Valid Matching Claims	% Contributions Raised In NYC
Bill de Blasio	\$468	2,450	76 %
Eric Gioia	\$486	3,043	73 %
Mark Green	\$333	1,420	69 %
Norman H. Siegel	\$196	1,338	89 %

ANALYSIS: EXPENDITURES

A majority of the spending by the leading candidates went toward television advertisements and campaign mailings. While television remains important, direct mail has represented a growing proportion of spending. In particular, de Blasio communicated primarily through the mail, spending \$1.3 million — almost three times the amount he spent on television.

Gioia pledged early on to run the city’s first “carbon-neutral” campaign, petitioning the Board to allow him to purchase carbon offsets with public funds.⁷² In May 2009, the Board declined Gioia’s request, though the Board commended his efforts.⁷³ Gioia’s focus on mitigating his campaign’s carbon footprint may have driven the campaign’s choice to focus its communications spending on television ads, rather than mailings.

Figure 1.13 — Spending for Mass Communications, Democratic Primary Election

	Television	Mail
Bill de Blasio	\$ 456,154	\$ 1,305,559
Eric Gioia	\$ 1,949,880	\$ 492,371
Mark Green	\$ 628,611	\$ 612,404
Norman H. Siegel	\$ 275,000	\$ 243,670
Total	\$3,309,645	\$2,654,004

Comptroller

ANALYSIS: CONTRIBUTIONS

In comparison to the candidates for public advocate, the average contributions from New York City residents to comptroller candidates were significantly higher. Liu out-raised Yassky, his eventual opponent in the runoff, by almost \$1 million. But Yassky’s focus on small contributions maximized his payments of public funds, and helped him achieve near-parity in finances. Seventy-eight percent of all contributions made to Yassky’s campaign were from individual city residents — by far the most in the field.

Figure 1.14 — Contributions from New York City Residents, 2009 Election

	Average Contribution Size	Valid Matching Claims	% Contributions Raised In NYC
Melinda R. Katz	\$ 1,120	1,169	68 %
John C. Liu	\$ 940	1,619	59 %
David I. Weprin	\$ 793	1,128	62 %
David Yassky	\$ 695	2,147	78 %

ANALYSIS: EXPENDITURES

The competitive race led to the highest-spending contest for comptroller in the history of the Program. No previous election for comptroller featured four candidates spending over a million dollars each. Television advertisements topped the list of expenditures. Katz, Liu, and Yassky all released their first television advertisements following the first public funds payment in early August.⁷⁴ Weprin launched his first television advertisement shortly after. *The New York Times* reported that the comptroller candidates spent the majority of their funds “to bombard the airwaves with ads in an effort to break from the pack before the Sept. 15 primary.”⁷⁵

Figure 1.15 — Spending for Mass Communications, Democratic Primary Election

	Television	Mail
Melinda R. Katz	\$ 1,146,559	\$ 94,581
John C. Liu	\$ 1,611,335	\$ 398,703
David I. Weprin*	\$ 969,402	\$ 523,995
David Yassky	\$ 2,510,931	\$ 99,294
Total	\$6,238,227	\$1,616,573

* Numbers for the Weprin campaign are estimated based on documentation provided by the campaign; the campaign’s reporting did not categorize any expenditures with the purpose code for campaign mailings, and showed only \$301,320 spent on television advertisements.

BOROUGH PRESIDENT

Borough presidents are the only elected officials who represent boroughwide interests in New York City’s political system. The borough presidents are the executive officials of each borough. They appoint members to community boards, the Panel for Educational Policy, and the City Planning Commission. They control a portion of the city’s capital budget, and review and give comment on major land use decisions and proposed sites for city facilities within their borough.

After the extension of term limits, the three incumbent borough presidents serving their second term — Marty Markowitz of Brooklyn, Helen Marshall of Queens, and James Molinaro of Staten Island — all opted to run for re-election. Races in the Bronx and Manhattan featured first-term incumbents running for re-election. As a result, the races for borough president were not highly competitive in 2009. Only one incumbent faced a primary — Marshall in Queens, and only one challenger in any race — John Luisi in the general election in Staten Island — received more than 20 percent of the vote.

Figure 1.16 — Campaign Finance Program Limits — Borough President

Contribution Limit	\$ 3,850	Maximum Public Funds	\$762,300
“Doing Business” Limit	\$ 320		
Spending Limit (out-year)	\$ 129,000	Public Funds Threshold	
Spending Limit (primary)	\$1,386,000	Dollar Amount	varies*
Spending Limit (general)	\$1,386,000	Number of Contributors	100 borough residents

* The threshold amount is based on the number of persons residing in each borough, determined by the 2000 census. The dollar amounts are: Bronx, \$26,653; Brooklyn, \$49,307; Manhattan, \$30,744; Queens, \$44,588; Staten Island, \$10,000.

Queens

Queens Borough President Helen Marshall was the only incumbent to face primary challengers: Marc Leavitt, a lawyer and civic activist who served on Community School Board #30, and Robert Schwartz, an executive in the dairy industry who had previously run for State Senate. Schwartz relied on some unconventional campaign tactics, attempting to advertise his campaign on milk cartons. He contracted to spend \$70,000 to print his face and campaign slogan on approximately 25 million containers over five weeks, but the ads were discontinued after just one day as the dairy company had not realized they were political advertising.⁷⁶ Leavitt complained to the Board that the Marshall campaign failed to report expenditures or had received an unreported in-kind contribution in relation to a *Queens Courier* “Tribute to Helen Marshall” that contained articles, photographs and messages of support for the borough president.⁷⁷ The Board dismissed this complaint on September 11, 2009.⁷⁸

Figure 1.17 — Primary Election — Queens Borough President

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Marc C. Leavitt	\$ 99,671	\$ 310,722	\$ 403,258	12,871	16.6 %
Helen M. Marshall (I)	\$136,586	\$322,288	\$412,268	56,114	72.4 %
Robert Schwartz	\$ 44,820	\$ 0	\$ 44,481	8,501	11.0 %

All three candidates participated in the Program. Both Marshall and Leavitt met threshold and received public funds. Leavitt raised almost \$100,000, enough to achieve near-parity in spending with Marshall; nevertheless, the incumbent Marshall handily won the primary with 72.4 percent of the vote.

Figure 1.18 — General Election — Queens Borough President

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Robert A. Hornak	\$ 28,963	\$ 0	\$ 14,731	46,695	19.8 %
Helen M. Marshall (I)	\$135,291	\$18,840	\$462,494	180,268	76.3 %
Robert Schwartz	\$ 45,380	\$ 0	\$ 44,766	9,277	3.9 %

In the general election, Marshall once again faced Schwartz, this time on the Conservative Party ticket, as well as Republican Robert Hornak, a staffer for the Assembly Minority Leader’s Office and a consultant. All three candidates participated in the Program, but only Marshall received public funds. Marshall won re-election to her third term with 76.3 percent of the vote.

CHART KEY

I	incumbent
NP	non-participant
<bold>	won election

Staten Island

The 2009 contest for Staten Island borough president was a replay of the 2005 race. Two-term incumbent James Molinaro did not face a primary, but in the general election, for the second time, he faced John Luisi, an attorney and Pace University professor. Both candidates were Program participants. Luisi had not raised or spent more than one-fifth of the expenditure limit by the first payment of public funds, which limited Molinaro to 25 percent of the maximum public funds payment. Molinaro submitted a *Certified Statement of Need*⁷⁹ requesting that the cap on his public funds payment be lifted. Luisi qualified to receive public funds soon thereafter. Ultimately, Molinaro received more than \$628,000 in public funds, while Luisi received nearly \$240,000.

* A *Certified Statement of Need* is a certification that your opponent falls into one of several categories enumerated in the Act and thus, you need full public funds despite your opponent’s limited financial activity. See Admin. Code § 3-705(7). Molinaro certified that Luisi had received more than 25% of the vote in an election within the past eight years and had the endorsement of a membership organization of more than 250 members — the Working Families Party.

Figure 1.19 — General Election — Staten Island Borough President

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
John Luisi	\$ 56,664	\$ 239,934	\$ 293,497	28,625	37.1 %
James Molinaro (I)	\$255,794	\$628,248	\$907,282	48,494	62.9 %

The race attracted some controversy when the incumbent refused to debate Luisi, who said Molinaro was obligated to debate after taking “hundreds of thousands of dollars” in matching funds for his campaign. Eighty-nine percent of respondents to an online poll posted on the *Staten Island Advance* website agreed.⁸⁰ Nevertheless, Molinaro did not debate, spent three times as much as his opponent, and was re-elected with almost 63 percent of the vote.

CITY COUNCIL

The City Council is New York City’s legislative branch. It is responsible for adopting local laws, making decisions about land use, investigating and overseeing city agencies, and approving the city’s budget. Each Council member represents one of the 51 Council districts. The 2009 City Council elections gave evidence of a small upheaval in city politics. Several exciting, vigorous races put the best of New York City on display, but others foreshadowed significant challenges ahead for the Program. Analysis has identified several trends across the 51 Council races.

Competition increased. Even with a limited number of open seats, the Council primaries were more competitive than expected. Five incumbents were unseated by challengers, an unprecedented number for a single election. Other incumbents won by slimmer-than-expected margins. More incumbents faced primaries, fewer candidates ran unchallenged, and the average margins of victory were closer than in previous elections.

The success of non-participants was mixed. Several races featured high-spending candidates who opted out of the public financing program. In most cases, spending alone was not enough to win a Council seat; public funds helped to keep participating candidates competitive. In a few races, high-spending non-participants failed to earn 20 percent of the vote, although one non-participant, non-incumbent candidate did win election.

Independent expenditures became a larger factor. Media reports fueled suspicions that Data and Field Services (DFS), the consulting arm of the Working Families Party (WFP), was providing unreported in-kind expenditures to Council candidates in the form of discounted services. Other reports focused on the city’s real estate industry, which raised \$750,000 for the state Independence Party in an effort to help elect business-friendly candidates to the City Council.⁸¹ Complaints about third-party spending took center stage in several races. [See *Chapter 9 — Independent Expenditures.*]

Under-represented communities increased their presence on the Council. Emerging communities flexed their political muscles in neighborhoods all over the city. Chinatown gave the Council its first female Asian American member. Staten Island for the first time elected an African American to office. Queens elected its first openly gay members of the Council. After the 2009 elections, the New York City Council had a non-white majority for the first time ever, and a broader range of communities represented than ever before.

Figure 1.20—Campaign Finance Program Limits—City Council

Contribution Limit	\$ 2,750	Maximum Public Funds	\$88,550
“Doing Business” Limit	\$ 250		
Spending Limit (out-year)	\$ 43,000	Public Funds Threshold	
Spending Limit (primary)	\$161,000	Dollar Amount	\$5,000
Spending Limit (general)	\$161,000	Number of Contributors	75

District 1—Manhattan/Chinatown, Little Italy, Lower Manhattan and Tribeca.*

Figure 1.21—Primary Election—District 1

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Margaret S. Chin	\$118,519	\$88,550	\$196,414	4,611	39.4%
Alan J. Gerson (I)	\$ 87,558	\$ 0	\$ 171,042	3,627	31.0%
Peter J. Gleason	\$ 43,628	\$ 88,550	\$ 135,524	1,278	10.9%
Arthur Gregory	\$ 8,696	\$ 0	\$ 9,394	227	1.9%
PJ Kim	\$ 107,302	\$ 88,550	\$ 171,727	1,963	16.8%

In District 1, incumbent Alan Gerson faced a tough Democratic primary field that included four challengers: Margaret Chin, a community organizer and former director of Asian Americans for Equality, who was running her fourth Council campaign; Peter Gleason, a former firefighter who ran for the same office in 2003; Arthur Gregory, a local small-business owner; and first-time candidate PJ Kim, a former management consultant and member of Community Board #1.⁸²

CHART KEY

I	incumbent
NP	non-participant
<bold>	won election

Gerson fell behind his competitors early in fundraising, as both Chin and Kim demonstrated they could successfully raise private funds. Kim, for example, disclosed over \$70,000 in contributions in his first filing, covering the two months ending May 11, 2009. While Chin, Gleason, and Kim all received the maximum public funds disbursement for the primary election, Gerson did not qualify for public funds. In addition, a typographical error on his petitions temporarily knocked Gerson off the ballot; he was restored to the ballot after challenging the Board of Elections’ ruling in court.⁸³

Gerson’s ballot-access problem was just one of several issues in the race. A complaint from Gleason’s campaign alleged an improper “quid pro quo” between Gerson and a local non-profit, after a *Daily News* report indicated

* All Council District neighborhood descriptions are taken from *Gotham Gazette’s* “What’s My District?” See www.gothamgazette.com/city/district.

that employees of the United Jewish Council (UJC) of the East Side had collected signatures for Gerson and other candidates. The UJC was also the beneficiary of Council grants and discretionary funds provided through Gerson’s office.⁸⁴ Gerson, suggesting that Gleason’s campaign was trying to delay its payment of public funds, likened the Gleason campaign’s tactics to “red baiting” and “McCarthyism.”⁸⁵ Gerson’s challengers also drew attention to his support for the extension of term limits.

After the dust settled, Chin won the primary with 39.4 percent of the vote. The demographic makeup of the district played a decisive role, as Asians and Pacific Islanders constitute 42 percent of the district’s population.⁸⁶ Chin defeated Republican Irene Horvath in the general election with 86 percent of the vote. Chin’s victory made history, as she became the first Chinese American to represent Manhattan’s Chinatown, and the first Asian woman elected to city office.⁸⁷

District 3 — Manhattan/Chelsea-Clinton, Greenwich Village, Flatiron, Midtown and SoHo.

Figure 1.22 — Primary Election — District 3

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Yetta G. Kurland	\$ 93,502	\$88,550	\$ 177,388	4,269	31.2%
Maria Passannante-Derr	\$ 71,460	\$88,550	\$ 145,467	2,213	16.2%
Christine C. Quinn (I)	\$177,508	\$ 0	\$161,371	7,178	52.5%

Incumbent Christine Quinn was elected to her second full term in 2005, and was elected Speaker of the City Council in January 2006. Later that year, Quinn began fundraising for a citywide office. As the debate over term limits unfolded in the fall of 2008, Quinn announced her support for legislation to extend term limits from two to three terms.

After the passage of Local Law No. 51 of 2008 extended term limits, Quinn entered the Program as a Council candidate. Though she had raised \$3 million, she set aside her “war chest” and chose to begin fundraising from scratch and limit her spending for the Council campaign, an option provided by the Board in Advisory Opinion 2008-7. [See *Chapter 6 — Legislative Action.*]

Despite her late start, Quinn had no problem raising contributions, and declined public funds. In the Democratic primary, Quinn faced civil rights attorney Yetta Kurland and Maria Passannante-Derr, a lawyer and chair of Community Board #2.⁸⁸ Kurland and Passannante-Derr each received the maximum in public funds and waged spirited, competitive campaigns. Media criticism was leveled at Quinn for supporting the term limits extension, and for failing to exercise oversight of the so-called Council “slush funds.”⁸⁹ Several gay rights groups in the district endorsed Kurland over Quinn, the first openly gay Speaker of the Council, who reportedly “alienated a large section of the LGBT community.”⁹⁰ District Council 37 (DC 37), the city’s largest municipal labor union, declined to endorse Quinn — one of only nine incumbents to be denied an endorsement from DC 37.⁹¹ The union, which reportedly came close to endorsing Kurland, opted to stay out of the race after Quinn abruptly cancelled her interview with the executive committee and failed to complete an endorsement survey.⁹² In a tighter-than-expected result, Quinn prevailed with nearly 53 percent of the vote. In the general election, Quinn easily defeated Republican Brian Merritt with over 80 percent of the vote.

District 19—Queens/Bayside, Beechhurst, College Point, and Whitestone.

Figure 1.23—Primary Election—District 19

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Steven Anthony Behar	\$ 31,838	\$ 98,557	\$ 135,090	870	10.1 %
Thomas E. Cooke	\$ 25,567	\$ 71,157	\$ 48,808	625	7.2 %
Jerry M. Iannece	\$ 122,940	\$ 107,333	\$ 222,941	2,139	24.8 %
Kevin D. Kim (NP)	\$307,369	—	\$309,994	2,692	31.2 %
Debra Markell	\$ 41,931	\$ 96,999	\$ 128,376	461	5.3 %
Paul A. Vallone	\$ 165,161	\$ 106,733	\$ 246,401	1,837	21.3 %

Figure 1.24—Bonus Situation—City Council

Matching Rate	Trigger Amount	Maximum Public Funds	Expenditure Limit
Tier 1 \$7.14*–to–\$1	\$ 80,501	\$ 107,333	\$241,500
Tier 2 \$8.57*–to–\$1	\$ 483,001	\$201,250	no limit

** These are approximate matching rate formulas. The CFB will match up to \$175 given by each eligible contributor based on the applicable bonus matching rate, increasing the maximum public funds available per contributor from \$1,050 to \$1,250 for Tier 1 and to \$1,500 for Tier 2.*

With the incumbent Tony Avella running for mayor, six candidates vied in the Democratic primary to replace him. The three frontrunners were Jerry Iannece, a former Bronx Assistant District Attorney and chairman of Community Board #11, attorney Paul Vallone, son of former City Council Speaker Peter Vallone and brother of Council Member Peter Vallone, Jr., and Kevin Kim, deputy director of community affairs for U.S. Representative Gary Ackerman.

Kim did not participate in the Program, and his spending triggered a Tier 1 bonus, which raised the matching rate and spending limits for his participating opponents. However, he did not self-finance, contributing only \$2,750 to his campaign; he relied instead on private fundraising, a significant portion of which came from contributors outside of New York City. At the Board’s Post-Election Hearings, Kim campaign treasurer Bernard Tsang testified that the campaign chose not to join the Program because it was both in the “financial interest of our own campaign to not use that taxpayers’ money to run the campaign” and because the campaign had created a budget that exceeded the expenditure limits for a participant in the Program and “didn’t want to be constrained by the confines of the matching program.”⁹³

Though many believed the race was between Iannece, the choice of the Queens Democratic Party, and Vallone, who had significant name recognition, it was Kim who won the Democratic primary in a close race, receiving 31.2 percent of the vote. Iannece finished second, receiving 24.8 percent. In his bid to become the first Council member of Korean descent, Kim received 98 percent of the Asian American vote in the district on Primary Day.⁹⁴

Figure 1.25 — General Election — District 19

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Daniel J. Halloran	\$63,237	\$102,568	\$139,392	14,548	51.6 %
Kevin D. Kim (NP)	\$517,030	—	\$ 648,603	13,667	48.4 %

In the general election, Kim faced Republican candidate Daniel Halloran, an attorney. The race was hotly contested in the days leading up to the election. Kim claimed that the Halloran campaign was distributing racist literature, while Halloran repeatedly called attention to Kim’s connections to real estate developers.⁹⁵ At the outset of the general election, the *Queens Tribune* reported that Halloran held a local leadership role in a pre-Christian pagan religion.⁹⁶ Republicans and Halloran’s campaign pointed to the fact that the paper was founded by Kim’s former boss Gary Ackerman, and called on Kim to denounce the story as a political attack.⁹⁷

Kim’s spending also became an issue. Halloran claimed that Kim’s campaign had under-reported its spending to the CFB in an effort to avoid triggering the Tier 2 bonus before the election, costing Halloran additional public funds.⁹⁸ Nevertheless, the Program helped Halloran to compete effectively against Kim’s high-spending campaign; Halloran won a close vote, tallying 51.6 percent. A Tier 2 bonus was declared in District 19 after the election, based on Kim’s post-election filings.⁹⁹

District 20 — Queens/Flushing North.

Figure 1.26 — Primary Election — District 20

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
John Choe	\$ 107,620	\$ 107,333	\$ 211,855	1,267	16.3 %
Yen S. Chou (NP)	\$337,801	—	\$304,849	1,935	24.9%
S.J. Jung	\$ 145,044	\$ 107,333	\$ 233,752	1,752	22.6%
Isaac M. Sasson	\$ 71,749	\$ 107,333	\$ 180,539	1,741	22.4%
James M. Wu	\$ 103,736	\$ 101,966	\$ 167,060	1,073	13.8%

In 2001, this district, with the support of its large Asian population, elected the first Asian American to the City Council, John Liu. With Liu running for comptroller, the District 20 seat became open. The Democratic primary was crowded with a field of five candidates: Yen Chou, a former special assistant to Council Member David Weprin; Isaac Sasson, a tenants’ rights advocate and civic leader; businessman S.J. Jung; John Choe, Liu’s former chief of staff; and James Wu, a consultant and civic leader.

Jung received most of the union endorsements in the primary, had the backing of the WFP, and used get-out-the-vote services provided by DFS. [See *Chapter 5 — Enforcement.*] Choe was endorsed by Liu, as well as 1199 SEIU and the Teamsters.¹⁰⁰ Chou ran as a non-participant; her spending triggered a Tier 1 bonus, enabling her competitors to receive matching funds at a higher rate. Chou surprised many observers by winning, with just under 25 percent of the vote.¹⁰¹ Jung placed a close second, with 22.5 percent.

Figure 1.27 — General Election — District 20

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Evergreen C. Chou	\$ 3,052	\$0	\$ 3,041	282	1.6%
Yen S. Chou (NP)	\$ 528,883	—	\$ 528,531	7,793	45.2%
S.J. Jung	\$ 145,514	\$0	\$ 240,077	700	4.1%
Peter A. Koo (NP)	\$516,085	—	\$516,145	8,449	49.1%

In the general election, Chou faced Republican Peter Koo, owner of a chain of Flushing pharmacies and another non-participant. They were joined by Green Party candidate Evergreen Chou, a medical worker.¹⁰² Jung’s name appeared on the WFP line, but he dropped out of the race in early October and did not actively campaign.¹⁰³ Koo, dubbed an “Asian version of Bloomberg” by his rivals for his largely self-financed campaign, was endorsed by Mayor Bloomberg himself.¹⁰⁴ Yen Chou received endorsements from Queens Democratic leaders, including Congressmen Joseph Crowley and Gary Ackerman.¹⁰⁵ This was the only 2009 race between two high-spending non-participating candidates. The two candidates spent more than \$1 million between them, making it the most expensive City Council race, by far. Koo ultimately won, receiving a 49.1 percent plurality. At present, Koo is the only sitting member of the Council to be elected as a non-participant.

District 25 — Queens/Corona, East Elmhurst, and Jackson Heights.

Figure 1.28 — Primary Election — District 25

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Daniel P. Dromm	\$122,276	\$107,333	\$241,204	3,258	49.2%
Stanley J. Kalathara (NP)	\$ 127,337	—	\$ 133,652	716	10.8%
Helen Sears (I)	\$ 140,172	\$ 107,333	\$ 245,838	2,643	39.9%

Two-term incumbent Helen Sears was challenged in the District 25 Democratic primary by candidates Daniel Dromm, a New York City public school teacher and a gay activist, and Stanley Kalathara, an attorney. Kalathara ran as a non-participant. Though he ultimately raised enough — more than \$127,000 in private funds, including more than \$27,000 of his own — to activate the Tier 1 bonus,¹⁰⁶ Kalathara was outspent by both of his opponents, and ultimately earned only 10.8 percent of the vote.

The contest was between Sears, endorsed by the Queens Democratic Party,¹⁰⁷ and Dromm, who received the backing of the WFP.¹⁰⁸ Dromm attacked Sears for her vote to extend term limits, and complained that she was ineffective as a Council member and out of touch with the community.¹⁰⁹ The race took an ugly turn when Dromm was attacked in an anonymous mailer about a 1972 arrest for prostitution. The mailing was later denounced by Sears, though some complained she did not denounce it loudly enough.¹¹⁰ In the end, Dromm defeated incumbent Sears by almost ten percentage points.

In the general election, Dromm easily defeated Republican candidate Mujib Rahman, receiving almost 75 percent of the vote.

District 26 — Queens/Long Island City, Maspeth, Sunnyside, and Woodside.

Figure 1.29 — Primary Election — District 26

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Deirdre A. Feerick	\$ 84,305	\$ 88,550	\$ 172,550	2,512	36.7%
Brent M. O’Leary	\$ 45,662	\$ 43,398	\$ 78,730	1,112	16.3%
James G. Van Bramer	\$86,142	\$84,122	\$159,802	3,087	45.1%

There were three contenders to replace Eric Gioia, who left the District 26 seat to run for public advocate: Deirdre Feerick, Brent O’Leary, and James Van Bramer.

Feerick was a longtime City Council staffer who served as counsel to the Legislative Division before becoming deputy director of the Administrative Services Division. O’Leary, a senior legal compliance counsel for Bloomberg L.P., also served as a superdelegate for the 2008 Democratic National Convention. Van Bramer, who was the first openly gay Democratic committeeman in Queens, co-founded the Queens Pride House in Jackson Heights and was Chief External Affairs Officer for the Queens Public Library.

Van Bramer and Feerick appeared to be the frontrunners, and worked to match each other in fundraising and endorsements. In addition to receiving endorsements from Gioia and the Queens Democratic Party, Feerick was endorsed by the Lesbian and Gay Democratic Club of Queens, though her opponent Van Bramer was the only openly gay candidate in the race.¹¹¹ Van Bramer was endorsed by *The New York Times* and had backing from SEIU Local 1199, DC 37, and the WFP.¹¹²

Van Bramer’s institutional support became a point of controversy during the race. Feerick filed a complaint with the Board against Van Bramer, citing published suspicions about support provided by the WFP through their for-profit arm, DFS.¹¹³ Van Bramer, in turn, complained to the Board about an Independence Party mailing that supported Feerick. The mailing, according to one news account, “neither ask[ed] for votes nor mention[ed] the Sept. 15 primary...to voters, though, it [was] indistinguishable from a campaign mailer.”¹¹⁴ Though the Independence Party’s efforts opposed candidates backed by the WFP, in Feerick’s and other campaigns, many of its mailers touted candidates’ ties to unions and stands on pro-union issues.¹¹⁵ Nonetheless, Van Bramer won the primary and easily won the general election against two opponents: Feerick, who ran again on the Independence line, and Angelo Maragos, who ran on the Republican and Conservative tickets. Together, Van Bramer and Dromm (District 25) became the first openly gay Council members from Queens.

District 29 — Queens/Forest Hills, Kew Gardens, and Rego Park.

Figure 1.30 — Primary Election — District 29

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Heidi H. Chain (NP)	\$ 248,595	—	\$ 246,136	1,442	19.4%
Albert Cohen	\$ 34,608	\$ 106,795	\$ 123,148	950	12.8%
Michael L. Cohen	\$ 37,576	\$ 80,328	\$ 117,287	983	13.2%
Melquiades R. Gagarin	\$ 16,069	\$ 43,185	\$ 58,943	464	6.2%
Karen Koslowitz	\$102,629	\$107,333	\$191,260	1,937	26.1%
Lynn C. Schulman	\$ 92,534	\$ 107,333	\$ 171,915	1,647	22.2%

Six candidates ran in the Democratic primary for the District 29 Council seat left open by Melinda Katz' decision to run for comptroller. Karen Koslowitz, who represented the district in the City Council from 1991 through 2001, Lynn Schulman, a healthcare executive and community activist, and Heidi Chain, an attorney, were the frontrunners.

Koslowitz received endorsements from United Food & Commercial Workers Local 1500, the United Federation of Teachers, and the Uniformed Firefighters Association.¹¹⁶ But it was Schulman who received the lion's share of labor support, landing endorsements from 1199 SEIU, the Retail Wholesale & Department Store Union, and the WFP, as well as *The New York Times*.¹¹⁷

Each of the candidates in the Democratic primary participated in the Program, with the exception of Chain, whose campaign was almost entirely self-funded. More than three-quarters of her war chest came from personal funds. Chain's spending was criticized by some of her opponents. Schulman, for example, expressed her frustration with Chain's decision, stating that "[t]he system is designed to make sure that elections are about issues and ideas, not just about who has more money."¹¹⁸ Chain explained that she wanted the public money to go toward city programs rather than her campaign.¹¹⁹ As a high-spending non-participant, Chain triggered the Tier 1 bonus, increasing the public funds matching rate for her opponents.

Chain's personal spending was a wild-card factor in a race that became yet another showdown between the Independence Party and the WFP. The Independence Party sent out at least four mailers on behalf of Koslowitz in the weeks before the election.¹²⁰ These mailers touted more traditionally conservative priorities, such as lower taxes and safer streets, providing a counterpoint to Schulman's more liberal, pro-union positions.¹²¹ Despite WFP backing and get-out-the-vote assistance from DFS, to whom she reported paying \$17,500, Schulman was defeated by Koslowitz, who won the primary with just over 26 percent of the vote. Chain finished a close third.

Schulman ran in the general election on the Working Families line. A third candidate, Bartholomew Bruno, ran on the Republican ticket. Koslowitz and Schulman both received public funds for the general election.* The results, however, were not nearly as close; Koslowitz won the general election with nearly 65 percent of the vote.

District 36 — Brooklyn/Bedford Stuyvesant and Crown Heights.

Figure 1.31 — Primary Election — District 36

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
William A. Carrington	\$6,463	\$33,300	\$ 44,838	476	5.1 %
Robert E. Cornegy, Jr.	\$ 24,702	\$ 87,060	\$109,848	658	7.1 %
Mark W. Griffith	\$ 74,090	\$ 88,550	\$ 144,421	2,111	22.8 %
David F. Grinage	\$ 40,018	\$ 84,122	\$ 84,652	820	8.9 %
Saquan U. Jones	\$ 13,523	\$ 55,320	\$ 70,122	881	9.5 %
Adrian M. Straker	\$ 7,177	\$ 35,550	\$ 39,437	598	6.5 %
Albert Vann (I)	\$52,244	\$88,550	\$137,093	2,846	30.8 %
Tremaine S. Wright	\$ 13,751	\$ 0	\$ 18,939	860	9.3 %

Incumbent Albert Vann, running for a third term, faced a difficult Democratic primary, with seven challengers on the ballot. Mark Winston Griffith, co-founder of the Central Brooklyn Federal Credit Union and Executive Director of the Drum Major Institute for Public Policy, was Vann’s chief competitor. Griffith pledged to bring new, fresh energy to representing the district, saying of Vann that “people feel like he’s retired on the job” after 34 years in the state Assembly and City Council.¹²²

Griffith had support from ACORN and the WFP in his attempt to unseat Vann. Griffith’s get-out-the-vote efforts, assisted by ACORN subsidiary NY Citizens’ Services Inc., were seen by his campaign as especially important to combat expected low turn-out.¹²³

Though Griffith waged a competitive campaign, seven candidates split the anti-incumbent vote, and ultimately Vann hung on to win the Democratic nomination in the primary with about 31 percent of the vote. He faced Griffith again in the general election, this time with Griffith on the Working Families line.† Griffith’s general election campaign received some added momentum with the endorsements of Council Member Charles Barron and Reverend Al Sharpton in late October.¹²⁴ Still, Griffith got little more than “token” support from the

* In order to receive additional public funds for the general election, Schulman was required to certify that she would actively campaign for office. Schulman submitted a “Certified Statement by Candidate Who Lost the Primary and is Seeking Public Funds for the General Election” on October 2, 2009.

† In order to receive additional public funds for the general election, Griffith was required to certify that he would actively campaign for office. Griffith submitted a “Certified Statement by Candidate Who Lost the Primary and is Seeking Public Funds for the General Election” on September 28, 2009.

WFP in the general election.¹²⁵ In the meantime, Vann worked to associate himself with the citywide candidates on the general election Democratic ticket, Thompson, de Blasio and Liu.¹²⁶ In their head-to-head matchup, Vann won with almost 65 percent of the vote.

Figure 1.32 — General Election — District 36

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Mark W. Griffith	\$ 103,560	\$ 85,344	\$ 279,313	5,659	31.8%
Robert A. Hunter	\$ 10,072	\$ 44,118	\$ 53,826	713	4.0%
Albert Vann (I)	\$102,391	\$79,995	\$263,544	11,419	64.2%

District 39 — Brooklyn/Carroll Gardens, Kensington, Park Slope, and Windsor Terrace.

Figure 1.33 — Primary Election — District 39

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
John L. Heyer II	\$ 80,105	\$ 88,550	\$ 164,650	3,042	23.1%
Brad S. Lander	\$120,723	\$88,550	\$194,701	5,346	40.6%
Gary G. Reilly	\$ 28,460	\$ 44,550	\$ 72,480	476	3.6%
Josh Skaller	\$ 108,154	\$ 88,550	\$ 181,119	3,284	24.9%
Bob Zuckerman	\$ 99,657	\$ 88,550	\$ 181,031	1,029	7.8%

With his bid for public advocate, incumbent Bill de Blasio left the District 39 seat open, and a competitive race for the Democratic nomination ensued.⁷ The Democratic primary was stacked with “extremely qualified”¹²⁷ candidates, including: Brad Lander, former director of the Pratt Center for Community Development; Josh Skaller, an IT director and President of Central Brooklyn Independent Democrats; John Heyer, a funeral director and former special assistant to Brooklyn Borough President Marty Markowitz; Bob Zuckerman, former Director of the Gowanus Canal Local Development Corporation; and Gary Reilly, an attorney.

With four of the five contenders qualifying for the maximum payment in public funds, the primary was a contentious and hard-fought race. Lander and Skaller emerged as the frontrunners, and the two spent much of the summer tossing personal barbs in each other’s direction. Lander received the endorsement of the WFP, and was criticized by Skaller for working with their for-profit consulting arm, DFS. Lander responded with accusations that Skaller failed to pay rent for a campaign office.¹²⁸ After Lander regularly touted his status as the only public school parent in the race, Skaller attacked his opponent for making an issue of his family’s decision to send

* The 39th District was home to one of the two Republican primaries in the city as well, pitting Joseph Nardiello against George Smith. Both joined the Program, but neither qualified to receive public funds. Nardiello won the primary.

his child to private school.¹²⁹ Adding to the acrimony, both Lander and Skaller received an endorsement from Howard Dean in the primary election.¹³⁰

Though most coverage of the race predicted a competitive election, ultimately Lander won the Democratic primary with over 40 percent of the vote. Lander faced four competitors in the general election: Conservative George Smith, Green Party candidate David Pechefsky, Libertarian Roger Sarrabo, and Republican Joseph Nardiello. Lander won the general election with 70 percent of the vote.

District 45 — Brooklyn/East Flatbush and Flatlands.

Figure 1.34 — Primary Election — District 45

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Ernest Emmanuel (NP)*	—	—	—	538	5.7%
Erlene J. King	\$ 18,965	\$ 84,122	\$ 102,737	392	4.2%
Dexter A. McKenzie	\$ 50,430	\$ 73,216	\$ 124,613	1,085	11.6%
Kendall B. Stewart (I)	\$ 73,910	\$ 83,358	\$ 140,492	2,392	25.5%
Samuel A. Taitt	\$ 48,383	\$ 88,550	\$ 134,303	1,554	16.6%
Jumaane D. Williams	\$79,726	\$88,550	\$156,274	3,426	36.5%

* Emmanuel failed to file disclosure statements with the CFB.

Kendall Stewart had represented District 45 since 2002. From the start, Stewart faced an uphill battle within his district. Two of his former staff members were indicted for embezzling Council funds in 2008, linking his name to the investigation of the alleged Council slush-fund scandal.¹³¹

Five candidates challenged Stewart in the Democratic primary. Perennial candidates Erlene King and Samuel Taitt returned for their third and fourth runs, respectively. However, it was newcomer Jumaane Williams, a community organizer in Flatbush, who gained early attention and support. With Stewart’s troubles, much of the institutional and community support in the race coalesced behind Williams. Williams was endorsed by the WFP and 32BJ SEIU, among many other unions, *The New York Times*, and even two of Stewart’s colleagues, Council Members Charles Barron and Rosie Mendez.¹³² Stewart, for his part, claimed endorsements from several of his colleagues who never intended to give him their backing.¹³³

Stewart did receive the backing of the Independence Party, which sent mailers on his behalf touting the incumbent’s pro-worker views. Williams charged the party with attempting to mislead voters, alleging that the Independence Party has “known conservative views.”¹³⁴

With WFP support, Williams had a get-out-the-vote operation built by DFS, and he won the primary. He faced Stewart again in the general election; this time the incumbent ran on the Independence Party ballot line.* Both Williams and Stewart received public funds for this race, but Williams won the general election with more than 75 percent of the vote. Williams was the only challenger to unseat an incumbent in Brooklyn. To do so, he spent more than any other Council candidate in Brooklyn.¹³⁵

Figure 1.35 — General Election — District 45

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Salvatore Grupico*	—	—	—	1,146	6.1%
Kendall B. Stewart (I)	\$ 81,190	\$ 53,582	\$ 242,419	3,237	17.2%
Jumaane D. Williams	\$96,274	\$66,190	\$282,508	14,388	76.7%

* Salvatore Grupico did not register his committee with the CFB.

District 49 — Staten Island/North Shore

Figure 1.36 — Primary Election — District 49

Candidate	Contributions	Public Funds	Expenditures	Votes	% Vote
Rajiv Gowda	\$ 36,635	\$ 68,904	\$ 100,721	540	5.9%
Kenneth Mitchell (I)	\$ 112,306	\$ 88,550	\$ 157,984	3,636	39.6%
Deborah Rose	\$ 64,985	\$88,500	\$158,463	4,998	54.5%

Michael McMahon represented District 49 from 2002 until he was elected to Congress in 2008. In February 2009, Kenneth Mitchell, McMahon’s chief of staff, won a special election to fill the seat. Mitchell ran for election to a full term in the 2009 elections, and faced Deborah Rose and Rajiv Gowda in the Democratic primary. Rose, a longtime member of Community Board #1, had run for the District 49 seat twice before; first in 2001, and then again in the 2009 special election, where she lost to Mitchell by just a few hundred votes.¹³⁶ Gowda also ran in the 2009 special election.

All three candidates in the primary participated in the Program, and each received public funds. Mitchell was supported by the Uniformed Fire Officers and other public safety unions, while Rose was backed by the WFP and 1199 SEIU.¹³⁷

* In order to receive additional public funds for the general election, Stewart was required to certify that he would actively campaign for office. Stewart submitted a “Certified Statement by Candidate Who Lost the Primary and is Seeking Public Funds for the General Election” on September 25, 2009.

While Rose’s campaign reported paying \$45,000 to DFS during the campaign, the Independence Party printed and sent mailers to District 49 voters on Mitchell’s behalf.¹³⁸ The media scrutiny over DFS brought some attention to the race; Mitchell backers claimed that working with DFS gave the Rose campaign “resources that they would not have normally had.” * Others claimed that Mitchell faced an uphill battle because Republicans and Conservatives who may have helped Mitchell win the special election were unable to support him in the primary, and Rose’s long-time supporters were highly motivated to elect her.¹³⁹

Rose defeated Mitchell in the primary, but faced him again in the general election on the Conservative Party line. Timothy Kuhn, a high school science instructor, ran on the Republican line. Rose was the only candidate to be paid public funds in the general election, receiving the maximum \$88,550. She won the general election with nearly 60 percent of the vote to become the first African American elected to any office on Staten Island.¹⁴⁰

* The Rose campaign was sued after the election by five Staten Island voters represented by former Giuliani Deputy Mayor Randy Mastro, on the basis that DFS provided services to the campaign at a discounted rate. The lawsuit was settled in February 2010, with Rose’s campaign agreeing to pay an additional \$8,525 to DFS. [See *Chapter 5 — Enforcement.*]

The Program at Work — Analysis

TOP VENDORS

A look at the top 10 vendors to participating candidates provides a clearer view of the fundamental differences between citywide and City Council campaigns. Candidates for every office make expenditures that help them increase their name recognition and communicate with voters, but candidates for different offices may find it more efficient to communicate through different media.

With a broader constituency of potential voters, citywide candidates allocate a significant portion of their funds to broadcast media. [See Analysis, pp. 18 – 19.] Seven of the top ten vendors for all participating candidates in the 2009 elections produced television advertisements and/or bought the air time for those ads. Many earned the vast majority of their fees from a single citywide client. The vendors included three Washington, D.C.-area consulting firms, media-buying and production firms in Philadelphia and Marietta, GA, and some venerable local names with a long history of involvement in New York City politics. The majority of expenditures made to the largest vendors overall came from citywide candidates.

Figure 1.37 — Top 10 Vendors to All Candidates (Participants Only)

	Vendor Name	Total	2005 Top 10
1	Squier Knapp Dunn/Knickerbocker SKD	\$3,389,760	X
2	The Campaign Group	\$3,223,555	
3	The Parkside Group	\$2,430,523	
4	Sheinkopf, Ltd.	\$2,231,377	X
5	Great American Media	\$2,024,404	
6	Luc Media	\$1,949,850	X
7	Mack/Crouse Group	\$1,553,039	
8	Murphy Putnam Media	\$1,308,956	
9	Mission Control	\$1,076,482	X
10	Miram Group	\$1,066,124	X

When the list of vendors is restricted to Council campaigns only, it looks much different. Council candidates have a different task; they must reach a smaller audience, confined within a more compact geographic area. With lower spending limits, Council candidates must target their communications with potential voters more efficiently. For the most part, the largest expenditures to vendors by Council candidates paid for literature, campaign mailings, and fieldwork or grassroots outreach. All the top vendors to participating City Council campaigns were New York City-based firms, except for the U.S. Postal Service. Half the vendors on both lists were also on the top 10 list for the 2005 elections.

Figure 1.38—Top 10 Vendors to City Council Candidates (Participants Only)

	Vendor Name	Total	2005 Top 10
1	The Parkside Group	\$1,328,897	X
2	BerlinRosen	\$ 582,690	
3	Red Horse Strategies	\$ 473,861	
4	Branford Communications	\$ 444,252	X
5	U.S. Postal Service	\$ 443,574	X
6	Grassroots Initiative	\$ 434,875	
7	Data and Field Services	\$ 372,768	
8	The Advance Group	\$ 295,561	X
9	Mark Guma Communications	\$ 198,412	X
10	Century Direct LLC	\$ 182,838	

PUBLIC FUNDS

If a campaign is a car, campaign contributions provide the fuel. To extend the metaphor, the Program puts candidates in a car with an efficient hybrid engine — one that runs on both private donations and public funds. Candidates in the public funds program get more miles to the gallon — their small contributions go further.

Compared with campaigns for citywide office, which must necessarily generate a broader appeal, City Council campaigns are smaller and closer to community concerns. Council candidates are generally also more reliant on the Program. The Program matches contributions up to \$175 from New York City residents. Public funds comprise a larger proportion of overall funds available for Council candidates — more than half — than they do for candidates running citywide, for whom public funds comprise less than 40 percent of expenditures.

Differences in fundraising can help explain Council candidates' reliance on public funds. Candidates for Council raise more small contributions. A majority of contributors to candidates for mayor, public advocate, and comptroller still gave \$175 or less, but practically eight out of ten contributors to participating Council candidates gave less than or equal to the maximum matchable contribution.

With a narrower local focus, Council candidates also receive more of their funds from inside New York City than do citywide candidates. Again, citywide candidates raise a healthy majority of their funds from inside the city — but Council candidates raise almost 80 percent of their contributions from city residents.

Figure 1.39—Public Funds as a Proportion of Expenditures, Participating Candidates, 2009 Elections

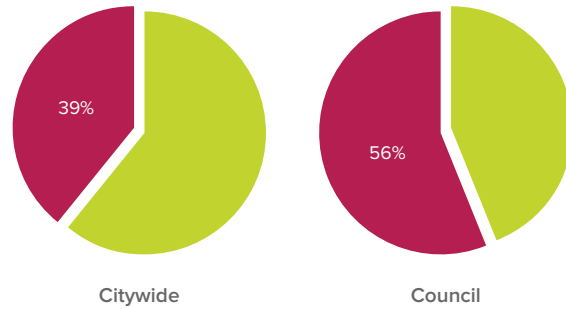


Figure 1.40—Proportion of Contributors Giving \$175 or Less, Participating Candidates, 2009 Elections

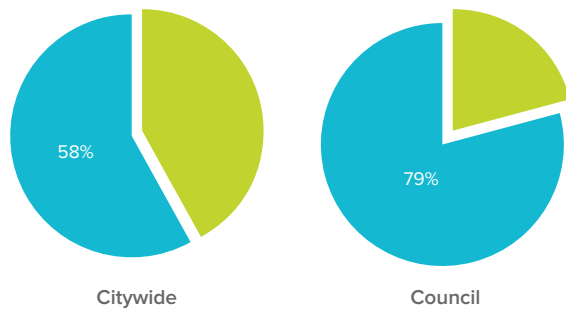
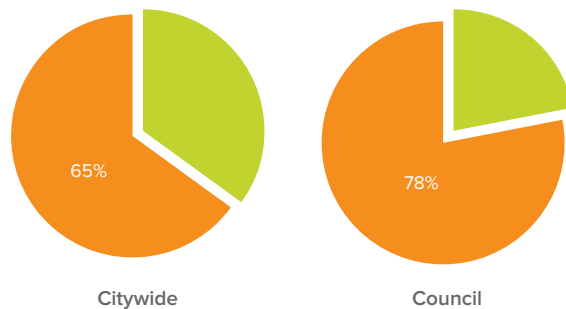


Figure 1.41—Proportion of Total Contributions (\$) from New York City Residents, Participating Candidates, 2009 Elections



TOP CONTRIBUTORS

As in most other recent elections, the top contributors to candidates in the 2009 elections were labor groups. Of the top 10 contributors for all participating candidates in 2009, eight were employee organizations or political committees connected to labor unions. Six of the top 10 appeared on the top 10 list for the 2005 elections.

Figure 1.42—Top 10 Contributors to All Candidates (Participants Only)

	Contributor	Amount	2005 Top 10
1	Local 1199 SEIU	\$ 139,400	X
2	NYS Laborers' PAC	\$ 119,175	X
3	United Federation of Teachers	\$ 115,210	
4	New York Hotel and Motel Trades/Local 6	\$109,600	X
5	NYC District Council of Carpenters	\$100,575	X
6	Local 32BJ SEIU	\$ 89,674	X
7	Council of School Supervisors & Administrators	\$ 85,415	
8	NYC Justice PAC (NYS Trial Lawyers Association)	\$ 80,400	
9	District Council 37 AFSCME	\$ 68,840	
10	Leonard Litwin	\$ 65,125	X

For Council candidates, the list looks similar. Again, eight of the top 10 contributors to Council candidates were union-based; again, six of the top 10 appeared in the top 10 contributors to Council candidates in 2005.

Still, the lion's share of contributions to participating candidates come from individuals. While the top contributors were mostly organizations, organizational contributions* overall make up only 16 percent of money raised by Council candidates during the 2009 election cycle. Participating candidates for citywide office all received between 10 and 14 percent of their campaign money from non-individual contributors.

* Limited liability companies (LLCs), partnerships, employee organizations, and political committees. Candidates were prohibited from accepting contributions from LLCs and partnerships as of January 1, 2008.

Figure 1.43—Top 10 Contributors to City Council Candidates (Participants Only)

	Contributor	Amount	2005 Top 10
1	Local 1199 SEIU	\$104,500	X
2	NYS Laborers PAC	\$ 81,825	X
3	United Federation of Teachers	\$ 74,760	
4	New York Hotel and Motel Trades/Local 6	\$ 72,250	X
5	NYC District Council of Carpenters	\$ 68,750	X
6	Local 32BJ SEIU	\$ 50,374	X
7	Council of School Supervisors & Administrators	\$ 48,050	
8	Taxpayers for an Affordable New York	\$ 43,700	X
9	District Council 37 AFSCME	\$ 41,790	
10	NYC Justice PAC (NYS Trial Lawyers Association)	\$ 37,570	

Figure 1.44—Organizational Contributions by Office (Participants Only)

	Organizational Contributions	% of All Contributions
Mayor	\$ 649,672	13.0%
Public Advocate	\$ 711,119	13.6%
Comptroller	\$1,083,610	10.3%
Borough President	\$ 332,799	8.8%
City Council	\$1,728,967	16.0%

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THE DEBATE PROGRAM

OVERVIEW


One of the CFB's central goals is to provide voters with the information they need to make educated decisions when voting. The Debate Program is a cornerstone of the CFB's voter education efforts.

Candidates for citywide office who join the Campaign Finance Program are required to take part in debates before each election. The Debate Program is administered by the CFB in concert with various civic and media partners, who sponsor, produce, and broadcast the debates. It provides the public with an opportunity to hear candidates discuss issues of interest, giving potential voters a greater ability to play an informed role in the democratic process.

The Debate Program grew out of public frustration generated during the 1993 mayoral campaign, when Rudy Giuliani and then-Mayor David Dinkins failed to meet in a public debate, even though they collectively accepted more than \$3 million in taxpayer funds.¹ Newspapers, former candidates, public officials, and citizens' groups united to demand that debates be mandatory for citywide candidates who seek public funds.² In late 1996, the Debate Law was passed by City Council and signed into law by Mayor Giuliani. It went into effect for the 1997 elections and has been a part of each citywide election since.³



A live
audience of
600
saw the
CFB mayoral
debate at
El Museo
Del Barrio.



THE LAW

The law requires two debates be held before each primary and general election for the offices of mayor, comptroller, and public advocate. In the case of a runoff election, the law requires that one runoff debate be held. Each debate must be at least one hour. Candidates who join the Campaign Finance Program are required to take part in all CFB debates for which they are eligible.

To be eligible for the debates, candidates must be on the ballot and must achieve a minimum financial benchmark. Additionally, sponsors may work with the CFB to determine other nonpartisan, objective, and non-discriminatory criteria.

The second debate in both the primary and general elections for each office is limited by law to “leading contenders.” Leading contenders are identified by additional nonpartisan, objective, and non-discriminatory criteria determined by the sponsor in consultation with the CFB. Often, sponsors use polls and additional financial criteria to help determine the leading contenders.

Debate sponsors may invite candidates who do not join the Campaign Finance Program to participate in any of the debates, as long as these candidates satisfy the criteria applicable to all participating candidates.

CRITERIA FOR PARTICIPATION IN THE DEBATE PROGRAM

While the law included financial criteria for the 2005 and 2009 debates, this has not always been the case. When the Debate Program was created before the 1997 elections, the law required all participants on the ballot to attend the debates before the primary. All participants were required to debate once before the general election. The second debate before the general election was reserved for “leading contenders,” which was the only debate to which non-participating candidates could be invited. To provide a forum for candidates who did not qualify for the “leading contenders” debate, the Board was required to sponsor an “alternative nonpartisan voter education forum” for candidates on the ballot who did not meet the criteria.

Some observers felt that mandating all participating candidates on the ballot to attend diluted the quality of the debates.⁴ In 1997, one columnist wrote that the “antics” of Eric Ruano-Melendez, who sang the Star-Spangled Banner during his closing statement in a debate before the Democratic primary for mayor, “undermined the stature and seriousness” of the other

candidates.⁵ In 2001, *The New York Times* asked to be removed from consideration as a sponsor because it was unwilling to produce a debate that included all candidates on the ballot.⁶

These concerns were raised again after the 2001 election, especially after the first debate in the general election for mayor featured Democratic nominee Mark Green with four minor-party candidates (including Kenny Kramer, model for the Kramer character on *Seinfeld*, who ran on the Libertarian line), but not Republican nominee Michael Bloomberg, who ran as a non-participant and could not, by law, be invited.⁷

In 2004, the City Council amended the Act to restrict eligibility by setting minimum financial criteria for all CFB debates, which allowed only candidates who raised **or** spent at least 20 percent of the threshold for public funding to participate in debates. The objective criteria help limit participation to viable candidates. The second primary and general election debates were also limited to the leading contenders.⁸ The 2004 law allowed the sponsor to invite non-participants who met the criteria to appear in any debate.

In 2005, however, a candidate qualified for the debates by lending his campaign the funds to meet the minimum amount.⁹ In 2007, the Council closed this loophole by amending the Act to require that a candidate raise **and** spend 20 percent of the public funding threshold, and to require that only contributions raised and spent in compliance with the Act be used to determine debate eligibility.¹⁰ This financial standard is now a minimum for all debates.

For the 2009 elections, this meant that candidates for public advocate and comptroller were required to raise and spend a minimum of \$25,000; candidates for mayor were required to raise and spend \$50,000. Unlike the threshold to receive public funds, which includes only matching claims, **all** contributions are counted to determine eligibility for the debates. [See Figure 2.2.]

Figure 2.1—Criteria to Participate in CFB Debates, 2009 Elections¹¹

		First Debate	“Leading Contenders” Debate
Primary Election	Mayor	\$50,000 raised and spent and 5% in the polls	\$200,000 raised and spent or \$50,000 raised and spent and 10% in the polls
	Public Advocate	\$25,000 raised and spent	\$200,000 raised and spent or \$25,000 raised and spent and 10% in the polls
	Comptroller	\$25,000 raised and spent	\$200,000 raised and spent or \$25,000 raised and spent and 10% in the polls
General Election	Mayor	\$50,000 raised and spent and 5% in the polls	\$500,000 raised and spent and 20% in the polls
	Public Advocate	\$25,000 raised and spent	\$200,000 raised and spent and 10% in the polls
	Comptroller	\$25,000 raised and spent	\$200,000 raised and spent and 10% in the polls

Thompson viewed the debate as a rare opportunity to level the playing field.

2009 DEBATES

Sponsors and Schedule

The CFB solicited applications for debate sponsors from a broad variety of academic, civic, community, and news organizations. To be considered, organizations may not be affiliated with a political party or candidate, and may not endorse a candidate in the pending election prior to their sponsored debate.

IT'S AN ELECTION YEAR...
WATCH & LEARN
NYC'S OFFICIAL DEBATES

PRIMARY ELECTION	GENERAL ELECTION
MAYORAL DEBATES Wednesday, August 26, 2009 7:00 pm on NY1 and WNYC Radio Wednesday, September 9, 2009 7:00 pm on WABC-TV and 1010 WINS	MAYORAL DEBATES Tuesday, October 13, 2009 7:00 pm on NY1 and WNYC Radio Tuesday, October 27, 2009 7:00 pm on WABC-TV and 1010 WINS
PUBLIC ADVOCATE DEBATES Sunday, August 30, 2009 11:00 am on WABC-TV and WNYC Radio Tuesday, September 8, 2009 7:00 pm on NY1 and WNYC Radio	PUBLIC ADVOCATE DEBATES Sunday, October 25, 2009 11:00 am on WABC-TV and WNYC Radio Wednesday, October 28, 2009 7:00 pm on NY1 and WNYC Radio
COMPTROLLER DEBATES Sunday, August 23, 2009 11:00 am on WABC-TV and WNYC Radio Thursday, September 10, 2009 7:00 pm on NY1 and WNYC Radio	COMPTROLLER DEBATES Sunday, October 18, 2009 11:00 am on WABC-TV and WNYC Radio Thursday, October 29, 2009 7:00 pm on NY1 and WNYC Radio

www.nycctfb.info/debates

- Broadcasts in additional languages
- Runoff election debates
- Host a debate party

Debates '09
 New York City Campaign Finance Board

These debates are sponsored by:

To learn more about the candidates running for local office this year, read the NYC Voter Guide and watch the Video Voter Guide. Find out more at www.nycctfb.info/voterguide.

In 2009, the CFB received applications from 19 organizations, some of which submitted joint proposals. Each application was reviewed for the applicant's ability to reach a wide audience, sensitivity to the diverse New York City population, and ability to present a fair, impartial, and nonpartisan debate. After a thorough review, the CFB selected two groups as debate sponsors for the 2009 elections: the NY1 group, consisting of NY1 News, NY1 Noticias, WNYC, *Daily News*, Citizens Union, and Time Warner Cable; and the WABC-TV group, consisting of WABC-TV, League of Women Voters of the City of New York (LWVNYC), 1010 WINS, and Univision.

The 2009 Debate Program consisted of 11 debates. In the general election, the "leading contenders" debate for comptroller and both debates for public advocate were cancelled, as required by law, because only one candidate met the eligibility criteria.

Each debate was broadcast on television, radio, and online via streaming video. The debates for mayor included a studio audience, invited by Citizens Union (for the NY1 debates) or WABC-TV. Every debate was broadcast in Spanish by the partnering sponsors. Consistent with the CFB's mission to engage the widest possible audience for the debates, the sponsors arranged to have the debates rebroadcast in a variety of different languages: in Korean on The Korean Channel TKC, in Russian on RTVi, in Punjabi on Jus Punjabi, in Hindi on ITV Gold, in Greek on the Greek Channel, and in Mandarin and Cantonese on Sino TV and NTD-TV.

In addition to the sponsors' publicity efforts, the CFB promoted the debates in a subway advertising campaign. The main campaign for the Debate Program involved two four-week displays of posters on subway platforms throughout the five boroughs and full-page display ads within the printed Voter Guides. In addition, the Debate Program was cross-marketed with the Voter Guide and Video Voter Guide. [See *Chapter 3 — Voter Guide*].

Mayor — Primary Election

The first debate in the Democratic primary for mayor was open to the public. A live audience watched the debate at the New York Public Library, and the debate was broadcast live on NY1 News, NY1 Noticias, and WNYC. Two candidates, Tony Avella and William Thompson, met the criteria to debate. With Thompson heavily favored to win the primary, the two candidates rarely addressed each other, and instead aimed most of their rhetorical arrows toward Mayor Bloomberg.¹² The debate may have failed to generate controversy, but *The New York Times* suggested the debate's importance was in focusing a spotlight on two candidates who were having trouble drawing much public interest:

[W]hat was most valuable, arguably, was that the two were simply on live television at all. After all, neither candidate is well known, according to recent surveys, including a Quinnipiac University poll released Wednesday. And neither has been able to afford any commercials or attract much media attention to date, in contrast to the \$37 million that Mr. Bloomberg, an independent, has already spent on television commercials and other campaign expenses.¹³

The "leading contenders" debate, broadcast on WABC-TV, Univision, and 1010 WINS and held at the WABC studios in Manhattan, again featured Avella and Thompson, and produced more excitement.¹⁴ When asked about his plans for his first act as mayor, Thompson answered that he would fire all of Mayor Bloomberg's commissioners, which *The New York Times* described as an "unexpected miscue."¹⁵ Education, campaign fundraising, and housing policy were topics that led to disagreements during the debate. The 60-minute debate, which was broadcast live in prime time, was moderated by WABC's Bill Ritter. Questions came from a panel of journalists from WABC, 1010 WINS, and Univision, as well as viewers who submitted questions over the Internet.

Mayor—General Election

Two candidates qualified for the first general election mayoral debate: Thompson, the winner of the Democratic primary, and incumbent Michael Bloomberg, a non-participant who ran on the Republican, Independence, and Jobs and Education lines. During the 2005 elections, Bloomberg attended only one of the two debates held under the auspices of the CFB Debate Program. In 2009, however, Bloomberg publicly announced on the night of the primary election that he would attend both CFB debates during the general election.¹⁶

The first debate, broadcast live by NY1 News and WNYC, was held October 13 at El Museo del Barrio before an audience of 600 guests, ranging from elected officials to members of the local community. Tickets were distributed by Citizens Union.

The New York Times wrote that, “[i]t was immediately apparent that despite a ho-hum campaign, the debate would be contentious and occasionally disorderly.”¹⁷ One mayoral hopeful who had not met the criteria to participate in the debate, Green Party candidate Billy Talen, obtained a ticket to sit in the audience. Talen, also known as “Reverend Billy,” rose from his seat and spoke out during Bloomberg’s opening statement, and was escorted out of the facility.



Mayoral candidates Michael Bloomberg and William Thompson at the October 13, 2009 CFB debate. (Daily News)

Once the debate got underway, Thompson repeatedly sought to provoke discontent over the extension of term limits and Bloomberg’s campaign spending, complaining that the Mayor “plays by his own set of rules.”¹⁸ Bloomberg responded by criticizing Thompson’s tenure as President of the Board of Education between 1996 and 2001, suggesting that if voters preferred Thompson’s education record to his, they should vote for the challenger. Despite Bloomberg’s advantage in spending, observers agreed that the debate gave Thompson an opportunity to make the race competitive. “Outspent 16 to 1,” wrote the *Times*, “Mr. Thompson and his aides viewed the debate as a rare opportu-

nity to level the playing field with Mr. Bloomberg and introduce himself personally to New Yorkers, who still know little about him.”¹⁹ According to the *Daily News*, the 60-minute forum “gave Thompson’s weakly funded campaign a platform he desperately needed—a commercial-free, televised hour during which he stood as Bloomberg’s equal.”²⁰

The second mayoral debate, a week before Election Day, was held at the WABC-TV studios and broadcast live in prime time. For 60 minutes, Bloomberg and Thompson “sparred” and “threw beanballs”²¹ as “the knives came out”²² for the final debate. Some of the disagreements were personal. Bloomberg alleged that Thompson raised funds from people who did business with the comptroller’s office, while Thompson alleged that Bloomberg’s personal contributions to various not-for-profits and civic groups amounted to “pay-to-endorse” politics. *The New York Times* noted that more meaningful contrasts between the candidates were revealed as “the debate

offered viewers yearning for substance a robust discussion of municipal issues,” including policies on taxes, job creation, and education.²³

Public Advocate — Primary Election

The first primary debate for public advocate featured four candidates: Bill de Blasio, Eric Gioia, Mark Green, and Norman Siegel. Hosted by WABC-TV at its studios, the debate was taped and streamed live on WABC’s website on Friday afternoon, then broadcast on Sunday morning, a traditional airtime for public affairs programming. As the perceived frontrunner, Green quickly came under attack, especially from de Blasio, who was running second in most public opinion polls.²⁴ The purpose of the public advocate’s office was at the center of the debate. As reported by *The New York Times*, moderator Diana Williams “repeatedly asked the candidates to justify the existence of the job.”²⁵

The second debate, held at WYNC’s Jerome L. Greene Performance Space and broadcast on NY1 News as well as WNYC, was similarly contentious. The four candidates who took part in the first debate all qualified as “leading contenders.” Trying to distinguish themselves from each other, the candidates “spent their second and last televised debate confronting one another on ethics, experience and political insiderness, in an hourlong meeting that was as unsettled as the race itself,” said *The New York Times*.²⁶



Public Advocate candidates (from L to R) Mark Green, Bill de Blasio, Eric Gioia, and Norman Siegel at the September 8, 2009 CFB debate. (Daily News)

With no candidate gaining 40 percent of the vote in the September 15 primary, a runoff election was held two weeks later. As mandated by law, a runoff debate was held, hosted by NY1 News at their studio and broadcast on NY1 and WNYC. de Blasio and Green met to debate each other for the third time less than a week before the runoff election. With polls showing the race tied and each candidate seeking every advantage, the 60-minute debate focused largely on the attacks each had aired during the primary election campaign.²⁷ Partially as a result, some griped that the runoff debate was “high on slugs, low on policy,” having “all the heft of cotton candy.”²⁸

There were no debates for public advocate in the general election. Although Democratic runoff winner Bill de Blasio was opposed by four other candidates — Alex Zablocki (Republican), Maura DeLuca (Socialist), William Lee (Conservative), and James Lesczynski (Libertarian) — on the November 3 ballot, none of these opponents reported sufficient contributions and expenditures to qualify under the law for a CFB debate.



Links to videos of the debates are available on the CFB’s website.



Comptroller — Primary Election

The 2009 CFB Debate Program kicked off on August 21 with the taping of the first primary Comptroller debate, hosted by WABC-TV at its Manhattan studios. Four Democratic candidates qualified: Melinda Katz, John Liu, David Weprin, and David Yassky. An NPR report noted that the first debate was mostly “public policy ho-hum,”²⁹ as candidates largely addressed the issues without engaging in political attacks. The hour-long debate, moderated by WABC anchor Diana Williams, was broadcast on both WABC and WNYC on Sunday morning, and streamed live over the Internet during the Friday afternoon taping.

The same four candidates qualified for the “leading contenders” debate, broadcast live on NY1 News and WNYC from WNYC’s Greene Space. Less than two weeks before the election, the polls showed three candidates in a dead heat for the nomination,³⁰ and the debate hadn’t been underway for long before the candidates “took a few swipes at each other.”³¹ It was the candidate trailing the others, Weprin, who initiated many of those swipes, attacking Liu for his disputed claims of working in a sweatshop as a child, and reminding viewers that Yassky and Katz had both voted to extend term limits. The candidates discussed the ability of the comptroller to oversee discretionary spending by the City Council (each claimed he or she would do a better job), and policy differences with the mayor (each claimed to be independent on important issues).

As with the public advocate race, no candidate earned 40 percent of the vote in the primary, so Liu and Yassky met at the NY1 News studio for a runoff debate. Their hour-long encounter, broadcast live on NY1 and WNYC, was marked by political attacks between the two, and was “in stark contrast from what [had] mostly been a polite campaign.”³² Still, much of the debate focused on substantive issues. “For long spells,” wrote the *Times*, “the candidates dueled without interruption from the moderator, and at several points they talked about the job they were running for, rather than the positions they were vacating.”³³

Comptroller — General Election

Besides the two debates for mayor, only one other debate was held during the general election, between Democratic runoff winner Liu and Salim Ejaz, nominee of the Rent Is Too High Party. Although there were three other candidates on the ballot, Joseph Mendola (Republican), Stuart Avrick (Conservative) and John Clifton (Libertarian), none met the minimum financial criteria required by law to participate.

ISSUES RAISED DURING THE 2009 DEBATE PROGRAM

The Debate Program for the 2009 election cycle generated some complaints, particularly in the general election, from candidates who did not meet the minimum criteria to qualify. “This law is ... classist, shutting out people who cannot self-finance or rely on corporate interests ... Working people don’t have \$50,000 to spend just to appear at one debate,” said Francisca Villar, the mayoral candidate of the Socialism and Liberation Party. “It’s an undemocratic practice that drives away real middle-class New Yorkers who instead have to spend money on rent and food for their children.”³⁴

Green Party mayoral candidate Billy Talen demonstrated outside the first general election debate for mayor to protest his exclusion.³⁵ Republican candidate for public advocate, Alex Zablocki, who also failed to meet the debate threshold, stated flatly, “Debates should not have an entry fee.”³⁶

The minimum financial criteria did not, however, prevent all minor party candidates from participating in the debates. For example, this year, Salim Ejaz, of the Rent is Too High Party, qualified for inclusion in the CFB’s first general election debate for the office of comptroller.

Of the eleven debates during the 2009 elections, only two featured an all-male panel and each debate panel contained at least one panelist from the Latino or African American communities. Some critics felt, however, that the debate moderators selected by the sponsors could have been more representative. Along with several comments received after the mayoral debate at Museo del Barrio, Council Speaker Christine Quinn and Council Members Melissa Mark-Viverito, Diana Reyna, and Helen Diane Foster signed a letter to the CFB protesting the lack of any women moderators at that debate.

The CFB also sought feedback from audience members and stakeholders during and after the debates. For more information, see Chapter 7 — Meeting the Goals.

Figure 2.2 — Money Raised and Spent to Determine Eligibility for First Debates, 2009 Elections
(ranked by percentage of the vote)

Mayor					
	Candidate	Party	Net Contributions	Net Expenditures	% of Vote
Primary (as of 8/10/09)	William C. Thompson, Jr.	D	\$ 3,916,696	\$ 2,816,740	71.0%
	Tony Avella	D	\$ 275,842	\$ 237,741	21.1%
	Roland C. Rogers (NP)	D	\$ 1,193	\$ 138	7.7%
General (as of 9/28/09)	Michael R. Bloomberg (NP)	R, I, JE	\$64,800,000	\$64,756,120	50.7%
	William C. Thompson, Jr.	D, WFP	\$ 4,129,527	\$ 3,811,856	46.3%
	Stephen A. Christopher (NP)	C	—	—	1.6%
	Billy Talen	G	\$ 44,223	\$ 59,276	0.8%
	Francisca Villar (NP)	PSL	\$ 8,388	\$ 6,801	0.2%
	Jimmy McMillan	RTH	—	—	0.2%
	Joseph L. Dobrian (NP)	LBT	—	—	0.1%
	Daniel B. Fein (NP)	SW	—	—	0.1%

Public Advocate					
	Candidate	Party	Net Contributions	Net Expenditures	% of Vote
Primary (as of 8/10/09)	Bill de Blasio	D	\$ 1,396,397	\$ 1,317,149	32.6%
	Mark Green	D	\$ 494,983	\$ 276,330	31.5%
	Eric Gioia	D	\$ 2,024,496	\$ 1,129,759	18.2%
	Norman H. Siegel	D	\$ 292,168	\$ 247,594	14.2%
	Imtiaz S. Syed	D	\$ 17,780	\$ 31,626	3.5%
General* (as of 10/19/09)	Bill de Blasio	D, WFP	\$ 1,877,259	\$ 3,981,192	76.9%
	Alex T. Zablocki	R	\$ 17,072	\$ 11,074	17.9%
	William J. Lee (NP)	C	—	—	3.6%
	Maura S. DeLuca (NP)	SW	—	—	0.9%
	James L. Lesczynski (NP)	LBT	—	—	0.7%

Comptroller					
	Candidate	Party	Net Contributions	Net Expenditures	% of Vote
Primary (as of 8/10/09)	John C. Liu	D	\$ 2,902,881	\$ 1,667,041	37.8%
	David Yassky	D	\$ 1,728,294	\$ 1,233,006	30.9%
	Melinda R. Katz	D	\$ 2,408,965	\$ 1,355,274	20.5%
	David I. Weprin	D	\$ 1,737,837	\$ 1,499,917	10.7%
General (as of 9/28/09)	John C. Liu	D, WFP	\$ 3,281,141	\$ 4,670,306	76.0%
	Joseph A. Mendola	R	\$ 20,223	\$ 17,235	19.3%
	Stuart J. Avrick (NP)	C	—	—	2.5%
	Salim Ejaz	RTH	\$ 31,923	\$ 36,940	1.3%
	John Clifton (NP)	LBT	—	—	1.0%

Did not achieve eligibility criteria for debate

NP Non-participant

† Debate cancelled because only one candidate achieved criteria

PARTY KEY

C	Conservative	JE	Jobs and Education	RTH	Rent is Too High Party
D	Democratic	LBT	Libertarian Party	R	Republican
G	Green	P	Populist Party	SW	Socialist Workers Party
I	Independence	PSL	Party for Socialism and Liberation	WFP	Working Families

ENDNOTES

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VOTER GUIDE

OVERVIEW

For over 20 years, the CFB has produced the official New York City Voter Guide, a free source of comprehensive, nonpartisan voter information. The CFB publishes and mails the printed Voter Guide to every household with an eligible voter. A Voter Guide is produced before each regularly scheduled municipal election for a covered office or ballot proposal. In 16 of the last 20 years, a Guide has been produced. Starting in 1998, the CFB has also produced an interactive edition on its website.

The Guide contains information about local candidates, ballot proposals, and voting procedures. A new Guide is printed and distributed before every municipal election if there are local candidates or ballot proposals on the regularly scheduled ballot. Production and content of the Guide is divided into editions by borough and Council district.

The Guide is printed in English and Spanish, as mandated by the City Charter. Editions translated into Chinese and/or Korean are included in mailings to voters in selected areas, consistent with the federal Voting Rights Act.

EDUCATING VOTERS

The Guide's primary intent is to provide substantive and nonpartisan information to the voters of New York City. Besides profiles submitted by the candidates, every edition also contains:

- ❖ answers to common questions about voting;
- ❖ deadlines for voter registration;
- ❖ contact information for the Board of Elections (BOE), including the address and phone number of each borough office;
- ❖ a description of voters' rights;
- ❖ pictorial instructions for using the voting machines;
- ❖ links and information about other voter resources, including broadcast schedules for the Video Voter Guide and the CFB's Debate Program in citywide election years, and the NY Unified Court System's online judicial voter guide.

The CFB also provides comprehensive coverage of local ballot proposals in the Guide, including:

- ❖ the text of each question as it will appear on the ballot;
- ❖ plain-language summaries of each proposal;
- ❖ arguments for and against each proposal, based on information gathered at public hearings, in the press, and from submitted public commentary;
- ❖ excerpts of public commentary for and against each proposal.

GIVING CANDIDATES A FORUM

The Guide is also a valuable resource for all candidates, because it provides them with a medium to communicate with their target constituency without cost to the campaign. For candidates with limited funds, publishing a profile in the Guide may be their best opportunity to reach the widest possible pool of potential voters. The printed Guide includes the profiles of all candidates anticipated to be on the ballot at press time; the online Guide provides any updates to this ballot status.

In the spring of the election year, the CFB sends Voter Guide submission kits to potential candidates, and Candidate Services Unit liaisons follow up with reminders to submit a profile for the Guide. The CFB's simple software application, the Voter Guide Wizard, provides step-by-step instructions to aid candidates in completing their submissions. Typically, a candidate profile includes:

- ❖ biographical information;
- ❖ a photo of the candidate;
- ❖ answers to standard questions relevant to the position;
- ❖ links to the campaign's email and website address.



THE 2009 VOTER GUIDE

For the 2009 elections, the CFB produced and mailed nearly three million Primary Election Guides in 18 editions, and almost 4.3 million General Election Guides in 14 editions. Civic groups, libraries, colleges, and other organizations across the city distributed nearly 50,000 additional Guides to the public.

The Voter Guide is produced and mailed in English and Spanish to voters throughout the five boroughs. Consistent with the federal Voting Rights Act, the CFB also produces and mails Chinese editions to Brooklyn and Manhattan voters in targeted election districts, and Chinese/Korean versions to voters in targeted election districts in Queens based on lists from the BOE.


Between the 2007 and 2008 elections, the BOE expanded the number of election districts in which it provides translated ballots and/or interpreters. Since the CFB's mailing is based on the BOE's list of election districts, this resulted in the CFB sending Chinese and/or Korean Guides to many more households in 2009 than in prior years.

For the general election, the CFB mailed Chinese (or Chinese/Korean) editions together with English/Spanish editions, instead of mailing the editions separately. This ensured voters would receive a Guide they could read (whichever language they preferred). It also resulted in a postage savings that more than covered the increased mail preparation costs.




A vigorous outreach campaign by the Candidate Services Unit resulted in the highest participation rate to date in the CFB's 2009 Primary Election Voter Guide. Ninety-seven percent of candidates in the primary submit-

Every citywide candidate in the primary election submitted a Voter Guide profile.



97% of candidates in the primary submitted profiles.



ted profiles for publication in the guide. Seventy-five percent of candidates on the ballot for the general election submitted profiles as well. Overall, the CFB received submissions from 268 potential candidates.

THE ONLINE VOTER GUIDE

The online edition of the 2009 Voter Guide was designed to maximize flexibility and optimize the reader's access to information about candidates for each race. The online version was updated to add new information, especially regarding ballot status and candidate contact data. Visitors could:

- ❖ find candidates by providing their street address or selecting their Council district from a list;
- ❖ choose to view any candidate's profile by name or by office sought;
- ❖ see all the candidates in a race on one page and toggle between their profiles by clicking on their names;
- ❖ play each candidate's Video Voter Guide statement from a link at the bottom of their profile;
- ❖ launch a candidate's website or email their campaign by clicking on a link in their bio;
- ❖ bookmark, email, or post content to social media sites using "share" buttons.

Visitors could enter their address to find their Council district through a link to NYCityMap, an online map created and maintained by the New York City of Information Technology and Telecommunications (DoITT). Other links of note included the BOE's poll site finder, for help in finding out where to vote, and the NY Unified Court System's online judicial voter guide.

For the 2009 elections, the CFB posted translated content online. Spanish, Chinese, and Korean Guide homepages were created with a link in each language to the appropriate translated Guide, as well as to voter registration forms, absentee ballot applications, debate schedule information, and other information in each language.

There were over 190,000 page views of the online Primary and General Election Guides combined. Both editions were in the top ten pages on the CFB's website in terms of site traffic for the year.

VIDEO VOTER GUIDE

The Voter Assistance Commission (VAC) launched a complementary resource, the Video Voter Guide, in 2005. The Video Guide offered every candidate on the ballot another opportunity to reach voters, with a taped statement aired on NYC-TV and other media outlets and available on VAC's website. For the 2009 Video Guide, the CFB partnered with VAC to reach out to candidates, advising them of the opportunity to participate, and helping schedule their tapings at NBC's studios at 30 Rockefeller Center. Although fewer candidates participated in the Video Guide than in the CFB's print and online Guide, 165 candidates on the ballot in the primary and general elections taped profiles.

The Video Guide aired on TV the week before each election, and the videos were posted concurrently on VAC's website. The CFB linked to the candidates' profiles in its online Voter Guide to the videos, which allowed one-stop shopping for voters: they could read a candidate's profile, view his or her taped statement, visit the campaign's website, or email the campaign from a single page.

VOTER GUIDE PROMOTION

The expanded role the CFB played in the Video Guide led to expanded opportunities to promote all the formats of the Guide. The CFB and VAC agreed to cross-market these voter resources along with the CFB's Debate Program. To reach a broad cross-section of New Yorkers, the CFB advertised the Guide on the city's subways and buses. The ads also provided information about the Video Guide and debates. Video Guide ads on bus shelters, phone kiosks, and periodicals such as *Time Out NY* promoted the CFB's Voter Guide and Debate Program and provided their dedicated web addresses.

Additionally, two new types of promotion were launched in 2009: urban panels and social media. Urban panels are posters on subway entrances, usually at street level. These highly visible placements represented the Guide's first advertisements on city streets. In addition, the CFB created a Voter Guide fan page on Facebook, with frequent updates about the Guide mailing, online resources, election news, and links for voters.



**165 candidates
on the ballot
in the primary
and general
elections taped
video voter
guide profiles.**

FOR THE FUTURE

The CFB continuously seeks to improve the print and online Voter Guides. Ideas for improvement come from many sources, including staff, voter feedback, testimony at the CFB's post-election hearings, and advancements in technology. The CFB is considering ways to make the online Guide more interactive and cultivate voter participation via its website. Ideas include allowing voters to submit questions for candidates to answer; hosting online forums where voters can interact directly with candidates online (like an online town hall or debate); and making it easier for voters and candidates to interact via social media sites like Facebook and Twitter. The CFB has also received preclearance from the Justice Department for a new distribution method for the Chinese and Chinese/Korean editions, which will better ensure the translated Guide is directed to those who need it.



PUBLIC DISCLOSURE

OVERVIEW

Providing accessible, complete, and timely disclosure of campaign finances to the public is a critical part of the CFB's mission. Starting with the 2005 election, all candidates for offices covered by the Campaign Finance Act—whether or not they participate in the matching funds program—have been required to disclose their contributions, expenditures, and other transactions to the CFB. Disclosure helps the public see who is supporting a candidate and how each candidate is spending his or her money, including public funds. Information about candidates' fundraising and spending can help voters make more informed decisions when they go to the polls. A transparent view of candidates' finances helps lay a foundation of trust between candidates and the public they hope to serve. To further these goals, the CFB implemented several improvements to its extensive public disclosure systems during the 2009 election cycle.

C-SMART

To ensure campaign finance data is disclosed efficiently to the public, the agency provides campaigns with the tools they use to collect and provide the information. Campaigns track and disclose their transactions using proprietary software the CFB provides to every campaign free of charge, known as Candidate Software for Managing and Reporting Transactions, or C-SMART.

After the 2005 elections, the CFB invited campaign compliance staff and treasurers to participate in a series of focus groups about C-SMART, and offer suggestions on how to improve it. Using this feedback, the CFB developed C-SMART 9, which featured improved campaign management functions and a modernized user interface. It was introduced in March 2008, giving campaigns time to become familiar with the new edition well in advance of the 2009 elections. [See *Administrative Report for information about campaigns attending C-SMART trainings.*]

C-SMART 9 gives users the ability to more easily view and access multiple transactions. Its cleaner interface makes it easier to identify fields, such as name or transaction ID.

To make the system more user friendly, C-SMART 9 was streamlined for improved efficiency and easier navigation. Data can be exported and imported to and from widely used accounting applications like Quickbooks and Microsoft Money, as well as other applications.

Many of the changes to C-SMART support the day-to-day activities of a campaign. For example, the software can generate letters to contributors, helping campaigns to track their correspondence while streamlining their efforts to comply with the law. C-SMART 9 can produce letters to ask donors for missing contributor information or request unregistered political committee contributors to register with the CFB, as well as thank donors for their contributions.

C-SMART's new features help campaigns organize information in ways that aid disclosure and fundraising. Campaign staffers can access contributor information to help arrange fundraising events, compile lists, and record pledges. As they enter basic information like addresses and employers, campaigns can also elect to add other contributor attributes in order to target communications with their donor base. C-SMART also allows campaigns to file over the Internet — which most campaigns have done.

Helping campaigns gather and organize their financial information is the first step in ensuring it is disclosed in a clear and accessible way. Providing added value that encourages campaigns to make better use of C-SMART has helped improve the quality and timeliness of campaign disclosure.

CFB WEBSITE

Disclosure of campaigns' contributions and expenditures is provided to the public on the CFB's website via the Searchable Database and the Campaign Finance Summary pages. Users can see information about candidates' financial activity in digest form, or in detailed transaction-by-transaction reports. Disclosures are made every six months in the first three years of the four-year election cycle. In the first half of the election year, reports are due every two months, and then approximately every two weeks as the election nears. After the last scheduled pre-election disclosure statement is filed two weeks before Election Day, campaigns are required to disclose any large contributions and loans (exceeding \$1,000) and expenditures (exceeding \$20,000) within 24 hours.

In preparation for the 2009 elections, as detailed below, the CFB made significant enhancements to the way it provides public disclosure.

In addition to financial disclosure, the CFB makes a wide range of information about the work of the CFB available on its website. The basic rules and requirements of the Program are posted, along with guidance for candidates, agency press releases and reports, and the text of the Campaign Finance Act and relevant sections of the City Charter. The website also provides information about Board enforcement actions, including penalties and repayments, candidates' final audit reports, advisory opinions, and determinations issued by the Board, as well as declarations filed by candidates (such as *Certified Statements of Need*).

CFB Searchable Database

Launched in 1998, the Searchable Campaign Finance Database contains transactions from all campaigns that have filed disclosures with the CFB since 1989. In May 2009, the CFB unveiled its completely redesigned Searchable Database. The update — the first since the database was introduced — provides a more user-friendly interface that aims to make searching campaign fundraising and expenditure data significantly easier and less time-consuming. Instead of a single interface, the new database offers users two choices: a Quick Contributor search and an Advanced Search.

Users looking to research a specific contributor or candidate can go directly to the Quick Search and access results without navigating through undesired options. The Advanced Search is equipped to handle more powerful queries, allowing users to search contributions, intermediaries (or “bundlers”), expenditures, and other transactions employing parameters not available on previous versions of the database. The advanced search displays all the search options on a single screen, allowing users to see the parameters they have chosen, and enabling searches by contributor name, employer, address or zip code, dollar amount, disclosure statement, contributor type, or expenditure purpose. An intuitive check-box interface helps users find and compare candidates more easily.

An additional new feature is the intermediary search (people or organizations that solicit or deliver money from other contributors on behalf of a campaign). This search function totals the dollars raised for a candidate by each intermediary, and allows users to click through to see the list of contributions that each intermediary has “bundled.”

The database's new, interactive results page provides a dollar amount for each search, and allows users to sort results in ascending or descending order as they prefer. The results environment provides users with more clarity and flexibility to view their data, which can also be downloaded



**In May 2009,
the CFB
unveiled its
completely
redesigned
Searchable
Database.**



into a Microsoft Excel (.xls) file, a database file (.dbf) readable with Excel or Microsoft Access, or a printer-friendly Adobe Acrobat (.pdf) file.

The database is easier to find when a user enters the CFB's website as well. Along with a link to the database, a quick-search widget accessible on all pages takes users directly to a list of contributions to a particular candidate for the current election cycle. In 2009, the Searchable Database was the most-visited area on the CFB's website. [*For more information about visitors to the CFB's website, see the Administrative Report.*]

Campaign Finance Summaries

While the Searchable Database provides transaction-by-transaction detail on candidate fundraising and spending, the Campaign Finance Summary provides interested users with a snapshot of candidates' overall finances, displaying the most requested numbers for private fundraising, public funds, and disbursements, as well as a breakdown for each.

The Summary was redesigned to provide users with access to an in-depth summary report for each candidate. The candidate-specific page provides a "balance sheet" of a candidate's receipts and disbursements, as well as a broad analysis of contributions received. The "balance sheet" can be viewed for each disclosure filing period, and users can click through the totals provided to see the transaction details via the searchable database. The redesigned Summary can now be sorted by borough and district, allowing users to compare candidates in a particular race for borough president or Council.

Also added before the 2009 elections was a "Doing Business" Contributions Summary. With new, strict limits on contributions from people "doing business" with city government in place for the 2009 elections, this new page provides the public with a look at "doing business" contributions accepted by each candidate. The summary shows the number and amount of their contributions, and the amount refunded to contributors to comply with the limits. A downloadable .xls file lists every contribution, providing the public with a way to study the efficacy of the city's limits on pay-to-play contributions, which are among the most comprehensive of any jurisdiction in the nation. [*For more on the CFB's administration of the "Doing Business" limits, see Chapter 8.*]

By shining a light on the role of money in city politics, public disclosure resources provided by the CFB give the public the tools they need to better hold their elected officials accountable.



ENFORCEMENT

OVERVIEW

Rigorous enforcement of the Campaign Finance Act has been a hallmark of the New York City Campaign Finance Board since its inception. The CFB's enforcement efforts ensure that taxpayer dollars are used appropriately, and prevent candidates from gaining advantage over their opponents by evading the requirements of the Act and Board rules.

The CFB closely monitors the compliance of campaigns throughout the election cycle. Enforcement issues come to light in many ways, including through review of campaigns' disclosure statements; compliance visits during the campaign season; press reports; and complaints filed by campaigns, anonymous sources, or members of the public.

After each election, the CFB conducts comprehensive audits of all campaigns to identify irregularities and possible violations. While campaigns are given multiple opportunities to correct problems, if the post-election audit reveals that a campaign has committed violations of the Act or should repay public funds, the CFB initiates administrative proceedings against the campaign. Penalties may be assessed and public funds that were improperly spent, inadequately documented, or left over at the end of the campaign must be repaid to the city.

ENFORCEMENT ISSUES RAISED IN THE 2009 ELECTIONS

Independent/Coordinated Expenditures

Some of the most difficult and time-consuming enforcement issues the CFB faced during the 2009 elections involved allegations of expenditures being made on behalf of a candidate by outside entities. While independent expenditures that are not coordinated with a campaign are constitutionally protected, they pose a serious threat to the efficacy of the Program. Expenditures that are coordinated with a campaign (i.e., non-independent) pose an even greater threat. A campaign's failure to account for and report non-independent activity undermines the Program in several ways: the activity of a potentially major campaign contributor remains undisclosed; over-the-limit and in-kind contributions can go undetected; and unreported coordinated activity may constitute a violation of the expenditure limit. Further, non-independent activity can disrupt the election's competitive balance: a candidate who receives the benefit of non-independent expenditures from a third party is at a significant advantage over an opponent who complies with the Act's contribution and expenditure limits.¹

Perhaps the most notable allegations of non-independent expenditures in the 2009 election cycle involved Data and Field Services (DFS). In August, *City Hall News* published an investigative report raising questions about DFS, a "for-profit" consulting firm established by the Working Families Party (WFP) to provide services to candidates, such as consulting, canvassing, voter lists, and get-out-the-vote activities. The report stated that "[a] complicated web of coordinated activities, shared resources and staff, and quiet money transfers between the Working Families Party, a secretive private company called Data and Field Services and at least six current Council campaigns, as well as Bill de Blasio's campaign for public advocate, appears to have found several ways around the strict city campaign finance laws."² Nine candidates, all of whom were endorsed by WFP, contracted with DFS for campaign-related services in the 2009 elections.³

The press reports and other information received by the CFB raised serious allegations that these candidates could be receiving significant, unreported, in-kind contributions, in the form of cut-rate services subsidized by the WFP. The close affiliation between DFS and WFP prompted concerns about potential violations of the Act, namely that (1) campaigns that contracted with DFS were not paying full market value for the services they received; and (2) there may have been non-independent expenditures by WFP and its affiliates for some or all of these candidates.

On September 2, 2009, the Board issued the following statement:

Based on information acquired by the Board to date, it is the Board's understanding that DFS exists as an arm of the Working Families Party. Both organizations are located in the same space and share employees; DFS was created by Working Families Party staff; and there are no apparent firewalls between them. In light of the close affiliation, the Board presumes that any activity undertaken by the Working Families Party on behalf of campaigns using DFS as a vendor is non-independent. Therefore, these activities must be reported and accounted for by campaigns as either an in-kind contribution from the Working Families Party or an expenditure.³

* The nine candidates are: Bill de Blasio, Daniel Dromm, S.J. Jung, Brad Lander, Stephen Levin, Lynn Schulman, Deborah Rose, James Van Bramer, and Jumaane Williams. Other candidates endorsed by the WFP did not hire DFS.

By issuing this statement, the Board ensured that the campaigns that contracted with DFS were aware of the potential issues surrounding the affiliation between DFS and WFP. This statement put campaigns on notice to be vigilant they did not receive more services than they paid for from DFS. The CFB's ongoing post-election audits will determine whether campaigns heeded the warning, and ensure that all services provided to campaigns by DFS and WFP have been fully paid, accounted for, and reported.*

The CFB investigated numerous other complaints of alleged non-independent expenditures by, among others, the Independence Party, SEIU Local 1199, Local 32BJ, and the Glen Oaks Village Corporation. Some complaints were quickly resolved; others required a more in-depth inquiry, and will be addressed further during the post-election audit process. As will be discussed in greater detail, the determination of whether a particular expenditure is independent or non-independent can be quite difficult. Evidence of non-independent activity is usually largely circumstantial.

* In addition to the CFB's close monitoring, DFS and WFP have been the subjects of scrutiny from several other sources. Notably, former Deputy Mayor Randy Mastro, on behalf of five Staten Island voters, filed a lawsuit under New York State law against DFS and Deborah Rose's 2009 campaign. The suit alleged that the Rose campaign failed to report significant in-kind contributions from DFS in the form of below-fair-market-value services subsidized by WFP, and sought an order requiring the Rose campaign to amend its disclosure statements filed with the New York State Board of Elections. On February 22, 2010, the parties reached a settlement whereby the Rose campaign agreed to amend its city and state disclosure statements to reflect \$8,525 in additional payments to DFS, and DFS agreed to reform its corporate structure and governance by, among other things: (i) appointing independent directors not affiliated with WFP; (ii) establishing independent management, administrative, and employment structures separate from and not controlled by WFP; (iii) engaging independent accounting and law firms different from those used by WFP; and (iv) reforming its standard contracts to include more specific details of the services provided and the charges thereof. Enforcement of this settlement is ongoing.


It has also been reported in the press that the U.S. Attorney's Office for the Southern District of New York has issued subpoenas to WFP, DFS, and the campaigns that contracted with DFS as part of a criminal investigation relating to DFS' activity in the 2009 elections. See David Seifman, "Woeful families matters," *New York Post*, December 16, 2009.

Finally, WFP retained former New York State Chief Judge Judith Kaye to conduct an "internal review" of DFS and its activity in the 2009 elections. On May 14, 2010, former Judge Kaye delivered her report to WFP and DFS. The report did not make any "findings relating to the past conduct of DFS, WFP or their personnel," but did recommend structural changes to the relationship between DFS and WFP (including that DFS restructure into a taxable non-profit). Many of the report's recommendations were consistent with the reforms agreed to by DFS in the settlement of the Staten Island lawsuit. WFP endorsed all of the report's recommendations. See Edward-Isaac Dove, "Kaye Report Proposes Transforming DFS Into Non-Profit," *City Hall News*, June 2, 2010.




The most
difficult
enforcement
issues
involved
allegations of
coordinated
expenditures.





81

candidates in
2009 made
political
contributions
with personal
funds.



Because the CFB cannot be privy to oral communications between campaigns and third parties, information about whether campaign-related activity has been discussed or otherwise coordinated between a campaign and a third party is uniquely within the campaign's — and the third party's — possession. When investigating alleged non-independent expenditures, CFB staff may receive only limited information regarding precisely what and when activity has taken place. In most circumstances, the CFB must rely on information it receives from campaigns and their opponents, which can often be incomplete, or inaccurate.

Unreported Political Contributions from Candidates' Personal Funds

On August 20, 2009, the campaign of William Thompson filed a complaint against Michael Bloomberg and his campaign. Thompson's complaint alleged that Bloomberg and his campaign violated the Act and Board rules by making political contributions (from Bloomberg's personal account), and failing to report them to the CFB as campaign expenditures. Prior to this complaint, the Board had never been presented with a matter where a candidate made a substantial number and amount of political contributions from his or her personal account rather than from the candidate's committee account. The complaint alleged that Bloomberg used personal funds to make more than \$1 million in political contributions to various non-candidate political committees, including political committees of the Republican Party and Independence Party during the 2009 elections.

Relying on the CFB's long-standing practice of considering political contributions to be campaign expenditures subject to disclosure, the Board determined that Bloomberg's political contributions were presumptively campaign expenditures, and therefore should be disclosed and reported to the CFB — regardless whether they were made with personal funds. A candidate's normal expenditures in furtherance of his or her campaign, such as staff wages, advertising, or literature, do not become unrelated to the campaign by virtue of using a personal bank account to pay for them. In past elections, the Board has required candidates who paid campaign consultants with personal funds to report their personal spending as campaign expenditures. By the same standard, making a political contribution with personal funds does not transform the expenditure from a campaign expenditure to a personal contribution unrelated to the campaign.

In October 2009, the Board issued a determination stating: 1) political contributions of more than \$99 to non-candidate political committees that support candidates in New York City and throughout New York State made by a candidate with his or her personal funds are presumptively campaign expenditures in furtherance of his or her campaign; and 2) effective

January 12, 2010, all candidates must report such contributions — unless the candidate rebuts the presumption that the contributions are in furtherance of his or her campaign.⁴

Bloomberg was not the only candidate in the 2009 election cycle to make political contributions using personal funds without reporting the contributions to the CFB as campaign expenditures (although Bloomberg’s political contributions were by far the largest — totaling over \$1 million).⁷ Because the CFB previously did not require candidates to report political contributions made with personal funds as campaign expenditures, the Board declined to find Bloomberg or any other candidate in the 2009 election cycle in violation for failing to report such political contributions to the CFB. The Board published a list of contributions made by candidates during the 2009 election cycle.⁵ However, beginning January 12, 2010, all candidates are required to disclose and report political contributions of more than \$99 made from a candidate’s personal account to a non-candidate political committee, unless the candidate shows that such contributions were not in furtherance of his or her campaign.

Mass Mailings

During the 2009 elections, the CFB once again was responsible for enforcing the “mass mailing” provision of New York City Charter §1136.1(2)(b).[†] This provision prohibits a public servant from using government resources for a mass mailing that is mailed or delivered within ninety days of an election in which he or she is a candidate, subject to certain exceptions.[‡] To ensure that elected officials and candidates were in compliance with the mass mailing provision for the 2009 elections, CFB staff advised elected officials prospectively on whether planned mailings complied with the provision. The CFB received approximately 89 requests from elected officials seeking a determination of whether a mailing was in compliance with the mass mailing provision.[§] The CFB approved 65 of the requests (14 of which were approved only after the elected official made suggested modifications), and found that 24 might violate the provision if sent.

* In February 2010, it was reported that Bloomberg made two additional personal contributions totaling \$1.2 million to the Independence Party. The Manhattan District Attorney’s Office launched an investigation relating to these contributions after it was revealed that most of the money ended up in the hands of John Haggerty Jr., a GOP operative and Bloomberg campaign volunteer. *See* Adam Lisberg and Elizabeth Benjamin, “Bloomberg donation investigated after it ends up in hands of campaign operative, says sources,” *Daily News*, February 9, 2010. Haggerty was indicted in June 2010 for grand larceny, money laundering and three counts of falsifying business records. *See* David W. Chen and Colin Moynihan, “GOP Consultant Accused of Stealing Campaign Money,” *The New York Times*, June 15, 2010. According to the indictment, Haggerty lied to Bloomberg and his campaign aides by saying that he would spend Bloomberg’s money on Election Day ballot security and poll watching, when in truth he used a significant portion of the money to purchase a house, and spent very little of it on Election Day activity. Haggerty has pleaded not guilty.

† Pursuant to N.Y. City Charter §1136.1(4), the CFB has the “power to investigate and determine whether any use of governmental funds or resources” pursuant to §1136.1(2)(b) is a violation and whether such use of government resources also constitutes a contribution and/or expenditure.

‡ A mass mailing is defined as “identical or nearly identical pieces of literature or other mass communication totaling more than one hundred items, including but not limited to newsletters, pamphlets and informational materials, which are mailed to residents or voters, or any group or classification thereof, other than in response to specific inquiries or requests made by members of the public.” N.Y. City Charter §1136.1(1)(e).

§ Twenty-five of the requests were from Manhattan Borough President Scott Stringer, and 24 were from Council Speaker Christine Quinn; the rest of the requests came from two other borough presidents and various Council members.

New York City Charter §1136.1(3)(a) lists seven exceptions to the mass mailing provision. During the 2009 elections, the lack of clarity of a few of these exceptions presented compliance and enforcement difficulties for both the elected officials and the CFB, as described below.

“Ordinary Communication” Exceptions. An elected official or public servant may use government resources for a mass mailing within the 90-day blackout period if it is an “ordinary communication” between elected officials and their constituents, or between public servants and members of the public.⁶ During the 2009 elections, there were many mailings the CFB approved under the “ordinary communications” exceptions, such as flyers advertising annual ethnic celebrations or park openings; mailings to inform constituents of recent changes in the law; announcements of City Council or other public hearings; information about city, state, or federal programs with important deadlines; and other mailings requiring urgent action.

However, the CFB advised officials that other types of mailings might violate the mass mailing provision, including holiday greetings, tourism promotions, specific updates on members’ activities, ads for certain events sponsored by non-profits or businesses, electronic newsletters, and flyers for town halls (that did not fall under the public health/safety exception discussed below).

The Public Health and Safety Exception. An elected official may use government resources for a mailing within the 90-day blackout period if it is a communication “necessary to safeguard public health and safety.”⁷ For the 2009 elections, when determining whether this exception applied, the CFB endeavored to permit only mailings that were truly “necessary.” Mailings that provided information regarding recent crimes (including hate crimes and rapes), swine flu vaccinations, and free mammography services were approved because these are the types of information that constituents need to know immediately. Other mailings that current elected officials sought approval for under the public health/safety exception did not meet this standard, including mailings regarding bus idling, flyers for a town hall on pedestrian safety, and flyers advertising a spay/neuter van.

Other Complaints

During every election season, the Board receives many complaints, both formal and informal. For all formal complaints (and for all but the most frivolous informal complaints, which are dismissed without further action), the campaign which is the subject of the complaint is given an opportunity to respond. If merited, the CFB conducts further investigations into the alleged violations. For the 2009 elections, the Board received 56 complaints reflecting a wide variety of issues. While most complaints are filed in good faith, a significant number of complaints appeared designed to distract an opponent during the height of the election. When a meritorious complaint was presented, the CFB pursued vigorous investigative measures, perhaps leading to enforcement actions. At the same time, the CFB recognized the importance of not enabling campaigns to abuse the complaint process by using it for purely strategic purposes.

SIGNIFICANT ENFORCEMENT ISSUES RESOLVED DURING 2006–2009

A few cases that were especially complicated or highlighted important issues were resolved since the last post-election report was issued.

Pedro Espada, Jr.

In December 2008, the CFB emerged victorious from a long-running legal battle with former City Council Member and current state Senate Majority Leader Pedro Espada, Jr. The litigation related to Espada's 2001 campaign for Bronx borough president. In the course of that election, the CFB found indications of a number of serious violations of the Act, including the undisclosed use of corporate contributions and repeated failures to provide full disclosure of campaign expenditures. Accordingly, the Board denied Espada's campaign public matching funds.* During the post-election audit, the CFB discovered additional violations, including the campaign's acceptance of excess aggregate contributions from Espada in a variety of forms, such as loans that were not repaid, and in-kind contributions from entities controlled by Espada. The audit also revealed that employees of Soundview HealthCare Network (a business owned by Espada) had been reimbursed for their contributions by their employer.†

The Board ultimately determined that Espada committed 22 separate violations of the Act and assessed \$61,750 in penalties — one of the largest



The Board
received
56
complaints
against
candidates
in the 2009
elections.



* Espada filed a lawsuit against the CFB, challenging the Board's decision and seeking to compel the CFB to pay the campaign \$173,000 in public matching funds. The court denied Espada's request and upheld the Board's decision to deny Espada's campaign public matching funds, finding that the Board's action was not an abuse of discretion. See *Espada 2001 v. N.Y.C. Campaign Fin. Bd.*, Index No. 115778/01 (N.Y. Sup. Ct., Sept. 7, 2001).

† The CFB brought its concerns about the suspicious activity it observed during the 2001 election to the attention of the New York State Attorney General's Office. In May 2005, three senior members of Espada's Soundview management team pleaded guilty to various criminal offenses, including the stealing of state funds earmarked for programs designed to serve impoverished women, children and persons diagnosed with HIV and AIDS and using these funds for Espada's 2001 Bronx borough president campaign. The CFB cooperated with the Attorney General's office in its investigation and prosecution. See Jonathan P. Hicks, "Three Admit They Cheated Clinic Patients," *The New York Times*, May 21, 2005. In April 2010, agents from the New York State Attorney General's Office, the I.R.S. and the F.B.I. raided Espada's Soundview office. Attorney General Andrew Cuomo filed a civil suit against Mr. Espada and other Soundview officials, accusing them of "looting" at least \$14 million from the nonprofit organization to pay for Mr. Espada's personal and campaign expenses." See Nicholas Confessore and Mirela Iverac, "F.B.I. Raids Bronx Clinic Office Linked to Espada," *The New York Times*, April 21, 2010.

aggregate fines the Board has ever imposed. Espada filed a lawsuit challenging the Board's determination. After the trial court upheld many, but not all, of the penalties against Espada, a unanimous ruling by the Appellate Division in December 2008 reinstated all the penalties assessed by the Board against Espada.⁸ Following some additional wrangling with the CFB, and public calls for Espada to pay up,⁹ Espada finally paid his \$61,750 debt to the CFB in August 2009.

Fernando Ferrer

In July 2009, the Board concluded a significant enforcement action against Fernando Ferrer's 2005 mayoral campaign. During the election, Ferrer's campaign received significant and highly visible support from New York's Health and Human Services Union, 1199/SEIU, AFL-CIO (1199 SEIU). The nature of 1199 SEIU's activity on behalf of Ferrer's campaign raised concerns that the activity was not independent from the campaign. Notably, key personnel on leave from their positions at 1199 SEIU were involved with organizing the campaign's field operations and get-out-the-vote efforts, which extensively utilized 1199 SEIU members. Moreover, 1199 SEIU officials attended a campaign strategy meeting in the month preceding the election with Mr. Ferrer and campaign staff. 1199 SEIU also printed and distributed hundreds of thousands of glossy brochures in support of Ferrer.¹⁰

In July 2009, after a thorough post-election audit and hearing before the Board, the Board determined that 1199 SEIU's activity on behalf of the Ferrer campaign amounted to coordinated activity. The Board assessed a \$10,000 penalty against Ferrer and his 2005 campaign committee for accepting an over-the-limit in-kind contribution in the form of 1199 SEIU's non-independent activity.¹¹ [See also *Chapter 9—Independent Expenditures.*]

Miguel Martinez

In December 2008, the CFB's long legal battle with former Council Member Miguel Martinez and his 2001 election committee finally came to a close with a ruling in the CFB's favor. In 2001, Martinez ran as a participant in the Program and received \$128,786 in public matching funds. Like all campaigns, the Martinez campaign was subject to a routine and comprehensive post-election audit. The campaign's initial response included only minimal paperwork, which failed to include documentation that justified the proper use of public funds. The CFB issued a draft audit report finding that the campaign had been unable to document any qualified expenditures and, absent such documentation, would have to repay all the public funds it received. In response, the campaign produced additional documentation purporting to represent all of the remaining invoices and checks for expenditures for the 2001 campaign. Upon close inspection, however, many of these new documents appeared to be fabricated, including apparently altered invoices, discrepancies in signatures, and false endorsements of checks. As a result, the CFB sought penalties against Martinez, his treasurer, and the committee for, among other violations, the submission of fabricated documentation and misrepresentation.*

* In response to the CFB's first Notice of Alleged Violations against the Martinez campaign dated November 24, 2004, the campaign filed a lawsuit in which it alleged that the CFB's allegations were vague and in violation of due process. The campaign's lawsuit was ultimately dismissed with prejudice. See *Martinez 2001 v. N.Y.C. Campaign Fin. Bd.*, 36 A.D.3d 544 (1st Dept. 2007).

After two lengthy public hearings, the Board found that Martinez, his treasurer, and the committee had committed multiple serious violations of the Act by fabricating documentation, which, taken together, constituted a breach of the campaign's Certification to comply with the Act and Rules, which had been signed by Martinez and his treasurer.* Accordingly, in addition to the assessment of penalties totaling \$44,780, the Board determined that Martinez and his committee were required to return all \$128,786 in public funds that the campaign had received.¹² Martinez then filed a lawsuit against the CFB challenging the Board's determination. The Board's determination was upheld in full by the court, which also granted the CFB's counterclaim for a money judgment in the amount of \$173,566 — the total amount owed by Martinez.¹³

In July 2009, Miguel Martinez pleaded guilty to federal corruption charges alleging that he converted over \$100,000 in taxpayer funds to personal use through various illegal schemes in which he approved and submitted fabricated documentation to the City.¹⁴ In December 2009, Martinez was sentenced to five years in prison. Following the sentencing, the United States Attorney for the Southern District of New York publicly thanked the CFB for its assistance in the investigation.¹⁵

Annabel Palma

In October 2009, the CFB collected long outstanding penalties assessed against Annabel Palma and her 2003 and 2005 campaigns, bringing a very important enforcement action to an end.

During Palma's 2003 campaign for Council District 18, her first run for office, 1199 SEIU produced and printed literature advocating Palma's election, created and distributed fundraising appeals, and conducted an extensive get-out-the-vote drive on the day of the primary election. The nature of 1199 SEIU's activity raised concerns that these efforts on behalf of Palma were non-independent. Notably, 1199 SEIU served as a vendor to Palma's campaign for, among other things, phone banking, literature production and distribution, and Election Day activities, yet also allegedly provided these same services as independent third party expenditures. In addition, campaign literature paid for by Palma's campaign and literature paid for by 1199 SEIU contained identical or substantially similar photographs, text, and contact information. Finally, various activities on and leading up to primary Election Day were conducted by Palma's campaign in conjunction with 1199 SEIU, including recruitment of Election Day workers, staffing at the campaign's Election Day space and the campaign's headquarters, campaign management and oversight, poll-site operations, literature distribution, get-out-the-vote efforts, use of a sound truck, food for election workers, and use of a "mobile office."¹⁶ Upon the completion of a comprehensive post-election audit and multiple hearings before the Board, in October 2007, the Board determined that 1199 SEIU's activity on behalf of Palma was non-independent and therefore constituted an unreported over-the-limit in-kind contribution.† The Board assessed a total of \$30,000 in penalties against Palma and her campaign for violations relating to the coordinated activity, as well as misrepresentations made to the Board throughout its investigation.¹⁷ [See also *Chapter 9 — Independent Expenditures.*]

* Board Rule 2-02 outlines the activities deemed to be a breach of the obligations affirmed and accepted by a participating candidate in their certification.

† The resolution of the Board's action against Palma was delayed by a lawsuit Palma filed against the Board in October 2005 in an effort to prevent the Board from conducting its administrative process. In October 2006, the court denied Palma's request for a preliminary injunction, thereby enabling the Board's enforcement action to move forward. See *Palma v. N.Y.C. Campaign Fin. Bd.*, Index No. 114600/05 (N.Y. Sup. Ct., Oct. 20, 2006).

In 2009, the Board was forced to file collection actions against Palma in order to recover these penalties, as well as additional penalties that had been assessed against her 2005 campaign for separate violations of the Act.¹⁸ After the Board's initiation of these proceedings, and following notification that Palma was ineligible to receive public funds for the 2009 elections,* Palma's outstanding penalties were paid in full by a defense trust fund established on her behalf.† As a result, Palma became eligible to receive public funds and received \$22,138 for the general election.

Michael Roth

Michael Roth was a candidate in the 2005 general election for Council District 48. CFB's post-election audit of Roth's campaign revealed that Roth, who received \$20,392 in public funds, had converted at least \$17,223 of campaign funds for personal use. Specifically, during the campaign, Roth made eighty expenditures from campaign funds totaling \$8,035 that were unrelated to his election, such as payments for groceries, gas and car expenses, and MetroCards. After the election, Roth spent an additional \$9,188 — nearly the entire balance of his campaign's bank account — on airline tickets to Florida, tickets to tourist attractions in Florida (including tickets to the Kennedy Space Center), gas (including gas purchased in Florida and Virginia), restaurant bills, MetroCards, and phone bills.¹⁹

In December 2008, the Board assessed a total of \$20,000 in penalties against Roth and his campaign for failing to demonstrate that these expenditures were campaign-related, and for using public funds to make substantial campaign expenditures which Roth knew or should have known were fraudulent.²⁰ In addition, the Board determined that Roth and his campaign engaged in activities that constituted a fundamental breach of certification, and as such required the campaign to repay all \$20,392 of public funds it received. Roth repaid \$15,000 of the public funds, and after the Board received a judgment against Roth in June 2010, he repaid the remaining public funds and penalties in full.

* A candidate is ineligible to receive public funds if he or she has failed to satisfy any outstanding claim made by the Board for the payment of civil penalties or repayment of public funds. See Admin. Code § 3-703(1)(n).

† The bulk of the funds to Palma's defense trust fund were contributed by 1199 SEIU. See Courtney Gross, "Unions Pick Up Tab for Council Members' Fines, Legal Bills," *Gotham Gazette*, June 4, 2010.

ENDNOTES

- 1 CFB, *Advisory Opinion No. 2009-7* (August 6, 2009).
- 2 Edward-Isaac Dove, “City Hall Special Investigative Report,” *City Hall News*, August 10, 2009.
- 3 CFB press release, September 2, 2009, “Campaign Finance Board Makes Statement, Announces Third Public Funds Payments for 2009 Primary Elections.”
- 4 CFB, *Final Determination No. 2009-1*, “In the Matter of Michael Bloomberg and Bloomberg for Mayor 2009, Inc.,” October 21, 2009.
- 5 *Id.*
- 6 N.Y. City Charter §§ 1136.1(3)(a)(iv), (v).
- 7 N.Y. City Charter § 1136.1(3)(a)(ii).
- 8 *See Espada 2001 v. N.Y.C. Campaign Fin. Bd.*, Index No. 109424/06 (N.Y. App. Div., 1st Dept., Dec. 30, 2008).
- 9 Editorial, “Grab Pedro’s money: Campaign Finance Board must garnish scofflaw Espada’s Senate check,” *Daily News*, August 6, 2009.
- 10 CFB, Final Audit Report, New Yorkers for Ferrer, August 5, 2009.
- 11 *Id.*
- 12 CFB, *Final Determination No. 2008-1* (January 17, 2008).
- 13 *See In re Miguel Martinez and Martinez 2001*, Index No. 106724/08 (N.Y. Sup. Ct., Dec. 22, 2008).
- 14 Thomas Zambito, Robert Gearty, and Greg B. Smith, “Manhattan City Councilman Miguel Martinez admits he stole tens of thousands of taxpayer dollars,” *Daily News*, July 16, 2009.
- 15 United States Attorney, Southern District of New York press release, December 15, 2009, “Former New York City Council Member Sentenced in Manhattan Federal Court to Five Years in Prison for Corruption Crimes.”
- 16 CFB, Final Audit Report, Friends of Annabel Palma, October 26, 2007.
- 17 *Id.*
- 18 CFB, Final Audit Report, Friends of Annabel Palma 2005, June 25, 2007.
- 19 CFB, Final Audit Report, For Mike Roth, December 16, 2008.
- 20 *Id.*



LEGISLATIVE ACTION IMPACTING THE PROGRAM

OVERVIEW

No two elections are alike. Political conditions change, and campaign methods evolve. With the Board's post-election mandate to recommend new legislative reforms, the Program itself often changes from election to election. The Campaign Finance Act is a continual work in progress. The regular post-election review of the Act by the Board and the Council have helped keep the Program current and relevant for more than two decades. In addition, legislation affecting the administration of elections in New York City can impact the Program and the work of the Board.

I. LOCAL LAW NO. 34 OF 2007

Local Law No. 34 of 2007¹ is a prime example of this ongoing evolution of the Program. It made several important, substantive changes to the Campaign Finance Act. Many of these had a direct impact on the conduct of the 2009 elections:

- ❖ **Placed strict, low limits on contributions from those “doing business” with city government.** Local Law No. 34 gave New York City some of the broadest restrictions on so-called “pay-to-play” contributions in any jurisdiction across the country. It limited contributions from people* associated with entities seeking or holding contracts, franchises, or concessions; entities which obtain grants, pension investment agreements, or economic development agreements; entities which are parties to real property transactions or land use actions; and registered lobbyists. [For a review of the impact of the “doing business” limits on the 2009 elections, see *Chapter 8 — “Doing Business”*.²]
- ❖ **Increased the matching rate.** To further encourage small contributions, Local Law No. 34 boosted the matching rate to \$6-to-\$1 for contributions up to \$175 by New York City residents.³
- ❖ **Limited public funding for “sure winners.”** Local Law No. 34 strengthened the restriction on public funds payments to candidates facing minimal opposition, by requiring candidates to demonstrate their need for additional funds before the cap can be lifted.⁴
- ❖ **Banned contributions from LLCs and partnerships.** The law extended the prohibition on corporate contributions to include limited liability companies (LLCs) and partnerships.⁵
- ❖ **Closed the transition/inauguration funds loophole.** Local Law No. 34 extended the prohibition against accepting corporate, LLC, and partnership contributions to Transition and Inauguration Entities (TIEs). The law also banned “doing business” contributions to TIEs.⁶
- ❖ **Expanded the definition of “intermediaries.”** The law clarified who campaigns must report as intermediaries, or “bundlers,” to the CFB.⁷
- ❖ **Clarified the permissible uses of campaign funds.** Local Law No. 34 defined several categories of expenditures presumed to be campaign-related, and classified others as unrelated to a campaign purpose.⁸ The Law also further defined qualified expenditures for which public funds may be used.⁹
- ❖ **Eliminated most exemptions to the spending limit.** Local Law No. 34 sharply reduced the exemptions to the spending limit candidates could claim for compliance and other purposes. To compensate for the reduced exemptions, the law increased the spending limits by 7.5 percent.¹⁰
- ❖ **Added an extra payment date before each election.** An extra opportunity to obtain payment of public funds was added for candidates able to remedy invalid matching claims or other compliance issues.¹¹
- ❖ **Strengthened the eligibility criteria for debates.** Candidates were required to both raise *and* spend a threshold amount of funds to be eligible for CFB-administered debates.¹² [For more detail, see *Chapter 2 — Debates*.]

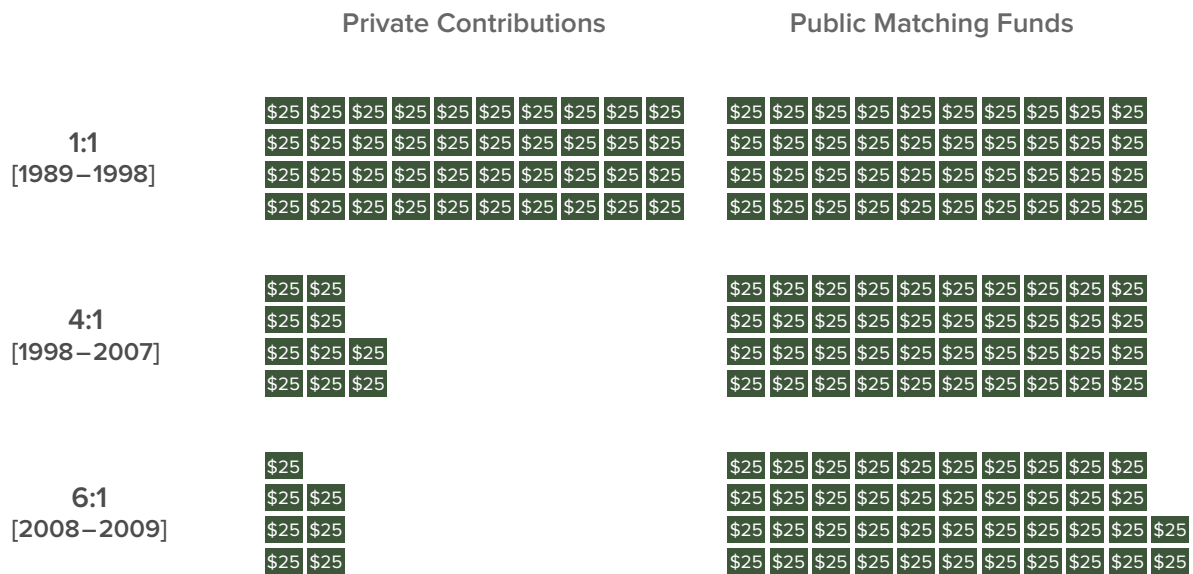
* The limits apply to the entity’s chief executive officer, chief operating officer, chief financial officer or their equivalents, as well as any person who owns 10 percent or more of the entity.

- ❖ **Required trainings.** In order to receive public funds, the law added the requirement that a member of participating campaigns with significant managerial control attend training on compliance with Program requirements.¹³
- ❖ **Changed post-election audit and enforcement processes.** Local Law No. 34 set deadlines for the CFB to complete the audit process,¹⁴ and gave candidates the option to have penalties and repayments considered by an administrative judge.¹⁵

INCREASED MATCHING RATE

The main benefit of the Program is that, in exchange for abiding by strict spending limits, candidates who opt in may be eligible to have contributions from individual New York City residents matched with taxpayer dollars.¹⁶ Public matching funds represent a tangible benefit both to participating candidates and the general public. Amplified by public funds, New Yorkers’ small contributions can have a meaningful impact on campaigns. As a result, candidates focus on small contributors and can mount viable campaigns without depending on large contributions. While the public funds help grassroots challengers compete with incumbents, they also help the voice of the average New Yorker compete with the influence of special interests and wealthy contributors on the political process.

Figure 6.1—Matching Rates and Maximum Matchable Contributions, 1989–2009





The \$6-to-\$1 matching rate increased the value of campaigns' outreach to small donors.



For the first three citywide elections conducted under the Campaign Finance Program, the Board matched the first \$1,000 of contributions from city residents at a rate of \$1-to-\$1. In conjunction with the ban on corporate contributions, in 1998 the Council raised the matching rate to \$4-to-\$1 for the first \$250 of city residents' contributions, for a maximum of \$1,000 in matching funds per contributor.¹⁷

Local Law No. 34 of 2007 again increased the matching rate for contributions from New York City residents, to \$6-to-\$1, but limited the match to the first \$175 per contributor, for a maximum public funds payment of \$1,050 per contributor.¹⁸ The new rate increased the value of campaigns' outreach to small donors. While the change was made 18 months into the four-year cycle, it applied retroactively to all contributions made for the 2009 elections.

The change had a definite impact on contributor activity. Campaigns and contributors responded to the changed incentives and brought new donors into the political process. More small donors contributed to campaigns during the 2009 cycle, and most were new to city politics; a majority (63 percent) of donors who gave \$175 or less had never previously donated to a candidate for city office. [See *Chapter 7 — Meeting the Goals* for further analysis.]

LIMITED PUBLIC FUNDS FOR “SURE WINNERS”

In any system with public financing of elections, when public funds are granted to qualifying candidates, some recipients will go on to win election by wide margins. So-called “sure winners” have been a point of concern since the Program's inception in 1988. During the first few elections under the Program, the Board took the position that “public criticism may effectively induce Program participants who face weak opponents not to take public funds.”¹⁹

Following the 2001 elections (which saw the highest level of payments in the Program's history), candidates and civic advocates alike called for a reduction in public funds paid to candidates who faced only nominal opposition. Recognizing the difficulty of creating a subjective standard, the Board asked the City Council to investigate if changes to the law were needed and if so, determine what level of opposition should be considered significant.²⁰ The Council addressed the issue in February 2003, enacting legislation that capped public funds payments at 25 percent of the maximum payment if a participant's opponent did not raise or spend more than 20 percent of the expenditure limit for the office they were seeking.²¹

Under this law, however, candidates were given the opportunity to lift the cap on public funds payments by submitting a “Statement of Need” to the Board, which entitled the applicant to receive up to the maximum for public funds, even if their opponent failed to raise or spend the 20 percent “trigger.” Statements of Need, which are posted on the CFB’s website for public view, required the candidate’s signature, but required no showing of cause — the letter itself resulted in the disbursement of funds.²²


Local Law No. 34 amended the Act to require that Statements of Need include documentation demonstrating that an opponent meets at least one of a list of pre-established conditions to receive public funds beyond the 25 percent cap.²³ If an opponent has failed to raise or spend one-fifth of the spending limit,²³ the participating candidate’s 25 percent cap on public funds can be lifted if the opponent is:

1. a non-participating candidate or a limited participating candidate with the ability to self-finance;
2. a candidate who has received significant endorsements;
3. a candidate who has had significant media exposure in the year preceding the election;
4. a candidate who has received 25 percent or more of the vote in an election within the last eight years;
5. a candidate whose name is similar to the candidate’s so as to result in confusion among voters;
6. a candidate who is a chairman, president, or district manager of a community board (for Council or borough president races only);
7. a candidate whose close family member holds or has held elective office in the area within the past ten years.²⁴


The Board is authorized to verify candidates’ statements, and can reject the statement if it does not demonstrate that any of the conditions were met.²⁵ By requiring certification by the Board, these provisions of the law aim to make it harder for candidates facing weak or nominal opponents to receive large payments of taxpayer funds. In this, the new law may have achieved some modest success; analysis shows that fewer candidates in the 2009 elections received extra payments by filing Certified Statements of Need than in 2005. [See *Chapter 7 — Meeting the Goals.*]

One note about the modified provisions for limiting payments in non-competitive races: prior to enactment of Local Law No. 34, the Act allowed candidates to receive up to the maximum public funds payment if their opponent received *any* public funds. The new law removed this provision from the Act.²⁶ As a result, there were instances during the primary elections when a public funds payment for a higher-spending candidate was capped at 25 percent of the maximum while the lower-spending opponent (whose fundraising or spending had not yet reached one-fifth of the expenditure limit) received a much larger payment of public funds. This issue is discussed in Chapter 10 — Recommendations.

* A Certified Statement of Need is not necessary in races for an open seat.



The law
extended the
corporate
contribution
ban to cover
LLCs and
partnerships.



BAN ON LLC/PARTNERSHIP CONTRIBUTIONS

A prohibition on all organizational contributions has been a key, long-standing recommendation of the Board. In 1998, the City Council passed a law increasing the matching rate from \$1-to-\$1 to \$4-to-\$1 for candidates who voluntarily agreed to not accept corporate contributions. At the same time, the 1998 Charter Revision Commission proposed a ban on corporate contributions, which was approved by referendum. In doing so, the Commission took special note of the potentially corrupting influence of corporate money in the political marketplace, and the corresponding erosion of confidence in the electoral system.²⁷

Limited liability companies (LLCs) and partnerships were not included in the original corporate ban.²⁸ In addition to concerns about the appearance of corruption, contributions from LLCs to candidates have long provided a particular disclosure problem. Any organization that makes political contributions can use a name that obscures its identity or business on campaign disclosures. But while many political committees and corporations must make public filings that identify their officers and funding sources, often there is literally no information in the public record about an LLC's owners or principals.

To close this loophole, Local Law No. 34 broadened the ban on contributions from corporations to also ban contributions from limited liability corporations and partnerships.²⁹ This ban went into effect on January 1, 2008. Over the entire election cycle, individual contributions grew in proportion to compensate for the ban on contributions from LLCs and partnerships, suggesting that campaigns were able to further concentrate their fundraising efforts on individual contributors without sacrificing their ability to raise money and compete. [See *Chapter 7—Meeting the Goals.*]

EXPANDED DEFINITION OF INTERMEDIARIES

To ensure public disclosure of those who potentially wield influence over a candidate, the Act has long required that intermediaries, or “bundlers,” who collect contributions from other sources and deliver them to a campaign, as well as each individual contribution the intermediary delivers must be disclosed by campaigns.³⁰ The definition failed to include bundlers who solicited, but did not *deliver* contributions, leaving a potential disclosure loophole. Many campaigns were confused about this disclosure requirement. Campaigns routinely over-reported or under-reported their intermediaries, which necessitated time-consuming staff reviews, and obscured important information from public review.

Local Law No. 34 strengthened the Act’s intermediary disclosure requirements, as the Board had repeatedly recommended.³¹

The clarified definition of “intermediary” includes not only those who *deliver* contributions to candidates, but also those known to the campaign to have successfully *solicited*, or who are clearly identified as having solicited, contributions for the candidate.³² The definition still excludes the candidate’s family members, professional fundraisers hired by the campaign, and campaign staff workers.³³ Local Law No. 34 also made clear that:

1. hosts of a campaign-sponsored fundraising event are not considered intermediaries;
2. only one host of a multi-host non-campaign sponsored event need be reported as an intermediary.³⁴

Figure 6.2 — Intermediaries Reported by Campaigns, 2005 – 2009

	Candidates Reporting Intermediaries	Number of Intermediaries Reported	Contributions Reported Intermediated	Amount Reported Intermediated
2005	59	335	4,525	\$2,279,555
2009	63	395	4,187	\$1,902,857

Until the post-election audits are completed, and intermediaries are fully reported and accounted for, it is difficult to determine the precise impact of the new law on candidates’ reporting.*

PROHIBITED CORPORATE CONTRIBUTIONS FOR TRANSITION/INAUGURATION

Since 1998, the Act has required winning candidates to disclose the fundraising and expenditures of their Transition and Inauguration Entities (TIEs), accounts opened to cover expenses related to commencing their terms in office.³⁵ Although the dollar amounts of contributions to TIEs were limited by the Act, there were no prohibitions on the sources of those funds. So, while candidates could not accept corporate contributions for their campaigns, winning candidates could solicit corporate funds to finance their inaugural events.† Indeed, nearly half the funds raised by candidates for transition committees following the 2005 elections came from corporations, LLCs, and partnerships.

* This analysis does not include terminated candidates. Two candidates who were reportedly running for mayor in 2009 and suspended their campaigns as a result of the extension of term limits, Anthony Weiner and Christine Quinn, had a substantial number of intermediated contributions not included in this table. Weiner reported \$1,183,268 in contributions from 76 intermediaries, and Quinn reported \$1,132,825 in contributions from 69 intermediaries.

† Candidates may also self-fund these activities. See Admin. Code § 3-801(10).

Figure 6.3— Source of Contributions to TIEs, 2005–2009

Source	2005		2009	
Corporations/LLCs/LLPs/Other	\$ 189,987	45.6%	\$ 6,387	1.3%
Individuals	\$ 140,617	33.7%	\$ 335,769	67.2%
Political Committees/Unions	\$ 86,054	20.7%	\$ 157,849	31.6%
Total	\$416,658	100%	\$500,005	100%
<i>Note: Excludes candidates' contributions to their own TIE committees. Some adjustments were made to the contributor codes reported by campaigns to account for errors or omissions in reporting.</i>				

As recommended by the Board in its 2005 post-election report,³⁶ Local Law No. 34 of 2007 prohibited TIEs from accepting contributions from corporations, LLCs, LLPs and from persons whose names appear in the Doing Business Database (excluding the candidate-elect and members of his or her family).³⁷ While increasing the transparency of candidates' post-election fundraising, the new requirements bring TIEs into line with the limitations on contributions to campaigns. In one respect, the new TIE limits go further: the law entirely bans, rather than merely limits, contributions to TIEs from those doing business with the city.³⁸

CLARIFIED USES OF CAMPAIGN FUNDS

The Board has previously advocated for a more concrete definition of campaign-related expenditures (items for which campaign funds may be used) and qualified expenditures (for which public funds may be used).³⁹ Local Law No. 34, as amended by Local Law No. 67, clarified both.

The law now provides a list of eleven categories of expenditures which are presumed to be campaign-related, and ten categories of expenditures defined as not campaign-related.⁴⁰ Further limiting the types of expenditures that may be made with public funds, the law forbids their use for ballot proposal advocacy, payment of any penalties or fines, or payments made by persons advancing money to a campaign (except where there is an individual purchase of more than \$250).⁴¹

ELIMINATED MOST EXEMPT EXPENDITURES

Local Law No. 34 implemented a longstanding Board recommendation by eliminating most exemptions to the expenditure limit.⁴² These exemptions were often unclear to campaigns, and complicated campaigns' efforts to comply with the spending limits.

Specifically, the Council eliminated the exemption for costs incurred to comply with the Act and Rules, retaining only exemptions for expenditures for: responding to the post-election audit; challenging or defending the validity of petitions; or bringing or responding to an action before a court or administrative agency regarding the candidate's compliance with the Campaign Finance Act or Election Law.⁴³ The Board clarified the narrow scope of the exemption for responding to the post-election audit in an advisory opinion, stating that the exemption included the costs of organizing records and copying them.⁴⁴

Local Law No. 34 eliminated the 7.5 percent “safe harbor” for campaigns, which previously could claim exempt expenditures of up to 7.5 percent of the applicable spending limit, without providing detailed documentation. To compensate for this change to exempt expenditures, the law raised expenditure limits 7.5 percent.⁴⁵

ADDED FOURTH PAYMENT DATE

Local Law No. 34 provided for an additional payment date within the 30 days prior to each covered election.⁴⁶ There were already two payment dates within that time period, each following a scheduled disclosure filing. The additional payment allows campaigns to receive public funds if they correct invalid matching claims and resolve compliance issues. This new payment date benefitted a relatively small number of campaigns in 2009.

On September 2, the additional payment date for the 2009 primary election, 42 of the 141 participating campaigns on the ballot were paid a total of \$538,727; of these 42 campaigns, four received a payment for the first time.⁴⁷ On October 21, the additional payment date for the general election, 15 of the 100 participating campaigns on the ballot were paid a total of \$77,769 — none for the first time.⁴⁸ The extra payment gave these candidates access to public funds they otherwise would have received only days before the election.*


STRENGTHENED DEBATE ELIGIBILITY CRITERIA

The candidate debate provisions of the Act were substantially amended, strengthening the eligibility requirements for the CFB Debate Program. As discussed in Chapter 2, to be eligible for the mandatory debates, participating candidates were required to raise *and* spend, rather than raise *or* spend, the threshold amount, ensuring the public would see debates between viable candidates.⁴⁹

MANDATORY TRAININGS FOR PARTICIPANTS

While the CFB has always provided both general compliance and C-SMART training for candidates, Local Law No. 34 makes this training

* The last payment before the primary election was 9/11/2009 and the last payment before the general election was 10/29/2009.



More than
1,000
individuals
were trained
during the
2009 election
cycle.

mandatory for participating candidates or their key staff members.⁵⁰ [See the *Administrative Report* for more information regarding CFB trainings.]

POST-ELECTION

Other changes in Local Law No. 34 were focused mainly on the CFB's post-election audit and enforcement processes. Their impact on the Program is ongoing and can only be fully assessed after those processes are completed.

- ❖ **Set deadlines for CFB audits.** The CFB audits every campaign to assess their compliance with the law and ensure public funds were used properly. Under the new law, draft audits must be completed within 8 months after submission of the final disclosure statement for City Council and boroughwide races, and within 10 months for citywide races.⁵¹ Final audits (or notices of potential penalties and/or repayment obligations) must be issued within 14 months after submission of the final disclosure statement for City Council and boroughwide races, and within 16 months for citywide races.⁵² The time period to complete the audits may be extended if a campaign fails to respond or provides an inadequate response to a request for information.⁵³ The CFB has increased its staff to meet this mandate.
- ❖ **Allowed candidates the option to have decisions on penalties and repayments considered under the City Administrative Procedures Act (CAPA).** The CFB has always conducted audits of campaigns, and the Act provides that any public funds payment (or non-payment) determinations are not final until that audit is completed.⁵⁴ The draft audit provides campaigns an opportunity to address potential violations and issues relating to public funds payments and repayments. In the past, campaigns were notified at the end of the audit process of potential violations and penalties, and were afforded an opportunity to respond in writing and/or appear before the Board to contest those penalties. The Board voted on findings of violation, penalties, and post-election public funds payments. After that, a final audit was issued. Any obligations to repay public funds were included in the final audit, and campaigns were allowed to contest their repayments before the Board after the final audit.⁵⁵ Campaigns had the right to challenge any Board determination in court, through an Article 78 proceeding. Local Law No. 34 made two substantive changes to the end of the audit process. First, it required the Board to vote on public funds repayment obligations *before* the issuance of the final audit.⁵⁶ Second, it gave campaigns the option to have a formal proceeding under the City Administrative Procedures Act before the Board's vote on violations, penalties, and/or repayments of public funds. Campaigns may still opt for a more informal hearing before the Board, or no hearing at all.⁵⁷
- ❖ **Required that CFB audits be conducted in accordance with generally accepted government auditing standards (GAGAS).** The CFB's audit program protects taxpayer money from waste, and enables the disclosure of detailed information about campaigns. While the CFB's audits were always conducted according to a written program, Local Law No. 34 requires the CFB to conduct its audits, which require detailed analyses of campaign reporting and document submissions, in accordance with generally accepted government auditing standards (commonly known as GAGAS).⁵⁸ [See *Administrative Report* for more information on CFB's GAGAS compliance.]

The mandate to review the Program after each election helps to ensure that it continues to best serve candidates, campaigns, and the New York City electorate through evolving times. Occasionally, however, the Board must respond to unanticipated events in the legislative sphere that impact the administration of the Program.

II. LOCAL LAW NO. 51 OF 2008 (TERM LIMITS)

On November 3, 2008, Local Law No. 51 was enacted, extending term limits for New York City officeholders from two to three terms. This change dramatically altered the electoral landscape for the 2009 elections. Allowed to seek a third term, some incumbents originally planning to run for a new office instead ran for re-election. Many candidates planning to run for an open seat ended their campaigns rather than challenge an incumbent.

The law's passage, barely ten months before the 2009 primary elections, created unprecedented challenges for potential candidates and for the CFB. First, several candidates had been fundraising and spending money in pursuit of "higher" office since the start of the four-year election cycle. With the elections less than a year away, some of these candidates had already spent more than the expenditure limit for their current office. Joining the Program to run for re-election would have exposed them to severe penalties. If they opted out of the Program, these candidates would have "war chests" accumulated for a planned borough or citywide campaign that would likely have deterred any potential candidates from stepping forward to challenge their re-election.

Meanwhile, potential candidates for the many expected open seats raised funds and worked in good faith to qualify for public funds in anticipation of joining the Program. Some had decided to run in 2009 only because they anticipated an open seat. When Local Law No. 51 was enacted and incumbents returned to seek re-election, fairness demanded that these potential candidates have the ability to retain the benefits of their fundraising efforts if they chose to run in a future election.

With these complex issues in mind, the Board sought a solution that would make it practical for all candidates to join the Program, to treat both incumbents and challengers fairly in 2009 and in future elections, and to encourage competitive races for offices covered by the Program.

TERM LIMITS IN NEW YORK CITY

History

In 1993, a term limits referendum to restrict the mayor, public advocate, comptroller, borough presidents, and City Council members to two consecutive terms in office passed with nearly 60 percent of the votes cast, winning a majority in each of the City's five boroughs.⁵⁹ Three years later, in 1996, the City Council placed a referendum on the ballot seeking to extend term limits from two terms to three terms and to stagger the effective

date. The referendum was rejected by 54 percent of voters.^{60*} In September 2002, the City Council overrode the Mayor's veto to enact Local Law No. 27 of 2002, which established that a term of two years would not constitute "a full term" under Section 1138 of the Charter. Consequently, Charter Section 1137's limit of eight consecutive years in office was not already applicable to City Council members in some circumstances prior to enactment of Local Law No. 51 of 2008.

Local Law No. 51 of 2008

On October 7, 2008, a bill to amend Sections 1137 and 1138 of the Charter to extend from two to three the number of terms an elected official could serve consecutively was introduced at the request of the Mayor by the City Council.⁶¹ The City Council held nearly 20 hours of public hearings on the issue on October 16 and 17.⁶² On October 23, the Council voted 29 to 22 in favor of the term limits bill,⁶³ which became Local Law No. 51 of 2008 when it was signed by Mayor Bloomberg on November 3, 2008.[†]

Term-Limited Incumbents

Prior to the passage of Local Law No. 51, the mayor, public advocate, comptroller, four of the five borough presidents, and 36 of the 51 members of the City Council were barred from running for re-election in 2009.⁶⁴ Many term-limited incumbents interested in running for "higher" office had opened campaign committees, and had been soliciting contributions up to the borough or citywide contribution limit.

Ultimately, most incumbents sought re-election in 2009; only a handful sought a higher office. Comptroller William Thompson and Council Member Tony Avella ran for mayor. Council Members John Liu, David Yassky, David Weprin, and Melinda Katz ran for comptroller, and Council Members Bill de Blasio and Eric Gioia ran for public advocate. Public Advocate Betsy Gotbaum decided not to run for re-election.

* Term limits are addressed in Sections 1137 and 1138 of the New York City Charter. Between 1993 and the enactment of Local Law No. 51 on November 3, 2008, Section 1137 of the Charter declared it to be the "public policy of the city of New York" to limit elected officials to eight consecutive years in an office "so that elected representatives are 'citizen representatives' who are responsive to the needs of the people and are not career politicians." See Former N.Y. City Charter § 1137 (2004) (amended Nov. 3, 2008). Section 1138 of the Charter made officials who served two full consecutive terms in an office ineligible for immediate re-election to that same office (individuals who had already served two full consecutive terms in office were eligible to be elected to such office if "one full term or more has elapsed since that person last held such office...."). See Former N.Y. City Charter § 1138 (2004) (amended Nov. 3, 2008).

† A group of elected officials, prospective candidates, voters, and good government groups opposed to extending term limits by legislation alleged that Local Law No. 51 was unconstitutional and sought an injunction to prevent the Board of Elections from enforcing the law. On January 13, 2009, the United States District Court for the Eastern District of New York ruled that Local Law No. 51 was constitutional, did not infringe upon rights guaranteed by the First Amendment nor impose procedural barriers to ballot access. See *Molinari v. Bloomberg*, 596 F.Supp.2d 546 (E.D.N.Y. 2009), *aff'd*, 564 F.3d 587 (2d Cir. Apr. 2009). Further, the court ruled that the New York State Constitution and the Municipal Home Rule Law allowed the City Council to overturn referenda legislatively. Plaintiffs appealed the decision to the United States Court of Appeals, Second Circuit, which affirmed the District Court's decision on April 28, 2009. See *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009).

Figure 6.4— Term-Limited Incumbents Raising Funds as of July 11, 2008 (Statement #5)

Candidate	Office Held	Contributions	Expenditures
William C. Thompson, Jr.	Comptroller	\$ 3,391,767	\$1,015,622
Christine C. Quinn*	City Council	\$ 2,989,104	\$ 287,601
John C. Liu*	City Council	\$2,790,905	\$ 564,984
Adolfo Carrion, Jr.	Borough President—Bronx	\$2,282,872	\$ 808,983
Melinda R. Katz*	City Council	\$ 2,079,766	\$ 770,262
Eric Gioia*	City Council	\$ 1,656,702	\$ 332,955
David I. Weprin*	City Council	\$ 1,362,855	\$ 333,453
David Yassky	City Council	\$ 1,012,941	\$ 144,661
Marty Markowitz	Borough President—Brooklyn	\$ 885,116	\$ 408,856
Peter F. Vallone, Jr.*	City Council	\$ 774,528	\$ 257,500
Bill de Blasio*	City Council	\$ 605,669	\$ 224,755
Tony Avella	City Council	\$ 212,100	\$ 45,128
Joel Rivera	City Council	\$ 207,205	\$ 135,364
James S. Oddo	City Council	\$ 171,148	\$ 6,887
Betsy F. Gotbaum	Public Advocate	\$ 166,415	\$ 118,502
Domenic M. Recchia	City Council	\$ 150,834	\$ 41,976
Leroy G. Comrie	City Council	\$ 100,515	\$ 90,681
Helen Sears	City Council	\$ 79,000	\$ 6,001
G. Oliver Koppell	City Council	\$ 37,845	\$ 38,444
Helen Diane Foster	City Council	\$ 2,390	\$ 7,073
Robert Jackson	City Council	\$ 2,000	\$ 872
Charles Barron	City Council	\$ 1,270	\$ 561
* Candidates who spent in excess of the spending limit for the office they held as of July 2008.			

EFFECT ON THE CAMPAIGN FINANCE PROGRAM

Issues Resulting from Extending Term Limits

On October 2, 2008, the same day Mayor Bloomberg declared his intention to support an extension of term limits, CFB Chairman Joseph P. Parkes, S.J. issued the following public statement, outlining the Board's considerations and goals in crafting a response to the proposed term limits change:

As reports have appeared in the past several weeks suggesting term limits could be extended, the Board began discussing the impact any changes would have on the Campaign Finance Program.

If the law is changed, some candidates seeking higher office may decide to change their plans and run for their current seat. Others may decide to suspend their campaigns if term limits are extended. While the law is clear about the contribution limits that apply for different offices, there are more complicated questions, including those about the spending limits, which must be resolved.

We need to make it practical for candidates who wish to join the Campaign Finance Program to do so. We need to make sure we treat both incumbents and potential challengers fairly. And any solution should encourage — not discourage — competitive races for all offices covered by the Program.

If the law is changed, we will be prepared to provide clear guidance to campaigns seeking advice on how to comply with the law going forward.⁶⁵

On October 14, 2008, the Board requested comments from the public to help develop a framework consistent with the principles stated by Chairman Parkes.⁶⁶ Three days later, the Board issued a draft outline of a proposed approach and requested further comments from the public.⁶⁷

On the effective date of Local Law No. 51, November 3, 2008, the Board issued Advisory Opinion No. 2008-7 to address the complex impact of the term limits extension. AO 2008-7 presented three options aimed at maximizing candidates' ability to join the Program. The options strove to treat both incumbents and potential challengers fairly, and to encourage competitive races. CFB staff also provided one-on-one guidance to candidates affected by the extension of term limits.

Advisory Opinion No. 2008-7 (November 3, 2008)

The advisory opinion addressed two groups affected by the extension of term limits:

- ❖ **Group 1:** Previously term-limited incumbents with reported activity who had been seeking a “higher” office, but instead chose to run for re-election to their current office; and
- ❖ **Group 2:** Candidates with reported activity who chose not to run against a previously term-limited incumbent in 2009, but may choose to run in a future election.

Group 1: Incumbents Choosing to Run for Re-election Instead of Higher Office

Because they had been seeking “higher” office, Group 1 candidates faced two significant issues concerning their compliance with the Program’s requirements: accepting contributions that exceeded the limit for their current office, and spending beyond the Program’s expenditure limit for their current offices. The first issue could lead to financial penalties, and the second issue would effectively block these candidates from entering the Program.

To qualify as a Group 1 candidate, incumbents were required to demonstrate that they had been seeking a “higher” office before the change in the term limits law. Candidates’ submissions needed to include evidence that demonstrated their prior intentions — such as a solicitation for, or receipt of, contributions above the limit for their current office and/or press accounts that they were seeking a “higher” office. The form and accompanying evidence were due by January 15, 2009.

Six candidates applied for Group 1. They were able to choose between two options: Option A or Option B.

— Option A: Restart the 2009 Election Campaign

Option A provided candidates with the ability to “freeze” the funds they had amassed for a higher office, and register a new 2009 campaign for re-election with a clean slate. These candidates were required to create a new committee for the 2009 election, open a new bank account, and begin fundraising and qualifying for public funds from scratch. Candidates who chose this option preserved the contributions they had raised with the old committee — and their eligibility for matching claims — for a future election cycle.*

Five of the Group 1 candidates chose Option A. The deadline to “unfreeze” these campaigns and use them for the 2013 election cycle was July 15, 2010, the date of the first disclosure filing for the 2013 elections. All five candidates opted to “unfreeze” their campaign.

Figure 6.5 — “Group 1-A” Candidates

Candidate	Total Receipts	Matching Claims
James S. Oddo	\$ 239,993	\$ 51,625
Christine C. Quinn	\$3,127,917	\$256,024
Domenic Recchia	\$ 150,359	\$ 31,928
Joel Rivera	\$ 208,036	\$ 17,310
Peter F. Vallone, Jr.	\$ 965,145	\$ 103,523

Note: Data as of July 15, 2010.

* Most of Group 1-A candidates’ spending prior to the enactment of Local Law No. 51 (2008) would be excluded from both the 2009 and 2013 spending limits. An estimated fundraising cost of 15% of the total amount of funds on hand in a campaign’s “frozen” committee as reflected by its bank statement(s) on or near January 11, 2009 will be applied to the pre-election year spending limit for the 2013 election for Group 1-A candidates.

— *Option B: Maintain Current Committee for 2009 Election*

Option B allowed candidates to keep their registered 2009 committee active and refund any contributions that exceeded the limit for their incumbent office without penalty. Candidates who chose Option B preserved their eligibility for public matching funds in 2009, but most expenditures made by their committee applied against their 2009 expenditure limits.* Only one Group 1 candidate, Marty Markowitz, chose Option B.

Group 2: Candidates Choosing to End Their Campaigns

Group 2 comprised candidates who chose not to run against a previously term-limited incumbent in 2009, but who might seek office in a future election. The CFB allowed these candidates to continue activity with the committee they opened for the 2009 election, and preserve their ability to qualify for matching funds in a future election. A charge equaling 15 percent of the campaign’s total funds on hand as of January 11, 2010 (not to exceed total actual expenditures), representing the estimated cost of raising the funds, will count against the candidates’ spending limit in the 2013 election†. Group 2 candidates were required to register with the CFB and file Disclosure Statement #1, due July 15, 2010, in order to preserve their matching claims for a future election.

While 50 candidates met the criteria to be part of Group 2, only 14 returned for the 2013 election cycle to take advantage of this option.

Figure 6.6— “Group 2” Candidates

Candidate	Total Receipts	Matching Claims
Todd A. Dobrin	\$ 36,005	\$18,593
Brian L. Gotlieb	\$ 26,085	\$15,628
Ari M. Hoffnung	\$ 81,816	\$23,649
Martin S. Krongold	\$ 5,040	\$ 3,840
John Lisyskiy	\$ 64,090	\$ 9,685
Steven Matteo	\$ 10,440	\$ 4,040
Mercedes Narcisse	\$ 25,110	\$ 11,015
Audrey I. Pheffer	\$348,201	\$86,419

* According to Board Rule 1-08(c)(1), expenditures are presumed to be for the candidate’s next election. However, a Group 1-B candidate could overcome this presumption by demonstrating that certain expenditures prior to the change in term limits provided no or minimal benefit to his or her re-election campaign. Such expenditures would not be applied to the candidate’s 2009 spending limit. This Board action was consistent with past CFB interpretation of the Act and Rules. *See, e.g., CFB, Advisory Opinion No. 1997-6* (June 24, 1997); *see also CFB, Advisory Opinion No. 1993-7* (July 20, 1993). Markowitz did not attempt to overcome the Board Rule 1-08(c) presumption.

† Two Group 2 candidates — David Greenfield and Joseph Lazar — ran in the intervening February 2010 special election in CD #44. The candidates were allowed to use the matching claims raised by the 2009 committee and had a charge against their special election spending limit.

Figure 6.6— “Group 2” Candidates (continued)

Candidate	Total Receipts	Matching Claims
Alfonso Quiroz	\$ 67,556	\$ 34,776
Helen K. Rosenthal	\$ 55,410	\$ 6,006
Michael Simanowitz	\$ 68,950	\$ 21,900
Cheryl Simmons-Oliver	\$ 9,820	\$ 7,085
Martha Taylor	\$ 32,108	\$ 15,886
Robert M. Waterman	\$ 22,073	\$ 11,247
Anthony D. Weiner	\$5,149,537	\$249,410

Note: Data as of July 15, 2010.

Litigation Over AO 2008-7

In December 2008, several would-be challengers to previously term-limited incumbents sought a declaratory judgment invalidating AO 2008-7 on the grounds that it violated the Act, and sought a permanent injunction preventing the CFB from excluding any candidate’s campaign expenditures between 2006 and 2008. Specifically, the plaintiffs in *Kurland v. New York City Campaign Fin. Bd.* alleged that AO 2008-7 was contrary to the Act and Rules because it did not count early expenditures by some candidates against those candidates’ spending limits.⁶⁸ The plaintiffs maintained that these exemptions created an unlevel playing field between the incumbent candidates and their challengers. The Board argued that the advisory opinion was, in light of the change of circumstances, the best alternative for candidates and the public. The advisory opinion was an attempt to be as equitable to incumbents and challengers as possible, while still furthering the Program’s goals.

In a decision handed down on January 5, 2009, State Supreme Court Justice O. Peter Sherwood found that AO 2008-7 is consistent with the Act and the CFB’s mission to encourage participation in the Program.

Additional CFB Advisory Opinions

AO 2008-7 covered most of the candidates in the 2009 election, but it could not anticipate every possible situation candidates affected by the extension of term limits might face. Therefore, the Board invited candidates to seek further guidance about issues not addressed. In response to candidate requests, the Board issued two additional advisory opinions on the impact of the term limits extension.

❖ Advisory Opinion No. 2009-8 (October 29, 2009)

On October 29, 2009, the Board issued Advisory Opinion No. 2009-8 to provide guidance to candidates who ceased campaign activity prior to the 2009 election, but whose campaign was not impacted by the extension of term limits. AO 2009-8 applies, for example, to a challenger who temporarily ran against

a first-term incumbent or for an open office. The Board clarified that such candidates are not eligible to receive the benefits of AO 2008-7.*

❖ **Advisory Opinion No. 2010-1 (January 7, 2010)**

Advisory Opinion No. 2010-1 clarified that contributions from limited liability companies (LLCs) and limited liability partnerships (LLPs) received by campaigns prior to January 1, 2008 were eligible to be used by candidates who had frozen or set aside their campaign funds for a future election (Groups 1A and 2). The Program's prohibition on contributions from LLCs and LLPs became effective on January 1, 2008; the Board affirmed that candidates are allowed to retain any such contributions received prior to that date.

Conclusion

The extension of term limits posed a serious challenge to the CFB in the 2009 elections. By encouraging incumbents to voluntarily accept the Program's spending limits, the Board crafted a response that treated incumbents and challengers fairly. Even though term limits allowed incumbents to run for re-election, more challengers were successful than in any previous election cycle under the Program. The evidence suggests that the Board's action in response to Local Law No. 51 achieved its intended effects: the 2009 elections were significantly more competitive than the 2005 elections; more candidates ran; and there was a higher rate of participation.

* Rather, the potential future candidate would be required to create a new committee in order to join the Program in a future election cycle. The new committee would be permitted to accept a transfer of contributions received by the 2009 committee, but those transferred contributions would not lawfully be eligible for matching funds. *See* Admin. Code § 3-703(14); Board Rule 1-07.

ENDNOTES

- 1 New York, N.Y. Local Law No. 34 (July 3, 2007).
- 2 Local Law No. 34 § 1 (codified at N.Y.C. Administrative Code § 3-702 (3)(amended), (18),(19),(20)(new)).
- 3 Local Law No. 34 § 21 (codified at Admin. Code § 3-705 (2)(a) (amended)).
- 4 Local Law No. 34 § 22 (codified at Admin. Code § 3-705(7)(c) (amended)).
- 5 Local Law No. 34 § 18 (codified at Admin. Code § 3-703(1)(l) (amended)).
- 6 Local Law No. 34 § 33 (codified at Admin. Code § 3-801(2)(d) (new)).
- 7 Local Law No. 34 § 16 (codified at Admin. Code § 3-702(12) (amended)).
- 8 Local Law No. 34 § 17 (codified as amended at Admin. Code § 3-702(21) (new)).
- 9 Local Law No. 34 § 20 (codified at Admin. Code § 3-704(2)(i),(j),(k) (new)).
- 10 Local Law No. 34 § 23 (codified at Admin. Code § 3-706(4) (amended)).
- 11 Local Law No. 34 § 7 (codified at Admin. Code § 3-705(4) (amended)).
- 12 Local Law No. 34 § 9 (codified at Admin. Code § 3-709.5(5)(b) (amended)).
- 13 Local Law No. 34 § 6 (codified at Admin. Code § 3-703(15) (new)).
- 14 Local Law No. 34 § 26 (codified at Admin. Code § 3-710(1)(a) (new)).
- 15 Local Law No. 34 § 29 (codified at Admin. Code § 3-710.5(ii)(b) (amended)).
- 16 Admin. Code § 3-703
- 17 New York City Campaign Finance Board, 2001 Post-Election Report, *An Election Interrupted...An Election Transformed*, p. 3.
- 18 Local Law No. 34 § 21 (codified at Admin. Code § 3-705(2)(a) (amended)).
- 19 New York City Campaign Finance Board, 1993 Post-Election Report, *On the Road to Reform*, Chapter 11, pp. 123 – 124.
- 20 2001 PER, *An Election Interrupted...*, pp. 159 – 160.
- 21 Local Law No. 12 § 6 (February 18, 2003) (codified at Admin. Code § 3-705(7) (new)).
- 22 *Id.*
- 23 Local Law No. 34 § 22 (codified at Admin. Code § 3-705(7)(c) (amended)); New York, N.Y. Local Law No. 67 (December 31, 2007) (codified at Admin. Code § 3-705(7) (amended)).
- 24 Admin. Code § 3-705(7)(b).
- 25 Local Law No. 34 § 22 (codified at Admin. Code § 3-705(7)(1) (amended)).
- 26 Local Law No. 34 § 22(codified at Admin. Code § 3-705(7) (amended)).
- 27 Report of the New York City Charter Revision Commission (August 20, 1998), pp. 15 – 17.
- 28 New York City Campaign Finance Board, 2005 Post-Election Report, *Public Dollars for the Public Good*, p. 45.
- 29 Local Law No. 34 § 18 (codified at Admin. Code § 3-703(1)(l) (amended)).
- 30 2005 PER, *Public Dollars for the Public Good*, p. 126.
- 31 2005 PER, *Public Dollars for the Public Good*, p. 126; 2003 PER, *City Council Elections*, p. 52; 2001 PER, *An Election Interrupted...*, p. 114, p. 152; 1997 PER, *A Decade of Reform 1988-1998*, p. 139; 1993 PER, *On the Road to Reform*, p. 130.
- 32 Local Law No. 34 § 16 (codified at Admin. Code § 3-702(12) (amended)).
- 33 *Id.*
- 34 *Id.*

- 35 Local Law No. 39 § 2 (September 25, 1998), (codified at § 1052(a)(11)(new)); § 5 (codified at Admin. Code § 801 (new)).
- 36 2005 PER, *Public Dollars for the Public Good*, p. 124.
- 37 Local Law No. 34 § 33 (codified at Admin. Code § 3-801(2)(d) (new)).
- 38 Local Law No. 34 § 33 (codified at Admin. Code § 3-801(2)(d) (new)); See Admin. Code § 3-703(1-a) (concerning campaign contributions from those doing business with the city).
- 39 2005 PER, *Public Dollars for the Public Good*, pp. 136 – 37 (proposing additional limits on qualified expenditures and questioning the use of campaign funds for durable goods); 2001 PER, *An Election Interrupted...*, p. 152 (proposing additions to the list of expenditures that are not qualified).
- 40 Local Law No. 34 § 17 (codified at Admin. Code § 3-702(21) (new)).
- 41 Local Law No. 34 § 20 (codified at Admin. Code § 3-704(2)(i), (j), (k) (new)).
- 42 2005 PER, *Public Dollars for the Public Good*, p. 128; 2003 PER, *City Council Elections*, vol. 1, p. 52; 2001 PER, *An Election Interrupted...*, Part 1, pp. 150-151 (2002); 1997 PER, *A Decade of Reform 1988-1998*, vol. 1, p. 137; 1993 PER, *On the Road to Reform*, vol. 1, p. 25.
- 43 Local Law No. 34 § 23 (codified at Admin. Code § 3-706(4) (amended)).
- 44 CFB, *Advisory Opinion No. 2008-4*, April 10, 2008.
- 45 Local Law No. 34 § 23 (codified at Admin. Code § 3-706(4) (amended)).
- 46 Local Law No. 34 § 7 (codified at Admin. Code § 3-705(4) (amended)).
- 47 CFB Press Release, September 2, 2009, “Candidates for 2009 Citywide Elections File Disclosure Statements with Campaign Finance Board.”
- 48 CFB Press Release, October 21, 2009, “Campaign Finance Board Announces Third Public Funds Payments for 2009 General Elections to 15 Candidates, Issues Determination.”
- 49 Local Law No. 34 § 9 (codified at Admin. Code § 3-709.5(5)(b) (amended)).
- 50 Local Law No. 34 § 6 (codified at Admin. Code § 3-703(15) (new)).
- 51 Local Law No. 34 § 26 (codified at Admin. Code § 3-710(1)(a) (new)).
- 52 Local Law No. 34 § 26 (codified at Admin. Code § 3-710(1)(b) (new)).
- 53 Local Law No. 34 § 26 (codified at Admin. Code § 3-710(1)(d) (new)).
- 54 Admin. Code § 3-710.
- 55 Board Rule 5-02(a).
- 56 Local Law No. 34 § 28 (codified at Admin. Code § 3-710(4) (new)).
- 57 Local Law No. 34 § 29 (codified at Admin. Code § 3-710.5(ii)(b) (amended)).
- 58 Local Law No. 34 § 26 (codified at Admin. Code § 3-710(1) (amended)).
- 59 Steven Lee Meyers, “New Yorkers Approve Limit of 2 Terms for City Officials,” *The New York Times*, November 3, 1993.
- 60 Vivian S. Toy, “Term Limits Stay 8 Years As Extension is Rejected,” *The New York Times*, November 6, 1996.
- 61 N.Y. City Council Intro. No. 845 of 2008.
- 62 Sewell Chan and Jonathan P. Hicks, “The Term Limits Hearings, Friday,” *City Room, The New York Times*, October 17, 2008.
- 63 Sewell Chan and Jonathan P. Hicks, “Council Votes, 29 to 22, to Extend Term Limits,” *City Room, The New York Times*, October 23, 2008.
- 64 Grace Rauh, “Bloomberg Shifts on Term Limits,” *New York Sun*, August 22, 2008.
- 65 CFB press release, October 2, 2008, “Statement of New York City Campaign Finance Board Chairman Father Joseph P. Parkes, S.J. on Extending Term Limits.”

- 66 CFB press release, October 14, 2008, “CFB Requests Comment on Implications of Extending Term Limits.”
- 67 CFB press release, October 17, 2008, “New York City Campaign Finance Board Issues Draft Guideline In Response to Potential Extension of Term Limits.”
- 68 *Kurland v. New York City Campaign Fin. Bd.*, 873 N.Y.S.2d 440 (N.Y. Sup. Ct. 2009)



ANALYSIS: MEETING THE GOALS

OVERVIEW

The Act requires the Board to “review and evaluate the effect” of the Campaign Finance Program “upon the conduct of election campaigns in the city” at the end of each four-year election cycle.¹ The first several chapters of this report have provided a detailed accounting of the events surrounding the 2009 elections.

What follows is a more rigorous evaluation of the Program’s success at achieving the goals outlined in the mission statement of the Board. Those goals are distilled into six main themes:

❖ **Engagement**

The Program aims to enhance the role of New York City residents in the political process. Are small contributions by New Yorkers playing an important role in campaigns? Do matching funds help bring new contributors into the political process? Are campaigns finding new ways to raise small contributions? Are New Yorkers across the city participating equally in the city’s politics?

❖ **Accountability**

It is important that public matching funds distributed through the Program are used how they were intended. Is the Board ensuring that taxpayer funds distributed through the Program are protected from waste or abuse? Are the right candidates receiving public funds? Are public funds being paid to candidates in non-competitive races?

❖ **Competition**

Competitive elections help ensure that elected officials are answerable to the voters. Is the Program promoting more competitive elections for city office? Are challengers able to compete against incumbents? Is the Program helping participating candidates to connect effectively with voters, even when they are opposed by high-spending non-participants?

❖ **Education**

The CFB works to provide voters with the knowledge to make informed choices at the polls. Is the CFB doing an effective job at voter education? Have the Debate Program, Voter Guide, and Video Voter Guide improved the quality and accessibility of public information about candidates? Has the CFB helped to provide more complete information about campaign finances?

❖ **Integrity**

The Program was created principally to help reduce the possibility and perception of corruption in New York City's political system. Is the Program helping to decrease candidates' reliance on large contributions? Are "bundlers" playing a smaller role in city elections? Are organizational contributors able to gain influence through contributions, or do public funds mute their impact?

❖ **Participation**

The goals of the Program can only be met if candidates choose to participate. Is the CFB effectively encouraging and simplifying participation in the Program? Are participation rates increasing? Does the Program help encourage more citizens to run for public office? Are more communities getting involved in New York City's political life through the Program?

"Better government" is an intangible quality. There is no analysis, based on hard data, that can show public financing has directly resulted in better city laws, or a more responsive city government, or increased public confidence in elected officials. The analysis that follows, however, attempts to highlight the CFB's explicit mission, and how well its administration of the Program has realized those goals. It explains the government's interest in funding political campaigns.

An examination of the 2009 election cycle shows that the Program was very successful in promoting several of the CFB's key values — candidates participated at high levels; competition increased; more New Yorkers made small contributions to candidates; large contributions and organizational contributors played a smaller role in funding campaigns. In other ways, the analysis helps to identify the challenges still ahead.

ENGAGEMENT

Encouraging citizen involvement, increasing the role of small donors

Empowering small donors within New York City's political system is among the key objectives of the Campaign Finance Program. When it is successful, the Campaign Finance Program should help encourage New Yorkers to be more fully and completely engaged in the process of choosing their local leaders. The public matching funds increase the value and impact of small, local contributions. By moderating the influence of "big money" in campaigns, the Program helps the average citizen to feel his or her involvement in the electoral process makes a real difference.

Raising funds from a broad range of small donors, rather than a narrow band of wealthy donors, gives candidates access to a wider range of perspectives on city issues. At the same time, candidates who work to cultivate small contributors are helping to create a more active class of supporters, who are investing not only their money in political campaigns, but also their time. In other words, encouraging small donors pays off in many ways.

With each successive election in New York City, the Campaign Finance Program cultivates grassroots giving on a larger scale. Spurred by changes to the public funds matching rate that increased the return on small contributions, more small donors are getting involved in local elections than ever before. To the extent that campaign contributions are a measure of civic engagement, the signs are encouraging for the city’s political process.

Small Contributions

More contributors are making small contributions. Motivated by the increased matching formula (see *Chapter 6—Legislative Action*), 2009 saw candidates place a greater focus on soliciting small contributions. The new, more generous matching rate for the 2009 elections — which matches each qualifying dollar with six dollars of public funds — meant that a contribution of \$175 (the maximum matchable amount) had the same impact as a non-matchable contribution of \$1,225.*

Figure 7.1— Contributions of \$175 or Less as Percentage of Total Net Contributions (\$) from Individuals, Participating Candidates

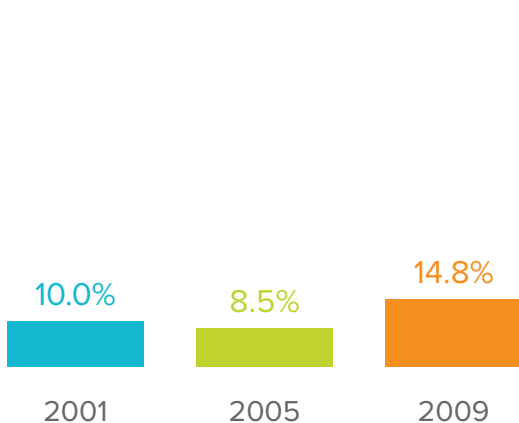
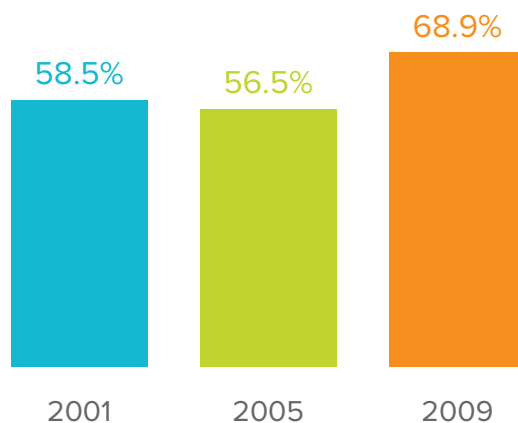


Figure 7.2— Contributors Giving \$175 or Less as Percentage of All Individual Contributors (#), Participating Candidates

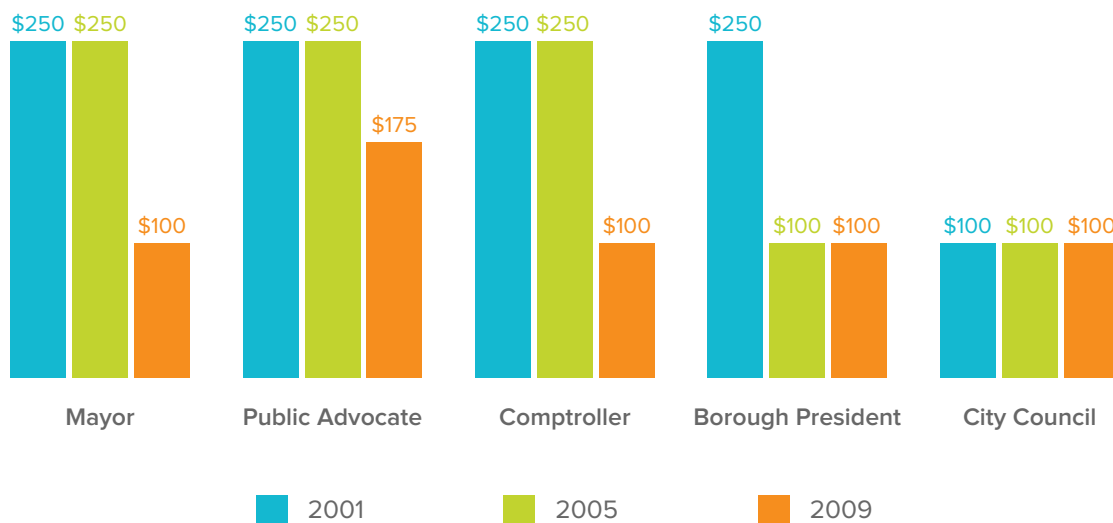


* Total includes the original contribution plus \$1,050 in matching funds. Only contributions from individual New York City residents are matched. Contributions from organizations (e.g., political committees or employee organizations) and individuals outside New York City are not matched.

The slow economy and the new, low limits on “doing business” contributions may have contributed to the increase in small contributions. [See *Chapter 8 — Doing Business.*] But it seems clear that campaigns and donors alike responded to the changed matching rate. The decrease in the maximum matchable contribution — from \$250 to \$175 — had a significant impact on contributor behavior during the 2009 election cycle. The most common individual contribution size (i.e., the mode) decreased across all three citywide offices. In fact, the most common contribution size for participating candidates in the 2009 elections was \$100 for every office but public advocate.

More donors gave small contributions, and they made up a larger portion of candidates’ fundraising. From 2005 to 2009, the proportion of funds raised by participating candidates from small donors who gave \$175 or less increased by almost 75 percent (from 8.5 percent of total net contributions from individuals to 14.8 percent). With the maximum matchable contribution lowered, more donors were able to maximize the impact of their contributions in 2009.

Figure 7.3 — Most Frequent Individual Contribution Size (Participating Candidates)



New Contributors

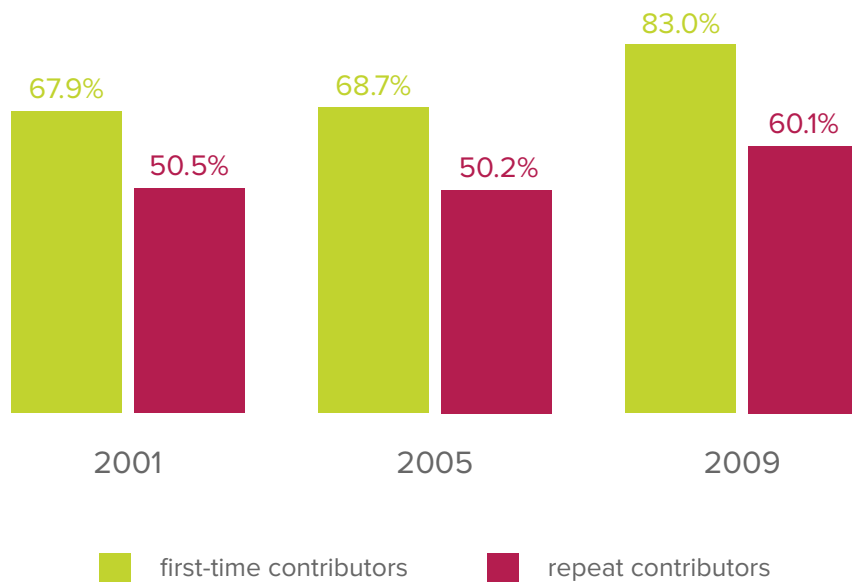
More than half of all contributors took part in city elections for the first time. Matching small contributions provides encouragement for candidates to expand their fundraising base beyond a core of reliable large donors. As a result, candidates are encouraging more New Yorkers to invest in the political process for the first time. Some candidates built bridges to communities that historically have not been active in city politics; others found innovative ways to fundraise that drew in younger people who were not “traditional” political donors.

Figure 7.4—Estimated Number of First-Time Contributors by Election Cycle (All Candidates)

Election Cycle	First-Time Contributors	% Contributors Giving for the First Time
2001	54,070	67.7%
2005	28,170	52.8%
2009	33,900	55.4%

In each of the last three citywide election cycles, more than half of all New York City contributors were first-time contributors. The new contributors are more likely to make small contributions than repeat donors. (See Figure 7.5.) Of the more than 30,000 individual New Yorkers who gave to a city candidate for the first time in 2009, more than 80 percent of them contributed \$175 or less.

Figure 7.5—First-Time Contributors Giving \$175 or Less Compared with Repeat Contributors (Individual New York City Contributors Only), 2001–2009



Online Contributions

New technologies are helping campaigns more effectively reach out to small donors. The growing use of the Internet as a political organizing tool has begun to transform the way candidates raise campaign funds. In many ways, these emerging technologies can enhance the core values of the Program, by lowering the barriers to entry for candidates and the overall cost of campaigning, by helping candidates build grassroots networks, and by making it easier for candidates to connect with donors.

The lower costs of communicating about ideas and events via social media and through campaign websites have allowed more candidates to enter the political arena, enabled campaigns to cut down on the traditional costs associated with fundraisers, literature, and get-out-the-vote operations, and increased the impact of small contributions.

Figure 7.6—Credit Card Contributions from New Yorkers to Participating Citywide Candidates, by Zip Code

Zip Code	Neighborhood	Borough	% of Net Contributions (\$) by Credit Card
10075	Yorkville	Manhattan	51.6%
11215	Park Slope	Brooklyn	47.4%
10003	East Village	Manhattan	46.1%
10013	Tribeca	Manhattan	45.0%
10024	Upper West Side	Manhattan	44.9%
10011	Chelsea	Manhattan	44.1%
10010	Kips Bay	Manhattan	42.2%
10025	Upper West Side	Manhattan	40.6%
11201	Brooklyn Heights	Brooklyn	39.2%
10014	West Village	Manhattan	38.7%

Note: Measures contributions from individuals only; organizational contributions are almost uniformly made by check. Zip codes with a minimum of \$50,000 in credit card contributions included.

All of the leading candidates for citywide office had sophisticated Web presences that allowed contributors to make credit card contributions to their campaigns over the Internet. Some smaller citywide campaigns and many City Council campaigns had websites as well, most of which enabled online contributions. More than 150 campaigns provided their website addresses to the CFB.* Of all contributions by individuals to participating citywide campaigns, 29.2 percent were credit card contributions — a substantial increase from 2005, when credit cards accounted for only 13.1 percent of contributions to citywide candidates. Council candidates

* Campaigns disclosed their websites to the CFB so that staff could ensure they were in compliance with CFB rules on accepting credit card contributions over the Internet. Candidates' website addresses were also printed in the Voter Guide.

accepted fewer contributions over the Internet; 8.1 percent of contributions made by individuals to participating City Council candidates were made via credit card, still an increase from the 2005 figure of 5.4 percent.*

Figure 7.7—Credit Card Contributions from New Yorkers to Participating City Council Candidates, by Zip Code

Zip Code	Neighborhood	Borough	% of Net Contributions (\$) by Credit Card
10011	Chelsea	Manhattan	26.2%
10075	Yorkville	Manhattan	22.0%
11217	Fort Greene	Brooklyn	21.7%
10024	Upper West Side	Manhattan	19.5%
11201	Brooklyn Heights	Brooklyn	18.3%
10025	Upper West Side	Manhattan	16.7%
10023	Upper West Side	Manhattan	15.2%
11215	Park Slope	Brooklyn	14.7%
10128	Upper East Side	Manhattan	14.2%
10028	Yorkville	Manhattan	13.9%

Note: Contributions from individuals only; zip codes with a minimum of \$10,000 in credit card contributions included.

Credit card contributions received online may reflect many new donors. The new donors may not be the sort of people who receive invitations to more traditional, “meet and greet” fundraisers. But if they are connected to the Internet, they can more easily learn about candidates and their positions, and make contributions without leaving their homes. New Yorkers’ credit card contributions were largely concentrated in Manhattan and Brooklyn, which may highlight issues of access to broadband Internet in certain areas of the city.

* A review of candidates’ documentation shows that the majority of candidates who accepted credit card contributions did so over the Internet.

Figure 7.8—2009 City Council Candidates with Largest Amount of Credit Card Contributions from Individuals

Candidate	District	Credit Card Contributions	Total Net Contributions	% of Contributions from Credit Cards
Daniel R. Garodnick (I)	4	\$ 110,397	\$603,506	18.3%
Jessica S. Lappin (I)	5	\$ 87,310	\$ 403,016	21.7%
PJ Kim	1	\$ 61,542	\$ 107,302	57.4%
Mark Winston Griffith	36	\$ 46,326	\$ 103,560	44.7%
Christine C. Quinn (I)	3	\$ 45,448	\$ 210,208	21.6%
Bob Zuckerman	39	\$ 40,997	\$ 100,842	40.7%
Jo Anne Simon	33	\$ 33,987	\$ 121,283	28.0%
Brad S. Lander	39	\$ 32,553	\$ 121,623	26.8%
Josh Skaller	39	\$ 32,050	\$ 110,754	28.9%
Mark S. Weprin	23	\$ 30,938	\$ 142,670	21.7%

Contributions by Borough

While Manhattan still dominates, contributions from other boroughs made up a larger proportion of contributions in 2009. An aim of the Campaign Finance Program is to help all New Yorkers participate in the city’s political life, regardless where they live. With the value of small-dollar fundraising multiplied by matching funds, the Program should encourage candidates to connect with voters and build contributor support in as many neighborhoods as possible throughout the city. Public funds can and should help “level the playing field” between neighborhoods, spreading influence more evenly across the city, instead of further concentrating power in a few limited pockets of wealth.

Data from the past few elections show a trend towards greater balance. While a majority of contributions to candidates in the Program has traditionally come from Manhattan, evidence from the 2009 elections shows that other boroughs are stacking up more competitively. Although Manhattan has less than a quarter of the city’s voters, its residents accounted for 68 percent of all contributions to participating candidates for citywide office in 2001.* In 2009, Manhattan’s share of those contributions dropped to a bare majority (53 percent). The precipitous drop in total contributions from Manhattan has led Brooklyn and Queens’ combined share to rise from 25 percent in 2001 to 43 percent in 2009.†

* Looking at contributions to citywide candidates across election cycles helps control for the impact of incumbency or other factors that may impact patterns of giving across neighborhoods and/or boroughs. For instance, fundraising among Council candidates may have been higher in Brooklyn in 2009 because there were more competitive races for City Council in 2009 than in 2005. The conditions in citywide races, on the other hand, are common to the entire city.

† There may be many reasons for the drop in Manhattan contributions — from a lagging economy to perceived noncompetitive mayoral races in 2005 and 2009, where big-dollar contributions traditionally abound.

Figure 7.9—Net Contributions from Individuals to Participating Candidates for Citywide Office, by Borough

	2001		2005		2009	
Manhattan	\$ 13,859,728	68.1%	\$ 7,017,748	61.8%	\$ 6,257,750	53.4%
Brooklyn	\$ 2,630,498	12.9%	\$ 2,275,927	20.0%	\$ 2,525,143	21.5%
Queens	\$ 2,429,370	11.9%	\$ 1,333,837	11.7%	\$ 2,501,533	21.3%
Staten Island	\$ 585,027	2.9%	\$ 265,870	2.3%	\$ 228,260	1.9%
Bronx	\$ 835,453	4.1%	\$ 468,273	4.1%	\$ 212,028	1.8%
Total	\$20,340,076	100%	\$11,361,655	100%	\$11,724,714	100%

Contributions by Zip Code

While the traditionally active sources of contributions were strong in 2009, new neighborhoods became active in significant numbers. A look at contributor activity at the neighborhood level tells a similar story. To raise the funds that help them maximize their matching funds, citywide candidates return again and again to reliable sources: the Upper East Side and Upper West Side of Manhattan. Of the top ten neighborhoods (defined by zip code) as sources of contributions for participating citywide candidates, eight are in Manhattan — and all eight were among the largest sources of contributions for the 2005 elections as well.

Figure 7.10—Top Ten NYC Zip Codes, Net Contributions from Individuals to 2009 Participating Citywide Candidates

Zip Code	Neighborhood	Borough	Contributions
10021	Upper East Side	Manhattan	\$1,117,735
11201	Brooklyn Heights	Brooklyn	\$ 693,331
10028	Upper East Side	Manhattan	\$ 558,167
10024	Upper West Side	Manhattan	\$ 533,926
10023	Upper West Side	Manhattan	\$ 459,027
10128	Upper East Side	Manhattan	\$ 404,841
10022	Sutton Place	Manhattan	\$ 322,934
10025	Upper West Side	Manhattan	\$ 253,573
11215	Park Slope	Brooklyn	\$ 250,419
10011	Chelsea	Manhattan	\$ 240,881

Neighborhood did not appear in 2005 list.

Candidates for citywide office who can rely on an active donor base in their home districts may increase the fundraising strength of one particular area. In the 2009 elections, some communities' growing involvement in the political process reflected campaigns by "favorite son" candidates at the citywide level. Candidates with

roots in brownstone Brooklyn — David Yassky, Bill de Blasio, and William Thompson — helped their home neighborhoods become more directly engaged in politics.

A look at some of the neighborhoods with the largest increases in contributor activity since 2005 also tells the story. John Liu’s campaign for comptroller made him the first Asian American elected to citywide office; he relied heavily on contributions from his home base in and around Flushing, a heavily Asian community that is home to Queens’ Chinatown. Zip codes in and around Flushing were among the areas that showed the biggest surge in political giving for the 2009 election.

If contributors are spread more evenly throughout the city, opportunities for candidates from all boroughs should be more evenly available as well. In 2009, for the first time since the inception of the Campaign Finance Program, two of the three citywide offices were captured by candidates from outside Manhattan. The Program should continue to provide incentives to reach new communities of contributors; only time will tell if these emerging communities continue their increased involvement through the next election.

Figure 7.11— Top Five NYC Zip Code Increases in Net Contributions from Individuals to Participating Citywide Candidates

Zip Code	Neighborhood	Borough	2005	2009	Difference	% Difference
11354	Flushing	Queens	\$ 25,690	\$ 178,619	+ \$ 152,929	+ 595.3%
11355	Flushing	Queens	\$ 33,999	\$ 216,314	+ \$ 182,315	+ 536.2%
11363	Douglaston Little Neck	Queens	\$ 29,130	\$ 119,685	+ \$ 90,555	+ 310.9%
11201	Brooklyn Heights	Brooklyn	\$ 180,103	\$ 693,331	+ \$ 513,228	+ 285.0%
11215	Park Slope	Brooklyn	\$ 119,292	\$ 250,419	+ \$ 131,127	+ 109.9%

While there are still challenges in attracting more voters to the polls, a greater number of contributors are getting directly involved with political campaigns — an encouraging sign that more New Yorkers are making a meaningful engagement with politics.

ACCOUNTABILITY

Safeguarding Taxpayer Funds

Although the overall amount of public funds paid to candidates makes up a small portion of the city’s budget, the Program represents a significant investment by the public in the electoral process. The CFB takes its stewardship of taxpayer dollars very seriously, and works hard to ensure that candidates are held responsible for the funds they receive.

Audits and Enforcement

CFB audits and enforcement hold campaigns responsible for their use of public funds. Protections built into the Program help ensure the taxpayer subsidy for campaigns is used properly. The CFB’s audit process is a robust

safeguard against waste in the campaign finance system. For example, CFB audits make sure that public funds are paid only to campaigns who are truly eligible for them by reviewing every claim before payment is made.* If all the matching claims submitted by campaigns during the 2009 elections had been matched in full, approximately \$34.3 million would have been disbursed.† However, the total amount of public funds disbursed for the 2009 elections was \$27.3 million. The difference, \$7 million, represents the estimated savings to the taxpayers realized by CFB auditing during the campaign.

Once candidates have been entrusted with taxpayer funds, the CFB's rigorous audits test candidates' continued compliance with the law's requirement that public funds only be used "to further the participating candidate's nomination for election or election."² The law contains a clear list of purposes that are not qualified as permissible uses of taxpayer funds, including payments to close relatives, payments in cash, payments in excess of the fair market value of services or goods, and others.³

Campaigns must carefully document their use of public funds, and must repay funds if they cannot show the funds were used for qualified purposes. If a publicly-funded campaign has a surplus after the election, the excess funds are returned to the taxpayers, up to the amount of public funds paid.

It is too early to analyze the effect of CFB enforcement on the 2009 elections, as most audits are still ongoing.‡ To give a sense of the fiscal impact of CFB oversight of campaigns' use of public funds, candidates have returned \$978,000 in public funds repayments in connection with the 2005 elections.⁵ Another \$490,000 is owed the Board by candidates in payment plans or subject to litigation. In addition, \$348,000 in penalties arising from the 2005 elections has been collected by the CFB.

Threshold For Public Funds

The threshold ensures that only candidates with demonstrated levels of support are able to receive public funds. Even after joining the Program, participating candidates must meet certain conditions to be eligible for public funds. Candidates must be on the ballot, and have an opponent on the ballot.⁴ Ballot access has long been a difficult process in New York State. Even established and experienced candidates, like Council Members Alan Gerson and Bill de Blasio (the latter of whom ran for public advocate), were temporarily removed from the ballot because of technical irregularities on their petitions filed with the City Board of Elections. In the 2009 election cycle, 193 participants were on the ballot in either the primary or general election. Another 27 candidates joined the Program and tried but failed to obtain a place on the ballot in either the primary or general election.

* To be eligible for public funds, a candidate must meet a two-part fundraising threshold, be opposed on the ballot, and be fully in compliance with the Act and Rules.

† Includes claims submitted by campaigns which were not paid because they did not meet threshold, or did not comply fully with Program requirements; *excludes* claims submitted by candidates who declined public funds.

‡ Starting with the 2008 elections, CFB post-election audits are subject to deadlines. The audit process must be completed (*i.e.*, by issuing either a final audit report or a notice of potential penalties and/or potential public funds repayment obligations) 14 or 16 months after the last disclosure statement for the election. For a further discussion of the audit deadlines, see Chapter 6.

§ As of July 22, 2010.

¶ Candidates must also meet a two-part threshold and maintain compliance with the Act and Board Rules.

Candidates must also demonstrate they have attained a basic level of support in their community by meeting a two-part fundraising threshold. Candidates must have a minimum number of contributors who give \$10 or more; candidates for borough president and City Council must find contributors in the area they are seeking to represent. They must also raise a minimum dollar amount in matching claims (contributions from city residents up to \$175). In terms of dollars raised, the threshold remained unchanged from 2005 to 2009.

Figure 7.12 – Thresholds to Qualify for Public Funds, 2009 Elections

Office	Dollar Amount	Number of Contributors
Mayor	\$250,000	1,000
Public Advocate & Comptroller	\$125,000	500
Borough President	\$10,000 – \$49,307*	100 borough residents
City Council	\$5,000	75 district residents

* For borough president, the threshold dollar amount is based upon the number of persons living in each borough. The dollar amount (based on the 2000 census) for each borough is: Bronx, \$26,653; Brooklyn, \$49,307; Manhattan, \$30,744; Queens, \$44,588; and Staten Island, \$10,000.

As the maximum matchable contribution was lowered from \$250 to \$175, a larger number of individual contributions were required to meet the threshold. Still, candidates in the 2009 elections achieved the threshold in proportions comparable to 2005, and did so in time to be paid on the first payment date in August in slightly greater numbers.

One possible reason the need for a greater number of threshold contributors did not have a greater effect on candidates meeting the threshold is the term limits extension; many non-incumbent candidates started fundraising earlier in the cycle, anticipating a greater number of open seats.

While the threshold seems adequate for Council candidates, it may warrant some review at the citywide level. In 2005, four mayoral candidates each received more than one million dollars in public funds on the first payment. This cycle, the leading Democratic contender did not meet the threshold to receive public funds until just before the primary, on the fourth payment date; the other contender did not reach the threshold at all.*

Figure 7.13 – Participating Candidates on the Primary Ballot Meeting Threshold

Election Cycle	Participants on Ballot	Received Funds	Met Threshold by First Payment Date	
2005	96	75	53	55.2%
2009	141	113	89	63.1%

* The only other major contender for citywide office to fail to meet the threshold was Rev. Al Sharpton in the 1997 Democratic primary for mayor. At the time, the matching rate was \$1-to-\$1, with contributions up to \$1,000 counting towards the threshold.

Limits on Public Funds Payments

The cap on public funds payments ensures that candidates must rely on some level of private support along with public funds. Unlike full public financing systems, the Program requires that candidates demonstrate support by raising private funds for their campaign. While payments are based on matching claims received by candidates, the total amount of public funds available is limited by law. The maximum payment for any participating candidate is fixed at 55 percent of the applicable spending limit.* When the spending limits increased for the 2009 elections, the public funds caps increased as well. Candidates may be eligible for up to the maximum payment in each of the primary and general elections.

Figure 7.14 — Maximum Public Funds, 2009 Elections

Mayor \$3,386,900	Public Advocate \$2,117,500	Comptroller \$2,117,500	Borough President \$762,300	City Council \$88,550
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The maximum payments for the citywide offices are relatively high; no candidate for mayor, public advocate, or comptroller was paid the maximum amount of public funds in either the 2001, 2005, or 2009 elections. Two candidates for borough president qualified for the maximum payment in the 2005 primary elections; none did in 2009.

Figure 7.15 — City Council Candidates Receiving Maximum Public Funds, Primary Elections

Election Cycle	Received Public Funds	Received Maximum Public Funds	
2005	59	32	54.2 %
2009	103	53	51.5 %

Note: Candidates who received within \$500 of the maximum payment are included.

Conversely, City Council candidates reach the maximum amount of public funds available (and have the resources to spend up to the expenditure limit) with much more regularity — more than 50 percent of the time in the primary elections, and less often in the general elections (see Figures 7.15 and 7.16). The highly competitive nature of the 2009 Council elections brought more candidates into the races, which may account for a slight decrease in the proportion of Council candidates who achieved the maximum payment in the primaries from 2005.

* The maximums may increase if the candidate is opposed by a high-spending non-participant.

Figure 7.16 — City Council Candidates Receiving Maximum Public Funds, General Elections

Election Cycle	Received Public Funds	Received Maximum Public Funds	
2005	45	13	28.9%
2009	54	18	33.3%

Note: Candidates who received within \$500 of the maximum payment are included.

The comparatively larger number of Council candidates approaching the maximum payment and the spending limit* is largely a reflection of the more generous matching rate. In 1997, the matching rate was \$1-to-\$1 for the first \$1,000 of contributions from New York City residents, and the maximum payment to Council candidates was \$40,000. In the 1997 elections, roughly 10 percent of Council candidates who received funds received the maximum payment in the primary and/or general elections. Changes in the matching rate to reward efforts to gather smaller contributions particularly rewarded City Council candidates, who generally tend to do more low-dollar fundraising. In recent elections, even as the maximum payment to Council candidates has more than doubled since 1997, a much greater proportion of candidates reached the cap.

Caps on “Sure Winners”

Public funds are sometimes paid to candidates in noncompetitive races. Since the inception of the Program, there has been spirited discussion about the role of public financing in noncompetitive races. With the advantages provided by incumbency and party registration, many candidates regularly win by wide margins — especially in the general election.

City Council candidates who won with 60 percent or more of the vote were paid \$1.86 million in the 2005 primary and general elections, representing 28.3 percent of all public funds paid to Council candidates. In the 2009 elections, the amount increased slightly while the proportion decreased. Candidates who won their elections to City Council with 60 percent of the vote or more were paid \$1.96 million, representing 17.4 percent of all public funds paid to Council candidates.† In addition, two candidates for borough president in 2009, Helen Marshall (Queens) and James Molinaro (Staten Island), received a total of \$970,000 in public funds for races they won by wide margins, comprising 64 percent of all public funds paid to candidates for borough president.

* Until the final disclosures of the election cycle are filed, and the final audits completed, it is difficult to determine which candidates have actually exceeded the spending limit.

† The increase was less than the legislated 7.5 percent increase in the spending limit between the 2005 and 2009 election cycles. The spending limit for Council increased from \$150,000 to \$161,000; the maximum payment for Council candidates rose from \$82,500 to \$88,550.

Figure 7.17 — Caps on Public Funds Payments for Candidates Facing Low-Spending Opposition, 2009 Elections

Office	Until your opponent raises or spends 20 percent of the spending limit... <i>(i.e. the “trigger”)</i>	...you are limited to 25 percent of the maximum public funds payment <i>(i.e. the “cap”)</i>
Mayor	\$1,231,600	\$846,725
Public Advocate	\$ 770,000	\$ 529,375
Comptroller	\$ 770,000	\$ 529,375
Borough President	\$ 277,200	\$ 190,575
City Council	\$ 32,200	\$ 22,138

These public funds were paid to “sure winners” despite changes to the law meant to reduce the amount of funds paid to candidates who go on to win with large percentages of the vote. With Local Law 34 of 2007, the City Council compelled candidates who face low-spending opponents to show *proof* of need, based on a specific list of criteria, in order to receive payments above and beyond the 25 percent cap. Before full payment is made, the Board may verify the truthfulness of a candidate’s Certified Statement of Need.

There is some evidence the changes to the law had some impact on candidates’ behavior. Fewer payments were made in 2009 based solely on Certified Statements of Need.* In some cases, candidates who petitioned the Board for full payment faced opponents whose spending eventually would have triggered the removal of their payment cap.

In the 2009 primary elections, **nine** Council candidates submitted Certified Statements of Need to lift the cap on their public funds payments.

- ❖ In **three** cases, the Board rejected the Statements as insufficient. Based on spending by their opponents, two of those three candidates — Larry Seabrook (CD#12) and Charles Barron (CD#42) — were never subject to the cap; the third, Sara Gonzalez (CD#38), had her public funds cap lifted for the final payment before the election.
- ❖ **One** candidate who submitted a Certified Statement of Need, Daniel Halloran (CD#19) had no opponent in the primary, and was not entitled to public funds until the general election.

Five were deemed sufficient by the Board.

- ❖ **Two** candidates — Carlos Bristol (CD#42) and Kenneth Mitchell (CD#49) — received the same payment as they would have without their Certified Statement of Need; their opponents had spent sufficient funds to lift the cap by the time their statements were considered.

* While more public funds were paid in 2009 than in 2005 as a result of Statements of Need, a majority of the funds paid in 2009 went to a single candidate: James Molinaro, candidate for borough president on Staten Island.

Figure 7.18 — City Council Candidates Filing Statements of Need, 2005 Elections

Candidate	District	Payment	Cost*
2005 Primary Elections			
Charles Barron (I)	42	\$82,500	\$ 61,875
Lewis A. Fidler (I)	46	\$82,500	\$ 0
Letitia James (I)	35	\$72,844	\$ 52,219
Diana Reyna (I)	34	\$ 70,620	\$ 0
Kendall B. Stewart (I)	45	\$82,500	\$ 0
Primary Elections Total: \$114,094			
2005 General Elections			
Charles Barron (I)	42	\$ 58,577	\$ 37,952
Lewis Fidler (I)	46	\$ 12,092	\$ 0
Erlene J. King	45	\$ 54,378	\$ 0
Andrew J. Lanza (I)	51	\$82,500	\$ 61,875
Michael E. McMahon (I)	49	\$82,500	\$ 0
Rosie Mendez	2	\$ 41,250	\$ 20,625
Michael C. Nelson (I)	48	\$82,500	\$ 61,875
James S. Oddo (I)	50	\$82,500	\$ 61,875
Domenic M. Recchia (I)	47	\$82,500	\$ 0
Larry B. Seabrook (I)	12	\$ 71,000	\$ 50,375
General Elections Total: \$294,577			
2005 Elections Total: \$408,671			
* Funds that would not have been disbursed without a Statement of Need.			

- ❖ **Three** candidates — Inez Dickens (CD #9), Darlene Mealy (CD #41), and Thomas White, Jr. (CD #28) — submitted Certified Statements of Need, and received additional funds earlier than they otherwise would have. Each candidate faced an opponent whose spending would have eventually lifted the cap in time to receive the full payment before the election.

Two Council candidates submitted acceptable Certified Statements of Need for the 2009 general elections. One — Lewis Fidler (CD#46) — did not have an opponent who eventually reported contributions or expenditures sufficient to lift the cap. The other, Vincent Gentile (CD #43), received a payment earlier than he would otherwise have.

Figure 7.19 — City Council Candidates Filing Valid Certified Statements of Need, 2009 Elections

Candidate	District	Payment	Cost
2009 Primary Elections			
Carlos A. Bristol	42	\$ 41,160	\$ 0
Inez E. Dickens (I)	9	\$88,250	\$ 0
Daniel J. Halloran	19	N/A*	N/A
Darlene Mealy (I)	41	\$ 86,135	\$ 0
Kenneth C. Mitchell (I)	49	\$88,550	\$ 0
Thomas White, Jr. (I)	28	\$88,425	\$ 0
Primary Elections Total: \$0			
2009 General Elections			
Lewis A. Fidler (I)	46	\$88,550	\$66,412
Vincent J. Gentile (I)	43	\$88,550	\$ 0
General Elections Total: \$66,412			
2009 Elections Total: \$66,412			
* Daniel Halloran only ran in the general election and was not eligible to receive a payment in the primary election.			

While these statements were responsible for some extra payments, a greater number of so-called “sure winners” (candidates who won election with 60 percent of the vote or more) in the 2009 elections whose payments were limited chose *not* to ask the Board for a full payment of public funds.

- ❖ In the 2009 general elections for City Council, ten “sure winners” had their public funds payments capped; as stated before, only one — Fidler — filed a Certified Statement of Need that caused additional funds to be released.[†] By contrast, in the 2005 general election, nine candidates came up against the cap; six filed Statements of Need and received additional payments.
- ❖ Several participating candidates who faced minimal opposition in their 2009 re-election efforts declined public funds altogether. Nine incumbent candidates for Council declined to accept public funds for the general elections. One — Christine Quinn (CD #3) — declined public funds for both the primary and general. All went on to win by 60 percent or more.[†] In 2005, nine candidates for Council declined funds as well.

* City Council candidates receiving a maximum \$22,138 payment under the 25 percent cap for the 2009 general election were: Margaret Chin (CD #1), Rosie Mendez (CD #2), Inez Dickens (CD #9), Maria Arroyo (CD #17), Annabel Palma (CD #18), Daniel Dromm (CD #25), Stephen Levin (CD #33), Letitia James (CD #35), Sara Gonzalez (CD #38), and Michael Nelson (CD #48).

† The other City Council candidates declining funds for the 2009 general election were Gale Brewer (CD #6), Daniel Garodnick (CD #4), G. Oliver Koppell (CD #11), Jessica Lappin (CD #5), Domenic Recchia (CD #47), Joel Rivera (CD #15), James Vacca (CD #13), and Peter Vallone, Jr. (CD #22). Of these, only Koppell faced a primary opponent.

In some respects, the change was a marked improvement. There is some evidence that the combination of attention paid to the issue, along with the more rigorous Certified Statement of Need, helped encourage restraint among candidates in noncompetitive races. Council candidates petitioning the Board for a full payment of public funds cost taxpayers significantly less in 2009 than in the previous election.

Two candidates running for borough president filed Certified Statements of Need in 2009. Marc Leavitt, a candidate for Queens borough president in the Democratic primary, received his \$310,722 payment earlier than he otherwise would have. James Molinaro, who was running for re-election as Staten Island Borough President, received \$628,248 in public funds after he filed a Certified Statement of Need. Though his opponent in the general election, John Luisi, also received public funds, he did not report sufficient contributions or expenditures to lift Molinaro’s cap before the election. Molinaro was paid \$451,010 more than he would have under the 20 percent cap.

Still, despite the change in the law, there was no decrease in the total amount of public funds paid to winners of noncompetitive races in 2009. The issue of “sure winners” will likely continue to occupy public attention. During the past election, the media persisted in highlighting candidates who submitted Certified Statements of Need as symbolic of the issue. In a typical editorial, the *Daily News* called on one to return the funds he’d been paid, calling him a “greedy” politician, who was “guilty of abusing New York’s system of public funding for political campaigns.”⁴

If maximum payments of public funds are regularly paid to candidates who go on to win with 60, 70, or 80 percent of the vote, it may be incumbent upon policymakers to consider whether the 20 percent “trigger” that releases the maximum payment is set at the appropriate level.

Figure 7.20 — City Council Candidates with 60+ Percent of Vote Receiving Public Funds, 2005 and 2009

2005 Primary Elections				2009 Primary Elections			
Candidate	District	Vote	Payment	Candidate	District	Vote	Payment
Letitia James [†] (I)	35	84.9%	\$72,844	Rosie Mendez (I)	2	83.1%	\$ 22,138
Charles Barron [†] (I)	42	83.9%	\$82,500	Letitia James (I)	35	81.1%	\$88,550
Diana Reyna [†] (I)	34	79.3%	\$70,620	Julissa Ferreras (I)	21	66.0%	\$72,480
Lewis A. Fidler [†] (I)	46	78.5%	\$82,500	Inez E. Dickens [†] (I)	9	66.4%	\$88,250
Yvette D. Clarke (I)	40	77.7%	\$ 81,784	Robert Jackson (I)	7	66.6%	\$88,550
G. Oliver Koppell (I)	11	76.0%	\$82,500	G. Oliver Koppell (I)	11	64.0%	\$88,550
Robert Jackson (I)	7	75.6%	\$41,484	Sara M. Gonzalez (I)	38	63.5%	\$88,550
James F. Gennaro (I)	24	75.2%	\$82,500	Leroy G. Comrie (I)	27	64.0%	\$88,330
Hiram Monserrate (I)	21	65.2%	\$82,500	Helen Diane Foster (I)	16	63.1%	\$88,550
Helen Sears (I)	25	61.9%	\$82,500	Ydanis A. Rodriguez	10	60.3%	\$88,550
Primary Elections Total (10 candidates)			\$761,732	Primary Elections Total (10 candidates)			\$802,498
[†] filed Statement of Need				[†] filed valid Certified Statement of Need			

2005 General Elections				2009 General Elections			
Candidate	District	Vote	Payment	Candidate	District	Vote	Payment
Helen Diane Foster (I)	16	98.6%	\$ 20,625	Maria C. Arroyo (I)	17	96.8%	\$ 22,138
Darlene Mealy	41	90.1%	\$ 20,625	Robert Jackson (I)	7	95.4%	\$ 16,482
Diana Reyna (I)	34	90.5%	\$ 17,300	Darlene Mealy (I)	41	95.1%	\$ 300
Charles Barron [†] (I)	42	88.9%	\$ 58,577	Ydanis A. Rodriguez	10	95.1%	\$ 64,146
Letitia James (I)	35	88.3%	\$ 15,760	Mathieu Eugene (I)	40	94.1%	\$ 21,192
Robert Jackson (I)	7	88.2%	\$ 15,640	Charles Barron (I)	42	93.0%	\$ 4,572
Larry B. Seabrook [†] (I)	12	87.2%	\$ 71,000	Helen Diane Foster (I)	16	93.1%	\$ 4,560
G. Oliver Koppell (I)	11	81.1%	\$ 20,625	Letitia James (I)	35	92.3%	\$ 22,138
Andrew J. Lanza [†] (I)	51	81.0%	\$ 82,500	Inez E. Dickens (I)	9	92.3%	\$ 22,138
Helen Sears (I)	25	80.0%	\$ 20,832	Stephen T. Levin	33	93.3%	\$ 22,138
Rosie Mendez [†]	2	79.5%	\$ 41,250	Larry B. Seabrook (I)	12	90.3%	\$ 16,542
James F. Gennaro (I)	24	78.7%	\$ 44,704	Michael C. Nelson (I)	48	89.9%	\$ 22,138
James S. Oddo [†] (I)	50	78.4%	\$ 82,500	James J. Sanders, Jr. (I)	31	88.5%	\$ 21,888
Sara M. Gonzalez (I)	38	76.1%	\$ 500	Thomas White, Jr. (I)	28	88.7%	\$ 24,196
Michael C. Nelson [†] (I)	48	74.3%	\$ 82,500	Annabel Palma (I)	18	87.6%	\$ 22,138
Michael E. McMahon [†] (I)	49	70.8%	\$ 82,500	Fernando Cabrera	14	87.6%	\$ 5,190
Lewis A. Fidler [†] (I)	46	70.3%	\$ 12,092	Margaret S. Chin	1	85.8%	\$ 22,138
Domenic Recchia [†] (I)	47	69.3%	\$ 82,500	Rosie Mendez (I)	2	84.1%	\$ 22,138
Jessica S. Lappin	5	65.0%	\$ 82,500	Sara M. Gonzalez (I)	38	81.9%	\$ 22,138
James Vacca	13	64.4%	\$ 82,500	Lewis A. Fidler [†] (I)	46	80.6%	\$ 88,550
Daniel R. Garodnick	4	63.8%	\$ 82,500	Jumaane D. Williams	45	76.7%	\$ 66,190
Tony Avella (I)	19	62.5%	\$ 75,120	James S. Oddo (I)	50	75.2%	\$ 88,550
				Daniel P. Dromm	25	74.6%	\$ 22,138
				James G. Van Bramer	26	70.4%	\$ 88,550
				Brad S. Lander	39	70.5%	\$ 88,550
				Mark S. Weprin	23	67.7%	\$ 88,550
				Vincent M. Ignizio (I)	51	66.1%	\$ 88,450
				Albert Vann (I)	36	64.2%	\$ 79,955
				Karen Koslowitz	29	62.7%	\$ 78,522
General Elections Total (22 candidates)			\$1,094,650	General Elections Total (29 candidates)			\$1,156,615
2005 Elections Total (24 candidates)			\$1,856,382	2009 Elections Total (32 candidates)			\$1,959,113
[†] filed Statement of Need				[†] filed valid Certified Statement of Need			

COMPETITION

Helping candidates run competitive campaigns

Another oft-cited rationale for public financing programs is the potential to “level the playing field” between opposing candidates with public subsidies and spending caps. The CFB mission statement declares that the Program aims to help “more citizens to compete for city office.” An editorial last November in *The New York Times* cited this principle in urging lawmakers to consider reforms at the state level: “Albany should emulate New York City’s public financing of campaigns, which *promotes competition* and lessens the corrupting influence of special interests”⁵ (emphasis added).

Even a casual observer of politics would agree that money is not the *only* factor that determines the outcome of an election. Generally, incumbency provides a considerable advantage to office-holders running for re-election. Candidates’ respective biographies, abilities, qualities, or positions on timely and important issues can all affect their electoral prospects.

Still, public matching funds can get candidates *onto* the playing field, even if it is not always perfectly level. Once they are running, candidates who opt into the Program and demonstrate public support sufficient to qualify for public funds are granted access to resources that provide a capacity to communicate with voters. As a condition of the public funds, candidates agree to observe an overall cap on their spending. With the public funds setting a common floor and ceiling on campaign spending, the Program should promote competition by helping to ensure that money is not the deciding factor in a race between participating candidates.

Competition by Office

For most offices, the 2009 elections were more competitive than in 2005. Before the extension of term limits, many candidates were prepared for another election year like 2001, with open seats in all three citywide offices, three of the five borough presidencies, and 36 of 51 City Council districts.* The wide-open election many expected may not have come to pass, but anti-incumbent sentiment and anxiety about the economy set the stage for an election season that was significantly more competitive than in 2005.

Mayor: Compared with the vigorously contested four-way 2005 primary, competition for the Democratic nomination for mayor was less intense in 2009. The extension of term limits kept some viable challengers out of the race, leaving Tony Avella as Bill Thompson’s main challenger for the Democratic nomination. Avella failed to qualify for public funds; Thompson’s campaign outspent Avella’s by a ratio of 13 to one,† and Thompson won the primary with 71 percent of the vote.

On the other hand, the general election was more competitive than the 2005 contest, which Michael Bloomberg won by almost 20 percentage points. Thompson was outspent in the general election by nearly 12 to one, but finished on Election Day within five percentage points of the incumbent as voters returned Bloomberg to office with a much slimmer majority.

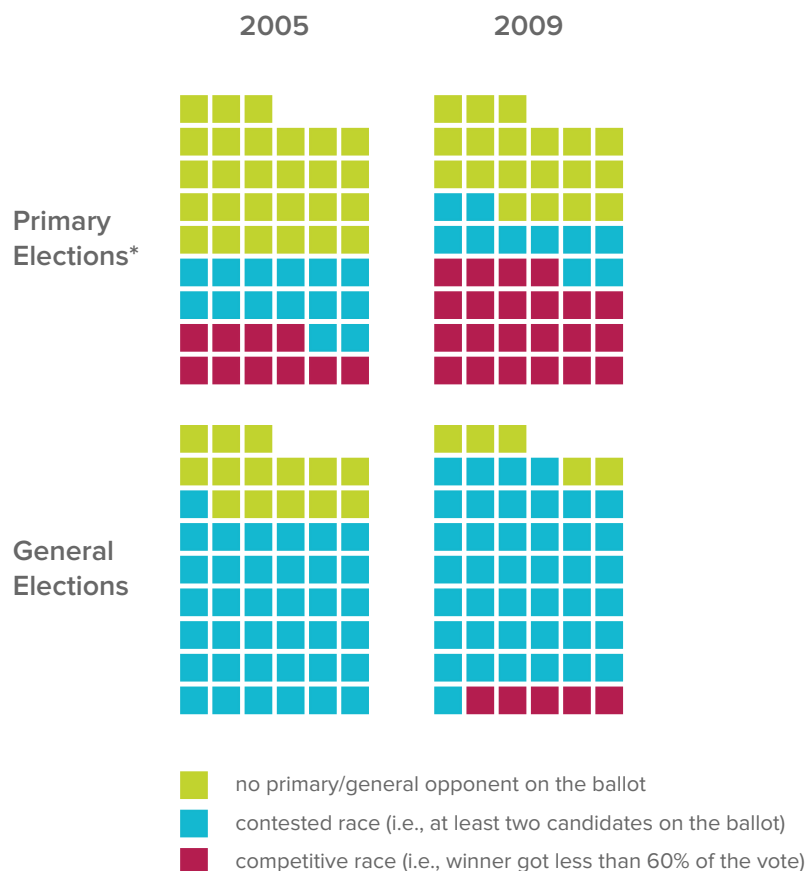
* Four members left the Council between November 2008 and July 2009. In the fall of 2009, 32 sitting Council members could have run for a third term. Of those, 25 incumbents ran for a third full term, as well as three borough presidents and the mayor.

† Through September 15, 2009.

Public Advocate/Comptroller: Incumbents easily won re-election to the other citywide offices in 2005. With both seats open in 2009, both elections were competitive in the Democratic primary. Four established contenders in each race qualified for public funds, and each race required a runoff. However, the deciding votes for each office were cast in low-turnout elections in the runoff and general elections; Bill de Blasio and John Liu each prevailed handily in both elections.

Borough President: In 2005, an open seat in Manhattan provided the only real competitive race for borough president, as incumbents were re-elected without difficulty in the other four boroughs.⁶ In 2009, incumbents made a clean sweep, earning re-election in all five boroughs in mostly noncompetitive races. Of the five, only Helen Marshall in Queens faced a primary. Challenger Marc Leavitt received public funds, and spent nearly the same amount of money as the incumbent, but Marshall took 72 percent of the vote to Leavitt’s 17 percent. Only James Molinaro in Staten Island faced an opponent who was paid public funds for the general election. Though opponent John Luisi received nearly \$240,000 in public funds, he was still outspent more than 3-to-1, and was easily defeated by Molinaro, 63 percent to 37 percent.

Figure 7.21—Contested/Competitive City Council Elections (each box represents one Council district)

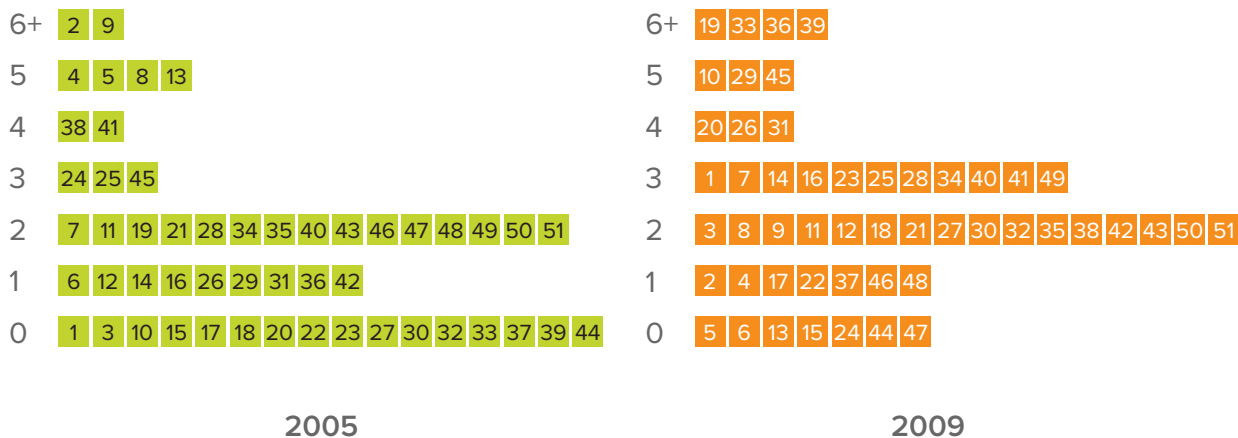


* Numbers are for Democratic Party primary elections. In 2009, there were two Republican primaries for City Council seats—in CD #4 (Manhattan) and CD #39 (Brooklyn); neither race was competitive. There were no primary elections in the Republican Party (or any other party besides the Democratic Party) in 2005.

City Council: Despite a comparable number of open (non-incumbent) races,[†] the 2009 City Council elections were considerably more competitive than 2005, in both the primary and general elections. Fewer candidates ran without opposition; there were primary elections in more Council districts, and fewer general election races with a single candidate on the ballot. Those races were more competitive, with fewer winners earning more than 60 percent of the vote. In the general election, competitive races at the Council level were still few and far between. Still, while there were only five out of 51 races in the 2009 general elections with winners earning less than 60 percent of the vote, there were *none* in 2005 (see Figure 7.21).

In 2009, two or more candidates received public funds in 37 of 51 Council districts. In 2005, only 26 districts — barely half — had two or more candidates receive public funds.

Figure 7.22 — Number of Candidates Receiving Public Funds by Council District (Primary and General Elections Combined), 2005 vs. 2009



Challengers vs. Incumbents

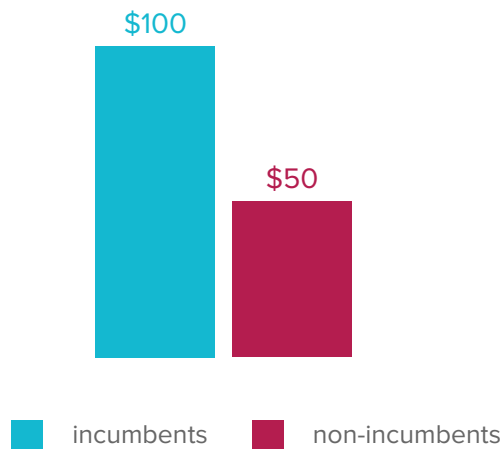
Fundraising remains a hurdle, but public funds helped to make challengers more competitive against incumbents. In an election year marked by high levels of anti-incumbent sentiment, the 2009 elections were an unprecedented success for challengers.⁷ The mayoral contest was unexpectedly close and five incumbent Council members were defeated, all in primary elections. Prior to 2009, no more than two Council incumbents had lost a bid for re-election in any single election year.[†]

* In 2005, there were seven Council districts where no incumbent ran for re-election; in 2009, there were eight.

† Since the Program was initiated, the city has had six regular citywide elections (1989, 1993, 1997, 2001, 2005, 2009) as well as two Council-only elections (1991, when the Council was expanded to 51 members, and 2003, for census-based redistricting). Two incumbent Council members were defeated in 1991 and in 1993.

While the results represent an historical achievement, it is important to keep them in perspective. Incumbents still win much more often than challengers: five Council incumbents were defeated, but another 38 were re-elected, giving incumbents an 88 percent success rate.

Figure 7.23—Median Contribution Size for City Council Candidates, 2009 Elections

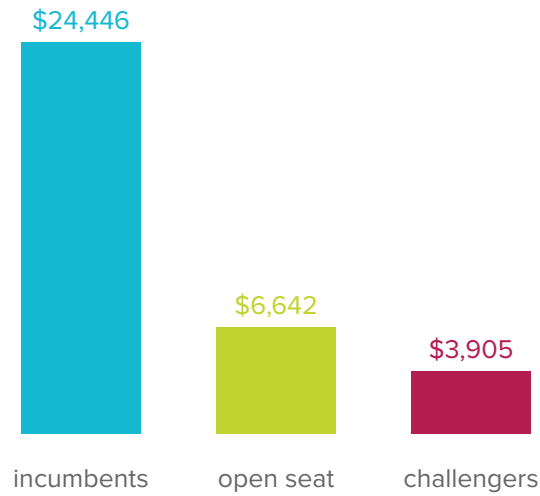


Whatever challenges they faced, incumbents were still more successful fundraisers in the 2009 election cycle. Among participants, the median incumbent candidate for Council reported \$87,295 in net contributions; the median challenger collected only \$23,238. Most incumbents have two significant advantages in fundraising.

- ❖ *Incumbents rely more heavily on larger contributions.* In the 2009 elections, the median contribution size for incumbents running for City Council (\$100), while itself small, was twice that of non-incumbents (\$50) (see Figure 7.23). Challengers collected more small contributions than incumbents: 85 percent of contributors to non-incumbents gave \$175 or less; incumbents, 66 percent. The difference was more pronounced among the smaller universe of candidates for borough president; 86 percent of contributors to the challengers gave \$175 or less, while only 50 percent of contributors to incumbents did so.
- ❖ *Elected officials can build relationships with organizational contributors that many challengers are unable to cultivate.* As discussed in Chapter 6, the Council took steps to ban some organizational contributions to political campaigns; candidates were prohibited from taking contributions from LLCs and partnerships as of January 1, 2008. Candidates may still accept contributions from other organizations, including political committees and employee organizations. Those organizational contributions heavily favor incumbents. The average incumbent Council member collected almost seven times the funds from organizational contributors as the average challenger; more than half the challengers who reported itemized contributions to the CFB did not raise a single dollar from organizational sources.*

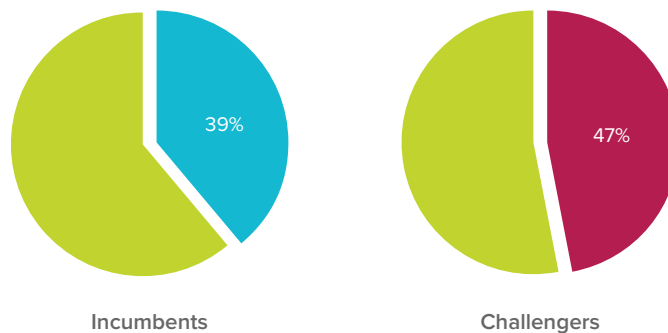
* Those challengers who were able to access funds from organizational contributors were largely successful candidates; four of the five challengers who defeated incumbents (Fernando Cabrera, Daniel Dromm, Debi Rose, Jumaane Williams) had the four largest amounts of organizational contributions among all challengers.

Figure 7.24 — Average Total Net Contributions to Participating Council Candidates from Organizations, 2009 Elections



In many cases, public funds can help to make up for differences in fundraising ability. As challengers are more reliant than incumbents on smaller, individual donors, it follows that they are more reliant on public funds as well. For challengers across all offices who ran as participants, public funds comprised nearly half of the funds that they spent; for incumbents, public funds comprised slightly less than 40 percent of their spending. A greater number of challengers received a maximum payment of public funds than did incumbents in both the primaries and general elections. (This may be in part due to incumbents who declined funds.)

Figure 7.25 — Public Funds as a Percentage of Expenditures, 2009 Elections (All Participants)



Public funds cannot ensure electoral success, only that challengers have the resources to make themselves heard. That is exactly what happened with increasing regularity during the 2009 elections. More challengers

Participants vs. Non-Participants

Participating candidates competed well against non-participants, even when they were outspent. While public funds and spending limits can ensure that elections between participating candidates take place on a playing field with well-defined boundaries, the voluntary nature of the Program means that some participants will face opponents who choose to spend large amounts of funds.

The Program extends assistance to challengers who run against non-participating candidates. While participating candidates cannot be guaranteed the ability to match a non-participant's spending dollar for dollar, they can get additional matching funds when facing a high-spending opponent.

With participation rates as high as they are, relatively few races featured high-spending candidates who opted out of the Campaign Finance Program. Most candidates who choose not to enter the Program run small campaigns and spend little. Only two, Michael Bloomberg and Council Member Simcha Felder were incumbents; neither faced a primary opponent (Felder had no opponent in either the primary or the general election), and both won re-election. A look at how the others fared shows how effectively the Program can help participating candidates to compete against non-participants in cases where the additional advantages of incumbency are not a factor.

In elections pitting participating candidates against high-spending non-participants, a participant won in three of those races and finished as close runners-up in the others. Each of those races was competitive; no winner finished more than 10 percentage points ahead of the runner-up.

- ❖ **District 19 (primary and general):** Non-participant Kevin Kim put very little of his own money into his campaign, but he was easily the top spender in the field. With a Tier 1 bonus declared, two of his participating competitors in the primary spent more than \$200,000 each; Kim won a narrow victory with 31 percent of the vote. His opponent in the general election, Daniel Halloran, participated in the Program. Kim spent nearly \$650,000 between the primary and general elections. Though he was outspent more than 4-to-1 over the course of the election cycle, Halloran won election by a narrow majority.
- ❖ **District 20 (primary):** Non-participant Yen Chou faced four opponents, each of whom participated in the Program. While each received more than \$100,000 in public funds, Chou outspent her nearest competitor by more than \$70,000 through the primary. Nevertheless, the election was very close; less than 200 votes separated Chou, the winner, from the third-place finisher.*
- ❖ **District 25 (primary):** Non-participant Stanley Kalathara spent \$32,450[†] of his own money, supplemented by nearly \$100,000 of fundraising. Assisted by Tier 1 bonus matching funds, his opponents were each able to outspend him by more than \$100,000. Kalathara finished third behind the winner, Daniel Dromm, and incumbent Helen Sears.
- ❖ **District 29 (primary):** Non-participant Heidi Chain ran in a six-candidate field that included former Council Member Karen Koslowitz and Lynn Schulman, who received the backing of the Working Fam-

* Chou faced another non-participating candidate, Peter Koo, in the general election. Koo contributed over \$370,000 to his own campaign, and spent more than \$516,000 overall to win election.

† Includes a loan of \$5,000 that was not repaid.

ilies Party. Despite pouring \$210,000 of her own money into her candidacy, enabling her to outspend her closest opponent by more than \$50,000, Chain finished third behind Koslowitz and Schulman, with only 19 percent of the vote.

At the City Council level, at least, the evidence seems to show that non-participants have no special advantage over participating candidates. Participating candidates who were outspent were able to compete and achieve victories over self-funded candidates. One “high-spending” non-participating candidate who triggered a bonus, Kalathara in District 25, was actually significantly outspent by his participating opponents. [See *Chapter 10 for further discussion of this issue.*]

Any analysis of participants’ ability to compete against non-participants must address the ability of the Program to respond to the highest-spending candidates. While the bonus provisions do provide challengers with a baseline ability to communicate with voters, there is no disputing that the unprecedented levels of spending in Michael Bloomberg’s mayoral campaigns of 2001, 2005, and 2009 have raised questions about the perceived ability of the Program to help challengers compete financially. In 2006, the Board published a white paper entitled *The Impact of High-Spending Non-Participants on the Campaign Finance Program* that explored some potential responses.⁸

The results of the 2009 election should provide a reminder that an overwhelming financial advantage is no guarantee of success. Some reports suggest that the show of force represented by Bloomberg’s spending may have turned some voters off. One *New Yorker* complained to a columnist that “Bloomberg TV ads were so omnipresent he felt like he was constantly hearing from Big Brother.”⁹

As noted in the Board’s 2006 study, there is a long list of wealthy, self-funded candidates across the nation who failed to capture the imagination of voters, including here in New York. Ron Lauder spent \$13 million in an unsuccessful bid for the Republican nomination for mayor in 1989. In 2002, Tom Golisano spent \$83 million in his third run for governor of New York State.¹⁰

A June 2010 report by the National Institute on Money in State Politics studied self-funded candidates for state office between 2000 and 2009. The report found that self-financed candidates who were the top “fundraisers” in their race won election 55 percent of the time. In contrast, candidates who raised money from contributors *and* possessed the edge in fundraising over their opponents won much more often — in 87 percent of their races. Of the seven candidates between 2000 and 2009 who spent more than \$25 million of their own money on a campaign for statewide office, only one won election — Jon Corzine for governor of New Jersey in 2005. (Corzine appears twice on the list; he lost his largely-self-funded race for re-election in 2009.)¹¹ While the report did not measure the magnitude of the self-funded candidates’ advantage, its conclusions provide a reminder of what money cannot buy.

In both 2005 and 2009, the winner of the Democratic primary entered the general election against an incumbent mayor with an overwhelming financial edge. Fernando Ferrer, Michael Bloomberg’s opponent in the 2005 general election, was outspent by roughly 9-to-1, and lost by nearly 20 percentage points. Facing an even greater financial disadvantage than his 2005 counterpart, Bill Thompson came within five points of a victory against a two-term incumbent mayor.

Thompson spent less — and qualified for fewer matching funds — than did Ferrer, but Ferrer had to run a costly campaign against three competitive and high-profile opponents in the 2005 primary before moving on to the general election. A Tier 2 bonus was declared in each race, which supplemented each candidate’s public funds payments. Bonus payments, to the extent they help challengers compete against wealthy candidates, are still based on those challengers’ ability to garner support; participating candidates must maximize their support from small donors if they wish to maximize the benefits of the bonus.

Figure 7.27 — Spending in Mayoral General Elections, 2005 vs. 2009

2005				2009			
Candidate	Public Funds	Spending	% Vote	Candidate	Public Funds	Spending	% Vote
Bloomberg	—	\$84,587,319	58.4%	Bloomberg	—	\$108,371,688	50.7%
Ferrer	\$4,361,060	\$ 9,159,432	39.0%	Thompson	\$3,265,062	\$ 9,352,416	46.3%

The Campaign Finance Program may not be able to promise a playing field that is completely level. Still, the 2009 elections illustrated how public matching funds can help participating candidates connect with voters and compete effectively with the advantages of incumbency or great wealth.

EDUCATION

Improving the quality, volume, and accessibility of public information about candidates and campaign finances

As the CFB encourages candidates to reach out to individual New Yorkers, the agency also works to engage voters directly, through its voter education efforts. With the Debate Program, the non-partisan citywide Voter Guide, and its website, the CFB provides multiple platforms for candidates to communicate with voters, and provides voters with crucial information that helps them make educated decisions at the polls.

Each plank of the CFB’s voter education program is well-established. The CFB Voter Guide has been published before each regularly scheduled primary and general election covered by the Program since the first in 1989. The Debate Program and the CFB’s website, www.nycffb.info, were both introduced for the 1997 elections. The online Searchable Database, providing instant access to candidates’ financial information, was unveiled in the summer of 1998. Over the years, the CFB has refined each of these valuable resources to make them more relevant to voters. The CFB has improved the quality of the debates, redesigned the Voter Guides, offered expanded information through a rebuilt website, and updated the Searchable Database to provide users with a wider range of search options.

Debate Program

Voters who viewed the CFB Debates believe they were informative. The CFB Debate Program provides citywide candidates the opportunity to meet on a level playing field and debate relevant issues, and provides voters with an opportunity to compare those candidates side by side. The CFB works with sponsors that can provide a wide broadcast distribution, in different languages, and the ability to stream video online. A key change to the De-

bate Law, ensuring that candidates raise *and* spend the threshold amounts to qualify for debates, helped ensure they were relevant. [See *Chapter 2 — Debates.*]

During the 2009 debates, the CFB solicited feedback from debate attendees, sponsors and additional stakeholders to help evaluate the Debate Program. Audience surveys were distributed to members of the public who attended the October 27, 2009 mayoral debate at El Museo del Barrio. Most felt that the debate achieved its goals of engaging and informing the public. Among the key findings:

- ❖ 80 percent of respondents said that information learned during the debate helped them make a better-informed decision in the mayoral election.
- ❖ 67 percent said the debate addressed the issues they felt were most important in the campaign.
- ❖ 69 percent believed the format of the debate provided a balanced and well-rounded presentation of the candidates.
- ❖ More than half of respondents had watched previous debates between candidates for citywide office produced as part of the official Debate Program for the 2009 primary elections.

Survey respondents commented that the mayoral debate “addressed many controversial NYC issues,” was “well done,” and that the program is a “great public service and well run.”

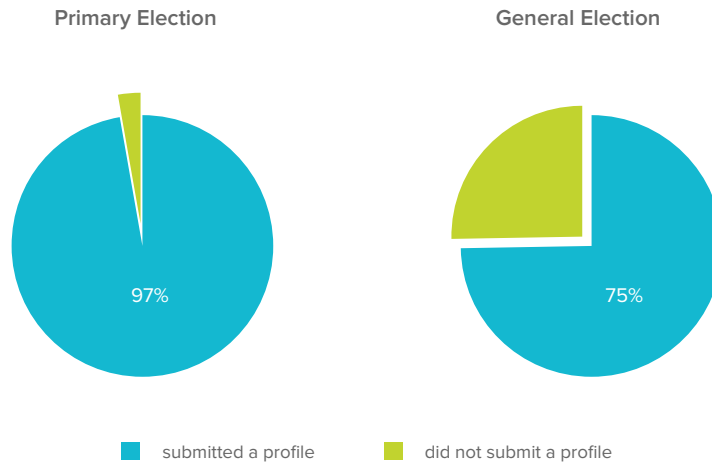
Other evidence showed that voters relied on the CFB Debate Program to inform their choices at the polls. During the CFB’s Post-Election Hearings, the League of Women Voters of the City of New York (LWVNYC) presented results of their own survey, which found that 50 percent of debate viewers changed their mind about their vote as a result of the debates. This high number is a testament to the importance and success of the Debate Program. Laura Altschuler, Co-Chair of the LWVNYC, commented that she “checked those numbers twice because I couldn’t believe it.”¹² She also noted that “the publicity given to the Debates and the Voter Guide by the [CFB] was a positive feature of the 2009 Campaign.”¹³

Voter Guide / Video Voter Guide

More candidates than ever before are communicating with voters through the Voter Guide and Video Voter Guide. The CFB’s official nonpartisan Voter Guide provides information on candidates, ballot issues and voting locations. [See *Chapter 3 — Voter Guide.*] The 2009 Voter Guide for the Primary Election had the highest rate of participation in the CFB’s history — 97 percent of candidates on the ballot submitted a profile. This meant that almost every registered voter eligible to vote in a primary election received a copy of a Primary Voter Guide that contained a profile of each and every candidate seeking to represent them.* The Voter Guide pages were in the top 10 list of most visited pages on the CFB website in 2009, receiving over 190,000 page views for the Primary and General Election editions combined. [See *Administrative Report for more information about website traffic.*]

* The Guide lists the name and party affiliation of candidates who fail to submit a profile for publication.

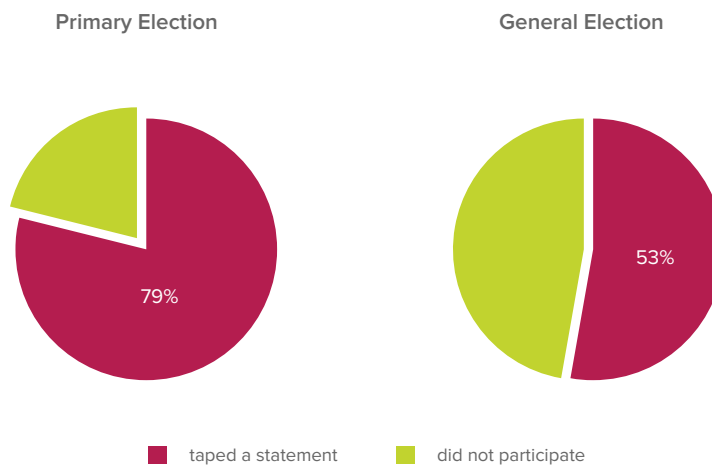
Figure 7.28—Candidates on the Ballot Participating in the CFB Voter Guide, 2009 Elections



Beginning in 2005, the CFB helped to bring voters a new education resource, the official New York City Video Voter Guide, a project of the Voter Assistance Commission (VAC). In 2009, the CFB’s Candidate Services Unit once again assisted VAC with promotion and logistics. The CFB played a significant role in producing the Video Guide, providing staff, budgetary, and organizational support to VAC, and using the Candidate Services Unit’s relationships with campaigns to arrange appointments for candidates to record their statements.

The CFB’s established relationships with candidates and campaign staff resulted in a high participation rate — 186 candidates taped profiles for the Video Guide. In the primary election, 79 percent of candidates on the ballot taped a statement; 53 percent of candidates in the general election taped a video statement.

Figure 7.29—Candidates on the Ballot Participating in the Video Voter Guide, 2009 Elections



Each candidate’s profile was available on the CFB’s online Voter Guide. Video Voter Guide statements were embedded in the online candidate profiles, providing visitors with easy access to information about candidates from mayor to City Council.

Disclosure

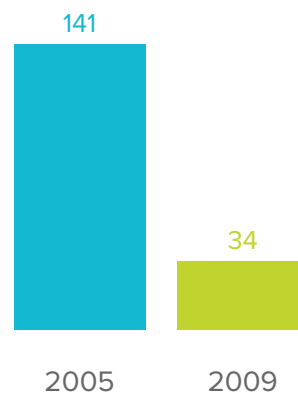
Improved quality of disclosure provided better information to the public. Campaign finance data available on the CFB website through the Searchable Database and the condensed Campaign Finance Summaries educate the press, voters, candidates and the public about how candidates raise and spend their funds. The overall quality of disclosure has improved significantly since 2005.

Upgrades in the CFB’s proprietary software for reporting transactions, C-SMART, making data entry easier for campaigns, have made for better disclosure overall. [See *Chapter 4—Disclosure.*] In addition to the improvements noted earlier in the report, along with outreach from the Candidate Services Unit, fewer candidates failed to disclose financial information for the 2009 elections. More complete and timely disclosure makes more complete information about the elections available to the public in a timely fashion. In 2005, 85 candidates either filed disclosure statements late (153 or 9.4 percent of all statements), or failed to file statements (141 or 8.6 percent of all statements). In 2009, those numbers improved considerably; only 116 statements were filed late (4.9 percent) and 34 statements were missing (1.4 percent), from 79 candidates. Candidates’ improved responsiveness made a greater breadth of financial data available to the public, improving the utility of the CFB’s website and Searchable Database for voters during the 2009 election season.

Figure 7.30— Disclosure Statements Filed Late



Figure 7.31— Missing Disclosure Statements



The CFB will continue to seek ways to improve the quantity and quality of information available to voters throughout the entire election cycle, seeking further enhancements to all its voter education efforts.

INTEGRITY

Decreasing actual and perceived corruption associated with large contributions and unlimited campaign spending

There is a clear link between the integrity of our public officials and campaign finance law. Any time elected officials or candidates solicit or receive funds from private sources, the public perceives that there is the potential for corruption to contaminate the political process.

The Program was created the same way most significant campaign finance reforms are enacted in jurisdictions across the United States: as a response to scandal. The corruption scandals of the 1980's did not grow out of an election campaign. However, lawmakers enacted campaign finance reforms to restore public confidence in government. As a result of the leadership of Mayor Ed Koch, Council Speaker Peter Vallone, and others, New York City became the first big city in America to adopt public financing of elections.

The Program they created requires candidates to rely on some measure of private support. Along with public funds, limits on contributions and spending ensure that candidates are not completely reliant on large contributions. Because candidates must still fundraise, perceptions of potential influence-seeking associated with private contributions may still arise.

Recent reforms have enhanced the Program's ability to address actual and perceived corruption. Some reforms took effect in the middle of the 2009 election cycle; the ban on contributions from LLCs and partnerships took effect in 2008, as did the low limits on "pay-to-play" contributions.

Large Contributions

Candidates who participate in New York City's Campaign Finance Program are less reliant on large contributions that may lead to perceptions of influence-seeking. The Program's focus on small contributions can help decrease the possibility or perception of corruption among office-seekers. Compared with a contributor who gives the maximum \$4,950 to a candidate, a contributor who gives \$50 is less likely to be favor-seeking — and the public is less likely to view them that way. Candidates who can draw on a broader base of small contributors are not overly reliant on any one or small group of wealthy, influential donors.

While the new \$6-to-\$1 matching rate helped encourage campaigns to reach out to small donors in greater numbers, new limits on so-called "pay-to-play" contributions from people doing business with city government may have also played a part. A report issued by the Board in June 2006 suggested that such "doing business" contributions played a significant role in the 2001 and 2005 elections; analysis of the 2009 elections shows that "doing business" contributions were sharply reduced due to the new, low limits. [See *Chapter 8 — Doing Business* for more information.]

Earlier sections of this chapter analyzed the growing focus on smaller contributions. The most frequent contribution size decreased across most offices, and small contributions comprised a larger portion of candidates' fundraising. Compared with contributors to candidates for New York State office, candidates who participate in the City's Campaign Finance Program receive more of their funds from small donors as well. In the 2009 city

elections, 17.5 percent of funds raised by participants came in contributions of \$249 or less; only 9.8 percent of contributions to New York state candidates in the 2008 elections were given in similar amounts.*

Intermediaries

Intermediaries can “bundle” contributions to amplify their impact beyond what the contribution limits allow. Intermediaries, or “bundlers,” are individuals who collect, solicit, or deliver contributions to a campaign. If contributions are perceived as a way for donors to gain influence over a candidate, bundling contributions may lead to perceptions of even greater influence-seeking. Individual contributions, as noted, are limited by the Act; no person can contribute more than \$4,950 to a candidate for mayor, for instance. But bundling can multiply an individual’s ability to provide funds to his chosen candidate several times over.

Disclosure of intermediated contributions provides the public with more complete information about candidates’ sources of funding. That is why the Campaign Finance Act has long required campaigns to report their intermediaries to the CFB. To remedy confusion about which activities are subject to the disclosure requirement, Local Law No. 34 of 2007 expanded the definition of intermediaries to capture bundling activity more accurately. The new definition includes those who solicit contributions, as well as those who deliver them. [See *Chapter 6 — Legislative Action.*]

Figure 7.32 — Top Recipients of Intermediated Contributions, 2009 Elections

Candidate	Office	Amount	Intermediaries	Average Amount Per Intermediary
Melinda R. Katz	Comptroller	\$324,370	45	\$ 7,208
Scott M. Stringer (I)	Borough President—Manhattan	\$ 315,066	51	\$ 6,178
David Yassky	Comptroller	\$280,285	31	\$ 9,041
Eric Gioia	Public Advocate	\$243,855	79	\$ 3,087
William C. Thompson, Jr.	Mayor	\$ 127,233	11	\$11,567
Ruben Diaz, Jr. (I)	Borough President—Bronx	\$ 86,039	10	\$ 8,604
Daniel R. Garodnick (I)	City Council — CD#4	\$ 75,150	15	\$ 5,010
Maria C. Arroyo (I)	City Council — CD#17	\$ 57,830	8	\$ 7,229
Thomas V. Ognibene	City Council — CD#30	\$ 31,130	4	\$ 7,783
Eric A. Ulrich (I)	City Council — CD#32	\$ 28,300	2	\$14,150

* Data on New York State fundraising accessed through the website of the National Institute on Money in State Politics: www.followthemoney.org.

Figure 7.33— Top Ten Intermediaries Reported by Campaigns, 2009 Elections

Name	Employer	Amount	Candidates
Richard M. Schaps [†]	Van Wagner Communications*	\$84,675	Melinda R. Katz, Mark Green, Scott M. Stringer, Jessica S. Lappin
Neil Weissman [†]	Jackson Development	\$70,696	Melinda R. Katz, Ruben Diaz, Jr., Maria C. Arroyo
Olivia Dorieux	Cathy Blaney & Associates, Inc.	\$39,825	Thomas V. Ognibene, Eric A. Ulrich
Peter G. Restler	CAI Funds	\$39,400	David Yassky
John Katzman [†]	Princeton Review	\$36,175	David Yassky, Scott M. Stringer
Ethan Geto ^{††}	Geto & deMilly	\$33,250	Scott M. Stringer, Tony Avella
Simcha Felder	New York City Council	\$30,000	Sara M. Gonzalez, Karen Koslowitz, Kendall B. Stewart, Thomas White, Jr., Albert Vann, Robert Jackson
Mark Misk	Nash Properties	\$27,875	Melinda R. Katz
Daniel Feinstein	Feinstein Iron Works	\$27,250	Melinda R. Katz
Howard P. Milstein	Emigrant Bank	\$26,350	Melinda R. Katz
<p>* Lobbyist client. [†] Name listed in the Doing Business Database (DBDB) during the 2009 election cycle. ^{††} Registered lobbyist.</p>			

In many cases, intermediated contributions may not raise special concerns about undue influence. Even with the new definition, intermediaries may be over- or under-reported by candidates. For example, in 2009, there were 395 intermediaries reported by campaigns; of those, 43 percent bundled contributions totaling \$1,000 or less. For 67 percent of intermediaries, their bundled contributions totaled less than the contribution limit for the office their candidate sought.

Transition and Inauguration Entities (TIEs)

While successful candidates can no longer accept corporate funds to finance their transition and inauguration activities, contributors who give the maximum amount to candidates may still make additional contributions. Local Law No. 34 extended the ban on donations to candidates from business entities (corporations, LLCs, and partnerships) to cover contributions to transition and inauguration entities (TIEs) as well. Those entities made up almost half of the funds raised for TIEs by winning candidates after the 2005 elections. In 2009, those donations were practically eliminated; 99 percent of TIE donations came from individuals, political committees, and unions.

Figure 7.34—Donations to TIEs, 2005 vs. 2009

	2005		2009	
Corporations/LLCs/LLPs/Other	\$ 189,987	45.6%	\$ 6,387	1.3%
Individuals	\$ 140,617	33.7%	\$ 335,769	67.2%
Political Committees/Unions	\$ 86,054	20.7%	\$ 157,849	31.6%
Total	\$416,658	100%	\$500,005	100%
<i>Note: Excludes candidates' contributions to their own TIE committees. Some adjustments were made to the contributor codes reported by campaigns to account for errors or omissions in reporting.</i>				

Nevertheless, winning candidates can receive donations from their wealthiest donors even if they have already contributed the maximum the law allows during the election. Individuals, political committees, or unions who make the maximum allowable contribution (*i.e.*, “max out”) during the election cycle can make another donation to a successful candidate for his or her TIE, essentially doubling their contribution. With TIE donations added, successful candidates for citywide office can potentially accept up to \$9,450 from a single contributor.⁷

Figure 7.35—TIE Donation Limits, 2009 Elections

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

Of the three citywide elected officials, two raised funds for transition and inaugural activities. The third, Michael Bloomberg, donated \$916,700 of his own money to his TIE. Bill de Blasio and John Liu each raised \$20,000 or more from their maxed-out donors for inaugural activities. For de Blasio, most of these donations came from political committees connected with unions. Eleven such committees, who each gave de Blasio’s campaign the maximum \$7,425 for the election and the runoff;[†] donated a combined \$44,500 to his TIE. For Liu, a smaller proportion came from political committees; four committees who gave \$7,425 each during the election gave a combined \$15,500 to his TIE. Marty Markowitz, who was re-elected as Brooklyn Borough President, raised all his TIE funds from individuals; many of his individual donors had previously maxed out to his election campaign.

* This amount can rise to \$11,925 if a campaign is allowed to solicit funds for a runoff.

† Candidates may collect up to half the contribution limit for an account created for a runoff election.

Figure 7.36—Donations to TIEs from Maxed-Out Contributors, 2009 Elections

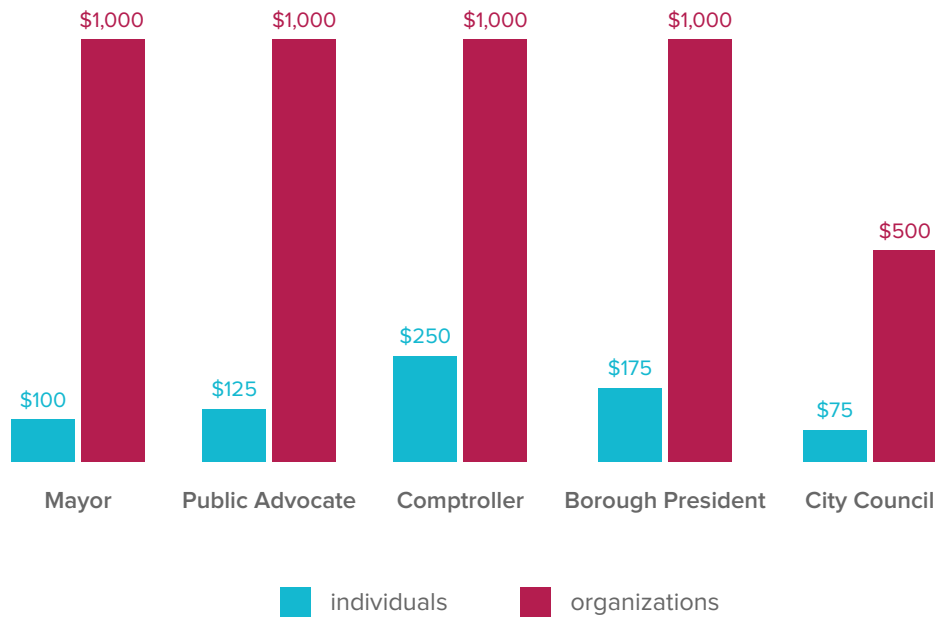
Candidate	Office	Total Donations	Donations from Maxed-Out Contributors
Marty Markowitz	Borough President—Brooklyn	\$ 122,339	\$ 77,200
Bill de Blasio	Public Advocate	\$ 75,020	\$52,000
John C. Liu	Comptroller	\$ 150,316	\$20,000

Note: Numbers as of the May 5, 2010 disclosure filing. Besides these three candidates and Michael Bloomberg, eighteen other candidates created TIEs after the 2009 elections. Only five raised more than \$10,000; none raised more than \$50,000.

Organizational Contributions

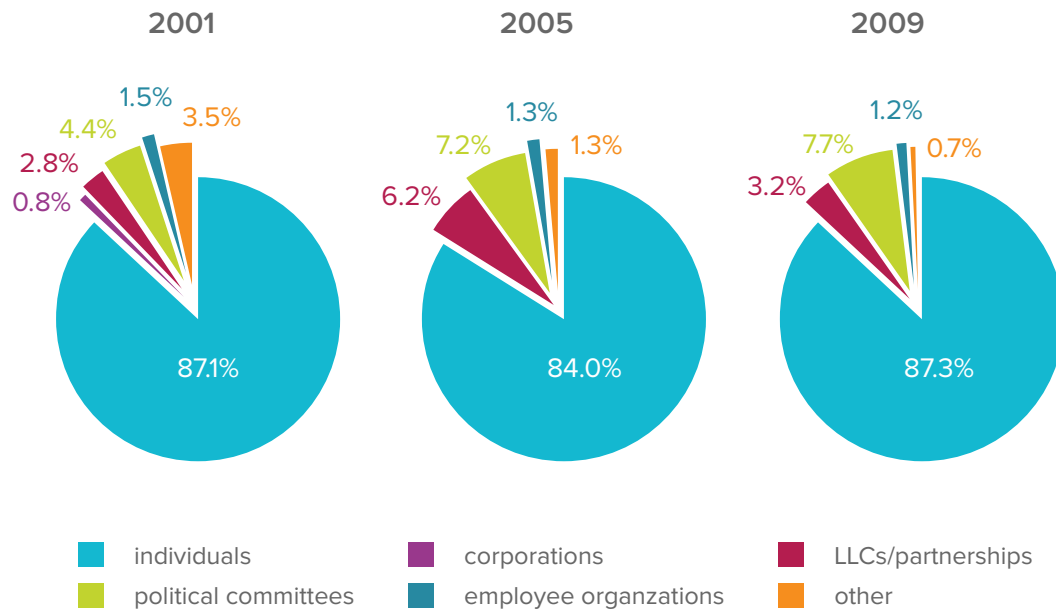
Though they represent a small proportion of overall fundraising, organizational contributions can still be perceived as potential influence-seeking. Contributions from political committees, unions and other organizations are generally larger than those from individuals, and may represent efforts to gain access or influence. For every office, the median contribution size for organizations was several times larger than it was for individuals.

Figure 7.37—Median Contribution Size by Source, Participating Candidates, 2009 Elections



Local Law No. 34 of 2007 prohibited candidates from accepting contributions from LLCs and partnerships. The ban took effect on January 1, 2008 — two years into the four-year election cycle. Several news reports noted that business entities increased their contributions to candidates during the period between the passage of the law and the effective date of the ban.¹⁴ Nonetheless, LLC and partnership contributions represented only 3.2 percent of all contributions to participating candidates during the 2009 elections.

Figure 7.38—Contributions by Source, Participating Candidates, 2001–2009



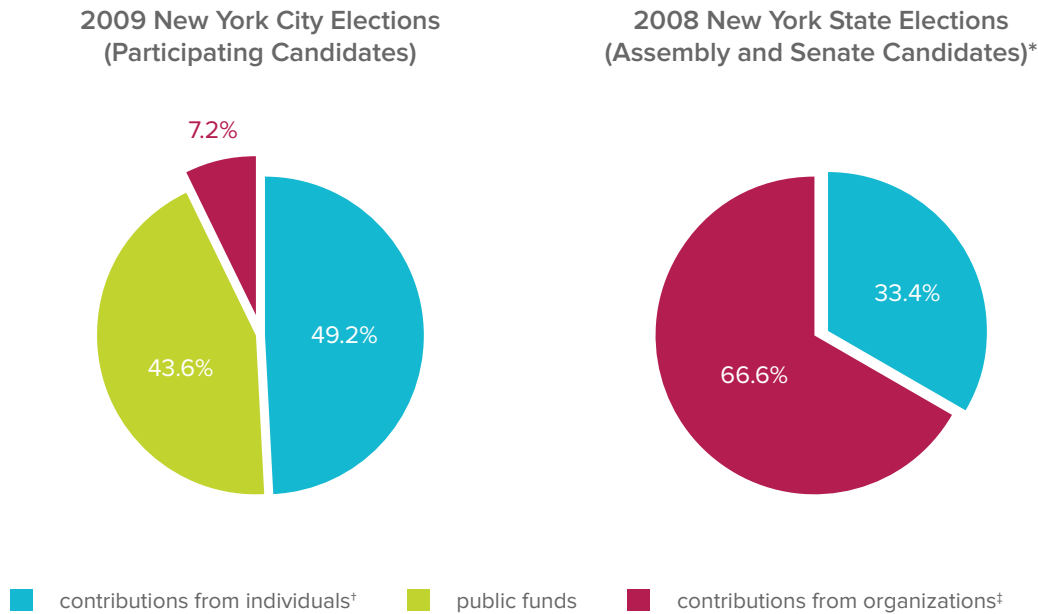
Indeed, since the ban on corporate contributions took effect in 1998, the overwhelming majority of candidates’ private fundraising has come from individual donors, not organizations.’ In the 2009 city elections, only a little more than 12 percent of the money raised by candidates participating in the Campaign Finance Program came from organizational contributions.

Public funds ensure that candidates do not become reliant on “special interest” contributions from business sources, labor unions, or political committees. The impact of public funds on the potential for influence-seeking through campaign contributions is particularly stark when New York City is compared with New York State. A combination of individual contributions and public funds helps to almost completely offset participating candidates’ reliance on so-called “special interest” money. With public funds figured in, organizational contributions made up less than seven percent of the funds available to candidates.

At the state level, with no prohibition on corporate contributions and no public financing, the picture is entirely different. A sizeable majority — *two-thirds* — of the funds available to candidates for state legislative offices in the 2008 campaign came from organizational sources — business entities, party committees, political action committees, and other entities.

* In the 1997 election, before the corporate ban was enacted, 26.5 percent of contributions came from corporations.

Figure 7.39—Funds by Source



* Source: National Institute on Money in State Politics, Followthemoney.org.

[†] Includes candidates' personal contributions.

[‡] Includes political committees, business entities, employee organizations.

Disclosure and Perceptions

Effective disclosure can raise public perceptions about the possibility of corruption. While recent reforms have further enhanced New York City's program as a national model of good government, perceptions of corruption are sometimes difficult to dispel. Despite the city's long-standing public financing program, a faithful reader of local news during the 2009 elections might not be faulted for thinking New York City politics were again awash in corruption. Story after story illuminated the relationship between money and politics in ways that were unflattering for the city's elected officials.

- ❖ One candidate for citywide office raised more than \$210,000 from limited liability companies during the last six months of 2007, before candidates were prohibited from accepting contributions from such sources.¹⁵
- ❖ Employees of a "major real estate firm" with a lucrative deal to develop land in Manhattan gave candidates more than \$100,000.¹⁶
- ❖ A Council member introduced a bill to provide a specific benefit to a constituency from which he had raised more than \$100,000.¹⁷
- ❖ Another Council member raised almost \$130,000 over three election cycles from organizations that received city grants he sponsored.¹⁸

Some of these stories were researched by campaign operatives and lobbed at candidates by their opponents during the back and forth of the election campaign. Others were discovered by skeptical reporters following a hunch. But they are possible because CFB disclosure provides the public with a transparent view of candidates' campaign finances.

The Program and the Act ensure candidates have access to the resources to run competitive campaigns, without the strings that are often attached to large contributions. Still, the Program requires that candidates seek private funds, even if the amounts are relatively small. Technology that makes it easier to access information about candidates' fundraising also makes it easier for the public and the press to raise questions about candidates' integrity. Ethics, as the saying goes, is what you do when no one is looking. Effective disclosure, however, means that there is *always* someone looking.

PARTICIPATION

Facilitating broader participation in the Program

For the Campaign Finance Program to be successful in meeting its goals, candidates need to participate. Candidates who choose to join the Program do so for many reasons. Some candidates rely on the subsidy offered by the Program; others may want to send voters a signal of their belief in good government. Every candidate who opts in should believe that participating gives them their best chance to run a competitive campaign. Campaigns do take on significant obligations when they join the Program; they agree to limit their spending, and to carefully document their eligibility for and use of public funds. If participation rates are an indication, the overwhelming majority of candidates for city office believe the benefits of joining the Program outweigh the burdens.

Participation Rates

Participation rates for the 2009 election cycle were among the highest in the Program's history. One way to measure success is through an examination of participation rates over time. In 2001, the first citywide election with the \$4-to-\$1 match, participation rates increased significantly. The rates have varied by only a few percentage points in the elections since. In the 2009 primary elections, the participation rate matched the 2001 benchmark of 93 percent. In the general election, 68 percent of candidates on the ballot joined the Program.

Though the participation rate for the general election is lower, a closer examination of participation in the general election reveals a different story. As noted earlier, the general elections are often much less competitive than the primaries, with many "paper candidates" who fill a party line on the ballot but do not campaign, raise or spend money, or even file basic paperwork with the Board.

Figure 7.40—Campaign Finance Program Participation in Citywide Elections, 1997–2009

		Primary Elections			General Elections		
		Participants on Ballot	Candidates on Ballot	%	Participants on Ballot	Candidates on Ballot	%
1997	Mayor	4	5	80%	4	6	67%
	Public Advocate	1	2	50%	3	5	60%
	Comptroller	0	0	0%	3	6	50%
	Borough President	9	10	90%	9	20	45%
	City Council	65	81	80%	78	141	55%
	Total	79	98	81%	97	178	54%
2001	Mayor	7	9	78%	6	9	67%
	Public Advocate	7	7	100%	3	6	50%
	Comptroller	2	2	100%	2	6	33%
	Borough President	11	12	92%	15	22	68%
	City Council	187	201	93%	133	182	73%
	Total	214	231	93%	159	225	71%
2005	Mayor	4	6	67%	2	8	25%
	Public Advocate	5	6	83%	2	4	50%
	Comptroller	0	0	0%	1	4	25%
	Borough President	9	9	100%	10	15	67%
	City Council	75	86	87%	78	105	74%
	Total	93	107	87%	93	136	68%
2009	Mayor	2	3	67%	3	8	38%
	Public Advocate	5	5	100%	2	5	40%
	Comptroller	4	4	100%	3	5	60%
	Borough President	3	3	100%	10	13	77%
	City Council	127	137	93%	82	120	68%
	Total	141	152	93%	100	151	66%

Of the 51 non-participants on the general election ballot in 2009, 26 failed even to submit a filer registration form to notify the CFB of their candidacy; just seven reported any itemized financial activity to the CFB. Only five non-participating candidates in the general election reported expenditures in excess of \$15,000.* If just the candidates who failed to register their candidacy with the CFB are excluded from the equation, the participation rate in the general election rises to 80 percent. It is clear that the overwhelming majority of candidates believe that participating in the Program gives them their best chance to be successful.

* Michael Bloomberg, Yen Chou, Simcha Felder, Kevin Kim and Peter Koo.

First-Time Candidates

The Program has helped encourage more citizens to run for office for the first time. By providing resources to candidates who lack connections to political machines or great wealth, the Program should encourage regular citizens to put themselves forward to compete for public office. Despite — or perhaps because of — the law that extended term limits and allowed incumbents to run for a third term, first-time candidates emerged in droves. More than half of all participants in 2009 — 101 candidates — were seeking city office for the first time.* The number of first-time candidates represents an increase from 2005, when 65 participants — 42 percent — were first-time candidates.†

Repeat Participants

Most candidates who join the Program for their first race continue as participants in subsequent races. Other candidates who were participants in previous elections broke through in 2009 with victories. City Council candidates Ydanis Rodriguez (CD #10) and Deborah Rose (CD #49) were both elected on their third try. For Margaret Chin (CD#1), her fourth campaign provided her first victory. Rose and Chin were among the five challengers to defeat incumbents in 2009. All of these candidates participated in the Program in every one of their races.

Other candidates with long records of Program participation joined to run for citywide office in 2009. The ten participating candidates who were deemed “leading contenders” for citywide office and appeared in CFB debates brought a combined experience of 30 campaigns run under the Program prior to 2009.‡ Of the 59 men and women currently holding elected city offices covered by the Program, only two were elected in 2009 as non-participants.§

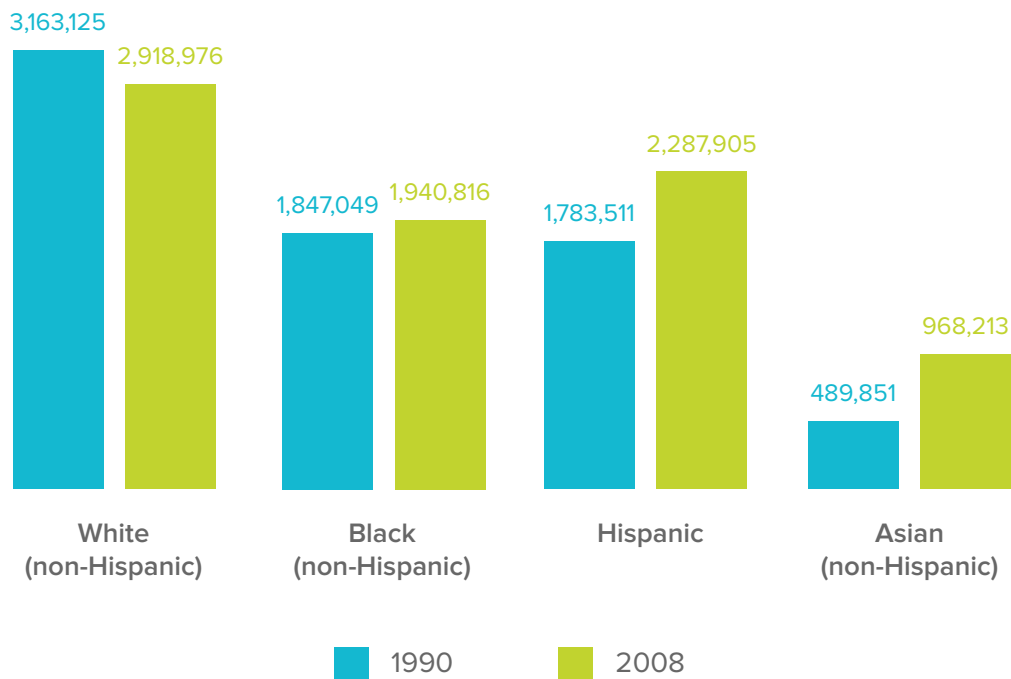
* Two candidates making their first run for city office in 2009 — Mark Weprin (CD #23) and Michael Cohen (CD #29) — previously served in the New York State Assembly, and were not included in the total.

† Two candidates making their first run for city office in 2005 — Stephen Kaufman (CD #13) and Keith Wright (Manhattan BP) — also served or are serving in the State Assembly, and were not included in the total.

‡ Tony Avella (5: 1991, 1997, 2001, 2003, 2005); William Thompson (2: 2001, 2005); Bill de Blasio (3: 2001, 2003, 2005); Eric Gioia (3: 2001, 2003, 2005); Mark Green (3: 1993, 1997, 2001); Norman Siegel (2: 2001, 2005); Melinda Katz (2: 2001, 2003); John Liu (4: 1997, 2001, 2003, 2005); David Weprin (3: 2001, 2003, 2005); David Yassky (3: 2001, 2003, 2005).

§ Michael Bloomberg (mayor) and Peter Koo (CD #20) were elected in 2009 as non-participants. A third candidate, Simcha Felder (CD #44), was elected to the City Council as a non-participant in 2009, but resigned to take a position in the Comptroller’s office. David Greenfield, who participated in the Program, was elected to the Council in a February 2010 special election in CD #44.

Figure 7.41—Demographic Breakdown of New York City Population, 1990 – 2008



Source: US Census, 1990 Census PL File, 2006–2008 American Community Survey via NYC Dept. of City Planning

More Diverse Representation

The Program has helped candidates from a broad range of communities across the city to run for office and succeed. The CFB does not collect demographic data about candidates, but a look at the demographics of the City Council over the course of the Program’s existence tells an interesting story. The makeup of the Council has changed over time to mirror the changing demographics of the city. Starting with the year the Council was increased to 51 seats, in 1991, African Americans, Latinos, and Asian Americans have all increased their representation on the Council.

As noted, the 2009 elections saw a number of significant firsts: the first Asian American elected to citywide office, the first Asian American woman, the first African American elected to the City Council from Staten Island, and the first openly gay council members from outside Manhattan. In 2009, for the first time in history, city voters elected a majority of minority candidates to the Council. In addition, there are a greater number of women on the City Council than ever before.

The charts illustrate how well changes in the City Council’s membership have tracked the changes in the city’s population. Over time, a growing proportion of members have been elected as participants in the Program. Public funds helped many of these candidates run successful campaigns, and helped ensure that the voice of these emerging communities will be expressed and heard at City Hall.

Figure 7.42 — Demographic Breakdown of New York City Council Members, 1991–2009

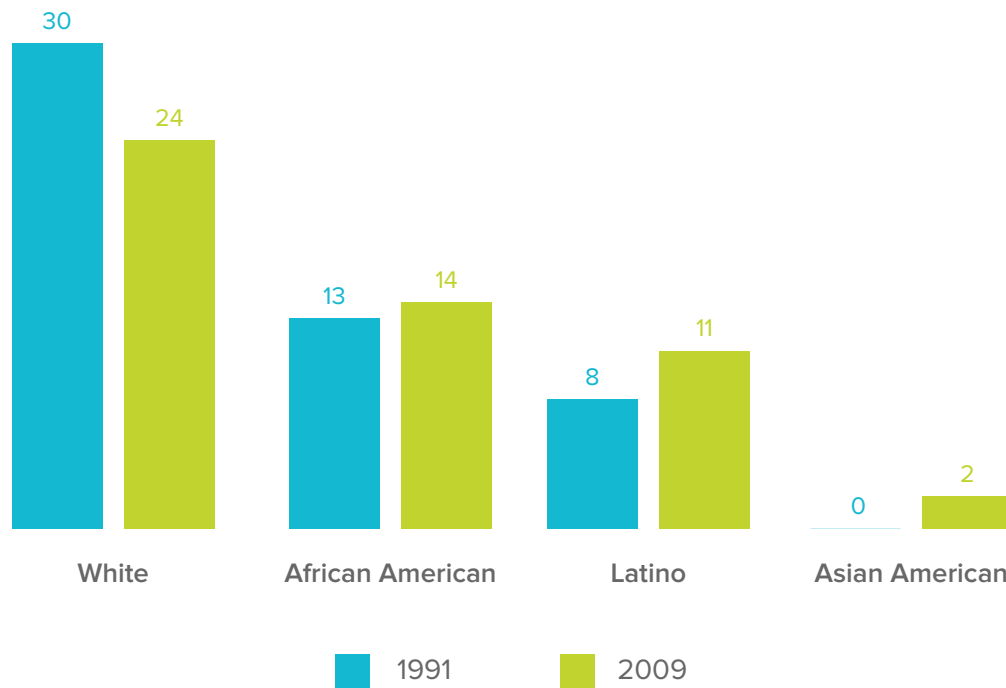


Figure 7.43 — Council Members Elected as Campaign Finance Program Participants

1991: **31** 2009: **49**

Note: As of February 2010's special election in Council District 44, there are 50 council members elected as Program participants.

CONCLUSION

Public financing of campaigns cannot ensure the city's political system will function perfectly. But there is plenty of evidence from the 2009 elections that the Program is indeed meeting its goals. Candidates took advantage of new technologies to connect with more New Yorkers. A higher number of small contributions meant that more New Yorkers were able to make a real impact, and more candidates could join the conversation about the city's future. Greater levels of competition meant that more voters had a chance to hold their elected representatives accountable to their concerns. The 2009 elections provided a clear reminder that the Campaign Finance Program remains an indispensable part of New York City politics.

ENDNOTES

- 1 N.Y.C. Administrative Code § 3-713(1).
- 2 Admin. Code § 3-704(1).
- 3 For a full list, see Admin. Code § 3-704(2).
- 4 Editorial, “Fidler on the hook: It’s time for greedy Brooklyn pol to return unused public funds,” *Daily News*, November 8, 2009.
- 5 Editorial, “It’s All About the Money,” *The New York Times*, November 30, 2009.
- 6 New York City Campaign Finance Board, 2005 Post-Election Report, *Public Dollars for the Public Good*, p. 18.
- 7 Russ Buettner and Ray Rivera, “Incumbency Fails to Hold Off Challenges From Cast of Newcomers to Council,” *The New York Times*, September 17, 2009.
- 8 CFB report, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, September 2006, pp. 20-24.
- 9 John Fund, “The Audacity of Bloomberg,” *Wall Street Journal*, November 5, 2009.
- 10 CFB report, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, September 2006, p. 3 – 4.
- 11 Anne Bauer, “The Efficacy of Self-Funding a Political Campaign,” National Institute on Money in State Politics, June 22, 2010.
- 12 Laura Altschuler, Testimony before NYC Campaign Finance Board Post-Election Hearing, December 1, 2009.
- 13 *Id.*
- 14 Michael Barbaro, “Bloomberg Rivals Used Money Loophole Up to ‘08 Ban,” *The New York Times*, February 13, 2009.
- 15 *Id.*
- 16 Frank Lombardi and Erin Einhorn, “Big businesses and unions are major players in City Council races,” *Daily News*, April 19, 2009.
- 17 Benjamin Lesser and Erin Einhorn, “Council members cashing in big time with campaign cash from lobbyists,” *Daily News*, June 2, 2009.
- 18 Erin Einhorn and Celeste Katz, “City Councilman Eric Gioia rips pork while handing it out, say critics,” *Daily News*, June 29, 2009.

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IN DEPTH: “DOING BUSINESS”

OVERVIEW

As a result of Local Law No. 34 of 2007, strict, low limits on contributions from people who “do business” with the city went into effect in stages during the 2009 election cycle. The limits are among the most comprehensive restrictions on “pay-to-play” of any jurisdiction in the nation.¹ Information about people and entities involved in a broad range of business dealings with city government is collected in a central database, which provides the basis for enforcement of the doing business limits.

In addition to these limitations, the law required the CFB to prepare a status report on the doing business database, and make recommendations regarding possible exemptions from the law’s definition of business dealings.² This chapter serves as that status report, and the basis for this report’s recommendations regarding all aspects of doing business regulation. This chapter also summarizes and analyzes the overall effects the new restrictions had on the Campaign Finance Program and the 2009 elections.

BRIEF HISTORY OF “DOING BUSINESS” REGULATION IN NEW YORK CITY

Initial Steps

In 1998, an amendment to the Charter required the Board to propose “rules as it deems necessary” for the purpose of regulating contributions from those doing business with the city, in order to address the reality or appearance of pay-to-play corruption.³ In response, the Board issued three alternative versions of proposed rules for public comment.⁴ There was limited response, and no consensus on an approach. After further study, by November 2000, the Board concluded that meaningful and fair regulation could not be accomplished at that time because of a lack of organized and comprehensive data sources.⁵

The issue was revisited in 2005 and 2006, when the Board held a series of public hearings to re-examine the prospect of creating doing business regulations.⁶ Concurrent with these hearings, the city developed and introduced public databases that improved transparency in the areas of city contracting and lobbying. A variety of approaches to regulation were proposed at the hearings. Some experts proposed that doing business contributions should be fully prohibited; others suggested they should be subject to low limits. There were a range of proposals about the types of business to be covered. Several witnesses addressed land use as a topic, both for its long association with campaign contributions and the potential difficulties in regulating it. Several of those who testified suggested securities industry rules governing municipal securities brokers as a model for regulation,* which would ban those making prohibited contributions from doing business with city government.⁷ This model suggests that placing the burden of enforcement on those seeking to do business creates an incentive for self-regulation.

Interim Report of the Campaign Finance Board on “Doing Business” Contributions

Following the public hearings, the CFB published a report in June of 2006 that examined the role of doing business contributors in the 2001 and 2005 election cycles.⁸ The research was largely based on publicly available data about city contracts, franchises, and concessions in the VENDEX database, and the NYC Lobbyist Search. Data from those two sources informed a “working definition” of doing business with the city.† Using this working definition, the report found that doing business contributors played a substantial role in financing campaigns during both election cycles, estimating that doing business contributions comprised 27.5 percent of funds raised by candidates in the 2001 elections and 22.3 percent of funds raised in the 2005 elections.⁹

The report also proposed and applied a second definition, which encompassed a wider range of doing business activities, including parties to land use decisions. Lack of available data prevented a more rigorous analysis using this broader definition, but a brief survey using the broader definition suggested that doing business contributors may have had a substantially greater role than was found in the analysis cited above.¹⁰ The report

* Municipal Securities Rulemaking Board Rule G-37 prohibits municipal finance professionals from engaging in municipal securities business with any issuer for two years after proscribed contributions are made. The only contributions allowed by these professionals are ones of \$250 or less to candidates for which the professional is allowed to vote. For more detail, see Martha Mahan Haines, Assistant Director of the Division of Marketplace Regulation, U.S. Securities and Exchange Commission, Testimony before the NYC Campaign Finance Board Hearing on “Doing Business,” January 31, 2005.

† The “working definition” used in the report included firms or individuals listed as principals of firms which have contracts with the city valued at \$100,000 or more, and registered lobbyists or lobbyist clients.

did not conclude that there was direct evidence of a pay-to-play culture in New York City, but expressed the need for regulation to address widespread perceptions of pay-to-play and special interest influence, which can themselves be corrosive to the political process.¹¹

2005 Post-Election Report

The CFB's 2005 post-election report restated the conclusions of the interim report: donors who do business with city government tend to contribute large amounts, and also play active roles as intermediaries.¹² These larger contributions can dilute the impact of smaller individual contributions in elections. In calling for legislation to address the issue, the Board recommended placing the burden of compliance on contributors rather than on campaigns.

2007 Legislation

Local Law No. 34 of 2007 created a broad definition of what it means to do business with the city,¹³ and mandated the creation of a database of entities and associated individuals which engage in these business dealings.¹⁴ Key components of the law as they relate to doing business include:

- ❖ Campaigns may not accept contributions from individuals who are named in the database larger than \$400 for citywide offices, \$320 for borough president, and \$250 for City Council.¹⁵
- ❖ Contributions from individuals named in the database are not eligible to be matched with public funds.¹⁶
- ❖ Responsibility for the creation of the database (in three phases) was placed with the Department of Information Technology and Telecommunications (DoITT).¹⁷
- ❖ All city agencies with which the defined business dealings are conducted were mandated to assist in developing the database by collecting required information.¹⁸
- ❖ Responsibility for certifying the reasonable completeness and accuracy of each phase of the database was placed with the CFB.¹⁹
- ❖ Enforcement of the restrictions is the responsibility of the CFB.²⁰
- ❖ Specific timetables for the review of campaign contributions for compliance with the restrictions were established.²¹
- ❖ Certain types of business dealings with the city are excluded.²²

Legal Challenge

In February 2008, a suit was filed in United States District Court, Southern District of New York, challenging many provisions of the Campaign Finance Act, including the doing business provisions as well as parts of the lobbying laws. Plaintiffs included former and potential candidates, a registered lobbyist, the spouse of a registered lobbyist, a lobbyist employee, entities and people claiming to do business with the city, limited liability companies, and political party committees.²³ The suit alleged that the various restrictions violated the First and Fourteenth Amendments to the Constitution, as well as the Voting Rights Act of 1965.²⁴ In February 2009, U.S. District Court Judge Laura Taylor Swain ruled in favor of the city.²⁵ An appeal was filed, but the case was stayed

pending the U.S. Supreme Court's action in the *Citizens United* case. Oral argument in the appeal is scheduled to be heard by the U.S. Court of Appeals for the Second Circuit in October 2010.

CERTIFICATION OF THE DATABASE

The law went into effect in three phases over a period of about a year. At each phase, the CFB tested and certified that the doing business database (DBDB) would be reasonably complete and accurate when enforcement took effect, 30 days after the certification.

- ❖ Phase 1 was certified by the Board on January 3, 2008 and went into effect on February 2, 2008. Phase 1 included entities holding city contracts, franchises, and concessions, as well as those entities' principal officers and owners with more than a 10 percent interest in the entity. Phase 1 also included registered lobbyists.
- ❖ Phase 2 was certified by the Board on July 1, 2008 and went into effect on July 31, 2008. Phase 2 included entities that are parties to grants, economic development agreements, and agreements for the investment of pension funds, as well as entities that are currently seeking or proposing to obtain contracts, franchises, and concessions, and the individuals associated with those categories. Phase 2 also included the senior managers of the entities in Phases 1 and 2.
- ❖ Phase 3 was certified by the Board on November 3, 2008 and went into effect on December 3, 2008. Phase 3 included entities involved in real property transactions with the city and parties to land use decisions, and the associated individuals.

In certifying the database, the CFB worked closely with DoITT and with the Mayor's Office of Contract Services (MOCS), which collected and consolidated the data to be processed by DoITT. The CFB performed specific testing on data sets received for each phase, and also reviewed the processes used by MOCS to acquire the data. The CFB tested the overall completeness of records in each phase, to ensure that both entities and individuals associated with the entities were included, and to ensure that the records included the information that would be most critical for employing the DBDB to identify contributors. In each phase, the CFB requested and reviewed source documentation for a random sample of people in the test data sets to ensure the information had been entered completely and accurately. Working under tight deadlines to create a database that had not existed before, and for which much of the data had not even been collected in any systematic way prior to the law, the CFB — in close association with MOCS and DOITT — met the deadlines in the law for the certification of each of the categories of doing business.

* In general, the contract, franchise, concession, or grant must be valued at or above \$100,000 for an entity to be included in the DBDB. See Local Law No. 34 § 1 (codified at Admin. Code § 3-702(18) (new)).

STATUS OF THE DATABASE

The DBDB changes as the city enters into new business relationships, and as other relationships end. Since the effective date of the law, DoITT has provided the CFB with monthly updates as required by the law.²⁶ Over time, the CFB, DoITT, and MOCS have worked together to improve the transmission of data and make corrections as needs have been identified.

Many of the individuals and entities do business in more than one capacity. As of May 31, 2010, there were nearly 23,500 individuals associated with over 7,000 entities in the DBDB. These numbers vary monthly as the DBDB is updated, and entities and people begin or end their period of “doing business” with the city.

IMPLEMENTATION

In accordance with the law, beginning with the July 15, 2008 filing,^{*} the CFB reviewed every disclosure statement filed by campaigns to identify contributors who are doing business with the city.[†] The CFB has 20 days following each disclosure statement in which to notify campaigns of any findings that they accepted contributions exceeding the applicable doing business limit.²⁷ During the six weeks immediately preceding an election, reviews are expedited; the CFB has three business days to review disclosure statements and provide such notification to campaigns.²⁸


Following notification, campaigns have 20 days to issue a refund (or demonstrate that the finding is incorrect).²⁹ No findings of violation may be made nor penalties assessed if campaigns issue refunds by the 20th day following notification. After the first round of notifications, following the July 2008 filing, the CFB contacted campaigns which had not responded prior to the 20th day to remind campaigns of their responsibilities under the new law. The CFB met its deadlines for issuing the over-the-doing-business-limit notifications for every disclosure statement in the 2009 elections (as well as for every special and off-year election held since the law took effect).

The CFB sent these notifications to campaigns via email, allowing for real-time communication that maximized the time available for campaigns to respond within the 20 days to avoid findings of violation and assessment of penalties. To show compliance, campaigns could scan images of their refund checks and email them to the CFB.


Throughout the election, the CFB incorporated information regarding the doing business restrictions into candidate trainings, and made continual improvements to available information on its website. In October 2009, the CFB began publishing a summary of doing business contribution data and a detailed transaction list available for download on its website. This data is updated following every doing business review.

* For the 2009 elections, Statement #5 was the disclosure period that included the initial February 2, 2008 effective date of the doing business provisions.

† Prior to July 2008, the CFB also reviewed disclosure statements filed in connection with a special election held in June 2008 in CD #30.



The new limits had a major effect on the 2009 elections.



BASIC STATISTICS ON “DOING BUSINESS” CONTRIBUTIONS

The mandate to enforce the new limits through a central database with information about those doing business with the city provides the CFB and others with opportunities to measure and analyze the extent and nature of so-called “pay-to-play” activity in city elections. Initial indications show that the new limits had a major effect on contributor activity during the 2009 elections. The amount of doing business contributions was substantially lower than the estimates for the previous elections contained in the Board’s *Interim Report*. From Disclosure Statement #5 through the end of the 2009 election cycle, the CFB reviewed almost 109,000 contributions reported by campaigns to determine whether the contributor was doing business with the city. Of the transactions reviewed, 3,708 (3.4 percent of the total) were identified as doing business transactions. These transactions constituted 3.6 percent of the total value of the transactions reviewed, or less than \$1 million of the \$26.2 million reviewed.*

Over the course of the 2009 elections, CFB staff identified approximately 80 campaigns that accepted at least one over-the-doing-business-limit contribution.† CFB staff issued 223 notifications of instances of over-the-limit findings to these campaigns. The overages totaled close to \$300,000; about \$250,000 was documented as having been refunded.

Of the almost 69,000 matching claims‡ made from Statement #5 through the end of the 2009 election cycle, CFB staff identified 1,768 claims as invalid for matching purposes because the contributors were in the DBDB at the time of their contributions. These invalid claims represent 2.2 percent of all matching claims for the 2009 elections.§

In most instances, campaigns withdrew these invalid claims upon notification. Based solely on remaining matching claims, however, the CFB’s review of matching claims against the DBDB saved the city approximately \$260,000 in public funds payments. In other cases, campaigns submitted information to validate these claims. Some campaigns were able to demonstrate that the contributor identified by the CFB was not the person of

* Contributions by Michael Bloomberg to his self-financed campaign are excluded from these totals.

† This figure does not include terminated candidates; the actual number of notifications generated by the CFB during the 2009 elections was higher.

‡ By definition, this figure does not include contributions that were not claimed for match for various reasons, including those from contributors known to be doing business by the campaign.

§ Figure based on total matching claims as of February 22, 2010.

the same name in the DBDB. In other cases, campaigns reached out to entities doing business to correct outdated personnel information listed in the DBDB.

ANALYSIS OF “DOING BUSINESS” CONTRIBUTIONS: WHO GOT THEM?

Several different factors make it difficult to draw conclusions from an analysis of doing business contributions during the 2009 elections. First, the law was implemented in three phases during the third year of a four-year election cycle. Many candidates began their campaigns early in the cycle, as large citywide campaigns traditionally do, and did much of their fundraising before the limits took effect. As a result, the full effect of the restrictions may not be truly felt until they are applied for a complete election cycle. Second, the large number of sitting officeholders on the ballot—including several candidates for citywide office—may have increased the likelihood that someone doing business with the city will give a campaign contribution.

In any event, the doing business contribution restrictions are one of several factors during the 2009 elections that contributed to the increase in the number of small contributions. One barometer of the effect is that the average contribution amount from Statement #5 (when the restrictions started to take effect) until the end of the election cycle was more than \$60 lower than the average contribution amount for the entire election cycle.

By Office

In an examination of doing business contributions by office, contributions to candidates for comptroller may be of particular interest. Over the past several years, much attention has been focused on the potential for pay-to-play in the management of government employees’ pension funds. Because the office of the comptroller is responsible for managing the city’s pension funds, it is often portrayed as a target of those seeking influence. As noted in Chapter 1, the average contribution to candidates for comptroller was larger than other contributions to citywide candidates. Similarly, candidates for comptroller raised the largest total amount of doing business contributions (compared to the other citywide offices and borough president).

For City Council, 136 of 190 candidates on the ballot accepted at least one doing business contribution. After refunds, doing business contributions constituted 2.6 percent of all contributions to Council candidates. On average, each of the 136 Council candidates accepted contributions from 14 doing business contributors.



“Doing Business” contributions dropped from an estimated 22% of funds raised in 2005 to less than 4% in 2009.



Figure 8.1—“Doing Business” Contributions by Office, 2009 Elections

Office	Number of DB Transactions	Number of Candidates Accepting at Least 1 DB Contribution	Doing Business \$ (pre-refund)	Doing Business \$ (post-refund)	% of DB \$ Refunded	Median DB Contribution (pre-refund)
Mayor	234	3	\$ 69,044	\$ 47,864	31%	\$ 150
Public Advocate	525	5	\$ 152,600	\$ 109,955	28%	\$ 175
Comptroller	485	5	\$ 198,844	\$ 117,694	41%	\$ 200
Borough President	381	10	\$ 111,021	\$ 95,935	14%	\$ 175
City Council	2,083	136	\$ 414,497	\$ 322,262	22%	\$ 150
Total	3,708	158	\$ 946,006	\$ 693,710	27%	\$ 175

Incumbency

Like many aspects of campaign finance and elections, doing business contributors favor incumbents. Doing business contributors gave more contributions and more total dollars to incumbents than to non-incumbents. On the City Council level, every single incumbent seeking re-election received at least one doing business contribution. The 43 incumbents on the ballot received 1,135 doing business contributions, compared to 721 doing business contributions among the 93 non-incumbents who accepted at least one.*

Council incumbents received 64 percent of all doing business dollars received by Council candidates, even though incumbents were outnumbered by non-incumbents by more than 3.5-to-1. This represents the inverse of the overall distribution of contributions; about 60 percent of overall contribution dollars went to the 147 non-incumbents.

Incumbent city officeholders seeking higher office also received larger numbers of doing business contributions. When doing business contributions are broken down between all current city officeholders (incumbents seeking re-election and those seeking higher office) versus non-city officeholders, the differences are even more striking. Sitting officeholders received 81 percent of all doing business dollars.

The number of doing business contributors also was noteworthy. Current officeholders received contributions from over 2,400 doing business contributors, compared to just over 800 contributors to non-current officeholders. Sitting officeholders are in a position to affect policy and practice, and thus it appears that they are by far more likely to receive contributions from those doing business with the city.

* This analysis does not account for any current state officeholders who may have been seeking city office in the 2009 elections.

ANALYSIS OF “DOING BUSINESS” CONTRIBUTIONS: WHO GAVE THEM?

An analysis of the nature of contributors’ business dealings with the city is met with certain limitations. Individuals named in the DBDB may have multiple relationships with multiple entities. Any single entity may be doing business with the city in more than one business category. When identifying a contributor as a doing business contributor, the CFB only tracks the contributor to a single relationship, based on the best match between the reported contribution and the DBDB. The CFB uses the entry that best matches how the campaign reported the contributor to determine a match.

Figure 8.2— Transactions by “Doing Business” Contributors by Type of Business, 2009 Elections

	Transactions	People
Non-lobbyists (contractors, others)	2,613	1,450
Lobbyists	1,095	360
Total	3,708	1,810

Still, there are several interesting conclusions to draw from the data. Analysis of doing business transactions (i.e., contributions) found that 70 percent were based on principal officer, owner, and senior manager relationships in the non-lobbying categories. The remaining 30 percent of transactions were based on lobbying relationships.* The 1,095 lobbying records represent approximately 360 people; the 2,613 non-lobbying records represent approximately 1,450 people. As a result, it is possible to say that lobbyists are much more likely to make multiple contributions. Each lobbyist who contributed made, on average, 3.4 contributions; the average non-lobbyist gave a little more than half as often, or 1.8 contributions.

* The number of transactions linked to lobbying relationships could be understated to the extent that CFB staff had to choose between a lobbying and non-lobbying record during manual review. The quality of data on non-lobbying entities, which is collected through MOCS, is considerably better than the quality of data on lobbying entities, which is collected by the office of the City Clerk.

Figure 8.3— Top 10 “Doing Business” Contributors, 2009 Elections (Before Refunds)

	Contributor Name	Entity	Amount	# of Contributions	# of Candidates	Category of Business
1	Laura Jean Hawkins	The Dryfoos Group	\$9,515	48	38	Lobbying
2	Lloyd Goldman	Bldg Oceanside LLC	\$8,950	3	3	Real property
3	George S. Kaufman	Kaufman Astoria Studios; KAS Production Center LLC & New Stage LLC	\$8,650	10	8	Real property
4	Winston Fisher	Plaza Construction Corp	\$7,425	2	1	Contracts
5	Tonio Burgos	Tonio Burgos and Associates, Inc.; NYPROCOA, Inc.	\$6,840	25	21	Lobbying
6	Thomas Chen	Crystal Window & Door Systems Ltd.	\$6,795	8	8	Economic development agreement
7	Paul Pullo	North Brooklyn Development Corporation, Metro Fuel Oil Corp.	\$6,725	11	8	Contracts; Real property
8	Jerry Speyer	Tishman Speyer Real Estate Venture, LP, Tishman Speyer Real Estate Co-Investment VII Parallel (NYC) LP, The Museum of Modern Art	\$6,600	2	2	Pension fund investment; Contracts; Lobbying
9	Bruce E. Mosler	Cushman & Wakefield, Inc.	\$5,950	3	2	Contracts
(tie)	Charles Phillips	Oracle USA Inc.	\$5,950	2	2	Contracts

Figure 8.4— Top 10 “Doing Business” Contributors by Office, 2009 Elections (After Refunds)

	Contributor Name	Entity	Amount	# of Contributions	# of Refunds	# of Candidates	Category of Business
1	Laura Jean Hawkins	The Dryfoos Group	\$8,755	48	4	38	Lobbying
2	Tonio Burgos	Tonio Burgos and Associates, Inc.; NYPROCOA, Inc.	\$6,590	25	1	21	Lobbying
3	Claudia Wagner	Law Offices of Claudia Wagner LLC	\$5,650	23	0	23	Lobbying
4	George Arzt	George Arzt Communications, Inc.	\$4,850	24	2	22	Lobbying
5	Thomas McMahon	TLM Associates LLC	\$4,845	19	0	19	Lobbying
6	Jamie Van Bramer	Yoswein New York, Inc.	\$4,670	19	0	19	Lobbying
7	Joni Yoswein	Yoswein New York, Inc.	\$4,610	20	2	18	Lobbying
8	James Sabella	Sidley Austin Brown & Wood, LLP	\$4,475	3	1	2	Contracts
9	James Capalino	James F. Capalino & Associates, Inc.; Cirkenski & Capalino LLC	\$4,395	18	0	18	Lobbying; Contracts
10	George S. Kaufman	Kaufman Astoria Studios; KAS Production Center LLC & New Stage LLC	\$4,370	10	8	8	Real property

Overall, however, a relatively small portion of the total universe of those doing business with the city actually made contributions to candidates. There are close to 23,500 people currently in the DBDB and only about 7 percent of people who have business dealings with the city gave campaign contributions during 2008 – 2009.

Categories of “Doing Business” Entities

One way to determine the effectiveness of the definitions of doing business in the Act is to determine the categories of business being done by the entities with which contributors are associated. As noted earlier, some entities do business with the city in more than one category, and some contributors are associated with more than one entity. So, an analysis of the nature of business dealings by category yields more results than there are transactions. If entities are placed in more than one category, the 3,708 doing business transactions can be traced to 4,534 different entities with doing business relationships.

By far, the largest category of business dealings captured by this analysis is contracts, including both goods and services aggregating over \$100,000, and construction contracts aggregating over \$500,000. Within the contracts category, there are about 100 entities that have both types of qualifying contracts. The next largest category of business dealings that generate doing business contributions is lobbying, which is noteworthy given the relatively small lobbying population. Of course, any analysis of contributions from the various categories during the 2009 elections is affected by the phased-in introduction of the DBDB, and also by the differing length of time for inclusion in the DBDB for each category.

Figure 8.5— Categories of Business Dealings Associated with Campaign Contributions

Doing Business Category	Number of Entities	Effective Date
Contracts	2,269	2/2/2008
Lobbying	1,267	2/2/2008
Real Property	413	12/3/2008
Economic Development Agreements	322	7/31/2008
Grants	125	7/31/2008
Franchises & Concessions	50	2/2/2008
Pension Fund Investment Contracts	47	7/31/2008
Land Use	41	12/3/2008
Total	4,534	—

Geography of “Doing Business” Contributors

Doing business contributors seem to be spread throughout the five boroughs and beyond in roughly the same proportions as contributors in general. Manhattan, the largest source of overall contribution dollars (34%), was also the largest source of doing business contributions (39%). Out-of-city contributors (the second largest) were responsible for roughly the same proportion of overall contribution dollars and doing business contributions. The third biggest source of doing business contribution dollars was Brooklyn, followed by Queens. The Bronx and Staten Island each contributed about 2% of the total doing business contribution dollars.


Intermediaries

Soliciting and/or delivering contributions is an additional way of seeking influence. The doing business law does not address intermediary activity, although previous CFB research suggested that people who did business with the city (using the *Interim Report* working definitions)³⁰ were especially active as intermediaries of other people’s contributions. Of the intermediaries reported by campaigns during the 2009 election cycle, close to 25 percent were in the doing business database at some point during the election cycle. Five of the top ten intermediaries were also in the doing business database, accounting for approximately \$250,000 in contributions to eight campaigns. There is reason to be concerned that restrictions on the activity of intermediaries would not withstand judicial scrutiny.³¹ Any attempt to restrict intermediaries’ activities could also serve to discourage campaigns from reporting on their bundlers’ activities. These figures highlight the importance of the Act’s mandate to disclose the role of intermediaries in campaigns.

Application of the “Doing Business” Limits to the Start of the 2009 Election Cycle

The full effect of the doing business restrictions cannot be precisely determined because the law went into effect midway through a four-year election cycle. It is also difficult to isolate the impact of the doing business restrictions on the decreasing size of contributions, compared to the effect of other variables like the higher matching rate, the extension of term limits, and the poor economy.

Nevertheless, a limited analysis of doing business contributor activity during the two years of campaign activity before the restrictions took effect is possible. The analysis reveals a considerably higher level of activity. Forty-eight candidates disclosed financial activity earlier than February 2, 2008, the effective date of the first phase of the DBDB. Matching their con-



About **7%**
of people who
have business
dealings with
the city gave
campaign
contributions
during
2008 – 2009.

tributors against the list of names that subsequently appeared in the DBDB during the 2009 election, the CFB identified about 2,000 transactions worth \$1.67 million from approximately 920 distinct individuals who may have been considered to be doing business with the city. The average size of these hypothetical doing business contributions from before the law went into effect was about \$830. From those contributions, the CFB identified 36 campaigns with about 950 instances of contributions greater than the not-yet enacted doing business limits. The overages totaled about \$1.25 million, roughly 9 percent of all contributions collected by all candidates in the period before the law went into effect. About \$825,000, or almost half, of the total \$1.67 million was contributed in the six month period between July 2007, when Local Law No. 34 was signed, and January 2008, the month before the first phase of the restrictions took effect.

Figure 8.6— Comparison of *Estimated* “Doing Business” Contributions Before the Law (Statements #1–4) and *Actual* “Doing Business” Contributions After Limits Took Effect (Statements #5–16)

	Doing Business Contributions (#)	Doing Business Contributions (\$)	Total Contributions (\$)	Percent Doing Business
Statements #1–4 [†]	2,000	\$1,670,000	\$13,300,000	12.6%
Statements #5–16 [‡]	3,708	\$946,000	\$26,200,000	3.6%

[†] Encompassing January 12, 2006 through January 11, 2008.
[‡] Encompassing January 12, 2008 through January 11, 2010.

The numbers are necessarily overstated; the analysis identified contributors whose names appeared in the DBDB at any point during the election cycle, and was not bound by the dates of contributors’ actual terms in the DBDB. But by any measure, the magnitude of the estimated numbers in this analysis far exceed the actual numbers and amounts of doing business contributions after the law took effect. These potential doing business contributions may reflect an artificial increase as contributors gave to candidates purposefully before the limits took effect, or it could reflect the impact of the new, low limits.

QUESTIONS TO CONSIDER

Based on a review of contribution data and the DBDB, the CFB has concluded that there is no basis for removing or exempting any of the existing categories of business dealings currently defined by law. There are areas, however, where the law may not be capturing the most complete or appropriate universe of contributors. There are other areas where the law has created challenges for both the agencies charged with administering the law and for the contributors and campaigns seeking to comply with it.

Individuals vs. Entities (Unions and Political Action Committees)

As the law is currently written, the doing business contribution limits apply *only* to individuals, and not to entities. Most entities are prohibited from making contributions to city candidates under other provisions of the Act. However, entities not barred from contributing — unincorporated sole proprietorships, for instance — could be listed in the DBDB, but not have their contributions restricted.

Labor contracts between the city and labor unions are not included in the definition of contracts that are considered business dealings with the city. Arguments have been made that a municipal union that must negotiate a contract with the city has the same incentive to seek influence with candidates as any other entity seeking a contract with the city. Historical analysis shows that unions remain among the largest and most active contributors to city candidates. [See *Chapter 1 — The Program at Work.*] Separately, registered political committees may also contribute up to the regular contribution limits, even if they are formed and controlled by entities that do business with the city, or themselves are in the DBDB (usually as registered lobbyists).

Doing Business Spouses and Family Members

Local Law No. 34 of 2007 called for the formation of a task force to study the feasibility of including spouses, domestic partners, and unemancipated children (referred to collectively as “family members”) in the doing business contribution restrictions. Such inclusion would mirror the treatment of family members under the city’s lobbying law; lobbyists are required to disclose the names of those individuals on their registration forms, and that information is made available to the CFB for the purpose of identifying contributions that cannot be matched with public funds. Clearly, the concern was that close family members could be used as a way to circumvent contribution restrictions.

For purposes of this analysis, the CFB identified family members of doing business contributors by reviewing the names and addresses of contributors who had given contributions to the same candidate as each doing business contributor. Based on this assessment, the CFB identified approximately 230 contributions totaling approximately \$125,000 from 203 family members of doing business contributors, nearly double the approximately \$68,000 given by those same doing business contributors. Forty family members of contributors listed in the DBDB gave contributions that exceeded \$1,000, and in 54 instances the family member gave a contribution to a campaign *after* that campaign issued a refund of an over-the-limit amount to the doing business contributor. This analysis appears to justify the concern regarding family members. However, the CFB



40 family members of contributors listed in the DBDB gave contributions that exceeded \$1,000.



recognizes the concerns about privacy and logistics that must be evaluated in assessing the feasibility of including family members in the doing business restrictions.

There are other difficulties resulting from incongruent provisions between the doing business law and the lobbying law (see below). Any study of this issue should consider the advantages of harmonizing the two laws.

Limited Liability Entities and Decision Makers

The DBDB only collects information about individual owners holding greater than a 10 percent interest in an entity doing business with the city. It is common for businesses to be formed as limited liability entities, particularly in the real estate industry. It is also common for businesses to be owned by other businesses, and to be organized in ways in which the decision-making authority rests with people who do not fit squarely into the titles or roles defined by the doing business provisions in the law.³² Thus, the DBDB is under-inclusive, particularly in the categories of real property and land use. A decision maker at the top of the organizational chart, who may have incentive to seek influence, might not be listed in the DBDB if his ownership of a doing business entity is obscured behind complicated business relationships. Disclosure that captures the individual principal owners of an entity that owns an entity listed in the DBDB could capture a more complete and accurate range of people who are doing business with the city.

In addition to instances of organizational structures shielding decision makers by their nature, it is also sometimes difficult to determine how well entities disclose their personnel. While there are standards to ensure that doing business data forms are complete (e.g., at least one senior manager must be identified by each entity for the form to be accepted), it is difficult to determine whether an entity that lists two senior managers really should be listing five.

Inconsistencies Between the Lobbying Law and the “Doing Business” Law

Prior to the passage of Local Law No. 34 of 2007, the law already required the registration of lobbyists and disclosure of lobbying activity, and banned lobbyists’ contributions from being matched with public matching funds.³³ The lobbyist registration requirement included lobbying firms as well as individual lobbyists, certain employees of lobbying firms, and the family members of the lobbyists. Because the terms of the already existing lobbying law and Local Law No. 34 are not perfectly compatible, separate mandates have caused confusion for campaigns in complying with the laws.

- ❖ *Non-matchability.* By including lobbying as a covered category of business dealings, the doing business law resulted in a second mandate to withhold matching funds for lobbyist contributions. The lobbying law is more inclusive than the doing business law: under the lobbying law, all people on the lobbyist registration (e.g., family members) are ineligible to be matched, while under the doing business law only the lobbyists themselves are ineligible to be matched.
- ❖ *Contribution limits.* The lower contribution limits imposed by the doing business law apply only to registered lobbyists themselves, and not to the broader range of people listed on the lobbyist registration. These different but overlapping restrictions cause confusion for campaigns and contributors.
- ❖ *Data compatibility.* For the lobbying category, the DBDB relies on data initially collected in a different manner and under a different authority than all the other categories. As a result, data in the lobbying category is generally less consistent, less reliable, and more duplicative than other data in the DBDB.

- ❖ *Timing.* Timing is a key concern in administering the laws simultaneously. Most other categories of business dealings are generally tied to the initiation of a process (e.g., an application or a proposal) and do not require any ongoing filing on the part of the entity or person to maintain their status. Lobbyist registration is tied to the calendar year, starting every January. Extensions to file lobbying registrations are routinely granted, and re-registration is not an automatic process. While a lobbyist's registration usually starts at the beginning of the year (or on the date it is filed), a lobbyist can only be included in the DBDB going back no longer than 30 days. As a result, there are instances when a lobbyist's contribution might not be matched with public funds under the lobbying law but at the same time is not restricted under the doing business law — particularly if a registration is filed late.

Timing of Inclusion in the DBDB

The law provides specified periods of inclusion in the DBDB for entities and people based on the different categories of business dealings with the city. Each category of doing business relationships has its own terms of inclusion. For example, holding a covered city contract results in inclusion in the DBDB from the date of proposal through the length of the contract, plus an additional year after the contract ends. Over the course of a four-year election cycle, the result is that would-be contributors might be restricted at some points in the cycle and not restricted at others.

This is confusing for contributors and campaigns. Contributors' changing status can make it very difficult for campaigns and even the individuals themselves to keep track of when or whether the lower contribution limit applies. There can be windows of time in the middle of an election cycle where a campaign may legally accept contributions at the higher, regular contribution limit from an individual who is doing business for three out of four years of the election cycle. The potential for gaps is confusing and creates appearance problems of the sort the law was designed to prevent.

By its nature, the DBDB is not updated in real time. The database is updated once a month, and new entries are closed several days prior to the update to permit processing of the data. The DBDB collects data from many different sources, but is dependent on agencies entering transactions and forwarding information in a timely fashion. Some agencies are more likely to have frequent modifications to transaction information. Under the law, inclusion in the DBDB cannot be made retroactive more than 30 days, even if that date is well after the actual business dealing has begun. As a result, if there is a delay in submitting information about a potentially covered transaction, the delay will result in a doing business start date well after the actual date the business dealing began.

As noted above, the so-called "30-day rule" also has a significant effect on lobbying transactions. A provision of the law designed to protect contributors and campaigns from confusion has resulted in an inability to correct routine oversights and errors caused by bad or incomplete data. The CFB sees this as an area for further study. Given all parties' limited experience with the DBDB, a more thorough examination over a longer period of time might result in recommended changes to this provision.

Contribution Limit Levels

Absent a basis of comparison, it is difficult to determine the efficacy of the specific doing business contribution limits and whether they need to be adjusted. Since the doing business law is intended to combat not only actual corruption but also the perception of pay-to-play, it seems that the potential for changing perceptions must be taken into account. There does not appear to be any particular basis for arguing that the doing business limit is either too high or too low at this point in the life of the doing business law. Overall, the limits seem to be set appropriately, as the median contribution even before refunds was well below the limit for each office (see Figure 8.1).

CONCLUSION

Implementation of the new doing business limits was not fully completed under the law until less than a year before the 2009 election. Still, even a limited analysis shows a positive impact on the city's political system. Contributions from those doing business with city government during the 2009 election were a fraction of previous estimates of pay-to-play contributor activity. The CFB continues to work with DoITT and MOCS to streamline the transmission of data that enables enforcement of the limits, and continues working with campaigns to help them comply with the law. The CFB's experience administering the new law during this past election has identified potential changes that might better achieve the law's intent.

ENDNOTES

- 1 Ray Rivera, “New Campaign Finance Rules Skip Unions,” *The New York Times*, June 28, 2007.
- 2 New York, N.Y. Local Law No. 34 § 39 (July 3, 2007).
- 3 N.Y. City Charter §§ 1052(a)(12) (as added by voter referendum in 1998).
- 4 CFB press release, January 7, 2000, “Campaign Finance Board Reviews Proposals to Disclose Contributions From Those Who ‘Do Business with the City.’”
- 5 New York City Campaign Finance Board, 2001 Post-Election Report, *An Election Interrupted...An Election Transformed*, p. 160.
- 6 Testimony before NYC Campaign Finance Board “Doing Business” Hearings, April 18, 2006.
- 7 Municipal Securities Rulemaking Board Rule G-37 (1994).
- 8 CFB report, *Interim Report of the New York City Campaign Finance Board on “Doing Business” Contributions*, June 2006.
- 9 *Id.* at i.
- 10 *Id.* at 41.
- 11 *Id.*
- 12 New York City Campaign Finance Board, 2005 Post-Election Report, *Public Dollars for the Public Good*, p. 52.
- 13 Local Law No. 34 § 1 (codified at N.Y.C. Administrative Code § 3-702(18) (new)).
- 14 Local Law No. 34.
- 15 Local Law No. 34 § 2 (codified at Admin. Code § 3-703(1-a) (new)).
- 16 Local Law No. 34 § 1 (codified at Admin. Code § 3-702(3) (amended)).
- 17 Local Law No. 34 § 37.
- 18 Local Law No. 34 § 36.
- 19 Local Law No. 34 § 37; The CFB’s certification reports for each of the phases may be viewed at http://www.nycffb.info/press/news/doingbusiness.htm?sm=press_21c.
- 20 Local Law No. 34 § 2 (codified at Admin. Code § 3-703(1-a),(1-b) (new)).
- 21 Local Law No. 34 § 2 (codified at Admin. Code § 3-703(1-b) (new)).
- 22 Local Law No. 34 § 1 (codified at Admin. Code § 3-702(18) (new)).
- 23 *Ognibene v. Parkes*, 599 F. Supp. 2d 434 (S.D.N.Y. 2009).
- 24 *Id.* at 434.
- 25 *Id.*
- 26 Local Law No. 34 § 1 (codified at Admin. Code § 3-702(20) (new)).
- 27 Local Law No. 34 § 2 (codified at Admin. Code § 3-703(1-b) (new)).
- 28 *Id.*
- 29 *Id.*
- 30 CFB report, *Interim Report of the New York City Campaign Finance Board on “Doing Business” Contributions*, June 2006, p. 4.
- 31 *Green Party of Conn. v. Garfield*, No. 09-0599-cv(L), 2010 WL 2737134 (2d Cir. July 13, 2010).
- 32 Adam Lisberg, “New York Politics Still Have Their Share of Special Interest Money,” *Daily News*, May 16, 2009; Eliot Brown, “Stringer, With Eye on 2013, Is Big on Real Estate Money,” *New York Observer*, August 4, 2010.
- 33 Admin. Code §§ 3-213, 3-702(3)(g).



IN DEPTH: INDEPENDENT EXPENDITURES

OVERVIEW

In any public campaign financing program, independent expenditures represent a distinct dilemma. A paramount goal of the Program is to diminish the possibility and the perception that special interests can exert influence on elected officials by spending money on political activities. Limits on direct contributions to candidates serve to limit the (perceived or actual) ability of any single contributor to gain influence over a particular candidate. However, the First Amendment protects the rights of independent actors to engage in electioneering activities without limits — as long as they do not coordinate those activities with the candidates they support.¹ These interests can come into conflict when the line between truly independent activity and so-called coordinated activity is blurred.

Generally speaking, independent activity by third parties^{*} is not regulated by the Act. The Act defines “independent” activity as that which a candidate or a candidate’s committee “did not authorize, request, suggest, foster or cooperate in.”² Conversely, “non-independent activity” includes any activity by another party that *is* authorized, requested, suggested, fostered by

* Third parties, in a broad sense, are any persons or entities separate from the campaign, such as employee organizations, political parties, and political clubs.

or done in cooperation with a campaign.* This is also commonly referred to as “coordinated activity.” A campaign must account for and report coordinated, or non-independent, activity conducted on the campaign’s behalf.³ Coordinated activities are considered in-kind contributions, subject to both contribution and expenditure limits.

Candidates who join the Campaign Finance Program agree to limit their spending. In-kind contributions are also counted against candidates’ spending limits. Expenditures made independently of the campaign, however, are not. In that context, spending by independent actors can impact election outcomes. As one study of New York City’s program observed, “Independent expenditures are of particular concern in jurisdictions with public financing programs, because those candidates who agree to limit their spending are faced by independent expenditure committees without limits.”⁴

Determining whether third-party activity is independent or non-independent can be extremely difficult. In the course of monitoring campaigns’ compliance with the Act, the CFB regularly reviews purportedly independent activities for signs of coordination, including shared resources between the campaign and the third party, such as personnel, funding sources, consultants, or materials.

In most cases, however, complete information about third-party activity is not available; rather, it is hidden from the CFB and the public. Whether or not evidence of coordination is apparent, the full extent and monetary value of the activity can remain unknowable.

* Board Rule 1-08(f) (entitled “Independent Expenditures”) lays out specific factors CFB considers in determining whether a third party expenditure is independent or non-independent, including:

- (i) whether the person, political committee, or other entity making the expenditure is also an agent of a candidate;
- (ii) whether the treasurer of, or other person authorized to accept receipts or make expenditures for, the person, political committee, or other entity making the expenditure is also an agent of a candidate;
- (iii) whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person, political committee, or other entity making the expenditure;
- (iv) whether the person, political committee, or other entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons, political committees, or other entities as those which have established, financed, maintained, or controlled a political committee authorized by the candidate;
- (v) whether the person, political committee, or other entity making the expenditure and the candidates have each retained, consulted, or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate’s communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate; and
- (vi) whether the candidate, any agent of the candidate, or any political committee authorized by the candidate shares or rents space for a campaign-related purpose with or from the person, political committee, or other entity making the expenditure.

INDEPENDENT EXPENDITURES IN NYC ELECTIONS

Several examples from earlier election cycles illustrate these issues.

Manhattan Borough President (2005)

The 2005 race for Manhattan borough president attracted nine experienced, well-known candidates. As the primary election approached, State Assembly Member Scott Stringer and City Council Member Eva Moskowitz emerged as the front-runners, leading the race in both fundraising and endorsements.⁵ Moskowitz, who served as Chair of the Council’s Education Committee, made education her top issue. Contentious and confrontational hearings she held in November 2003 about work rules for the city’s public school teachers put her at odds with the United Federation of Teachers (UFT).⁶


As the fall approached, union support coalesced behind Stringer, a six-term Assemblyman from the Upper West Side. Literature printed and distributed by Stringer’s campaign identified him as the endorsed candidate of the UFT, SEIU Local 32BJ, and UNITE-HERE, among other unions. The Working Families Party (WFP) made their preference in the Democratic primary known as well. On September 8, less than a week before the primary, the Board received a letter from Moskowitz about “thousands of recorded phone calls” made to voters by the WFP attacking her candidacy.⁷

The script of one of these “robo-calls,” which were clearly identified as coming from the WFP, alleged that Moskowitz was one of four members of the City Council who refused to sponsor an anti-sweatshop bill meant “to protect garment workers’ jobs.” While Moskowitz had voted for the legislation, the call made it seem she opposed the measure. Within the last days of the primary election campaign, the WFP mailed five pieces of literature to voters: three clearly opposed Moskowitz’ candidacy (e.g., “Eva Moskowitz is making things harder for working families”), and two others supported Stringer’s candidacy.*

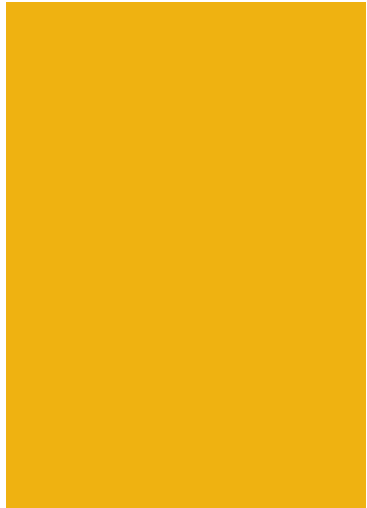
Stringer, his campaign staff, and WFP officials all denied coordinating their efforts with each other. After investigating Moskowitz’ complaint, the Board could not conclude the WFP’s activities were coordinated with the Stringer campaign.⁸

Stringer won the Democratic primary over Moskowitz, the second-place finisher, by almost 14,000 votes (out of 154,000 cast). It is difficult to say that the efforts of the WFP were decisive; in addition to his labor support,

* Based on CFB review of WFP mailings from the 2005 primary election.



“Independent expenditures are of particular concern in jurisdictions with public financing programs, because those candidates who agree to limit their spending are faced by independent expenditure committees without limits.”



Stringer was endorsed by many elected officials across the borough, as well as *The New York Times*, any of which may account for Stringer's win.⁹

Nevertheless, the complete details of the WFP's electioneering activities were unavailable to voters on Election Day. In disclosures filed *after* the primary with the New York State Board of Elections, the WFP did report about \$584,000 in spending between July 13 and October 3, 2005. No single spending item indicates it was spent to influence a New York City election.* The same disclosures show \$146,000 in contributions from UFT accounts to WFP accounts, all made within the two months before the primary.

Council District 41, Brooklyn (2005)

Darlene Mealy, a member of the Transport Workers Union Local 100 (TWU), began her campaign in Council District 41 as a long-shot candidate. Term limits prevented the incumbent, Tracy Boyland, from running for re-election. Boyland's father, former Assemblyman William F. (Frank) Boyland, entered the Democratic primary as the prohibitive favorite. As one of 10 candidates in the race, the perception was that Mealy faced an uphill battle against the so-called Boyland dynasty. While endorsements from Al Sharpton, *The New York Times*, and the *Daily News* helped raise her profile, Mealy's campaign clearly benefited from the resources TWU brought to the contest.¹⁰

TWU support of Mealy was apparent during the campaign. The union printed three-foot high posters for Mealy, which were placed widely around the district, especially near polling places. Other efforts included phone banking, the use of sound trucks, and leaflets and campaign posters prepared by TWU. On the day of the primary election, TWU rented several mini-vans to use as sound trucks, to carry union members, and distribute posters.¹¹ These efforts helped propel Mealy to an upset victory.

Although there were allegations that TWU's activity was non-independent, the Board ultimately concluded there was not sufficient evidence that TWU had coordinated its efforts with the Mealy campaign.¹² Nevertheless, regardless of whether TWU's activity was independent or non-independent, exactly how much was expended by TWU in support of Mealy's campaign was never disclosed. Because union activity, unless done through a political action committee required to file disclosure,[†] is not disclosed to the state BOE, the public did not receive a full accounting of how much and for what purpose money was spent on behalf of Mealy's candidacy in the 2005 elections.

Council District 18, Bronx (2003)

In 2003, Annabel Palma ran in Council District 18 against Pedro G. Espada, who shortly before the Democratic primary election had been substituted on the ballot for his father Pedro Espada, Jr., the incumbent City Council member (and current State Senate Majority Leader). Though some saw Palma as a novice, "token" opponent, as a healthcare worker and employee of Local 1199/SEIU (1199 SEIU), she brought a powerful and active ally to the campaign.¹³ During the 2003 elections, 1199 SEIU's substantial resources were employed to assist Palma's

* State election law does not require political parties (or any independent actor) to identify which candidate on whose behalf it was spending.

† N.Y. Elec. Law § 14-102.

first run for public office. For example, 1199 SEIU produced and printed literature advocating Palma's election, created and distributed fundraising appeals, and conducted an extensive get-out-the-vote drive on the day of the primary election.

The nature of 1199 SEIU's activity raised concerns that these efforts on behalf of Palma were non-independent. Notably, 1199 SEIU served as a vendor to Palma's campaign for, among other things, phone banking, literature production and distribution, and Election Day activities — yet they also allegedly provided these same services as independent third-party expenditures. In addition, campaign literature paid for by Palma's campaign and literature paid for by 1199 SEIU contained identical or substantially similar photographs, text, contribution cards, and contact information. Finally, various activities on the day of the primary election and the days leading up to primary election day were conducted by Palma's campaign in conjunction with 1199 SEIU, including recruitment of election-day workers, staffing at the campaign's election-day space and headquarters, campaign management and oversight, poll-site operations, literature distribution, get-out-the-vote efforts, use of a sound truck, food for election workers, and use of a "mobile office."¹⁴

The Board ultimately determined that 1199 SEIU's activities on behalf of Palma were non-independent, and therefore constituted an unreported over-the-limit in-kind contribution. On October 11, 2007, the Board assessed three penalties of \$10,000 each against Palma and her campaign for accepting an over-the-limit in-kind contribution from 1199 SEIU, for failing to report the contribution, and for misrepresentation. [See *Chapter 5 — Enforcement.*] While the final audit report for Palma's 2003 campaign contained a detailed analysis of 1199 SEIU's non-independent activity, the CFB was unable to assess a total monetary value to the in-kind contribution from 1199 SEIU, finding only that this activity well exceeded the \$2,750 contribution limit for City Council candidates. Ultimately, the total amount expended by 1199 SEIU in conjunction with Palma's campaign remained hidden from public view, thus denying the public full disclosure.

Mayor (2005)

In the 2005 mayoral election, Fernando Ferrer was at a considerable financial disadvantage against incumbent Michael Bloomberg, who would ultimately spend \$84.6 million of his own money on the campaign. Facing an enormous gap in resources, Ferrer hoped to counter the incumbent's financial advantage through union support, principally from 1199 SEIU.¹⁵ Indeed, 1199 SEIU's activity on behalf of Ferrer was highly visible during the election. Key personnel on leave from their positions at 1199 SEIU were involved with organizing the campaign's field operations and get-out-the-vote efforts, which extensively utilized 1199 SEIU members. Notably, 1199 SEIU officials attended a campaign strategy meeting in the month preceding the election with Mr. Ferrer and campaign staff. 1199 SEIU also printed and distributed hundreds of thousands of glossy brochures in support of Ferrer.¹⁶

In July 2009, the Board determined that 1199 SEIU's activity on behalf of the Ferrer campaign amounted to coordinated activity. [See *Chapter 5 — Enforcement.*] The Board assessed a \$10,000 penalty against Ferrer and his 2005 campaign committee for accepting an over-the-limit in-kind contribution in the form of 1199 SEIU's non-independent activity.¹⁷ Still, the public was left without a full accounting of 1199 SEIU's activity on behalf of Ferrer's campaign. Disclosures for the 1199/SEIU NYS Political Action Fund in the New York State Board of Elections database did not list any expenditures for printing during the 2005 elections, nor were expenses for staff or payroll, ostensibly paid directly by 1199 SEIU instead of their political committee, disclosed. To the contrary, the only expenditure on behalf of Ferrer disclosed by 1199 SEIU was a \$4,950 contribution to his

campaign. Similarly, Ferrer’s financial statements filed with the CFB disclosed only that contribution, as well as two payments to 1199 SEIU for office space, totaling \$840.

Working Families Party vs. Independence Party (2009)

The 2009 elections brought forth an unprecedented level of third-party activity in New York City elections — by actual third parties. New York State’s unique ballot access laws allow minor political parties to play a major role in city elections. New York is one of seven states to allow candidates to run for office as the nominees of more than one party, and total the votes they receive on each party line.* In fact, with one exception, the winner of every mayoral election under the Campaign Finance Program has run as the nominee of more than one party.† Of the 51 members of City Council elected in 2009, 38 ran in the general election on more than one party line.

The most active of the minor parties in New York is the Working Families Party. The party boasts only 11,386 active registered voters in New York City, or not quite 0.3 percent of all active New York City registered voters.‡ However, 29 of the 38 City Council members who were listed in the general election on more than one line ran as a WFP candidate, as did the current public advocate, comptroller, and three of the five borough presidents.§ But by the estimation of some observers, the WFP “is not at all a political party in the conventional sense.” Instead, “it is a union instrument of electoral politics, mobilizing the membership of its affiliated public-sector unions... to support its preferred candidates.”¹⁸

In past elections, the WFP occasionally acted as a consultant, accepting payment from candidates to perform key campaign functions. In 2007, WFP stepped up its efforts by creating DFS, a for-profit company, in order to provide campaign services on a larger scale. In the 2009 elections, nine WFP-endorsed candidates contracted with DFS for campaign-related services, including campaign staff, voter data, canvassing, and get-out-the-vote operations. As discussed in depth in Chapter 5, the close relationship between DFS and WFP raised serious concerns about potential violations of the Act by these campaigns, including that they had not paid fair market value for the services provided by DFS, as well as the potential for non-independent expenditures by WFP and its affiliates.¹⁹

Several candidates supported by the WFP were successful. Some observers have expressed concerns that WFP’s success in the 2009 elections will enable its affiliates — namely, the city’s largest unions — to assert undue influence over the significant number of public officials who owe their victories to WFP.²⁰

In an effort to combat the success and influence of WFP, some interests turned to another minor political party — the state Independence Party, which counts 92,417 active voters in New York City (about 2.3 percent of

* The other states are Connecticut, Delaware, Idaho, Mississippi, South Carolina and Vermont. See Adam Morse and J.J. Gras, “More Choices, More Voices: A Primer on Fusion,” *Brennan Center for Justice*, 2006, pp. 1 – 2.

† In 1989, David Dinkins ran only on the Democratic ticket in the general election.

‡ NYS Board of Elections, as of April 1, 2010.

§ All of these candidates also ran as the Democratic Party candidate. A fourth, Ruben Diaz, Jr., in the Bronx ran with WFP support but not on the party’s ballot line. Thompson, the Democratic candidate for mayor also ran on the WFP line.

all active voters).^{*} The Independence Party took a more active role in City Council elections than ever before. In particular, the Independence Party made significant expenditures in support of four Council candidates facing WFP-backed opponents in the Democratic primary.[†] The Independence Party's efforts consisted mainly of the production and distribution of mass mailings in support of these candidates.²¹

The Independence Party's emergence as an actor in the 2009 city elections was funded by New York City's real estate industry. According to an executive involved, the real estate industry accounted for more than \$500,000 in contributions to the Independence Party, including donations from some of the city's most powerful developers, such as Tishman Speyer and the Durst Organization, as well as big names in the real estate industry, including Leonard Litwin and Mary Ann Tighe, incoming Chair of the Real Estate Board of New York (REBNY).²² The effort was led by REBNY, the industry's main advocacy group, which joined with other real estate groups, including the Rent Stabilization Association and the Business Council of New York State, to strengthen the Independence Party as a way to counteract the WFP's emergence and help elect candidates who support the industry's interests.²³

With real estate and labor groups both intensifying their involvement in city elections, the activities of WFP/DFS and the Independence Party make it clear that these opposing interests will continue to play increasingly active roles in future elections.

CITIZENS UNITED: OPENING THE FLOODGATES FURTHER?

In January 2010, the United States Supreme Court issued a landmark decision in *Citizens United v. Federal Election Commission*.²⁴ In its ruling, the Supreme Court held that the federal government may not ban independent political spending by corporations or unions in elections. Specifically, the Court held that a provision of the federal campaign finance law that prohibited certain corporate-funded television broadcasts in the 60 days before a general election (or the 30 days before a primary) violated the First Amendment. In reaching its decision, the Court overruled

* NYS Board of Elections, as of April 1, 2010.

† These candidates were Deirdre Feerick (CD #26), Karen Koslowitz (CD #29), Kenneth Mitchell (CD #49) and Kendall Stewart (CD #45). In addition, the Independence Party heavily supported Daniel Halloran (CD #19), Thomas Ognibene (CD #30) and Michael Bloomberg in the general elections. Koslowitz, Halloran, and Bloomberg won.



Scholars and good government groups have predicted that *Citizens United* will “open the floodgates” to massive corporate spending in elections all over the country, including in New York City.



Austin v. Michigan Chamber of Commerce,²⁵ a prior decision that upheld restrictions on corporate spending in elections, thus calling into question many state and local restrictions on corporate and union spending on political campaigns.⁷

New York City's campaign finance system was not directly impacted by the ruling in *Citizens United*. Importantly, the decision addressed only *independent spending*; it did not in any way disturb the Act's prohibition on direct contributions from corporations to candidates, which remains intact.²⁶ New York City's campaign finance system does not restrict independent spending in New York City elections by corporations, unions, or any other actors. As evidenced by the discussion above, even before *Citizens United*, such expenditures were permitted, so long as they were truly independent. Thus, the *Citizens United* decision will likely have minimal impact on New York City political campaigns.

Nevertheless, in the words of one commentator, "the widespread assumption that the decision 'changed everything' about campaign finance regulation may well be self-reinforcing."²⁷ Many scholars and good government groups have predicted that *Citizens United* will "open the floodgates" to massive corporate spending in elections all over the country, including in New York City.²⁸ Some expect the decision to result in a new era of negative campaign ads funded by corporate interests.²⁹ Many fear that with fewer restrictions and renewed vigor, corporate interests will be able to wield considerable influence over candidates by threatening to spend substantial funds toward their defeat.³⁰ These fears are especially pronounced in local elections, where the expenditure of tens of thousands of dollars can have enormous impact.

The effects of the decision are starting to be felt in the 2010 campaigns at the federal level. An analysis from earlier this year showed that outside political groups were spending three times as much on political advertising for the 2010 midterm elections as they had by the same point in 2006 — a total of \$62 million through May 2010.³¹

In response to *Citizens United*, there have been calls for stricter disclosure requirements for independent expenditures.³² Notably, while a 5-4 Court majority struck down the restriction on corporate funding of campaign ads, eight of the nine justices agreed that *disclosure* of political activity by corporate actors remains crucial to the regular function of democracy, and allowed federal requirements for disclosure to remain in place. Indeed, in his majority opinion, Justice Anthony Kennedy noted that a "campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today," and explained that:

With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "in the pocket" of so-called moneyed interests" . . . This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.³³

* *The New York Times* reported that "laws in 24 states were directly or indirectly called into questions by the ruling." See Ian Urbina, "24 States' Laws Open to Attack After Campaign Finance Ruling," *The New York Times*, January 23, 2010.

Indeed, several states have already passed laws to strengthen requirements for independent actors to report their election-related spending in the wake of the *Citizens United* decision.³⁴

NEW YORK CITY’S “DISCLOSURE GAP”

Comprehensive, real-time disclosure of independent expenditures is crucial to providing New York City voters with information about third parties attempting to influence their decisions at the ballot box. Yet the Act does not currently provide for any disclosure of independent expenditures. As described above, independent actors can spend freely in city elections in support of (or opposition to) candidates, yet this spending is largely hidden from public view. Voters hoping to learn about the full range of financial activity in city elections have no access to complete information about independent spending. In addition, the lack of disclosure hampers the CFB’s ability to monitor activity that may be coordinated with campaigns.

In many other jurisdictions, including under federal regulations, there are statutory reporting requirements for independent expenditures. For example, under federal election law:

- ❖ Political committees must disclose their payments for independent expenditures above \$200 for a particular election to the Federal Election Commission (FEC); any other person must report independent expenditures above \$250 for a particular election.³⁵
- ❖ There is expedited disclosure for large expenditures, and for expenditures made close to an election. Once a committee’s or individual’s aggregate independent expenditures for a particular election reach or exceed \$10,000, up to and including 20 days before an election, a report must be filed with the FEC within 48 hours. Within 20 days of an election, if such aggregate independent expenditures reach or exceed \$1,000, a report must be filed with the FEC within 24 hours.³⁶

The reports must include:

- ❖ identification of the person to whom the expenditure was made;
- ❖ the amount, date and purpose of each expenditure;
- ❖ a statement that indicates whether such expenditure was in support of, or in opposition to, a candidate, together with the candidate’s name and office sought;



Independent actors can spend freely in city elections, yet this spending is largely hidden from public view.





The lack of information about election-related spending by corporations, unions, and others is a glaring blind spot in disclosure of campaign finances in city elections.



- ✦ and, in the case of a person other than a political committee, the identification of each person who made a contribution in excess of \$200 for the purpose of furthering the reported independent expenditure.³⁷

Finally, all reports of independent expenditures filed with the FEC must contain a certification under penalty of perjury that the expenditure was not “made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee or their agents, or, a political party committee or its agents.”³⁸

Most states also require some form of reporting of independent expenditures. According to the Campaign Disclosure Project, a collaboration of the UCLA School of Law, the Center for Governmental Studies, and the California Voter Project, 44 states require some form of disclosure of independent expenditures.³⁹ [See *Disclosure of Independent Expenditures in States*, p. 176.] In addition, the “Campaign Finance Disclosure Model Law,” drafted by the Center for Governmental Studies, includes provisions that require any group making independent expenditures to file reports, including daily reporting of independent expenditures made in the last few days of an election.

Another notable example is Los Angeles, which — like New York City — has a program that provides partial public financing in city elections. The Los Angeles campaign finance law provides that:

Any person, including any committee, that makes or incurs independent expenditures of \$1,000 or more in support of or in opposition to any... candidate for elective City office, or one or more payments for member communications... totaling \$1,000 or more in support of or in opposition to a candidate for elective City office... shall notify the City Ethics Commission within 24 hours by certified mail or fax or e-mail each time one or more payments, which meet this threshold, are made.⁴⁰

CONCLUSION

The lack of information about election-related spending by corporations, unions, political parties, wealthy individuals, or other outside groups is a glaring blind spot in the otherwise comprehensive mandated disclosure of campaign finances in city elections. The changing legal and political environment has increased the importance of independent spending, and made disclosure even more imperative. With its ruling in *Citizens United*, the Supreme Court has made it clear that the First Amendment protects independent expenditures from limitations like those that restrict direct contributions to candidates. At the same time, the decision affirmed the public's right to basic information about the electioneering activities of these outside actors. The decision makes it clear that New York City's Campaign Finance Act has an obvious disclosure gap when it comes to independent expenditures.*

* The 2010 Charter Revision Commission's preliminary staff report, released in July 2010, included a recommendation to give the Board authority to require disclosure of independent expenditures. The Commission's final report and recommendations were not available by the time this report went to print.

Disclosure of Independent Expenditures in States

For those jurisdictions that do require the disclosure of independent expenditures, the requirements vary. In different jurisdictions, different spending levels trigger required disclosure. The timing or frequency of the disclosure can differ, as well as the depth of information subject to disclosure.

AMOUNTS

Most jurisdictions require disclosure of independent expenditures of all but nominal amounts. Some localities require full disclosure for expenditures as low as \$25 (Wisconsin)⁴¹ or \$50 (Oklahoma)⁴² each and every time that amount is spent. In other places, independent actors can spend up to \$1,000 without facing mandatory disclosure. Most commonly, spending of \$100 triggers disclosure requirements.

TIMING

Most jurisdictions with public financing programs require prompt disclosure of independent expenditures. Many systems without public financing require disclosures of independent expenditures on the same schedule that candidates follow when filing their own financial reports. This can range from once or twice a year to eight or ten times a year. Others require disclosure anywhere from a week to a month after the expenditure is made. But within public financing programs, where candidates bound by spending limits may have limited time or resources to respond to a round of advertising financed by an outside party, prompt disclosure of independent expenditures is crucial. Most of these systems require disclosure within 24–48 hours just before an election, with these pre-election periods ranging from 14–30 days. Some require year-round instantaneous disclosure.

REQUIRED INFORMATION

Basic information includes the name of the individual or committee making the expenditure, their address, the amount of the expenditure and the date it was made. Other jurisdictions require additional information, including the purpose of the expenditures, whether it was meant to support or oppose a candidate or ballot measure, the candidate's district, and the name and address of the vendor used. Notably, many jurisdictions require the filer to submit a sworn affidavit claiming that the expenditure was not made in coordination with any campaign. An affidavit can serve to remind outside actors of their obligations under law — as well as the consequences of improper contact with the beneficiaries of their efforts. Finally, several jurisdictions require filers to disclose the sources of the funds used to make the independent expenditures, such as the name, occupation and employer of each person who contributed above a certain amount (ranging from \$100* to \$1,000†) towards the expenditure; at least one jurisdiction requires this information only for an entity's largest contributors.‡

* Michigan, Mich. Comp. Laws § 169.251.

† Federal Election Commission, 2 U.S.C. § 434(f)(2)(E),(F).

‡ Arizona, A.R.S. § 16-915(F)(5) (requiring the names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months).

ENDNOTES

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- 33 *Citizens United*, 130 S.Ct. at 916.
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10

BOARD RECOMMENDATIONS

OVERVIEW

Through six citywide elections over two decades, the Campaign Finance Program has transformed New York City's political culture. Public matching funds have helped to democratize campaign financing. The taxpayers' investment in the political process helps to amplify the voice of the average New Yorker, and gives more candidates access to the resources to be competitive. Disclosure requirements ensure that the private sources of candidates' finances are not hidden from public view.

Many of the events of the 2009 elections highlighted the CFB's successes. More contributors got involved, and levels of competition rose. More incumbents were defeated than in the previous four citywide elections combined. A more diverse set of officeholders were elected than ever before. When the extension of term limits changed the field, the Board acted decisively to ensure that joining the Program remained a viable option for all candidates.

It is easy to see the challenges still ahead. Undisclosed independent spending continues to impact city elections. Participation rates remain high, but non-participating candidates who spend unlimited sums continue to test the Program's efficacy. Court decisions affecting publicly funded campaign finance programs in jurisdictions across the nation have raised concerns about the ability of New York City's program to meet these challenges and fulfill its purpose.

The Act directs the Board to recommend changes to the law that will help to further the CFB’s mission. This mandate for reflection and renewal keeps the Program relevant, helping to ensure the CFB is prepared to meet the evolving needs of the candidates and the public.

After each election, the Board conducts public hearings, distributes surveys to candidates, evaluates data compiled by staff, and receives comment from candidates, civic groups, and other stakeholders. Much of the information transmitted to the Board through these channels has been discussed throughout this report.

Each of the Board’s recommendations is tied to one or more of the broader goals outlined in Chapter 7, and listed again below. Other issues of concern that fall outside the Board’s jurisdiction are listed at the end of the chapter.

- ❖ **Accountability:** Protecting taxpayer funds from waste or abuse.
- ❖ **Competition:** Promoting more competitive elections for city office.
- ❖ **Education:** Improving the quality, volume, and accessibility of public information about candidates and campaign finances.
- ❖ **Engagement:** Increasing the role of small, individual New York City donors in the political process.
- ❖ **Integrity:** Decreasing actual and perceived corruption associated with large contributions and unlimited campaign spending.
- ❖ **Participation:** Encouraging and simplifying participation in the Program.

1. MANDATE DISCLOSURE OF INDEPENDENT EXPENDITURES TO THE CFB

Accountability	Competition	Education	Engagement	Integrity	Participation
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The 2009 elections highlighted a crucial gap in the Act’s otherwise comprehensive requirements for disclosure of campaign finances in city elections: it requires no disclosure of independent expenditures.

While corporations, unions, political parties, wealthy individuals, and other outside groups may spend freely on independent efforts to support candidates in New York City elections, this disclosure gap means that information about third-party spending is largely hidden from public view. [See *Chapter 9—Independent Expenditures*, for an in-depth discussion.]

The Supreme Court’s January 2010 ruling in *Citizens United* may further encourage independent spending in city elections. Importantly, the decision affirmed the public’s right to basic information about the electioneering activities of these outside actors, and upheld federal disclosure requirements of independent expenditures. Most states, as well as the federal system, have laws that require some form of disclosure of independent expenditures; at least ten states have enacted increased requirements for disclosure of independent spending by corporations, unions, and other actors in the wake of *Citizens United*.¹

In a voluntary system of public financing that includes spending limits, the impact of independent expenditures can be magnified — making disclosure requirements of particular importance. Disclosure of independent

expenditures in city elections would provide New Yorkers with a more complete picture of the money spent on municipal races.

The Board recommends that all entities that make independent expenditures related to elections for the five CFB covered offices, including corporations, political parties, political committees, unions, and individuals be required to disclose their spending to the CFB.* Specifically:

- ❖ Entities making independent expenditures in support of or in opposition to a candidate for city office (or ballot proposal) in excess of \$1,000 should disclose such activity, including:
 - the name of the entity making the expenditure
 - the name of the vendor
 - the purpose of the expenditure
 - the candidate and race or ballot proposal for which the expenditure was made and whether it was in support or opposition.
- ❖ Entities making \$5,000 of independent expenditures in the aggregate should be required to disclose the sources of their funds, including the names, occupations, employers, and amount contributed by the five largest contributors.
- ❖ Entities disclosing independent activity should be required to affirm that no candidate authorized, requested, suggested, fostered, or cooperated in the spending.

2. REQUIRE THAT CAMPAIGN COMMUNICATIONS IDENTIFY SOURCES OF FUNDING

Accountability	Competition	Education	Engagement	Integrity	Participation
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Communications to voters during the election are not required to and often do not identify their source(s) of funding. During an election, voters may be inundated with conflicting and confusing information about candidates through a variety of media — in the mail, on television, at subway stations, on the Internet, and elsewhere. Requiring clear identification of the name of the entity funding those communications is a simple step that would provide crucial information to voters. In particular, mailings by third parties, whether independent or not, can be designed to intentionally mislead or conceal their source.

Similar requirements exist at the federal level and in many states; indeed, many city campaigns already do state their committee names on their materials.

* The 2010 Charter Revision Commission’s preliminary staff report, released in July 2010, included a recommendation to give the Board authority to require disclosure of independent expenditures. The Commission’s final report and recommendations were not available by the time this report went to print.

To provide better disclosure to the public about the sources of campaign spending, the Board recommends adding a “paid for by” requirement to all printed communications as well as radio, Internet, and television advertising, *including* communications produced by independent entities.

3. REFINE DEFINITIONS OF “DOING BUSINESS” WITH THE CITY

Accountability	Competition	Education	Engagement	Integrity	Participation
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The strict, low limits on people associated with entities “doing business” with city government have helped to limit the potential and perception of so-called “pay-to-play” corruption in city politics. In some areas, however, the Act’s definition of “doing business” may not capture the full range of those seeking to influence the way city government allocates its scarce resources.

To better address perceptions of influence-seeking over city government business through campaign contributions, the Board recommends the following:

- ❖ *Add placement agents to the categories of people “doing business” with the city.* An investigation by the state Attorney General into the use of third-party solicitors, or “placement agents,” to win business with state pension funds culminated in the March 2009 indictment of Hank Morris, an adviser to state Comptroller (and former city Comptroller and mayoral candidate) Alan Hevesi, among others.² Some city pension funds have already banned the use of placement agents and third-party marketing agents for their private equity investments. Extending the “doing business” contribution restrictions to these actors would ensure that they do not use the political process to attempt to gain influence or business.
- ❖ *Apply the limits to entities identified as doing business, and to political committees associated with doing business entities.* The doing business limits apply to “natural persons” (i.e., individuals) only.³ While few entities are still permitted to make contributions to candidates (i.e., sole proprietorships, employee organizations, political committees), the law exempts entities doing business with city government from the limits. Extending the restrictions to *entities* associated with city government business would further the intent of the law.
- ❖ *Expand the universe of contracts covered by the definition of “doing business” to include collective bargaining agreements with the city.* Unions representing municipal employees regularly negotiate work contracts with city government, but collective bargaining agreements are not defined by the Act as a category of doing business with the city. Many argue that a municipal union negotiating a contract with the city has the same incentive to seek influence through campaign contributions as any other entity hoping to obtain a city contract.⁴ The Board agrees, and recommends including labor contracts in the Act as a category of doing business.
- ❖ *Add additional disclosure requirements for entities with an ownership interest in “doing business” entities.* As noted in Chapter 8, it is not uncommon for business entities to be owned by other business entities — especially in real estate. Land is the ultimate scarce resource in New York City, and many actors are intensely interested in city decisions about its use. As such, land use has been long identified as a particularly critical area of “pay-to-play” regulation. A limited liability company (LLC) listed as the principal owner of a doing business entity, for instance, is not bound by the doing business limits (can-

didates may not accept contributions from LLCs), but it may conceal the identity of the ultimate owner and decision-maker of the entity that is doing business, whose contributions would then not be subject to the limits. In these cases, disclosure is obscured, and enforcement of the limits is prevented. A doing business entity listing another business entity as its principal owner should be required to report the owners of the second business entity as well.

- ❖ *Consider extension of the doing business limits to family members of those listed in the Doing Business Database (DBDB).* Local Law No. 34 of 2007 called for the formation of a task force to study the feasibility of including spouses, domestic partners, and unemancipated children under the doing business restrictions.⁵ As noted earlier, CFB staff identified 230 contributors who were close family members of other contributors listed in the DBDB, 40 of whom gave more than \$1,000. [See *Chapter 8—Doing Business*, p. 159.] This represents at least the possibility that doing business contributors are finding ways to contribute to candidates beyond what the low limits allow. The Board understands that contributors’ privacy concerns must be taken into account, but believes that extending the restrictions to family members should be considered. Harmonizing the treatment of family members under the lobbying and doing business laws would mean that contributions from family members of doing business contributors could not be matched.
- ❖ *Convene the mandated commission to review the lobbying law with an eye towards more uniform enforcement of the limits.* Pursuant to the Act, registered lobbyists are included in the definition of people who are doing business with city government.⁶ Both laws serve to reduce the potential for influence-seeking by people who have a clearly and narrowly defined interest in government business. However, there are several inconsistencies between the lobbyist law and the doing business law, creating confusion for campaigns and contributors alike. [See *Chapter 8—Doing Business*, pp. 160 – 161.] A more uniform approach to lobbying and doing business would further the goals of these important laws by simplifying compliance. The lobbying law requires the mayor and City Council to appoint a commission to review the law’s administration and enforcement.⁷ The Board urges that this commission be created as soon as is practicable, with the specific charge to recommend additional ways to harmonize the approach to lobbying and doing business.

4. INCREASE THRESHOLD FOR FULL PAYMENT OF PUBLIC FUNDS AGAINST “NOMINAL” OPPOSITION

Accountability	Competition	Education	Engagement	Integrity	Participation
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Public funds are regularly paid to candidates who win with large margins in non-competitive races. [See *Chapter 7—Meeting the Goals*, p. 114.]

The Act was amended before the 2005 elections to reduce public funds payments to candidates who faced low-spending opponents.⁸ If a candidate had no opponent who raised or spent more than 20 percent of the spending limit, that candidate’s public funds payment was capped at 25 percent of the maximum payment available in competitive races. However, candidates could receive their full payment by sending the Board a Statement of Need, which automatically released the extra funds. A hypothetical example:

Patricia Grey, a City Council incumbent who joined the Program to run for re-election in 2005, raised matching claims that would have made her eligible for the maximum public funds payment of \$82,500. Her opponent, however, reported only raising and spending \$12,000 — well short of 20 percent of the spending limit. Ms. Grey’s payment would have been capped at 25 percent of the maximum public funds available — \$20,625. Ms. Grey, however, sent the Board a Statement of Need requesting that the additional funds be released. Upon receipt, the Board disbursed the additional funds, as the law required.

Local Law No. 34 of 2007 amended the Act once more, in an attempt to further restrict the flow of public funds to candidates who faced nominal opponents.⁹ [See *Chapter 6 — Legislative Action.*] The law retained the 25 percent cap on public funds for candidates facing low-spending opposition. To strengthen the Statement of Need, the law required the participating candidate to demonstrate that their low-spending opponent meets certain factors that indicate competitiveness.* Before releasing additional funds, the Board must independently verify the candidate’s statement. To return to our hypothetical example:

In 2009, Patricia Grey again ran for re-election to City Council. Once again, her matching claims qualified her for the maximum payment, \$88,550. Before the primary, her opponent had raised and spent \$15,000, less than 20 percent of the spending limit. Ms. Grey’s payment therefore was capped at 25 percent of the maximum available — \$22,137. Nevertheless, Ms. Grey believed her opponent was a viable, competitive candidate. She prepared a Certified Statement of Need, which explained that her opponent had been endorsed by a local political club with over 250 members. After the Board reviewed and validated her Certified Statement of Need, additional funds were paid to Ms. Grey’s campaign.

In one sense, the change in the law served its purpose; in 2009, fewer payments were made based solely on a Statement of Need than in 2005. The 2009 elections were more competitive, to be sure. But it also seems clear that the 20 percent competitiveness “trigger” is too low. Of the ten candidates in the 2009 primaries who won with 60 percent of the vote or more, only one (Rosie Mendez, CD #2) faced an opponent whose fundraising failed to classify him as a competitive opponent. The low threshold means that “sure winners” may regularly receive public funds to run against opponents who can surpass the threshold, but are not truly competitive opponents.

The 2009 elections identified another issue regarding the treatment of low-spending opponents. For the 2005 elections, an opponent who received public funds was automatically deemed competitive. Local Law No. 34 removed this provision from the Act. As a result, there were several instances during the 2009 primary elections when a payment to a higher-spending candidate was capped even as the lower-spending opponent received a

* The seven factors enumerated in the Act are: 1) a non-participating candidate or a limited participating candidate with the ability to self-finance; 2) a candidate who has received significant endorsements; 3) a candidate who has had significant media exposure in the year preceding the election; 4) a candidate who has received 25 percent or more of the vote in an election within the last eight years; 5) a candidate whose name is similar to the candidate’s so as to result in confusion among voters; 6) a candidate who is a chairman, president, or district manager of a community board (for Council or borough president races only); 7) a candidate whose close family member holds or has held elective office in the area within the past ten years. See Admin. Code. §3-705(7)(b).

large public funds payment (in some cases, a maximum public funds payment). Though the payment of public funds made it clear the lower-spending opponent had reached the 20 percent competitiveness “trigger,” the full payment was not immediately available to the higher-spending candidate without filing a Certified Statement of Need.* As an issue of fairness, this should be addressed by including payments of public funds among the total receipts available to the challenger to measure competitiveness.

To ensure that fewer taxpayer funds are paid to candidates in non-competitive elections, the Board recommends that the Act be amended to define a competitive opponent as a candidate whose total receipts (contributions *plus* public funds) or total spending is 40 percent or more of the spending limit.† The 25 percent cap on public funds payments would not be applied to a candidate whose opponent meets this threshold.

5. EASE CITYWIDE CANDIDATES’ REQUIREMENTS TO QUALIFY FOR PUBLIC MATCHING FUNDS

Accountability	Competition	Education	Engagement	Integrity	Participation
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For candidates running citywide, the requirements to qualify for public matching funds have become more difficult to achieve.

In order to be eligible to receive public funds, candidates for any covered office must be on the ballot, face competition on the ballot, and meet a fundraising threshold that demonstrates viability and support within their community.‡ The threshold is in two parts: 1) a number of contributors who give \$10 or more,§ and 2) a dollar amount, measured in matching claims (i.e., the first \$175 of contributions from New York City residents).¹⁰

On the City Council and borough level, the threshold for public funds is set appropriately, encouraging competition and providing the ability for new voices to take part in the political conversation. In 2009, 37 of the 51 Council districts had at least two candidates who received public funds. In the competitive races for borough president — the primary election in Queens and the general election in Staten Island — the leading challenger received public funds.

* Five candidates — Inez Dickens (CD #9), Marc Leavitt (Queens BP), Darlene Mealy (CD #41), and Thomas White, Jr. (CD #28), in the primary; Vincent Gentile (CD # 43) in the general — who filed valid Certified Statements of Need would have eventually received an uncapped payment on a subsequent payment date, as their opponents reached the 20 percent threshold. By submitting a statement, these candidates received a payment earlier than they otherwise would have. Two others — Carlos Bristol (CD #42) and Kenneth Mitchell (CD #49), both in the primary — submitted Certified Statements of Need that were immaterial in terms of timing; their opponents crossed the 20 percent spending threshold before the subsequent payment date.

† Changing the law to modestly increase the trigger to 40 percent of the spending limit would have subjected four additional candidates to the cap through the primary.

‡ Candidates must also be in compliance with the Act and Board Rules.

§ For candidates for mayor, public advocate, and comptroller, the contributors must be from New York City; for borough president, the contributors must be from the candidate’s borough; for City Council, the contributors must be from the candidate’s Council district.

Figure 10.1— Threshold Requirements for Public Funds, 2009 Elections

Office	Monetary Threshold	Contributor Threshold
Mayor	\$250,000	1,000
Public Advocate & Comptroller	\$ 125,000	500
Borough President—Brooklyn	\$ 49,307	100
Borough President—Queens	\$ 44,588	100
Borough President—Manhattan	\$ 30,744	100
Borough President—Bronx	\$ 26,653	100
Borough President—Staten Island	\$ 10,000	100
City Council	\$ 5,000	75

Among candidates for citywide office — mayor, public advocate, and comptroller — the story is not the same. Only officeholders, former officeholders, and other experienced candidates managed to meet the citywide threshold in 2009. In the mayoral election, only William Thompson qualified for public funds, and did so only very late in the primary. For many grassroots candidates in citywide races, the public funds threshold is simply out of reach.

One potential reason: when the matching rate was increased from \$4-to-\$1 to \$6-to-\$1, the amount that could be claimed for matching was lowered from \$250 to \$175 per contribution — but the number of contributors required to meet the threshold remained constant. Only the matchable amount is counted towards the monetary threshold. As a result, for citywide offices, the number of matching claims it takes to meet the monetary threshold is larger than the number of contributors needed.

Take the office of mayor, for example.

- ❖ In the 2005 elections, a mayoral candidate who met the *contributor threshold* by collecting 1,000 matchable contributions from New Yorkers of exactly \$250 each also met the monetary threshold for public funds (\$250,000).
- ❖ In 2009, a mayoral candidate who met the *contributor threshold* with 1,000 matchable contributions of \$175 each would have raised \$175,000 — leaving the candidate \$75,000 short of the *monetary threshold*. It takes 1,429 contributions of exactly \$175 to meet the dollar threshold for mayoral candidates. As many contributions are smaller than \$175, it often takes more than that.*

The current contributor threshold presents an appropriate hurdle for citywide candidates. The Board therefore recommends lowering the dollar amount of the public funds threshold for citywide offices to strike a better balance between the two factors. Candidates still would need to raise a significant amount of money, but not so much that it overshadows the number of contributors as a key factor in determining whether a candidate has sufficient community support to qualify for public matching funds.

* The most common contribution size to mayoral candidates (and most other offices) was \$100.

Figure 10.2—Proposed Threshold Requirements for Public Funds

Office	Monetary Threshold	Contributor Threshold
Mayor	\$ 125,000	1,000
Public Advocate & Comptroller	\$ 75,000	500

Reducing the monetary threshold to qualify for public funds would help more grassroots candidates compete, and bring a wider range of voices into the conversation about citywide issues. The Board recommends reducing the monetary threshold to qualify for public funds for candidates for mayor, public advocate, and comptroller.

6. INCREASE TIER 1 BONUS THRESHOLD

Accountability	Competition	Education	Engagement	Integrity	Participation
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Participating candidates who face high-spending non-participants receive an increased matching formula, a higher maximum public funds payment, and an increased spending limit. The overwhelming majority of active candidates participate in the Program. As such, relatively few elections pit participants against candidates who have opted out of the Program. In most of those races, additional funds provided by the Program help participating candidates compete effectively with high-spending non-participants. [See *Chapter 7—Meeting the Goals*, p. 126.] But in a few cases, these “bonus” funds have enabled participating candidates to significantly outspend a non-participating opponent.

The system has two tiers:¹¹

Tier 1: non-participant raises or spends more than half the spending limit

- ❖ Contributions are matched at a rate of \$7.14-to-\$1, up to \$1,250 per contributor.
- ❖ The cap on public funds payments is increased to ⅔ of the spending limit (up from 55 percent).
- ❖ The participants’ spending limit is increased by 50 percent.

Tier 2: non-participant raises or spends more than three times the spending limit

- ❖ Contributions are matched at a rate of \$8.57-to-\$1, up to \$1,500 per contributor.
- ❖ The cap on public funds payments is increased to 125 percent of the spending limit.
- ❖ The participants’ spending limit is suspended.

In the 2009 primaries, a Tier 1 bonus was declared in four City Council primary elections. In three districts (CD #19, #20, #29), non-participants exceeded the spending limit and far outspent the field.*

In one primary election, District 25, non-participant Stanley Kalathara reported spending \$96,000 on his campaign through July 11, 2009 and triggered the Tier 1 bonus. Kalathara, who put \$32,450 of his own money into the campaign, was ultimately outspent by both his opponents, incumbent Helen Sears and eventual winner Daniel Dromm, and finished a distant third with just over 10 percent of the vote. Even without bonus funds, both Sears and Dromm would have had sufficient funds available to outspend Kalathara.

Figure 10.3 — Current and Proposed Tier 1 Bonus Threshold

Office	Current† 50 % Threshold	Proposed 75 % Threshold
Mayor	\$ 3,213,000	\$ 4,819,500
Public Advocate & Comptroller	\$2,009,000	\$ 3,013,500
Borough President	\$ 723,000	\$1,084,500
City Council	\$ 84,000	\$ 126,000

† The spending limits were adjusted based on changes in the consumer price index, effective March 1, 2010.

Evidence from the past several elections suggests that the 50 percent bonus threshold may be too low. Since 1997, there have been 30 City Council races where a bonus determination has been made. Nine have featured non-participants designated as “high-spending” who were, in fact, significantly outspent by their participating opponents with the help of additional bonus matching funds.†

A higher standard for declaring the Tier 1 bonus — 75 percent of the spending limit — would help ensure that extra public funds will be paid only when they are truly needed. With the 75 percent threshold, no bonus would have been declared in seven of the nine races where participants outspent “high-spending” non-participants — including the District 25 primary in 2009.

The Board recommends increasing the Tier 1 bonus threshold to 75 percent of the spending limit.

* Non-participating candidates (Kevin Kim, CD #19; Yen Chou, CD #20) won two of those three races. The other (Heidi Chain, CD #29) finished third in a six-candidate field.

† The two-tier bonus system was created in 2004 by Local Law No. 58 of 2004. In previous elections, there was a single bonus tier, whereby additional funds were released when an opponent spent more than 50 percent of the spending limit.

7. PROHIBIT CANDIDATES FROM ACCEPTING ORGANIZATIONAL CONTRIBUTIONS

Accountability	Competition	Education	Engagement	Integrity	Participation
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A ban on all organizational contributions has been a long-standing recommendation of the Board.¹² A central goal of the Program is to enhance the role of individual contributors in the political process; a ban on organizational contributions would make individuals the only source of private contributions in New York City elections. On average, organizations are able to make substantially larger contributions than individuals, which may represent attempts to gain influence. [See *Chapter 7—Meeting the Goals*, p. 136.]

Over time, New York City has taken several steps toward a complete ban on organizational contributions, both to affirm the role of individual contributors and to address concerns about influence-seeking. In 1998, voters adopted a Charter amendment to prohibit city candidates from accepting corporate contributions. Local Law No. 34 of 2007 barred candidates from accepting contributions from LLCs and partnerships as of January 1, 2008.¹³ Currently, the Act permits employee organizations and political committees to make direct contributions to candidates.

Figure 10.4 — Contributions by Source to Participating Candidates, 2005–2009

Contributors	2005 Elections		2009 Elections	
Individuals	83.95%	\$33,251,135	87.25%	\$30,850,061
Political Committees	7.17%	\$ 2,839,175	7.70%	\$ 2,722,149
Employee Organizations	1.29%	\$ 510,469	1.16%	\$ 409,442
LLCs/Partnerships	6.23%	\$ 2,466,344	3.21%	\$ 1,134,845
Corporations	0.04%	\$ 17,409	0.02%	\$ 5,404
Other	1.32%	\$ 522,900	0.66%	\$ 234,327

Prohibitions on organizational contributions exist in other jurisdictions. Federal election law has long prohibited direct contributions to candidates from corporations *and* unions. The *Citizens United* decision, while striking down limits on independent spending, left these prohibitions on direct contributions undisturbed.

A ban on organizational contributions would also remove one of the more obvious advantages of incumbency. Institutional contributors overwhelmingly favor incumbents; on average, incumbents collect nearly seven times the amount of contributions from organizations as do their challengers. [See *Chapter 7—Meeting the Goals*, p. 124.]

The Board recommends banning all organizational contributions, to ensure that individuals are the only source of private funding available to candidates in New York City.

8. REDUCE THE AMOUNT OF PUBLIC FUNDS AVAILABLE FOR SPECIAL ELECTIONS

Accountability	Competition	Education	Engagement	Integrity	Participation
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Special elections are conducted on a compressed schedule, and candidates have a short time to spend large amounts of public funds.

For a special election held to fill a vacancy in an office covered by the Program, the limits on contributions are cut in half. Though the matchable amount is also halved (to \$87 from \$175), the public funds cap remains constant — both the spending limits and maximum public funds payments are equal to those for a regular election.¹⁴

There have been 24 special elections held under the Program since 1989.¹ Before 1999, \$403,498 in public funds was disbursed in seven special elections. After the public funds matching rate was raised to \$4-to-\$1 — and the maximum payments increased — the amount of public funds paid for special elections ballooned. The new rate was first applied to special elections held in February 1999 to fill three vacant City Council seats.¹⁵ From that election through early 2010, a total of \$3,332,417 has been disbursed in 17 special elections.

During regularly scheduled elections, there are, on average, 40 days between the first payment of public funds and the election date. During special elections, there are only 20 days between the first payment and the election — leaving candidates less than three weeks to spend as much as \$90,000 in public funds for a Council race.

The Board recommends reducing the spending limit and maximum public funds payment for special elections by half.

9. CLARIFY THE RESTRICTIONS ON “MASS MAILINGS” BY PUBLIC OFFICIALS CLOSE TO AN ELECTION

Accountability	Competition	Education	Engagement	Integrity	Participation
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Restrictions meant to limit the use of government resources by elected officials during election season are difficult to enforce.

Under the New York City Charter, public officials who are running for office are prohibited from using government resources to send mass mailings (defined as mailings of 100 or more identical or nearly identical items) less than 90 days before an election.¹⁶ The Board is charged with enforcement of this prohibition.

There are a number of exceptions to the ban. For instance, government resources may be used for communications that are required by law, are necessary to safeguard public health and safety, are standard responses to inquiries, or are “ordinary communications” to members of the public.

* All but one — for Bronx borough president in 2009 — were to fill a vacant Council seat. No public funds were paid in the 2009 special election for Bronx borough president.

While exceptions to the ban on mass mailings are necessary in order to enable public officials to carry out their duties during the period prior to an election, the Board believes these exceptions should be clarified.

During the 2009 elections, the CFB was called upon to determine whether specific proposed communications fell within the exceptions to the ban on mass mailings. [See *Chapter 5—Enforcement*, pp. 71–72.] Without more explicit guidance in the Charter, CFB staff considered each mailing on a case-by-case basis in light of the statutory language and factors such as content and subject matter, timing, intended recipients, and geographical distribution (e.g., inside or outside of a Council member’s district).

The Board recommends that the exceptions to the mass mailings prohibition of the use of government funds or resources close to an election be clarified.

10. PROVIDE EXPANDED INFORMATION THROUGH CITYWIDE VOTER GUIDE

Accountability	Competition	Education	Engagement	Integrity	Participation
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Available technology can provide a better, more useful Voter Guide, with a broader range of information in a wider variety of formats. However, the Charter mandate to produce the Guide lacks flexibility.

The CFB prepares Primary and General Election Voter Guides in citywide election years, when local referenda are on the ballot, and for “off-year” elections for one of the covered offices. The Voter Guide covers the same offices covered by the Program: mayor, public advocate, comptroller, borough president, and City Council member. During citywide elections, other offices appear on the ballot. A broader mandate would make it easier for the CFB to include candidates for District Attorney and judgeships in the Voter Guide, for example, giving voters more complete information about the full range of choices on the ballot.

The Charter requires that a printed copy of the Guide be mailed to each household with a registered voter. The CFB also publishes an electronic, interactive version of the nonpartisan Voter Guide on its website. New Yorkers with reliable access to the Internet could opt out of receiving a printed guide in the mail, and receive a notification to view the Guide online when it is available. A more flexible mandate would allow the CFB to communicate with voters in the media they prefer, and reduce expenditures for printing and postage.

The Board recommends that the Voter Guide provisions in the Charter be expanded to provide explicit flexibility for the CFB to produce the nonpartisan, impartial citywide Voter Guide in multiple media formats and for a broader range of elected offices as feasible.*

* The 2010 Charter Revision Commission’s preliminary staff report, released in July 2010, included these recommendations. The Commission’s final report and recommendations were not available by the time this report went to print.

11. REQUIRE PARTICIPATING CANDIDATES FOR BOROUGH PRESIDENT TO DEBATE

Accountability	Competition	Education	Engagement	Integrity	Participation
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Participating candidates for citywide office are required to debate,¹⁷ but participating candidates at the borough and Council level who accept public funds may still avoid debating their opponents.

Currently, the Debate Program comprises two scheduled debates for mayor, public advocate, and comptroller before the primary and general elections. Participating candidates who meet certain criteria are required to attend. [See *Chapter 2 — The Debate Program.*]

Civic groups often sponsor debates for other offices. Occasionally, however, candidates receiving public funds will refuse to debate their opponents. In the 2009 elections, incumbent Staten Island Borough President James Molinaro declined to debate his opponent, John Luisi, in the general election. Both were participants; Molinaro received more than \$600,000 in public funds, while Luisi received less than \$240,000. [See *Chapter 1 — The Program at Work.*]

Adding borough president elections to the CFB Debate Program would provide New Yorkers with an important opportunity to learn about the candidates. Requiring a single debate for borough president in each of the five boroughs before the primary and general elections would add up to ten additional debates to the Debate Program. With reasonable eligibility criteria, experience suggests the actual number of added debates would be somewhat lower.*

While the Board is concerned about candidates who receive the benefits of public funds and deny their opponents a platform to debate, adding a debate requirement for elections in 51 City Council districts could present a more difficult set of administrative challenges. Requiring debates could also burden candidates who already participate in local forums provided by community organizations. CFB staff will research the feasibility of administering debates for City Council.

In the meantime, the Board recommends adding a requirement that participating candidates for borough president attend one debate before the primary and general elections.

* If only one candidate meets the eligibility criteria for a debate, the Act requires the debate be canceled. In the 2009 elections, for instance, there was only a single contested primary for borough president (in Queens) and two general elections with active challengers (Queens and Staten Island).

12. REMOVE REQUIREMENT THAT CANDIDATES OBTAIN RECEIPTS FROM COIB

Accountability	Competition	Education	Engagement	Integrity	Participation
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Some compliance requirements in the Act represent an unnecessary burden on candidates.

All candidates for public office in New York City are required to file personal financial disclosure statements with the Conflicts of Interest Board (COIB). Before they are eligible to receive public funds, participating candidates must deliver a receipt from the COIB to the CFB to indicate the disclosure has been filed.¹⁸

Candidates' disclosure of their personal finances to the COIB serves an important purpose, and the requirement to complete their disclosures in a timely fashion should remain. However, CFB staff can easily communicate with COIB staff to determine if candidates are in compliance. Eliminating the requirement that candidates deliver the receipt to the CFB would reduce paperwork for campaigns without reducing candidates' accountability to the public.

The Board recommends that the requirement that candidates provide receipts from their Conflicts of Interest Board (COIB) filing to the CFB be removed.

13. INCREASE CANDIDATES' ACCOUNTABILITY FOR COMPLIANCE

Accountability	Competition	Education	Engagement	Integrity	Participation
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While candidates and treasurers are both personally liable for penalties and most repayments of public funds, there is no requirement that they attend CFB trainings.

The CFB's Candidate Services Unit (CSU) offers regular trainings in compliance with the Act. CSU trainings also include a tutorial in the Candidate Software for Managing and Reporting Transactions (C-SMART) that campaigns use to disclose financial activity throughout the election cycle.

For all participating campaigns, the candidate, the treasurer, *or* a person with "significant managerial control" is required to attend trainings.¹⁹ To complete the requirement, only one of the listed personnel need attend. Both candidates and treasurers, however, are liable for all penalties and most repayments of public funds. They should both be trained and be aware of the law and their responsibilities.

Many candidates and treasurers already attend trainings. Before the 2009 elections, candidates representing 62 percent of all participating campaigns attended trainings; treasurers representing 76 percent of participating campaigns attended. Only 10 percent of participating campaigns sent neither the candidate nor the treasurer to training.

A mandate requiring that both candidates and treasurers attend CFB training would give each a better perspective on the Program and its requirements, and make compliance a shared responsibility among candidates and key staffers, even if they are not involved in the day-to-day work of the campaign.

The Board recommends that the law be amended to require both participating candidates and treasurers to attend compliance trainings.

OTHER ISSUES OF CONCERN

The Board does not have specific recommendations for issues that lie outside the scope of the Campaign Finance Act. There are several issues identified here that are outside the explicit jurisdiction of the Board, but are critical to the Program's continued success. Others are issues that require further deliberation. The Board wishes to encourage consideration and discussion of these important issues.

Ensuring Continued Participation in the Program

Several recent court cases have called into question an important feature of many public campaign financing systems that has been critical to ensuring broad participation and competitive races.

Specifically, there have been conflicting opinions on the issue of whether public financing regimes may award additional public funds to participants who face high-spending non-participants. The United States Court of Appeals for the Ninth Circuit upheld such a provision in Arizona²⁰; the United States Courts of Appeals for the Second and Eleventh Circuits reached the opposite conclusion with respect to laws in Connecticut and Florida, respectively.²¹ The United States Supreme Court appears likely to resolve this dispute in its next term.²²

There are fundamental differences between New York City's matching funds program and the "Clean Money" programs at issue in Connecticut and Arizona. In those states, participating candidates — including those facing high-spending opposition — receive all of their campaign funds from the public financing system. In New York City's system, participating candidates must gather private support from New Yorkers to maximize their access to additional public funds.

All of the programs, however, share the common goal of preventing corruption and the appearance of corruption. To this end, the Board strongly supports the reasoning employed by the Ninth Circuit in upholding Arizona's law. As the court recognized in its decision, these interests are best promoted when more candidates participate. If public financing programs are not able to offer an adequate level of public funds to candidates facing high-spending non-participants, these programs will be unable to attract participants. As the Ninth Circuit decision noted, "A public financing system with no participants does nothing to reduce the existence or appearance of *quid pro quo* corruption."²³

The Ninth Circuit's common-sense observation is confirmed by New York City's long experience with elections involving high-spending non-participants — including the 2009 elections. As the Board observed in its 2006 report, "The Impact of High-Spending Non-Participants on the Campaign Finance Program," the disincentive to participation created by the presence of high-spending non-participants is "perhaps the greatest challenge [to] the program."²⁴

This challenge was a factor in the 2009 elections. In the mayoral race, Michael Bloomberg (a non-participant) outspent William Thompson (a participant) by nearly \$100 million.²⁵ At least one major opponent dropped out of the race early on because of his perceived inability to compete against Bloomberg within the confines of the Program.²⁶ Yet, in the end, public funds helped Thompson mount a competitive campaign, and there is nothing

to suggest that Bloomberg felt “compelled” to curtail his spending in order to limit the amount of public funds available to his opponents. Quite the contrary — when asked by reporters during a press conference before the election about the possibility of additional public funds being paid to his prospective opponents, Bloomberg responded, “They don’t have to take the money.”²⁷ By providing Thompson with a greater ability to communicate with voters, the additional public funds *increased* — rather than restricted — the volume of political speech during the mayoral election.

As the 2009 mayoral election and others illustrate, the Program’s ability to provide an appropriate level of funding to participants competing against high-spending non-participants has been absolutely critical to maintaining high levels of participation in the Program by ensuring more candidates will have the chance to be heard. Public matching funds provide a critical pathway to public service for average New Yorkers of all backgrounds who wish to serve their communities. By helping participants compete, the Program helps ensure that lack of personal wealth is not a barrier to elected office.

“Legal Defense Funds”

Candidates who owe penalties and/or repayments of public funds to the Board may fundraise to pay off their debt, or may simply use their personal funds.

When soliciting contributions to pay off debts to the CFB (or to vendors), candidates may use a committee from a previous campaign, or a new committee for a future campaign, subject to certain regulations. In either case, the contributions to those committees are subject to the Act’s contribution limits and source restrictions, including the ban on corporate contributions. The contributions are reported in disclosure statements filed with the New York State Board of Elections (BOE) and/or the CFB. When paying with personal funds, however, candidates are not subject to the contribution limits, because the debt is considered a personal liability of the candidate as well as a debt owed by the candidate’s campaign committee.

In a very few cases, candidates have used trust accounts or separate political committees for the purpose of paying off debts to the CFB. The contributions raised by these entities are not fully disclosed to the public, and are not subject to the Act’s contribution limits and source restrictions.

These contributions are yet another way for contributors to seek influence with a candidate. The Board believes that all fundraising for the purpose of paying off debt arising from a political campaign should be fully disclosed, and should be subject to the same contribution limits and restrictions that apply during the election. Among other possible changes to the Act and Rules, the Board is considering whether candidates should be allowed to open separate “legal defense funds” to raise contributions to repay campaign debt resulting from certain legal fees, civil fines and penalties, and public funds owed to the Board. Legal defense funds would disclose all financial activity to the CFB.

Registering and Filing with the New York State Board of Elections (BOE)

All candidates running for a covered office — whether or not they participate in the Program — are required to disclose their campaigns’ financial information to the CFB on a regular schedule. The CFB’s Searchable Database permits the public to easily search campaigns’ contributions and expenditures. Users can search, sort, and download data for candidates across all election cycles conducted under the Program, dating back to 1989.

State election law requires candidates to register and disclose their finances with the New York State BOE as well. This duplication of tasks is time-consuming and wasteful. Though the CFB's C-SMART software can prepare campaigns' BOE filings, differences in the way information is collected can be confusing to candidates. Though both are disclosed on the Internet, differences in the way information is presented can be misleading to the public.

The requirement that candidates disclose their campaign finances to the CFB ends the January after the election. Campaigns must continue to file with the State BOE, however, until their campaign account is closed, with a \$0 balance. Candidates running in the Program often leave funds in a committee used for the last campaign until the conclusion of their post-election audit, so penalties or obligations to repay public funds can be satisfied before the account is closed. After January, candidates must continue corresponding with the CFB as the post-election audit is conducted, but the requirement for continuing disclosure is only with the BOE.

The Board recommends ending the requirement that candidates for offices covered by the Campaign Finance Program register and file disclosure statements with the State BOE. Concurrently, the requirement for candidates to file with the CFB should be extended until the campaign's account is closed.

Ballot Access

New York State's ballot access rules are notoriously burdensome. Unreasonably strict enforcement of the requirements can impose great costs on campaigns. For instance, in 2009, Bill de Blasio, a candidate for public advocate, was briefly removed from the Democratic primary ballot due to a typo on his cover sheet — despite gathering more than 15 times the number of signatures required by law.²⁸

The expense to candidates, both in time and money, to defend the validity of their petitions can be unnecessarily onerous. The Board strongly supports the adoption of simpler and fairer ballot access rules, including the creation of alternate methods for candidates to gain access to the ballot.*

Runoff Elections

The Board supports the adoption of instant runoff voting (IRV) for primary elections.† If no candidate for city-wide office receives 40 percent of the vote in a primary, the city is required to hold an additional day of voting. In addition to the significant costs of administering the election, public funds are granted to each participant

* The New York City Bar Association proposed that the Charter Revision Commission consider a change that would allow participants in the Campaign Finance Program a place on the ballot if they met the threshold to receive public funds. See New York City Bar Association, "Issues for Consideration by the Charter Revision Commission," April 2010.

† The 2010 Charter Revision Commission's preliminary staff report included IRV among its recommendations to the Commission in July 2010. The report notes: "In the form of IRV described here, the voters could rank up to three candidates in order of preference. If no candidates received at least 40% of the vote, there would be a runoff count between the two candidates with the greatest number of first-choice votes in the initial count. The runoff count would canvass the votes of those who did not select either of the top two as their first choice. The winning candidate would be the one preferred over the other by the majority of all the voters who expressed a preference. This IRV system simulates, in one election, the two-stage runoff that now exists for citywide officials." (*Preliminary Staff Report*, p. 29.)

in the runoff.* Further, the two weeks between the primary and the runoff can place added stress on candidates to fundraise. The Act allows candidates to raise funds for a separate account in the case of a runoff, allowing contributors to give an extra \$2,475 above the spending limit — for a total of \$7,425 — providing a potential avenue for influence-seeking behavior.

IRV can provide more voters with more choices. Instead of selecting the nominee and often presumptive city-wide officeholder in a low-turnout runoff election, the winner in an instant-runoff scenario will be the candidate with the most overall support among the largest possible pool of voters. Voters could support a minor candidate without fearing their vote has been “thrown away” or caused a like-minded candidate to lose. Additionally, compliance with the law governing fundraising and spending for runoff elections can be complicated for candidates; a change to IRV could make compliance with the Program easier.

The Board believes IRV should apply to elections for borough president and City Council as well. If democratic values require that a candidate for citywide office receive support of more than two-fifths of the primary electorate to appear on the ballot for the general election, the same should hold true for other offices as well. In 2009, ten City Council candidates won primaries with less than 40 percent of the vote; three advanced to the general election with less than 30 percent of the vote. A change in State law allowing for runoff elections for all offices is necessary.

Broadband Access

Limited access to high-speed Internet in New York City provides a significant challenge for candidates, the CFB, and the public. While new media can enable more candidates and voters to play an active role in the political process, many New Yorkers do not have access to high-speed Internet at home. A report by the New York State Office for Technology found that two-thirds of New York City residents lack affordable high-speed access to the Internet.²⁹ Nationwide statistics show that lower-income communities do not have the same access to broadband Internet as their better-off neighbors. A report published by the Federal Communications Commission in February 2010 showed that Americans with lower income and levels of education are more likely to lack affordable access to the Internet.³⁰ With library hours decreasing as city budgets grow tight, access points to the Internet are increasingly unavailable to many New Yorkers.

Since the last citywide election cycle, the volume of information available online about candidates and the political process has grown exponentially. News blogs — both professional and amateur — track campaigns’ every movement. Social media allow networks of friends and neighbors to exchange information about candidates and issues; candidates themselves have increasingly started to use platforms like Facebook and Twitter to engage their networks of supporters. Campaigns are making better use of their websites as an avenue to collect small contributions. The CFB has also added to the availability of political information on the Internet, with disclosure of campaign finances and the Voter Guide. New Yorkers stuck on the wrong side of the digital divide are simply unable to join the conversation.

* Runoff candidates receive 25 percent of the funds they received in the primary. A total of \$1.4 million was paid to the four candidates in runoff elections in 2009.

The Board recommends that the city pursue policies to increase affordable access to broadband Internet across the five boroughs.

Earlier Primary Election Date

Shifting the primary election date from September to June is a continued recommendation of the Board. An earlier primary date would provide several benefits: engaging the electorate earlier in the political process; giving voters more time between the primary and general elections to learn about the candidates and issues; allowing more time for a runoff election, if necessary; and giving the Board of Elections more time to plan successive elections within a particular election year. With a June primary, candidates who participate in the Program would be able to receive public funds earlier in the year, and engage New Yorkers in an extended conversation about issues.

Free Postage for Voter Guides

The Board continues to recommend that New York City band together with other localities that publish non-partisan voter guides to request that the United States Postal Service deliver these informative resources to voters free of cost, or at least at the significantly less expensive non-profit rates. In the 2009 elections, the CFB mailed nearly three million Primary Election Voter Guides, and almost 4.3 million General Election Voter Guides. The city would realize considerable savings if the CFB was permitted to mail the Guides without cost, or at non-profit postage rates. Reduced rates would allow other localities to provide voters with valuable information about elections and, in turn, increase participation in the political process.

CONCLUSION

Every new election cycle brings new challenges to the Program. Still, entering its third decade, New York City's Campaign Finance Program has endured as a national model of reform. The Board's mandate to recommend improvements to the Program has time and again brought reformers, administrators, and lawmakers together to address those challenges and ensure that New York City remains at the forefront of good government.

Courts have sought to tie the hands of campaign finance reformers across the nation; high-spending candidates have sown doubt about the Program's efficacy. A shrinking economy demands that the CFB find ways to administer the Program more efficiently without compromising its ability to serve the public interest.

At the same time, there is much to celebrate. The 2009 elections highlighted several strengths of the Program. More candidates were empowered to run for office. More New Yorkers played a vital role in the political process, and made their voices heard through small contributions to candidates. Those small contributions had a meaningful impact on campaigns at every level. As a result, more new faces from more communities are participating in shaping the city's future.

ENDNOTES

- 1 Fredreka Schouten, “10 States Add Campaign Finance Laws,” *USA Today*, July 24, 2010.
- 2 Danny Hakim, “Hevesi Aides Indicted in Kickback Scheme,” *The New York Times*, March 20, 2009.
- 3 N.Y.C. Administrative Code § 3-703 (1-a).
- 4 “Mike’s Half-‘Reform,’” editorial, *New York Post*, June 17, 2007.
- 5 New York, N.Y. Local Law No. 34 § 40 (July 3, 2007).
- 6 Admin. Code § 3-702(18)(a).
- 7 Admin. Code § 3-212(e).
- 8 Local Law No. 12 of 2003 (February 18, 2003) (codified at Admin. Code § 3-705(7)(new)).
- 9 Local Law No. 34 § 22 (codified at Admin. Code § 3-705 (7)(b) (amended)).
- 10 Admin. Code § 3-703 (2).
- 11 Admin. Code § 3-706 (3).
- 12 See e.g., New York City Campaign Finance Board, 2005 Post-Election Report, *Public Dollars for the Public Good*, p. 120; New York City Campaign Finance Board, 2001 Post-Election Report, *An Election Interrupted....An Election Transformed*, p. 144.
- 13 Admin. Code § 3-703 (1)(l).
- 14 Admin. Code § 3-705 (2).
- 15 CFB press release, January 22, 1999, “First Ever Public Funds Distribution Using 4-for-1 Matching Formula Today for Special Elections.”
- 16 N.Y. City Charter § 1136.1.
- 17 Admin. Code. § 3-709.5(1).
- 18 Admin. Code § 3-703(1)(m)(ii).
- 19 Admin. Code § 3-703(15).
- 20 *McComish v. Bennett*, Nos. 10-15165, 10-15166, 2010 WL 2595288 (9th Cir. June 23, 2010).
- 21 *Green Party of Conn. v. Garfield*, Nos. 09-0599-cv, 09-0609-cv, 2010 WL 2737134 (2d Cir. July 13, 2010); *Scott v. Roberts*, No.10-13211, 2010 WL 2977614 (11th Cir. July 30, 2010).
- 22 See *McComish v. Bennett*, No. 09A1163, 2010 WL 2265319 (U.S. June 8, 2010) (issuing a stay of the Ninth Circuit’s decision pending a petition for a writ of certiorari); see also editorial, “More judicial activism on campaign finance rules,” *The Washington Post*, June 11, 2010 (noting that “it is likely the justices will agree to review the law”).
- 23 *McComish*, 2010 WL 2595288, at *13.
- 24 CFB report, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, p. 4 (quoting written testimony submitted by Rachael Leon and Megan Quattlebaum at the New York City Campaign Finance Board’s post-election hearings, December 13, 2005).
- 25 See Chapter 1, *supra*, at 7.
- 26 See Anthony Weiner, “Why I’m Not Running for Mayor,” *The New York Times*, May 27, 2009. In explaining his decision to end his campaign, Congressman Weiner questioned the Program’s ability to help participants compete against high-spending non-participants:

The mayor is expected to spend \$80 million of his own money in the race, more than 10 times what candidates who have not opted out of the city’s public campaign finance program, as Mr. Bloomberg has, can spend in a primary. With spending like that, regular debates about real issues will probably take a back seat to advertising. . .The sad truth for a political candidate without deep pockets is that while money isn’t the only thing, it does matter.

- 27 Adam Lisberg, “Mike Won’t Rein In Campaign Spending,” *Daily News*, February 6, 2009.
- 28 Editorial, “For a Typo,” *The New York Times*, July 25, 2009.
- 29 New York State Chief Information Officer, New York State Office for Technology, “Universal Broadband Strategy for the State of New York, ‘Connecting New York to the World,’” as updated March 2009, p. 8.
- 30 John B. Horrigan, Ph.D. “Broadband Adoption and Use in America,” *OBI Working Paper — Federal Communications Commission*, February 2010, p. 3.



NOTES ON DATA

The data used as the basis for the analyses in this report are gathered from campaign finance disclosures filed with the CFB by candidates for the five city offices covered by the Campaign Finance Program: mayor, public advocate, comptroller, borough president and City Council. Both participating and non-participating candidates disclose their financial information to the CFB.

Unless explicitly noted, all CFB data presented in this report is as of February 22, 2010. Candidates may file amendments to their disclosures for the 2009 election; as a result, some numbers in this report may differ from the numbers available on the CFB website, which are updated regularly. Unless otherwise noted, all analyses apply only to candidates who appeared on either a primary or general election ballot (or both) in 2009 (i.e., non-terminated candidates).

The raw data used for most analyses in this report are available on the accompanying CD. Along with several appendices providing summary information about the 2009 elections, the CD contains files in comma-separated values (.csv) format that include the complete set of financial transactions for every campaign that made disclosures to the CFB during the 2009 election cycle—including those which terminated their campaigns before the election.

Some analyses of contributions and contributors presented in the body of the report were performed on the basis of a contributor key, which helps to aggregate contributions from distinct contributors by encoding certain essential parts of information derived from the name and address of contributors as reported to the CFB.

In Chapter 1 (The Program at Work) and elsewhere, measurements of fundraising or spending through the primary election cover transactions made through the date of the primary election, September 15, 2009. Unless specifically noted, all other analyses are of all transactions through the end of the 2009 election cycle, January 11, 2010. Throughout the report the following key is used:

Several analyses, especially in Chapter 7 (Meeting the Goals), refer to contributions from individuals. In this context, *individual contributions* encompass four distinct categories of contributors in the CFB database: individuals, candidates, spouses, and family members. For candidates who participate in the Campaign Finance Program, contributions from these sources may be eligible to be matched with public funds.* *Organizational contributions* include contributions from all other sources: political committees, employee organizations, limited liability companies, partnerships, and others.†

Much of the data in Chapter 8 (In Depth: “Doing Business”) was compiled through manual staff review of transactions against the doing business database (DBDB), during enforcement of the doing business limits. The DBDB is available for viewing online at www.nyc.gov/html/doingbiz/home.html. A full list of contributions from people identified as doing business with the city during the 2009 elections is available for download on the CFB’s website, www.nyccfb.info.

All CFB post-election reports, press releases, final audit reports, final determinations, and advisory opinions cited in this report are available on the CFB’s website as well. All news items cited in this report were available online as of July 30, 2010.

All vote totals presented in this report were obtained from the *Summary of Election Results* prepared by the New York City Board of Elections, available at vote.nyc.ny.us/results.html.

Any further questions about the data contained in this report should be directed to the CFB Press Unit, at (212) 306-7100 or press@nyccfb.info.

* If they are New York City residents.

† Candidates were prohibited from accepting contributions from LLCs and partnerships as of January 1, 2008.

GLOSSARY OF FREQUENTLY USED TERMS

Throughout the report there are many terms used frequently that are specific to the language of elections, campaign finance, and the CFB. For ease of reading, some of these are defined below:

Act: Short for Campaign Finance Act, which are the provisions of the NYC Administrative Code that regulate how the Campaign Finance Board operates and how the Campaign Finance Program is run. The Act contains the limits and prohibitions that apply to all candidates for mayor, public advocate, comptroller, borough president, and City Council member, as well as the additional provisions governing candidates who join the matching funds program.

Citywide office: Refers to mayor, public advocate, and comptroller; the three elected offices that represent and are elected by the entire city.

Disclosure statement: The method by which detailed campaign financial information is provided by campaigns to the CFB on a specified schedule. A disclosure statement is organized by different types of transactions. If a candidate has not formed a committee and has no financial activity, disclosure statements are not required.

Election cycle: The four-year period during which candidates report their campaign finances to the CFB. The 2009 election cycle comprises the four-year period between January 12, 2006 and January 11, 2010.

Individual: An individual is a natural person, as distinct from an organization. Only contributions from individuals who are New York City residents may be matched with public funds.

Intermediary: A person or entity who solicits and/or delivers contributions from another person or entity to a campaign where such solicitation is known to the candidate or campaign. Candidates must disclose the names, addresses, occupations, and employers of their intermediaries, also known as “bundlers.”

Matchable amount: The portion of a contribution for which matching funds are being sought. The maximum matchable amount per contributor for the 2009 elections was \$175, which may be matched at a rate of \$6-to-\$1.

Matchable contribution: A contribution from an individual New York City resident reported fully and timely to the CFB by a campaign that could be matched with public funds. To be matchable, the contribution must be contributed by December 31, 2009. Certain contributions may never be matchable, including in-kind contributions, contributions from non-New York City residents, and contributions from those who do business with the city.

Matching claim: A request for public matching funds for a monetary contribution. These are submitted by a campaign as part of its disclosure statement.

Non-participant: A candidate who does not join the Campaign Finance Program. These candidates are still required to abide by the contribution limits, most contribution prohibitions, and disclosure requirements that apply to Program participants. However, they do not have a spending limit and they cannot receive any public funds.

Open seat: An election for an office for which no incumbent is seeking re-election.

Organization: An entity which is not a natural person. Includes political committees (such as candidate committees, party committees, or political action committees), employee organizations, and business entities (such as limited liability companies, partnerships, or corporations). Contributions from organizations (i.e., organizational contributions) may not be matched with public funds. Candidates are prohibited from accepting some organizational contributions.

Participant: A candidate who files a timely certification to voluntarily join the Campaign Finance Program. Participants agree to abide by the spending limit and can qualify to receive public funds.

Program: Short for Campaign Finance Program. A participant in the Program agrees to abide by spending limits, and can qualify to receive public funds.

Public matching funds: Candidates who participate in the Program may be eligible to have certain contributions matched by the CFB. The Program matches the first \$175 of contributions by individual New York City at a rate of \$6-to-\$1.

“Sure winners”: Candidates who face only nominal opposition. Within this report, the term refers to candidates who win election with 60 percent of the vote or more.

Threshold (or public funds threshold): In most cases, *threshold* refers to the two-part criteria demonstrating a minimal level of support that a participant must meet to be eligible to receive public funds. The requirements vary by office. The first part requires that a campaign raise a certain amount in matchable contributions. The second part requires that a campaign raise a minimum number of contributions of \$10 or more from people who reside in the area from which they seek election. For contributions to count for the threshold requirement, they must be valid matchable contributions.



FACTS & FIGURES

FACT SHEETS

- 1 Program Participants on the Ballot and Elected to Office, 1989 – 2009
- 2 Contribution Limits by Office (Citywide Elections), 1989 – 2009
- 3 Expenditure Limits (Citywide Elections), 1989 – 2009
- 4 Maximum Public Funds (Citywide Elections), 1989 – 2009
- 5 Public Funds Disbursed by Election, 1989 – 2009
- 6 Total Contributions to Participants by Office (Citywide Elections), 1989 – 2009

FACT SHEET 1

PROGRAM PARTICIPANTS ON BALLOT AND ELECTED TO OFFICE, 1989 – 2009

Office	Participants on Ballot	Total Number of Candidates on Ballot	Participants as a % of All Candidates on Ballot	Number of Participants Elected to Office
2009				
Mayor	4	10	40%	0
Public Advocate	6	9	66%	1
Comptroller	6	8	75%	1
Borough President	11	14	71%	5
City Council	166	212	78%	49
Total	193	253	76%	56
2005				
Mayor	5	13	38%	0
Public Advocate	5	8	63%	1
Comptroller	1	4	25%	1
Borough President	18	23	78%	5
City Council	126	163	77%	46
Total	155	211	73%	53
2001				
Mayor	10	14	71%	0
Public Advocate	7	10	70%	1
Comptroller	2	6	33%	1
Borough President	20	27	74%	5
City Council	241	298	81%	47
Total	280	355	79%	54
1997				
Mayor	6	9	67%	1
Public Advocate	3	6	50%	1
Comptroller	3	6	50%	1
Borough President	15	27	56%	4
City Council	114	181	63%	36
Total	141	229	62%	43

FACT SHEET 1 (continued)

PROGRAM PARTICIPANTS ON BALLOT AND ELECTED TO OFFICE, 1989 – 2009

Office	Participants on Ballot	Total Number of Candidates on Ballot	Participants as a % of All Candidates on Ballot	Number of Participants Elected to Office
1993				
Mayor	4	7	57%	1
Public Advocate	6	9	67%	1
Comptroller	3	7	43%	1
Borough President	7	15	47%	4
City Council	87	132	66%	38
Total	107	170	63%	45
1989				
Mayor	5	11	45%	1
City Council President	0	6	0%	0
Comptroller	4	10	40%	1
Borough President	6	15	40%	5
City Council	33	97	34%	19
Total	48	139	35%	26

FACT SHEET 2

CONTRIBUTION LIMITS BY OFFICE (CITYWIDE ELECTIONS), 1989 – 2009

Office	1989*	1993	1997	2001	2005	2009
Mayor	\$3,000	\$6,500	\$7,700	\$4,500	\$4,950	\$4,950
Public Advocate†	\$3,000	\$6,500	\$7,700	\$4,500	\$4,950	\$4,950
Comptroller	\$3,000	\$6,500	\$7,700	\$4,500	\$4,950	\$4,950
Borough President	\$2,500	\$5,000	\$5,900	\$3,500	\$3,850	\$3,850
City Council	\$2,000	\$3,000	\$3,550	\$2,500	\$2,750	\$2,750

* Limit applied separately to the primary and general elections.

† Replaced the office of City Council President after the 1989 elections.

FACT SHEET 3

EXPENDITURE LIMITS (CITYWIDE ELECTIONS), 1989 – 2009*

Office	1989‡	1993	1997	2001	2005	2009
Mayor	\$3,000,000	\$4,000,000	\$4,732,000	\$5,231,000	\$5,728,000	\$6,158,000
Public Advocate†	\$1,750,000	\$2,500,000	\$2,958,000	\$3,270,000	\$3,581,000	\$3,850,000
Comptroller	\$1,750,000	\$2,500,000	\$2,958,000	\$3,270,000	\$3,581,000	\$3,850,000
Borough President	\$625,000	\$900,000	\$1,065,000	\$1,177,000	\$1,289,000	\$1,386,000
City Council	\$60,000	\$105,000	\$124,000	\$137,000	\$150,000	\$61,000

* Limits are per office and apply separately to the primary and general elections in the election year. Separate "out-year" limits also apply to the first three years of the election cycle.

† Replaced the office of City Council President after the 1989 elections.

‡ In addition to the expenditure limit, participants were also permitted a fundraising allowance. For mayor, the allowance was \$600,000; for City Council president and comptroller, \$350,000; for borough president, \$125,000; and for City Council member, \$20,000.

FACT SHEET 4

MAXIMUM PUBLIC FUNDS (CITYWIDE ELECTIONS), 1989 – 2009

Office	1989	1993	1997	2001	2005	2009
Mayor	\$ 1,500,000	\$ 2,000,000	\$ 2,366,000	\$ 2,877,050	\$ 3,150,400	\$ 3,386,900
Public Advocate [†]	\$ 875,000	\$ 1,250,000	\$ 1,479,000	\$ 1,798,500	\$ 1,969,550	\$ 2,117,500
Comptroller	\$ 875,000	\$ 1,250,000	\$ 1,479,000	\$ 1,798,500	\$ 1,969,550	\$ 2,117,500
Borough President	\$ 312,000	\$ 450,000	\$ 532,500	\$ 647,350	\$ 708,950	\$ 762,300
City Council	\$ 30,000	\$ 40,000	\$ 40,000	\$ 75,350	\$ 82,500	\$ 88,500

[†] Replaced the office of City Council President after the 1989 elections.

FACT SHEET 5

PUBLIC FUNDS DISBURSED BY ELECTION, 1989 – 2009

Year	Office	Total Payment
1989	Mayor	\$ 2,779,508
	City Council President	\$ 0
	Comptroller	\$ 421,665
	Borough President	\$ 799,228
	City Council	\$ 507,764
	Total	\$4,508,155
1990	City Council (District #1) [‡]	\$ 10,155
1991	City Council [†]	\$ 2,660,514
	City Council (District #22) [‡]	\$ 0
	City Council (District #29) [‡]	\$ 137,650
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
	City Council (District #4) [‡]	\$ 132,146

FACT SHEET 5 (continued)

PUBLIC FUNDS DISBURSED BY ELECTION, 1989 – 2009

Year	Office	Total Payment
1994	City Council (District 51)*	\$ 30,677
	City Council (District 51)‡	\$ 60,339
1996	City Council (District #5)*	\$ 81,375
	City Council (District #5)‡	\$ 63,208
1997	Mayor	\$ 3,431,133
	Public Advocate	\$ 427,575
	Comptroller	\$ 247,054
	Borough President	\$ 968,208
	City Council	\$ 1,877,410
	Total	\$ 6,951,380
	City Council (District #17)‡	\$ 0
1999	City Council (Districts #3, 4, 48, 50)*	\$ 272,961
	City Council (Districts #3, 4, 48, 50)‡	\$ 788,554
2001	Mayor	\$ 12,862,667
	Public Advocate	\$ 5,435,250
	Comptroller	\$ 2,673,219
	Borough President	\$ 7,063,563
	City Council	\$ 14,217,206
	Total	\$ 42,251,905
	City Council (District #15)‡	\$ 91,388
2002	City Council (District #38)*	\$ 119,600
2003	City Council†	\$ 5,110,863
	City Council (District #18, 43)‡	\$ 475,948
2005	Mayor	\$ 10,017,875
	Public Advocate	\$ 2,685,001
	Comptroller	\$ 0
	Borough President	\$ 5,585,698
	City Council	\$ 6,581,160
	Total	\$ 24,869,734
	City Council (District #17)‡	\$ 68,947
2007	City Council*	\$ 0
	City Council (District #40)‡	\$ 37,688
	City Council (District #40, 51)‡	\$ 588,263

FACT SHEET 5 (continued)

PUBLIC FUNDS DISBURSED BY ELECTION, 1989 – 2009

Year	Office	Total Payment
2008	City Council (District #30)*	\$ 165,986
	City Council (District #30)‡	\$ 178,374
2009	Mayor	\$ 3,265,062
	Public Advocate	\$ 5,971,165
	Comptroller	\$ 5,284,761
	Borough President	\$ 1,520,032
	City Council	\$ 11,263,713
	Total	\$ 27,304,733
	Borough President (Bronx)‡	\$ 0
City Council (Districts #21, 32, 49)‡	\$ 826,615	
2010	City Council (District #44)‡	\$ 180,180
Sum of all Payments		\$124,451,094
<p>* Off-year election to fill a vacancy. † City Council redistricting election (in 1991, the City Council was expanded from 35 seats to 51 seats). ‡ Denotes special election.</p>		

FACT SHEET 6

TOTAL CONTRIBUTIONS TO PARTICIPANTS BY OFFICE (CITYWIDE ELECTIONS), 1989 – 2009

Office	1989	1993	1997	2001	2005	2009
Mayor	\$ 20,989,309	\$ 17,424,061	\$ 14,856,779	\$ 29,150,517	\$ 15,113,813	\$ 5,000,586
Public Advocate†	\$ 0	\$ 2,937,366	\$ 2,016,977	\$ 4,829,248	\$ 2,366,238	\$ 5,228,623
Comptroller	\$ 3,649,193	\$ 4,897,597	\$ 1,959,275	\$ 3,670,474	\$ 3,844,371	\$ 10,532,785
Borough President	\$ 2,952,893	\$ 1,945,595	\$ 5,135,627	\$ 5,668,251	\$ 8,447,551	\$ 3,778,536
City Council	\$ 2,518,765	\$ 3,515,846	\$ 5,378,986	\$ 11,546,648	\$ 9,850,053	\$ 10,815,936
Total	\$30,110,160	\$30,720,465	\$29,347,644	\$54,865,138	\$39,622,026	\$35,356,466
<p>† Replaced the office of City Council President after the 1989 elections.</p>						

