An Election Interrupted...

The Campaign Finance Program and the 2001 New York City Elections

Executive Summary
September 2002

New York City Campaign Finance Board

. . . An Election Transformed

Dan Luhmann

New York City Council 2002, on the steps of City Hall

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

A. Gifford Miller, Speaker, New York City Council

An Election Interrupted…
…An Election Transformed

Executive Summary

New York City Campaign Finance Board

Dedication

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

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

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

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

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

New York City Campaign Finance Board

Administrative Services

Leroy Basdeo
Elizabeth Bauer
James Graham
Lillie Holley
Tamara Holmes

Administrative Staff

Cathy Calandra
Susan Pedone
Mary Young

Auditing and Accounting

Stacey Boucher
Peri Horowitz
Melody Lee
Kenda Nuñez
Peter Patton
Steven Townsend
Georgia Tsampasis

Candidate Services

Christopher Giza
Thomas Richardson
Peter Russo
Patrick Wehle

Data Operations

Eric Armstead
Ashaki Gooden
Helen Kwong
Gail Pickett
Margie Tart
Linda Weinstein

Legal

Patricia Cadreau
Katharine Hartman
Christopher Oldenburg
Jordan Stern
Jonathan Wayne

Press and Public Information

Gregory Bensinger
George Murray

Publications

Winnie Ng
Kym Platt
Tara Smith

Systems Administration

Marina Bardash
Marc Bratman
Shawn Crawford
Ruslan Gendelman
Stephen Gonzalez
Edgar Gorodetsky
Anne Guo
Suzanne Kizis
Cheryl Laner
Viktoriya Lyubeznik
Andrew Mendelson
Jeffrey Pollack
Kleanthis Tsillas

Preface

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

Report Team

Editor

Molly Watkins

Production Manager

Elizabeth A. Upp

Art Director

Winnie Ng

Writers

Francis Barry
Peri Horowitz
Amy M. Loprest
George Murray
Molly Watkins

Data Coordinator

Shawn Crawford

Fact Checking/Copyediting

Gregory Bensinger
Katharine Hartman
Tara Smith

Production Assistant

Kym Platt

Consultant

Arthur Castle

Table of Contents

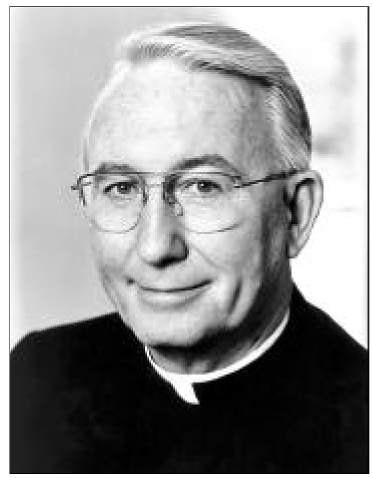
Executive Summary

Fact Sheets

Tables

Figures

Foreword



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

July 4, 2002

A Personal Acknowledgement

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

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

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

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

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

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

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

Nicole A. Gordon
Executive Director

Executive Summary

The 2001 elections in New York City were unique for a number of reasons. The full impact of a term limits law passed in 1993 was being felt for the first time with the mayor, public advocate, comptroller, four of five borough presidents, and 35 of the 51 members of the City Council ineligible to run for re-election in 2001. The New York City Campaign Finance Act's new generous rate for matching private contributions with public funds also encouraged hundreds of office seekers, many of them first-time candidates, to run. The realization that small contributions would be matched at the rate of $4-to-$1 had a dramatic impact on the electorate, as well. New York City residents generously contributed to candidates in greater numbers than at any other time in the history of the Campaign Finance Program. Public funds provided a very substantial supplement to private contributions, so that candidates could spend more time campaigning and less time fund-raising. The Campaign Finance Act's goal of a level playing field was realized in 2001 at every level of office and for virtually every race, beginning with a highly competitive primary election season. Then the terrorist attack of September 11th occurred — on Primary Day. The primary elections were postponed, and news coverage of the races virtually ceased until shortly before the general election. How the New York City Campaign Finance Program operated through the combination of these circumstances is the subject of this report.

THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM

The New York City Campaign Finance Board (CFB or Board), an independent, nonpartisan city agency, is charged with administering the city's Campaign Finance Program (Program). The Program, which is voluntary, was established by the pioneer New York City Campaign Finance Act (Act), adopted in 1988.[1] It is widely acknowledged as a model of campaign finance reform.[2] The Program provides public matching funds to qualifying candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member. Participants must abide by strict limits on contributions and spending, as well as other requirements, including full public disclosure of all financial transactions and rigorous audit by the Board.

The authors of the Act wisely recognized that, to be effective, the Program must continually evolve to keep pace with the changing environment in which it operates. Thus, the Act requires the CFB to review the performance of the Program following each election and to make recommendations to the mayor and the City Council for changes in the law. This report presents the results of the Board's study of how

Fact Sheet 1: 2001 Program Requirements

Contribution Limits*

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

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

Spending Limits

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

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

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

Threshold Requirements

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

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

Maximum Public Funds*

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

* Per election, in election year.

† Maximum public funds under bonus rate.

well the Program worked in the 2001 elections, in which a record sum of more than $41 million in public funds was distributed to 199 participating candidates. Of the 59 candidates who were elected, 54 were Program participants, an all-time high. This study relies upon statistical analysis of computerized data collected from the candidates' filings; information obtained through audit; and comments received at post-election public hearings, in surveys sent to candidates and treasurers, and in other public forums and informal communications received by the Board.

Two significant changes came into effect after the last set of citywide elections in 1997: term limits for city office and a change in the formula for receiving public matching funds for participants in the Program. Previously, contributions from New York City residents were matched at a rate of $1-to-$1 for contributions of up to $1,000. This formula favored larger contributions. The new formula, a rate of $4 in public funds for each dollar in private contributions of up to $250, was established to enhance the value of smaller contributions. The new matching rate was in effect for the first time citywide in the 2001 elections, notwithstanding the opposition of the Giuliani administration to the $4-to-$1 matching formula and the administration's efforts to block implementation of the new rate.[3] Other changes made in the law after the 1997 elections included a ban on corporate contributions and contributions from political committees (unless the political committees were registered with the Board) and lower contribution limits.[4]

PROGRAM PARTICIPATION

In 2001, the number of candidates who joined the Campaign Finance Program rose dramatically. The advent of term limits and the $4-to-$1 match in public funds encouraged many first-time candidates to run for office, especially for City Council. The 2001 elections were highly competitive in comparison to earlier years, when the presence of a large number of incumbents tended to discourage challengers. "Open seats" (seats for which no incumbent is running) always create an opportunity for more candidates to run. The added incentive of enhanced matching funds attracted the largest number of participants in the history of the Program. As a result, the electorate saw an even more diverse group of candidates in a city where diversity is well established. New immigrant voices emerged from the Asian-American and Russian-American communities, among others.

In all, three citywide offices (mayor, public advocate, and comptroller), four of five borough presidents, and 37 of 51 City Council seats were open seats. Of the 443 candidates who filed petitions for the offices covered by the Program, 355 (80%) were on the ballot in either the primary or the general election. There were 353 Program participants, 280 (79%) of whom were on the ballot. Nearly 90% of the competitive candidates[5] joined the Program. Of the 355 candidates on the ballot, 298 vied for the 44 open seats, an average of 6.8 per seat, more than at any other time. As described by *New York Times* Editorial Board Member Eleanor Randolph:

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

Fact Sheet 2: 2001 Election Statistics

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

> *This year is different. Democracy is having its day, courtesy of a term limits law that made available more than 40 elective offices at various levels of city government. On top of that is a campaign finance system that offers public money to match contributions for qualifying candidates.*
>
> *As a result, the city has been swarming with political hopefuls, reflections of the city itself with its many voices, colors, nationalities and political leanings. At one point, there were more than 400 people declaring themselves ready to run. About nine-tenths of them will wind up disappointed, but now that they have taken a dive into politics, the hope is that the contenders of '01 and their supports will stay engaged. The best part of this wild election year is the way it's broadening the city's base of politically active residents beyond the old tenured officeholders, their immediate families and their anointed successors.*[6]

Assuming the continued existence of term limits and generous public matching funds, it is likely that future elections will continue to see a large number of candidates, including first-time candidates, and a continuing high level of Program participation. In view of the participation of so many competitive candidates in 2001, the Campaign Finance Program appears to have an assured place in New York City's political landscape. The 2001 mayoral race, however, posed the question whether future candidates might avoid the Program for fear that a high-spending non-participant will succeed as Michael Bloomberg did in 2001. Bloomberg, who did not participate in the Program, and, thus, was not bound by expenditure limits, spent just over $73 million on his campaign, while Mark Green, the Democratic nominee and a Program participant, spent about $16 million. As a participant running against a high-spending non-participant, Green was entitled to a bonus $5-to-$1 public funds matching rate for the general election and had his expenditure limit removed. The additional match added $765,885 (for a total of $976,545 in general election funds) to the $2,846,148 Green had already received in public matching funds in the primary period.

THE MAYORAL ELECTION

Green's expenditure of more than $16 million was the second-largest amount of money ever spent on a mayoral race in New York City history (after Bloomberg). How much Bloomberg's spending was a factor in his win is difficult to assess, given the extraordinary confluence of events attending the 2001 elections. Green's campaign strategist, Richard Schraeder, denounced the spending as having been the deciding factor in the election, saying, "He [Bloomberg] bought it fair and square."[7] Green himself said, "I just couldn't compete with the money."[8] At the Board's post-election hearings, Green campaign chairman John Siegal urged the Board to recommend changes to the law. "What we saw this year is that the city Act, despite trying, fails completely to level the playing field when a major candidate opts out of the system and self-finances. This is a major flaw that needs to be amended before the next election," he said.[9]

But many factors contributed to Bloomberg's victory and Green's defeat in the general election. The attack on the World Trade Center caused the primary election to be postponed for two weeks, and diverted media coverage away from the elections almost entirely. Green had come in second to Fernando Ferrer in a Democratic primary that yielded no winner. Green then prevailed in a bruising run-off primary with a narrow margin of victory. During the run-off period, the Reverend Al Sharpton's endorsement of Ferrer had become a campaign issue. The *Daily News* reported that Green campaign aides were present at a meeting where strategies were developed to suggest that Sharpton would have disproportionate influence in a Ferrer administration.[10] Green denied that his campaign was engaged in these tactics, but the stories continued to loom large through the general election period. An advertisement quoting a *New York Times* characterization of Ferrer as "borderline irresponsible" and asking whether voters could "afford to take a chance" was also criticized by Ferrer supporters.[11]

From the day after the runoff, Green saw his sizable lead in the polls begin to ebb away. Two weeks before election day, a Quinnipiac University poll showed Green with a 16% lead over Bloomberg.[12] A Marist College poll published on November 2nd showed Green's lead had shrunk to four percentage points.[13] Some of Ferrer's core supporters who might otherwise have campaigned for the Democratic nominee after the runoff either did not work actively on Green's behalf or endorsed Bloomberg.[14] Some unions that had actively supported Ferrer during the runoff endorsed Green in the general election, but failed to mount the significant get-out-the-vote efforts that are their hallmark. Local 1199 reportedly had 8,000 volunteers out campaigning for Ferrer on October 11th, but only 300 for Green on Election Day.[15]

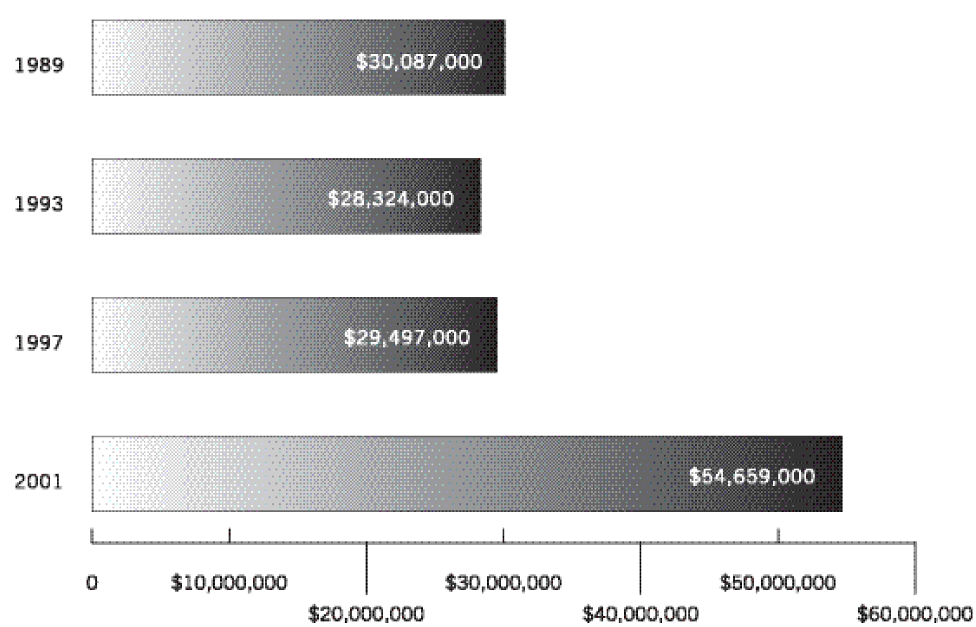
At the same time, the September 11th attack changed other dynamics of the election. Mayor Giuliani emerged as a national leader, and his endorsement, which went to Bloomberg, acquired unique value. Bloomberg's business success took on a new allure as rebuilding the city became a big campaign issue. But Bloomberg's high spending clearly had an impact. He ran 6,500 television commercials, compared to only 2,500 by Green. A campaign commercial featuring Mayor Giuliani aired repeatedly during the World Series between the New York Yankees and the Arizona Diamondbacks, when television rates are among the most costly.[16] The advertisement was ubiquitous: "you had to look over Giuliani's shoulder to see Derek Jeter," said pollster Mickey Carroll.[17] Bloomberg's campaign advisor David Garth told the *New York Post*, "I think we won because of Rudy Giuliani. If he was worth $5 before the World Trade Center, now he's worth $1,000."[18] Finally, negative advertisements aired by the Green campaign were widely considered to have backfired.[19] One of the sharpest criticisms of the Program arose from the fact that the total amount Green received in public matching funds for the general election — $976,545 — seemed dwarfed when measured against the tens of millions being spent by the Bloomberg campaign. But the Program is not intended to and cannot guarantee electoral success, nor, as a practical matter, can it ever guarantee parity in spending for a participant facing a non-participating candidate. Green's spending was itself a New York City record, even though he was outspent by a large margin. At a minimum, however, the Program should ensure that a serious candidate can get his or her message out. By that standard, the Program succeeded. As Evan Davis, former president of the Association of the Bar of the City of New York, wrote in a *Daily News* column after the election, "Did the campaign finance limits allow Green a sufficient opportunity to get his message out? The answer here is yes."[20]

CONTRIBUTIONS IN THE 2001 ELECTIONS

The national trend of wealthy individuals financing their own campaigns would suggest that spending massive sums of money outweighs the benefits of collecting contributions from a broad base of supporters. This supposition, however, received little support from analysis of the primary elections for City Council in 2001. These races show that the relationship between contributions and election outcome is stronger than the relationship between expenditures and election outcome. In races having two or more candidates who raised significant funds, the candidate with the largest dollar amount of contributions was successful three quarters of the time. The process of raising a large number of small contributions multiplies a candidate's contacts with potential supporters, who might not only vote for the candidate but who may also persuade others to vote. By enhancing the value of small contributions, the Program has provided a significant incentive for candidates to broaden and enlarge their contributor bases. This highlights the importance of the growth of the contributor base over the history of the Program.

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

Figure 1: Total Net Contributions to Program Participants — 1989, 1993, 1997, 2001



A number of changes in the Campaign Finance Act affected fund-raising and contributions during the 2001 election cycle. The contribution limits were lowered in 2001 to reduce further the influence that money can buy. Contributions from corporations, which had increased to 27% of all contributions by the 1997 election cycle, were banned after November 1998.[21] Contributions from political committees could only be accepted if the political committees registered with the CFB, so that CFB oversight could prevent funneling of corporate contributions through political committees.

Total contributions increased from about $29.5 million in 1997 to nearly $54.7 million in 2001, an increase of 85%. (The amount of total contributions in citywide election cycles through 1997 had been relatively stable.) Total contributions to mayoral candidates increased by nearly double from almost $14.9 million to about $29.1 million (96%); contributions to public advocate candidates increased from about $2 million to almost $4.8 million (135%); contributions to comptroller candidates increased from almost $2 million to nearly $3.7 million (87%); contributions to borough president candidates increased from $5.1 million to almost $5.7 million (10%); and contributions to Council candidates increased by more than double from almost $5.4 million to about $11.4 million (113%).

The number of contributions to all candidates almost doubled, from 71,600 in 1997 to 139,400 in 2001. The number of contributors, that is, unique individuals and organizations, rose to 102,000, an increase on the order of 40,000 since 1997. This total represents the largest number of contributors since and including 1989, when there were close to 80,000 unique entities that contributed to participating campaigns. In 2001, there was also a large increase in the number of contributors who donated to more than one candidate during the election cycle. In 1997, roughly 15,000 contributors donated to more than one participating candidate. In 2001, about 20,000 contributors gave to more than one candidate.

Growth in the number of contributors is one way to measure citizens' involvement in the political process and, by extension, the success of the Program. Donations to more than one candidate may represent greater interest and deeper commitment to the political process. In 1997, the percentage of contributors who were "multiple donors" was 14.5%; in 2001, 20% of all contributors were multiple donors.

The average contribution size across all offices was $388, a decrease of $24 from 1997. This relatively small decline reflects an increase in fund-raising at or below the $250 matching level that was significantly offset by a growth in larger contributions to citywide candidates. The average contribution size to mayoral candidates rose by $80 to $883 from 1997 to 2001, despite a reduction in the contribution limit of more than $3,000 and in the size of a matchable contribution by $750. Two likely reasons for this are the additional contributions for the anticipated run-off election that 2001 Democratic mayoral candidates were permitted to accept from contributors who had already given the regular $4,500 maximum, and the fact that there were four significant candidates who raised large sums of money, compared with only two candidates in 1997. Similarly, the average contribution to the public advocate candidates rose from more than $350 to over $430, reflecting the same two factors: a runoff that permitted fund-raising beyond the $4,500 limit, and a large field of well-known candidates who provided increased competition for the vacant office. The largest decrease in the average contribution size to any office was in the comptroller's race, where the average fell by $350, from $952 to $602. In 1997, the incumbent, Alan Hevesi, had little competition for the office and attracted numerous large donors but relatively few small contributors. The introduction in 2001 of a second strong candidate with the ability to raise significant funds in effect tripled the number of contributors to comptroller candidates. The average contribution size for City Council candidates was virtually identical in 1997 and 2001, at $166 and $167, respectively. At the City Council level, the average contribution size from individual New York City contributors was about $110, whereas from political committees it was $790, and approximately $625 from unions.

Intermediaries and Fund-raising Agents

Contributions delivered by intermediaries drew substantial press attention during the 2001 election cycle. Because of the Program's contribution limits and its ban on corporate contributions, there has been concern that intermediating contributions (delivering collected contributions to a campaign) is a new way to "buy influence" with a candidate. During the 2001 election cycle, 1,160 reported intermediaries delivered contributions to 78 campaigns. By comparison, 547 reported intermediaries delivered contributions to 36 campaigns during the 1997 election cycle. In 2001, about $9.4 million in contributions was intermediated, or 17% of the total contributions, compared to 1997, when $3.7 million was intermediated, or 13% of the total contributions. The real estate industry was prominently represented in this category. In a *New York Times* article on the real estate industry and its pledge to raise campaign contributions for the four major Democratic mayoral candidates, Joseph Strasburg, president of the Rent Stabilization Association, said of the organization's members, "They have to do business in New York regardless of who is mayor. If you give to all of them, then it's just the price of doing business."[22]

Contributions to Mayoral Candidates: An Untold Story

News reports on the disproportionate resources of Mark Green and Michael Bloomberg in the general election seemed to overshadow the fact that the four major Democratic primary candidates enjoyed reasonably comparable levels of contributions and spending. An untold story of the 2001 election is that of all the mayoral candidates, Fernando Ferrer arguably benefitted the most from the Campaign Finance Program. Of the four candidates, Ferrer raised the smallest total amount in contributions through the date of the primary, $4,570,976. His total was only 64% of what was raised by fourth-place finisher Alan Hevesi, whose fund-raising for the primary exceeded seven million dollars. Ferrer collected contributions from 6,571 contributors and raised 11% of his total contributions from his home borough, the Bronx, traditionally the borough that contributes least to Program participants in proportion to its population. His contributions from the Bronx totaled more than four times the amount received from the Bronx by any of his three major primary opponents. A *New York Times* analysis noted that Ferrer was tailoring his appeal to "the other New York" and trailed his opponents in collecting contributions from Manhattan, the borough that consistently provides the most in campaign funds. His spokesman said, "We have many, many contributors who are far from wealthy. That speaks to how we are seeking to represent all New Yorkers."[23] Ferrer had the second smallest amount of out-of-city contributions, after Peter Vallone.
He was the most consistent of the four candidates in raising potentially matchable contributions over the course of the election cycle. Despite the factors that, on the basis of funds available to the campaign, would have put Ferrer at a disadvantage vis-à-vis his opponents, he was able to compete on the same field as the others, emerging as the top vote-getter in the Democratic primary.

The Ferrer campaign's success, resting significantly on its contribution patterns and corresponding receipt of public funds, demonstrates the Program's capacity to democratize the funding of New York City campaigns.

Record Number of Contributors

The most interesting trend in contributions to emerge from the 2001 election cycle was the enormous increase in contribution dollars from a record number of contributors. Campaign contributors provided Program participants with record levels of funding, in spite of the reduced contribution limits in force in 2001. Half of all contributors donated $100 or less to one or more candidates. Candidates responded to the new $4-to-$1 matching formula by reaching out to contributors of relatively modest means as well as to more affluent donors. The higher Program participation levels, representing a more diverse group of candidates than ever before, broadened the contributor base and introduced new contributors to the world of New York City politics.

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

> *I think we have to continue to make sure that we give a sense of empowerment to the small donors, the $25 or $50 contributions. As you heard me say from time to time, this certainly served as a great base of support for me when I first ran for office in 1989,...when the Program first began. So I feel like someone who has grown up with the Campaign Finance Program, and without it I know that my ability to have the necessary funds to have run for City Council two terms and Borough President now two terms would have been greatly impacted. And a lot of that is still due to small donors, people who feel that they have an opportunity to participate. When you tell a person "Give me $20," that becomes $20 times 4, so that has made a significant difference in terms of people wanting to give. So we must continue to involve and give a sense of empowerment to the small donors, therefore making it risky for any candidate to ignore the small contributions.*[24]

EXPENDITURES IN THE 2001 ELECTIONS

When candidates elect to join the Campaign Finance Program, they voluntarily subject their campaigns to strict spending limits, which curb excessive campaign spending and "level the playing field" by giving candidates the opportunity to run a competitive campaign. Candidates who run in both the primary and general elections have two separate spending limits, one for each election.[25] Expenses incurred during the primary period by candidates having no primary election count toward their general election spending limit.

2001 was a unique year for campaign expenditures. First, an extraordinary number of candidates ran for an unprecedented number of open seats. Then, there was the terrorist attack on the World Trade Center, after which the Board imposed a ban on almost all spending from September 11th, the original primary date, to September 25th, the date of the postponed primary. Finally, the general election was the first citywide test of the effect of the increased spending allowances for City Council candidates and of the $5-to-$1 bonus match for candidates in the Program running against high-spending non-participants.

In comparison to previous elections, the cost of the 2001 elections increased dramatically, both in terms of total monies spent by candidates and payments made from the Public Fund for the first time since the Program's inception in 1989. This resulted in large part from the extraordinary number of participants seeking office as a result of term limits. The significant increase in Program participation at every level (particularly for the City Council) resulted in a substantial increase in total expenditures. The high spending was also a function of increased matching funds and higher spending limits.

Program participants spent approximately $94.6 million in 2001, well over two-and-a-half times the $37 million spent in 1997 and the $36.3 million in 1993, and nearly triple the $33.9 million spent in the Program's inaugural year, 1989.

While the cost of the elections was higher, 2001 was a much more competitive election cycle than either 1997 or 1993. The significant increase in dollar for dollar and percentage comparisons between these elections can largely be accounted for by the number of participants. When average candidate spending is examined, the increases over past elections are relatively modest for citywide offices. Also, while the cost of the election to the Public Fund was higher than in previous years, it never reached the extreme levels predicted earlier in 2001 by the city administration. (*See* "Public Funds in the 2001 Elections," below.) Several factors (including high-spending non-participants and the $4-to-$1 matching of public funds) seemed to engender a significant increase in spending on media, especially in the non-citywide races. As in previous years, citywide candidates relied heavily on television, consultants, and print media, while City Council candidates tended to focus their spending on print media and consultants. Still, at the City Council level, where candidates could spend a potential total of $338,000 in the entire four-year election cycle, many campaigns were making unprecedented expenditures. In 2001, some City Council candidates bought television time, a first for the Program in its 14-year history.

Media spending in 2001 topped the list of overall expenditures for Program participants in all offices, rising to $52.8 million from $15 million in 1997 (or $16.3 million in inflation-adjusted dollars), and $14 million in 1993 (or $17.2 million in inflation-adjusted dollars). In 2001, media spending made up 56% of total expenditures by participants. Of course, all candidates tend to spend whatever funds are available when races are very competitive. Generous matching funds and the current Program expenditure limits appear to have facilitated increased media-related spending.

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

Lifting the Spending Limits

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

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

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

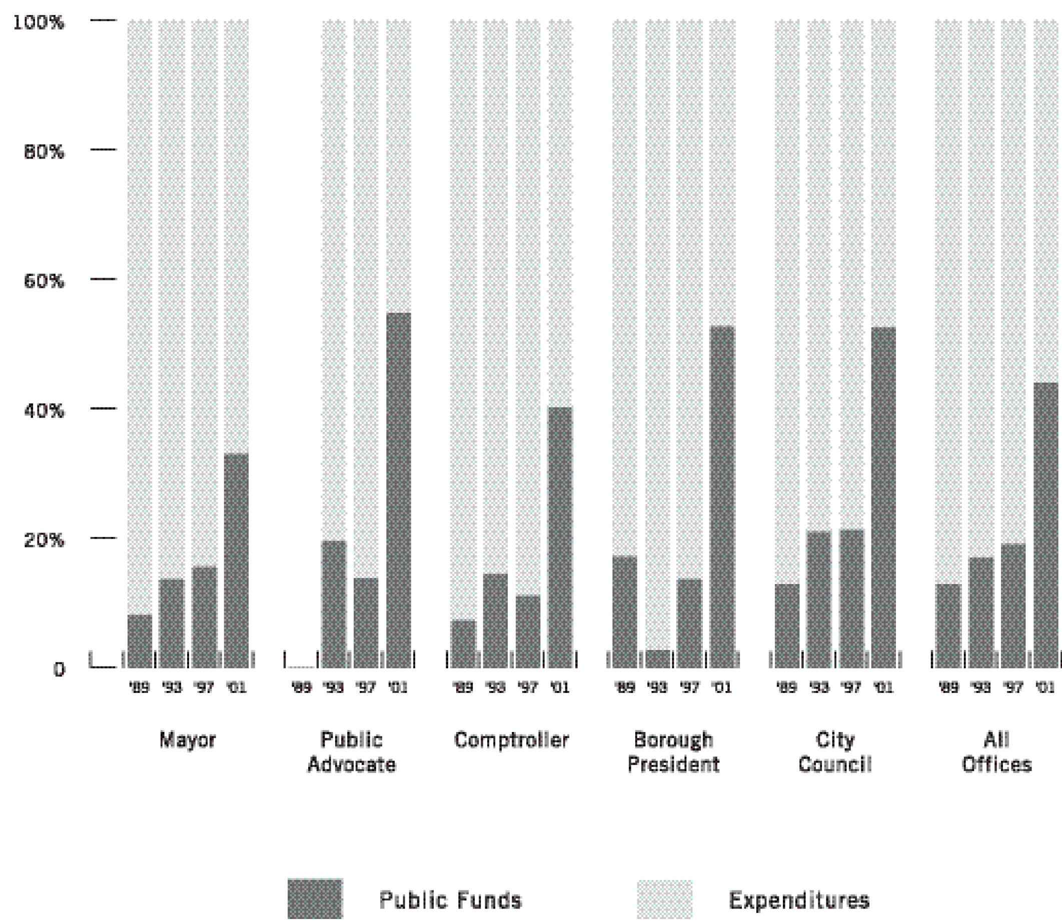
A definitive assessment of the Program's impact on the mayor's race and the extent to which the Program was successful in achieving its objectives for that race in the 2001 general election cannot be made, given the extraordinary events and factors outside the typical election experience, including,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

PUBLIC FUNDS IN THE 2001 ELECTIONS

> *The finance board, which oversees the pot of money that goes to candidates, has not been giving its money away easily. That is probably a good thing because the worry a year ago was that some candidates would be running for the city's matching money instead of for the offices. Supporters of the program were also afraid that the city would wind up financing legions of eccentrics, fanatics and goofballs. But in the end, it turned out that candidates had to be serious and well organized to do all the paperwork required to qualify for matching funds.*
>
> — Eleanor Randolph, *New York Times*[26]

The $4-to-$1 match was controversial even before the date of the first public funds payment. The Giuliani administration claimed the Program would cost New York City taxpayers up to $127 million and filed suit to prevent the implementation of the increased match.[27] The CFB's own budget estimate in early 2001 was $63.3 million, taking into account the maximum likely disbursement of public funds, even under extreme circumstances. At press time, $41.5 million had been disbursed for the 2001 elections. It should be noted that the cost of the Program in 2001 was about the same, if inflation is taken into account, as the original estimate of the Office of Management and Budget (OMB) for the 1989 elections, the first for which the CFB disbursed public funds. In 1988, the OMB had budgeted for $28 million (or roughly $40.2 million in 2001 dollars[28]), when only 43 offices were up for election, compared with 59 in 2001.[29]

Figure 2: Public Funds as a Percentage of Expenditures Over Time



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

One of the purposes of public matching funds is to reduce the need for candidates to spend an inordinate amount of time and money raising money from private and organizational contributors just to remain in the running. Public matching funds make it possible for candidates to spend the bulk of their time campaigning and to reduce a candidate's reliance on wealthy donors. The availability of public funds helps eliminate money as an obstacle to running for office, offering a valuable return to candidates for abiding by the Program's strict contribution and expenditure limits and disclosure requirements. Public funds can only be used for certain types of campaign expenditures and must be returned to the CFB if not used or if used improperly. The Board's audit staff is largely concerned with ensuring that only qualified candidates receive public funds and once they do, that they use them as provided for by law.

Cost of the Program

The CFB disbursed over $41.5 million in public matching funds for the 2001 election cycle through April 30, 2002. (As final audits are concluded, some candidates may still be entitled to post-election public funds payments to cover outstanding qualified debts.) This figure included $31.6 million for the primary, $2.2 million in run-off grants, and $7.7 million for the general election. Seventy-one percent (199 out of 280) of eligible Program participants received public funds for either the primary or the general election.[30] One hundred and seventy candidates received public funds for the primary, six candidates received public funds for the runoff, and 103 candidates received public funds for the general election. Of the 81 participating candidates who were on the ballot but did not receive public funds, ten were not in compliance with Program requirements. The rest failed to meet the minimum thresholds.

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

Public funds as a percentage of the total dollars available to candidates more than doubled for all offices, from 19% in 1997, to 43% in 2001. Fifty-five percent of the total funds available to City Council candidates came from public matching funds, more than double the 26% figure in 1997. The total amount of money available to candidates (public and private combined) increased from $36.3 million in 1997 to $96.3 million in 2001, an increase of about 165%. About $28 million in contributions went to four participating Democratic mayoral candidates, for whom public funds represented anywhere from 27% to 35% of their total funds available, or an average of 30% for that office.

Small Primaries, Half-hearted Campaigns, and Token Opponents

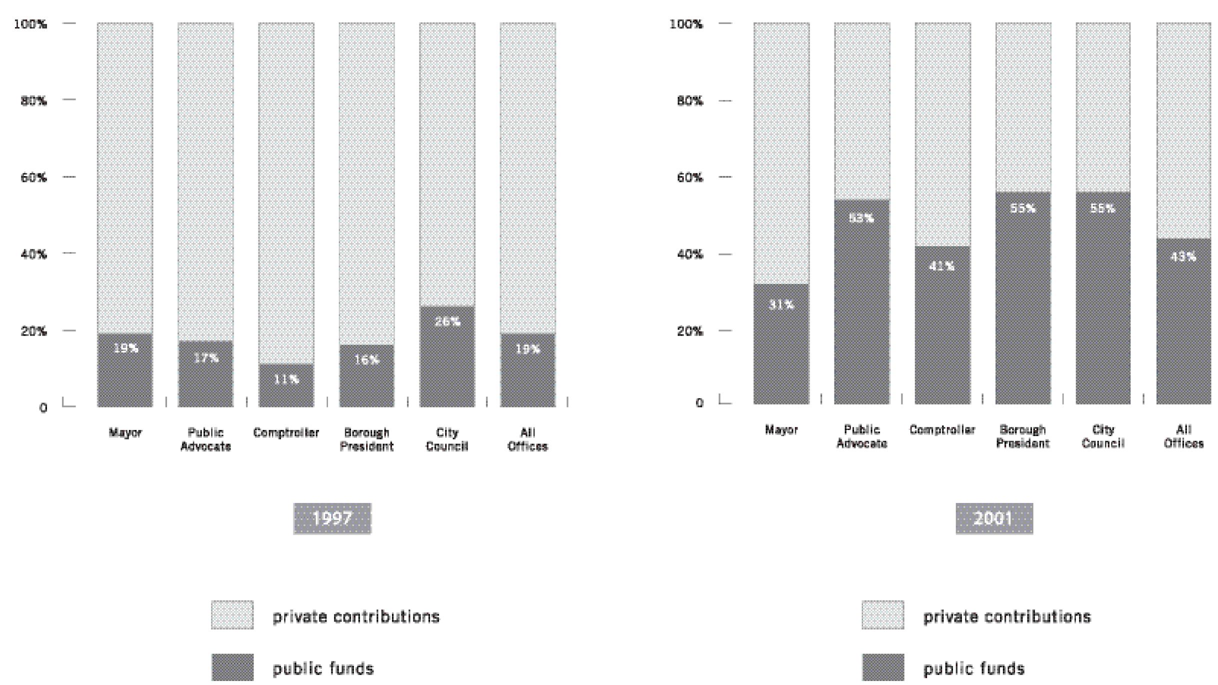
Although there were more competitive races than ever before, there was still concern that public funds were being disbursed in situations that did not require such large expenditures of public tax dollars. The candidates in the Green Party primary in district 20, for example, had to reach a small number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

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

In many cases, because of the huge Democratic registration advantage, in many Council districts and boroughwide races the general election often merely confirms the results of the Democratic primary. Candidates who do not have significant opposition essentially must police their own spending and answer to the voters if they spend public funds unnecessarily.

A number of campaigns and others, in testimony at the CFB's public hearing as well as in responses to the post-election survey, have called for decreased or no public funds to be disbursed to candidates facing "token" opponents, but had difficulty in defining just what constitutes a token opponent.[31]

Figure 3: Public Funds as a Percentage of Total Dollars Available to Candidates by Office — 1997 and 2001



* * * * * * *

The importance of public matching funds to campaigns and to the people whose contributions were being matched was underscored by the reactions of many of the candidates to the legal challenges to the $4-to-$1 matching formula early in the election year.

Richard Perez of Council District 37 (Brooklyn - Wyckoff Heights, Cypress Hills, East New York), echoing similar statements by other candidates, stated:

> *Raising money in an impoverished district such as the one I would represent is very difficult. The $4-to-$1 match makes it possible to mount a credible campaign, while raising money mostly from the people in my district. I have been reaching out to people in my district who usually don't think it's worth making their small contributions.… I believe the $4-to-$1 match encourages them to contribute and makes them feel like their contribution is valued. In that way, people from underserved communities are becoming more committed to the political process.*[32]

The opportunity to receive public funds was cited as the top reason for joining the Campaign Finance Program by 42.3% of respondents to the CFB's post-election survey. After the election, these campaigns categorized the effect of the receipt of public funds on their campaigns as "large" or "medium". More individuals contributed to participating campaigns than ever before. Thus, in 2001, public funds accomplished the twin goals of removing financial barriers for potential candidates and encouraging more citizens to participate in the political process. This development was confirmed by observers of the progress of campaign finance reform around the country, such as Josh Rosenkranz, President and CEO, Brennan Center for Justice:

> *"It's not a myth…New York has had a four-to-one match for one election cycle, this past one. And it was magical…The stories that emerged from it were just breathtakingly wonderful stories about democracy. Immigrants, new citizens saying I've been a community leader my whole life, there is no way I would ever have run but for this four-to-one match. I am campaigning in a completely different way. I can now do small gatherings because a $50 contribution is now worth $250. My public is the people I talk to about issues, not sitting in a dark closet making phone calls."*[33]

The many vigorous races clearly attest to the democratization of fund-raising and spending made possible by the Program. Losing candidates, as well as winners, understood that because of the Program, they had a fair chance to compete.[34]

DISCLOSURE IN THE 2001 ELECTIONS

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

The CFB Web Site

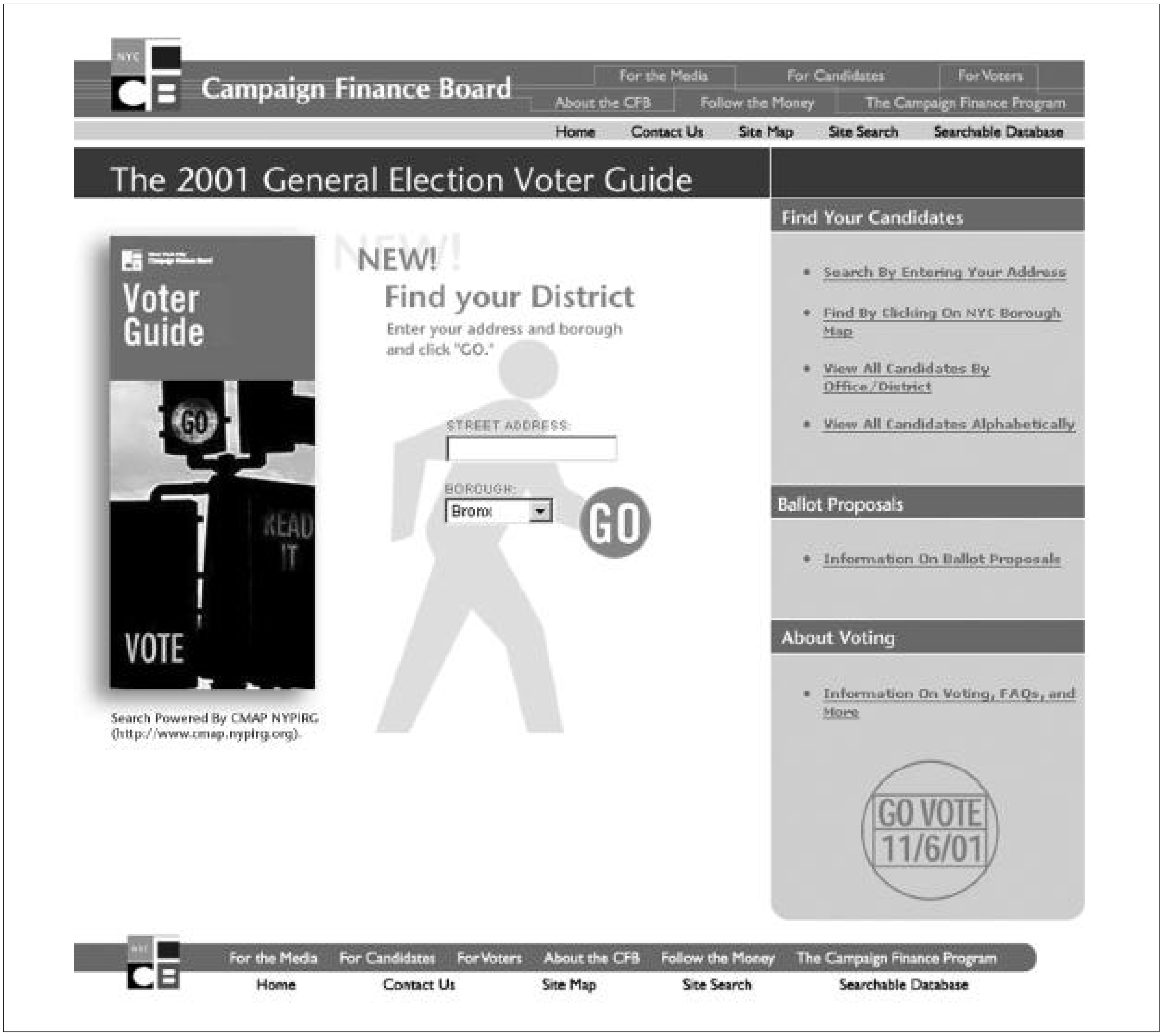
The Campaign Finance Board Web site, www.cfb.nyc.ny.us, has become one of the most important bookmarks for people interested in city politics, candidates running for office, and reporters who cover City Hall. The site, already a ground-breaker in computerized public disclosure, was redesigned for the 2001 elections to include new features, making it a one-stop shop for information on candidates in New York City, while continuing to enable visitors to the site to "follow the money" in many different ways. The centerpiece of the site, the searchable database for candidates and their contributions, was expanded to include expenditures, and, after the election was over, intermediaries (or "bundlers"), public funds payments, monetary transfers, loans, liabilities, partners, subcontractors, and affiliated contributions. No other jurisdiction in the country provides this level of searchable computerized access to candidates' campaign finance information. Currently, data going back to the 1997 election are available in searchable format. At press time, CFB staff was completing a project to make all data back to 1989 available on the Web site's searchable database. Users can also view summary reports of candidates' fund-raising, find out about the next Campaign Finance Board meeting, download forms, consult the Campaign Finance Act, and learn the latest CFB news. After the election, candidates who established transition and inaugural committees were required (whether or not they participated in the Program) to file disclosure forms with the CFB. The data for these committees are available as a summary across candidates and in searchable format. At the Board's post-election hearings, Program participant and Public Advocate Betsy Gotbaum said, "the Board has been an innovator in the public disclosure of campaign finance information. The information on the Board's Web site is terrific."[35]

THE 2001 VOTER GUIDE

The Voter Guide, the core of the CFB's voter education mandate, has been informing New York City voters since 1989. All candidates for the Program's five covered offices, whether or not they participate in the Campaign Finance Program, may submit — at no cost — their biographical information, photograph, and a campaign statement for inclusion in the nonpartisan Guide. The CFB also publishes and distributes the Voter Guide when a ballot proposal or referendum is before city voters. The Voter Guide is published in English, Spanish, and, for some districts, Chinese, and it is mailed to every household in the city having a registered voter. Candidates use the Guide to get their message out to registered voters, a targeted audience, and voters use the Guide to make more informed decisions on election day.

In 2001, the CFB produced 2.74 million primary Voter Guides and 6.41 million general election Guides, for a total of 9.15 million Guides in 32 editions. In past citywide elections, the CFB produced five English/Spanish Guides editions per election — one for each borough — and one Chinese language edition. Because of the unprecedented number of candidates running for office in 2001, the more populous boroughs of Manhattan, Brooklyn, and Queens had to be broken down further by Council district. As many as four English/Spanish editions had to be produced for these boroughs for each election, as well as three separate Chinese language editions — 17 editions for the primary election alone. The normal problems of assembling, publishing, and distributing a Voter Guide of such magnitude and complexity for the general election were severely compounded after September 11th. The CFB Publications Unit lost access to its computer records and had to work from the offices of the Guide's formatting and design vendor, D-Zine, Inc., to produce the general election Guide. The postponement of the primary election did not permit a postponement in preparing the general election Guide, which still had to arrive before election day on November 6th. Waiting for the primary election results was not an option. Voters would then receive the Guide well after the general election, rendering it both useless and wasteful. The only way to proceed was to include every primary election candidate in the general election Guide. The space needed for all these candidates also meant publishing a separate citywide Guide to cover Charter Revision and New York State ballot proposals. The inclusion of the many primary candidates and the additional editions of the Guide were bound to cause some degree of confusion (notwithstanding the explanation provided to the voters in the Guide). But the alternative was no Guide at all. The decision to issue the Guide in these circumstances was met with some criticism. It nonetheless remains the Board's view that, especially in light of the lack of news coverage of candidates after September 11th, the voters and the candidates were well served by the publication of the Guide. It may have been the only nonpartisan source of information available to voters. It was also an important reminder to vote.

The 2001 Online Voter Guide



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

THE 2001 DEBATE PROGRAM

The CFB's other voter education mandate, the Debate Program, grew out of public frustration with the 1993 mayoral campaign, when Rudolph Giuliani and then-Mayor David Dinkins could not agree on the terms of a debate, and none was held. Editorial page sanction was strong, especially since the two candidates had received more than $3 million in public matching funds. A year later, there was much criticism when the candidates for governor of New York also failed to debate during the gubernatorial campaign. In 1996, Mayor Giuliani signed into law an amendment to the Campaign Finance Act establishing a program of mandatory debates for citywide candidates who join the Campaign Finance Program, which first went into effect for the 1997 elections.[36]

The Law

The Debate Program requires citywide candidates who join the Campaign Finance Program and who appear on the ballot to participate in two debates prior to any primary election or run-off primary election and in at least one debate prior to the general election. (In the case of a primary debate, the debate is among Program participants seeking nomination of the same political party.) A second general election debate is required for Program participants who are determined to be "leading contenders." Candidates who do not join the Program but who qualify as leading contenders are invited, but not required, to participate in the second debate. Uniform and objective criteria for determining leading contenders are set in advance of the debates by the debate sponsors. The Debate law requires sponsors to provide an alternative voter education forum to candidates who are not deemed leading contenders.

Debate Sponsors and Participants

In 2001, the CFB received nine applications from 14 different organizations, several of which submitted joint applications: *Newsday* and WPIX; WABC-TV and the League of Women Voters of the City of New York (LWV/NYC); and a consortium of public affairs schools (at Baruch College, Columbia University, the New School, and New York University). The individual sponsor applicants were CUNY-TV (a cable television station run by the City University of New York), NY1 News, New York Law School, the *New York Times*, St. Francis College, and WNYC radio. The number of applicants, particularly from nonprofit organizations, declined from 1997, when 21 organizations accounted for 15 individual or joint applications. (The city's requirement that debate sponsors indemnify the city may have discouraged some potential applicants in light of the experience in 1997, when lawsuits were filed by candidates excluded from the debates. These lawsuits, though unsuccessful, placed financial burdens on the sponsors.) The *New York Times* withdrew, and the remaining eight applicants were all selected to conduct debates.

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

Since the Debate Program's inception, the question who should participate has itself been the subject of debate. In 1997 and 2001, debates included candidates who reported receiving no contributions and no expenditures, and some who raised nominal amounts. Newspaper columnists and debate sponsors have suggested that providing a platform to nominal candidates diminishes the public value of debates.[37] In the 2001 mayoral election, an extreme example of this occurred when Democratic nominee Mark Green was required under Program rules to debate four marginal candidates just days before the general election, when he was waging a highly competitive race against his opponent, Republican Michael Bloomberg. In addition, it has been the CFB's experience that organizations are less willing to sponsor debates with lesser-known candidates, and the press is less likely to cover them. Crosswalks-TV was the only television station willing to broadcast the two public advocate primary debates. In the general election, none of the daily newspapers covered the comptroller or public advocate debates broadcast by WNYC radio. What attention they did receive was related to the candidates' continued acceptance of public funds.

Democratic Candidates for Mayor Prepare for CFB Debate

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

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

COMPLIANCE AND ENFORCEMENT

> *I hope people, as they look at what you are doing here, understand that the key to this is not only the allocation of the money, not only what the law says, but how it is enforced. I think this Board has a record that really is, if not unique, certainly one that is recognized nationally as a Board that does attempt in very tough circumstances and often in unpopular circumstances to enforce the law. That gives it teeth. That means the players understand that there is a level playing field and that, at the end, it what this is about.*
>
> — Common Cause President Scott Harshbarger[38]

The Campaign Finance Board's primary enforcement and compliance objectives are to uphold the contribution and spending limits and prohibitions, ensure timely disclosure of campaign finance activity, and ensure that the distribution of public funds is made only to those candidates who qualify for them on the basis of legitimate contributions. In 2001, the enhanced $4-to-$1 matching rate and a flood of participating candidates presented the CFB with a formidable challenge to inform and educate the candidates about their responsibilities and to conduct meaningful audits of their campaigns. The Board's Candidate Services Unit (CSU) was in regular contact with the campaigns throughout the election cycle to ensure that they filed disclosure statements correctly and on time and to respond to candidates' questions about the Program's rules. The CFB's Auditing and Accounting Unit began preparations well in advance of the campaign season to examine the campaigns' documentation fully.

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

The Board's enforcement powers include the authority to: investigate complaints; assess penalties and withhold public funds; subpoena documents, records, and testimony; and institute civil lawsuits against candidates and campaigns. Criminal charges may be brought by prosecutorial offices against individuals who knowingly violate the Act or the Penal Law. Finally, the CFB is authorized to publicize violations of the Act. A number of the Board's actions received significant press and editorial attention.[39]

2001 Enforcement Summary

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

Since the summer of 2000, the Board also instituted seven lawsuits to recover monies owed from elections held in 1997 and 1999. These efforts resulted in the return of $145,187 in penalties and repayments of public funds and the provision of satisfactory documentation to account for an additional $193,935 in public funds payments.

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

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

Corporate Contributions

The most common violation in the 2001 elections was the acceptance of corporate contributions. In all previous citywide elections, the failure to file or late filing of disclosure statements were the most common violations. The 2001 election was the first citywide election in which the ban on corporate contributions was in effect. The Board's audit staff, prior to payment of public funds, notified candidates when it detected that they had accepted corporate contributions. While most campaigns quickly rectified any error by refunding the contributions, some candidates' public funds payments were suspended because they had not returned corporate contributions. By April 30, 2002, the CFB had assessed $21,350 in penalties against 51 campaigns for accepting 120 corporate contributions.

Late or Missing Disclosure Statements

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

Unregistered Political Committee Contributions

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

To Volunteer or Not to Volunteer: Hank Morris and the Hevesi Determination

In the spring of 2001, news reports and other mayoral candidates noted that Democratic candidate Alan Hevesi's spending for certain routine expenses appeared to be unusually low.[40] For example, the Hevesi campaign had reported no expenditures for rent. Questions were raised about the fee arrangement between the Hevesi campaign and its principal campaign consultants, Morris, Carrick & Guma. The services this firm provided to Hevesi were more comprehensive than those of other campaign consultants, yet the cost was far less. The Hevesi campaign maintained no formal campaign office, instead working out of the firm's headquarters. Of greater significance, it came to light that Hank Morris, the owner of Morris, Carrick & Guma, was volunteering his own services as a consultant while charging the Hevesi campaign for other work done by his firm.

Campaigns are allowed to use (and could not operate without) the assistance of volunteer workers. The Campaign Finance Act, however, recognizes limits on what can be considered volunteer services. Further, goods or services that are provided at below fair market value are considered in-kind contributions. In the spring of 2001, Hank Morris informally raised the question whether, hypothetically, he could provide his services to the Hevesi campaign on a volunteer basis without consequence to the campaign. He was encouraged to request an advisory opinion from the Board, but never did so.[41]

On August 6, 2001, Morris and the Hevesi campaign's legal counsel appeared before the Board. They argued that Morris was constitutionally entitled to volunteer his personal services to the Hevesi campaign. They also argued that the contract between Morris, Carrick & Guma (calling for payment of approximately $400,000) was commercially reasonable whether or not Morris was paid for his services. While recognizing the right of a candidate to run his or her campaign in a very different and frugal way, the Board determined that Morris could not be considered a volunteer under the Campaign Finance Act. Morris had never operated as a political consultant separately from his firm. The Board reasoned that as long as the firm he owned was receiving payment for its services to the Hevesi campaign, Morris could not volunteer his time, which instead was in effect an illegal contribution by the firm to the campaign. The Board suspended payment of more than $2.5 million in public funds until the Hevesi campaign could establish that it had a commercially reasonable arrangement with Morris' firm including the value of Morris' services. The *New York Times*, reporting one of the most memorable exchanges of the campaign, wrote that Morris said the campaign was going to sue the Board. Asked about Morris' remark, Board Chairman Joseph A. O'Hare, S.J., replied "[s]o sue me — go ahead."[42]

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

Lawsuits

While the Hevesi campaign did not pursue a lawsuit, many other campaigns did.[43] In the past, lawsuits against the Board were filed by candidates who missed the deadline for joining the Program, but nonetheless sought public funds or participation in the Debate Program. In 2001, most of the lawsuits concerned the failure of the Program participant to receive public matching funds. None of the lawsuits filed against the Board resulted in additional funds being paid to any candidates or in funds going to a candidate any faster than through the Board's routine processes.

* * * * * * *

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

Similarly, the payment process, which calls for campaigns to be in unambiguous compliance with the Act in order to benefit from the expeditious four-day turnaround for public funds payments[44] has proven to be a rigorous but effective process that limits encroachments on taxpayer funds and has been supported by the courts.

Although the Board's compliance and enforcement efforts understandably seem tedious for many candidates, those efforts are essential to safeguard the millions of public dollars entrusted to the Board's care and to ensure that some candidates do not obtain unfair advantage by failing to adhere to the Program's stringent standards. At the CFB's post-election hearings, candidates provided useful feedback, both positive and negative. John Walker, a candidate for Staten Island borough president who is a certified public accountant, testified: "[t]he audit that I have gone through so far — as an auditor I observed it very closely — was extremely thorough and I can assure you that your interests are being protected as well as the interests of the taxpayers whose money is being spent. I have to admire that. I didn't necessarily like it, but they certainly did a very good and thorough job."[45]

BOARD RECOMMENDATIONS

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

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

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

Proposed Amendments to the Campaign Finance Act

1. Contributions

(a) Restrictions on Organizational Contributions

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

The ban on corporate contributions had a significant impact on increasing the role of individual contributor participation. In 1997, 27% of all contributions came from corporations, and 62% came from individuals. In 2001, fewer than 1% of all contributions came from corporations, and 87% came from individuals. A complete ban on organizational contributions will not necessarily have a significant impact on candidate fund-raising. The percentage of contributions from two major categories of organizations (political committees and unions) actually decreased from 1997 to 2001 — from 5.5% to 4.7% and from 2.3% to 1.4%, respectively.[46]

(b) Lowering Contribution Limits

In the past, the Board has recommended reductions in the contribution limits. The objective has been to reduce the risk that large contributors could exercise undue influence without at the same time unduly impairing participants' ability to raise funds to wage competitive campaigns. In its 1998 post-election report, the Board recommended significantly lowering the contribution limits.[47] In 1998, following the Board's recommendation, the City Council passed legislation reducing the contribution limits from $7,700 to $4,500 for candidates for citywide office, from $5,900 to $3,500 for borough president candidates, and from $3,550 to $2,500 for City Council candidates. The mandated inflation adjustment will increase the contribution limits for the 2003 and 2005 elections to $4,950 for citywide candidates, $3,850 for borough president candidates, and $2,750 for City Council candidates.

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

Contributions over $4,000 accounted for 24.5% of the citywide candidates' total fund-raising, although such contributions represented only 4% of the total number of contributions for these candidates.[48] High-end contributions continue to play a disproportionate role in the totality of funds available to citywide candidates. This is to a significant degree offset by the $4-to-$1 matching rate for small contributions, but as long as the contribution limit is higher than the matchable amount, there will be an incentive to seek the bigger contributions. The Board recommends narrowing this gap by lowering the contribution limit for citywide and boroughwide candidates.

The newly enacted McCain-Feingold legislation increases the individual contribution limit for presidential candidates to $2,000 per election, or a total of $4,000 for the primary and general elections combined. If no change is made, the Program's $4,950 contribution limit for citywide candidates will be 24% higher than the combined primary and general election contribution limit for presidential candidates. The Board recommends lowering the contribution limit for citywide candidates from $4,950 (the new inflation-adjusted limit) to $4,000 and the borough president limit to $3,000. This would not, apparently, cause any significant fund-raising burden for citywide candidates, who were easily able to spend up to the spending limits.[49]

2. Public Funds

In 2001, the presence of extraordinary amounts of public funds drove up the cost of elections, especially on the City Council level, perhaps beyond what is reasonably necessary to wage an effective campaign. To address this, the Board proposes: (1) lowering the matching rate (*see* Recommendation 2(a)), (2) lowering the maximum amount in public funds a candidate may receive (*see* Recommendation 2(b)), and 3) recalculating the spending limits (*see* Recommendation 3(c)). These measures would in all likelihood also reduce the demand on the Public Fund.

(a) Matching Rate

In 1998, the CFB recommended increasing the matching rate from $1-to-$1 (for each matchable contribution of up to $1,000) to $3-to-$1 (for each matchable contribution of up to $250). In 1998, the City Council passed legislation that increased the matching rate to $4-to-$1 for each matchable contribution of up to $250. For the 2001 elections, the CFB made public funds payments of over $41 million. If the $3-to-$1 matching rate is applied to the data available for the 2001 elections, the result is a total of $31 million in public funds payments that would have been paid.[50] This represents a reduction of approximately $2.9 million at the mayoral level, $1.8 million at the public advocate and comptroller levels, $1.7 million at the borough president level, and $3.4 million at the City Council level.[51]

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

(b) Reduced Maximum Public Funds for Council Candidates

In 1998, the Board recommended that the maximum amount of public funds City Council candidates should receive be increased from $40,000 to $70,000. In 1998, the City Council passed legislation increasing the maximum to 55% of the spending limit (the same as for all other offices), or $75,350 for 2001. Because of the mandatory adjustment of the spending limit based on the changes in the Consumer Price Index, that amount will increase to $82,500 for the 2003 elections. Thus, in less than four years and over a single election cycle, the maximum amount of public funds City Council candidates can receive has more than doubled from $40,000 in 1997 to $82,500 in 2003.[52]

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

(c) Threshold Geographic Requirement for Candidates for City Council

Census results from 2000 will require redistricting of City Council district lines before the 2003 elections. In a year when district lines are uncertain, the Board recommends changing the threshold requirements for City Council candidates to allow them to satisfy the threshold with contributions from residents of the borough(s)[53] in which they are running rather than of the Council district. The Board also recommends that the number of required resident contributors be increased from 50 to 100 for the 2003 elections. This change would encourage candidates in the Program to demonstrate more significant community support, but enables them to do so from a much larger geographic area in 2003. In 2001, 76% (184) of the City Council candidates who appeared on the ballot received more than 50 valid matchable contributions from residents of their district.[54] In 2001, approximately 71% (170) candidates had valid matchable contributions from 100 or more borough residents. It therefore appears reasonable for candidates to show the seriousness of their candidacies by raising 100 contributions of at least $10 from borough residents to qualify to receive public matching funds. The other threshold requirement, that the candidate receive $5,000 in private contributions, would not be changed. It should be noted that when the threshold is reached under current law, a minimum of $20,000 in public funds payment is due. Under the Board's recommendation (*see* Recommendation 2(a)), the first minimum payment would be $15,000 (or three times the $5,000 threshold). Raising the threshold number of contributions is consistent with the approach in other jurisdictions, which have higher thresholds for the required number of contributors than New York City has. Assuming that this recommendation is adopted, the Board anticipates re-visiting the threshold requirement after the 2003 elections.

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

In the 2001 elections, questions were raised whether the bonus in place for participants facing a well-financed opponent was generous enough to let the participant effectively compete against a truly high spending non-participant. In 2001, the bonus was triggered in three City Council primaries and in the general election mayoral contest. To enhance the bonus further, the Board renews its 1998 recommendation to have a two-tiered bonus system. The first tier would be similar to the current bonus situation — triggered when a non-participant raises or spends more than half the spending limit, increasing the matching rate from $3-to-$1 to $5-to-$1, and increasing the maximum public funds cap to two-thirds of the spending limit.

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

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

(e) Money Order Contributions

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

(f) Public Funds Cap for Small Primaries

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

Table 1: Recommended Spending Limits

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

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

3. *Spending*

(a) Consolidate Separate Calendar Year Spending Limits

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

(b) Exempt Expenditures

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

The Board therefore proposes, as it has in the past, eliminating exempt expenditures, except for legal fees to challenge and defend petitions.[55] All other expenditures would be covered by the spending limits. The proposed amendment would simplify candidate reporting and Board auditing. If average aggregate exempt expenditure claims made by candidates in the 2001 elections are considered, adjusting for anomalies (such as candidates who did not claim any exempt expenditures and candidates who claimed more than 50% of their expenditures as exempt), it appears that increasing the expenditure limit by 5%, as discussed in c) below, would more than compensate for the removal of the category of exempt expenditures. The increased limits are set at high figures so that the removal of exempt expenditures should allow candidates to incur necessary compliance expenses without interfering in the candidate's ability to wage an effective campaign.

(c) Spending Limits

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

At the same time, the Board is recommending limiting the increase in the spending limit for City Council to $146,000.[56] This limit represents an increase of approximately 7% (the average percentage of exempt expenditures claimed by City Council candidates in 2001) from the current $137,000 limit. In the 2001 elections, the average spending per Council district for the primary was approximately $89,000. In only three City Council districts did the average primary spending exceed the recommended $146,000 spending limit. One of those districts had no spending limit because a well-financed non-participant triggered the bonus. In the other two districts, the primary election victors received more than three times the votes of their opponents, suggesting that such high spending was unnecessary.

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

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

4. Disclosure

(a) Intermediaries

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

(b) Contemporaneous Disclosure

Prospective candidates for citywide office and borough president must now file disclosure statements before they join the Program in order to preserve matching claims for any contributions received during the first three years of the election cycle. The Board recommends that this requirement be extended to prospective Council candidates, in place of the current option for these candidates that allows them to make contemporaneous filings but that does not require these filings to preserve matching claims.

This would allow the Board to provide candidates who do early fund-raising with an early review of their compliance with Program requirements and would provide the public with early disclosure of these candidates' finances.[57]

(c) Separate Committee for Covered Elections

In order to reduce the possibility that candidates will violate the Act and to simplify reporting requirements for candidates, the Board is proposing that participating candidates be required to establish separate committees for elections covered by the Program. Furthermore, to simplify and clarify public disclosure, the Board proposes that participants be permitted to authorize only one committee for primary and general elections covered by the Program and held in the same calendar year. The Board's educational materials for candidates have always advocated that candidates voluntarily follow these mandates to simplify participation requirements, and many candidates already follow this recommendation.

(d) Reporting Requirements Generally

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

5. Deadline for Joining the Program

In 1998, based on Board recommendations, the Act was changed to provide for a single later "opt-in" date of June 1st of the election year. The amendment to the Act also added a provision to allow the Board to declare a later opt-in date if certain extraordinary circumstances, such as the death or withdrawal of a candidate, occurred. In the November 1999 off-year elections, a Green Party candidate sued the Board when it declined to find that an extraordinary circumstance under the Act had occurred in her case.[58]

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

6. Rules for Postponed Elections

The Board proposes amendments that would allow the CFB to pass emergency regulations relating to public funds payments and additional expenditure limits for candidates on the ballot for an additional day of voting, a court-ordered election, or an election that has been postponed because of an emergency or other unforeseen circumstance.[59] The attack of September 11th forced the postponement of the primary elections to September 25, 2001, and the Board effectively froze spending for most of that period. Candidates had budgeted expenditures in anticipation of the September 11th primary, and had they been permitted to spend during this period, would not routinely have had either funds or room under the primary expenditure limit to continue campaign activities through September 25th. The Campaign Finance Act does not contain any provision allowing the Board to make additional public funds payments or to provide for an additional expenditure limit. The proposed amendment would authorize the Board to issue regulations to make public funds payments, as well as give candidates an additional expenditure limit, so that they are able to continue campaign activities during a period of postponement. Allowing the Board to issue emergency regulations (rather than set fixed limits) provides flexibility to tailor the increased public funds and spending limits to the needs of the candidates taking into account the specific circumstances surrounding the postponement, court-ordered election, or additional day of voting, *e.g.*, the length of time the election is postponed, the number of candidates affected, or the fact of a news blackout. The figures contained in current law do not necessarily bear any relationship to what may be practical in these circumstances.

7. Debate Program

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

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

In 1998, the United States Supreme Court found that limiting participation in a debate according to neutral and reasonable standards does not violate the First Amendment.[60] Accordingly, there is no constitutional problem with limiting the participation in the debates to those candidates who meet an objective standard. This standard would cover all debates, including the selection of "leading contenders" for the second debates for an election, but would be a lower standard than that for "leading contenders." To improve the quality of the debates, sponsors would be permitted to invite non-participants to the debates if the non-participants met the same objective, nonpartisan criteria that participants must meet.

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

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

(c) Eliminate Alternate Forums

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

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

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

(e) Repeal the Requirement that Sponsors Indemnify the City

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

8. Appointments to the Board

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

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

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

Proposed State Initiatives

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

1. Disclosure

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

The bill developed by the Board 1) recognizes that the citywide elections would be more equitable if opposing candidates were subject to the same disclosure requirements and public scrutiny, 2) permits all candidates who run for these offices to get free computer software specifically designed for filing campaign finance information with the Campaign Finance Board and with the City Board of Elections, and 3) would not impose new filing requirements on small campaigns that raise or spend funds at levels below the exemption levels specified in the Campaign Finance Board's current rules. This bill, introduced in 2001 in the Assembly by then-Assemblyman Eric N. Vitaliano (A.6680) and in the Senate by then-Senator Roy M. Goodman (S.1029), was approved by the full Assembly in previous sessions but was never voted out of committee in the Senate. When this report went to print, the bill had not been reintroduced in either the Assembly or Senate in 2002.

In 1994, the Board had also recommended "a five-year experiment to make the Board the computerized clearinghouse for all campaign finance information currently required to be filed by candidates for local public office or party position in New York City and the political committees that support them." Since then, State law has been amended to require electronic filing by committees filing with the State Board of

Elections, including on behalf of candidates for statewide offices and for the State Legislature beginning in 1999. The Board is pleased that the State Board of Elections developed its filing system in a manner that permits filing of C-SMART-generated forms.

The most practical and cost-effective approach for extending this electronic filing requirement to New York City filers would be to use the Campaign Finance Board's existing state-of-the-art database infrastructure and administrative protocols for electronic filing. Given the city's 14-year investment in computerized disclosure at the CFB, a different requirement for electronic campaign filing in New York City would be duplicative and wasteful of public tax dollars, as well as an imposition on candidates.

2. Contribution Limits

The Board recommends that State law be amended to require all candidates for the offices of mayor, public advocate, comptroller, borough president, and City Council member to abide by the contribution limits set by the Campaign Finance Act. The Board's proposal would subject candidates for these offices who do not join the Program to the same contribution limits that apply to those candidates who do join. The bill would end the disparity between the contribution limits that apply to opposing candidates by having the city's limits, which are generally lower, cover all candidates for these five city offices. Currently, the state contribution limit for the primary election for citywide candidates is at least $4,900, up to $14,700. The limit is based on a formula of $0.05 x the number of enrolled voters in the candidate's party. The limit for the general election is $30,700.[61] In no other jurisdiction are publicly financed candidates subject to lower contribution limits than their non-publicly financed opponents. The most recent version of this bill was introduced by then-Assemblyman Vitaliano in 2001 (A.6679). It has been approved by the full Assembly in previous sessions, but was never voted out of committee in the Senate.

3. Other Issues

The Board also supports changes in State law to:

- Address possible "soft money" problems by lowering the limit on contributions to political parties and by improving accounting and disclosure requirements for party spending on behalf of candidates;
- Lessen the unfair competitive advantage enjoyed by candidates who have funds remaining from a previous election by prohibiting the use of surplus funds for future elections; and
- Shifting the primary date from September to June, which would allow candidates to receive public funds earlier in the year.[62]
- Increasing the penalties for violating Section 14-120 of New York State Election Law, which prohibits candidates from accepting contributions made in the name of another, or so-called "nominee" contributions.

Issues Under Consideration

1. Transition and Inaugural Spending

In 1998, the New York City Charter and the Campaign Finance Act were amended to require successful candidates for city office to disclose the activities undertaken to commence their term in office. The new law applies to all successful candidates for the offices of mayor, comptroller, public advocate, borough president, and City Council member whether or not they participate in the Campaign Finance Program. The Board is in the process of reviewing and analyzing the information submitted by successful 2001 candidates. In the coming months, the Board will make additional recommendations clarifying and simplifying these requirements.

2. Run-off Primary Elections

The two run-off Democratic primary elections for mayor and public advocate highlighted certain limitations of the Board's current rules regarding Program requirements for run-off primaries. In the coming months, the Board will be undertaking to revise and propose for public comment changes to its rules regarding disclosure of and accounting for run-off primary finances.

3. Rules and Operations

As discussed above, a number of administrative items are being addressed through possible rules changes. At press time, the Board had adopted the first set of changes in its rules.

Issues of Concern

There are certain issues of concern that, if resolved, would further the Program's goals of leveling the playing field among candidates and making candidates more responsive to New York City citizens rather than to special interests. The resolution of these issues is in some cases not best resolved by Board rule or even changes in the law. The Board nonetheless urges that thought be given to what legal and extra-legal means might be available to address these areas.

1. Nominally Opposed Elections

The Act provides that candidates who are unopposed in a covered election are not eligible to receive public matching funds for that election. There is, however, no prohibition on public funds for participating candidates, even up to the maximum amount allowable, when the opponent provides only token opposition. Some participants face candidates, or are themselves, appearing on a third party line, but not running an active campaign. This problem was widely acknowledged at the Board's post-election hearings. It seems wasteful of government resources to provide public matching funds to candidates who have only minimal opposition and therefore need not expend much to become elected.

In the past, the Program has relied on self-policing and public pressure to minimize this problem. This issue, however, has been a problem from the Program's inception when in 1989, Ruth Messinger, running for Manhattan borough president, was criticized for taking public funds when she faced only token opposition. The problem was commented upon in a number of 2001 elections. For example, the *Daily News* criticized Herbert Berman, Betsy Gotbaum, and Scott Stringer for accepting public funds when they were not running serious campaigns or were facing only token opposition. The *Daily News* wrote: "[s]elf-control and selflessness would be welcome from… other politicians. Doing the right thing is its own reward."[63]

In 1990, the Board found that judging whether opposition was serious or token was a political issue best left to the voters. The Board cannot use a subjective standard, and an objective standard raises many problems, *e.g.*, a well-known incumbent may spend very little, avoiding the trigger for public funds for an opponent; or a candidate may spend only late in the election cycle to delay triggering public funds for an opponent. The Board urges the City Council to consider what levels of opposition are meaningful, if legislation seems warranted. The press and the public ought also to review carefully the financial disclosures of candidates and highlight candidates who they think are receiving public funds but are not running an active campaign or are facing only token opposition.

2. Doing Business with the City

In 1998, the New York City Charter was amended to require the Board to propose rules to regulate campaign contributions from individuals and entities doing business with the city. The Board conducted research and solicited public comment on ways to effectuate this mandate and in December 1999 proposed three alternative methods for regulating these contributions. After receiving public comment from a number of sources, the Board determined not to adopt these rules. The Board realizes that contributions from individuals doing business with the city is a potential source of influence peddling. At present, however, it is unclear how the Board would even obtain the comprehensive information necessary to enforce any rule. Given, moreover, the numerous other requirements the Program imposes on candidates and the difficulties in defining and reporting these contributions, the Board believes that this problem would be better addressed by limiting the actions of the contributor rather than the recipient of the contribution, as is the case with the Securities and Exchange Commission's regulations on political contributions by securities industry personnel.

3. Solicitations by Incumbents

In 2001, the Conflicts of Interest Board issued an advisory opinion concluding that the New York City Charter prohibits public servants with "substantial policy discretion" from asking anyone for contributions to a candidate for city elective office. This prohibition includes solicitations for the public servant who is himself a candidate for city elective office.[64] The Conflicts of Interest Board acknowledged that there is some unfairness to this Charter provision which by its terms does not apply to elected officials. The Board notes that the solicitation of contributions by both elected officials and certain public servants is fraught, at best, with potential influence peddling, and at worst with coercion of contributors. While as currently written the Charter mandated this result, there should be a better way to address these problems than by eliminating the fund-raising ability of certain classes of candidates (or forcing them to resign their positions), while other candidates' fund-raising is unrestricted.

4. *Candidate Misrepresentations*

Several participants have raised concerns about false statements made by candidates in the CFB Voter Guide and in other campaign literature, including misrepresentations of educational and professional experience and endorsements. The Board understands the frustration of candidates whose opponents continually include false biographical information and misrepresent endorsements in their campaign literature. Because of the constitutional implications of any law restricting candidate speech, it is unlikely that a law could be crafted which would both have meaningful force and meet constitutional muster. Further, such a law would place enormous burdens on the administering agency, the courts, and the candidates themselves. A better solution may be a voluntary certification with a civic organization that the candidates will adhere to certain standards in their campaign speech and refrain from dishonesty or personal attacks.

NOTES

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

2 *See, e.g.*, Editorial, "Money and the Mayoral Race," *New York Times*, January 25, 2001; Editorial, "Undermining the City Campaign Law," *New York Times*, June 23, 2001, A12; Jim Dwyer, "Rudy's Gulag Growing," *Daily News*, February 4, 1999; Editorial, "Reform in Action," *Daily News*, April 1, 1998, 32.

3 For a discussion of the legal and operational history of implementation of the $4-to-$1 matching rate, *see* the full report, *An Election Interrupted…An Election Transformed*, September 2002, (hereafter "*An Election Interrupted…*"), "Changes in the Campaign Finance Act," Chapter 1. For information from previous elections, *see* the New York City Campaign Finance Board's post-election reports: *A Decade of Reform 1988-1998*, September 1998 (hereafter "*A Decade of Reform*"); *On the Road to Reform: Campaign Finance and the New York City Elections*, September 1994; and *Dollars and Disclosure: Campaign Finance Reform in New York City*, September 1990, or visit the Campaign Finance Board's Web site at http://www.cfb.nyc.ny.us, where data from every election cycle are available in financial disclosure reports and as part of a searchable database.

4 *An Election Interrupted…*, "Changes in the Campaign Finance Act," Chapter 1.

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

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

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

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

9 *Hearings before the New York City Campaign Finance Board*, December 10-11, 2001 (hereafter "*Campaign Finance Board 2001 Hearings*"), vol. I, at 138 (testimony of John Siegal).

10 Scott Shifrel and Larry Cohler-Esses, "Green Aides Met with Dems on Ferrer-Sharpton Plan," *Daily News*, November 2, 2001, 21.

11 *See* Howard Jordan, "Ferrer's Folk Hide Their Own Agenda," *Newsday*, October 17, 2001, A44; Editorial, "The Next Mayor's Job," *New York Times*, October 4, 2001, A26; Michael Cooper, "Green's Latest Commercial Calls for a Closer Look at Ferrer," *New York Times*, October 10, 2001, D6.

12 Maggie Haberman, "Green Beans Bloomberg," *New York Post*, October 25, 2001, 20.

13 Marist Institute for Public Opinion, *Marist College Poll: The Race for New York City Mayor*, November 2, 2001.

14 Jessica Kowal, "Campaign's High Roller," *Newsday*, October 27, 2001, A7.

15 Steven Greenhouse, "At the End, Labor Made Little Effort for Green," *New York Times*, November 8, 2001, D4.

16 Michael Cooper, "Record Spending by Bloomberg Raises Questions About City's Acclaimed Law," *New York Times*, November 8, 2001, D4.

17 Philip Lentz, "Election Day Attack on NY Unmakes Mayor Green," *Crain's New York Business*, March 4, 2002.

18 David Seifman, "Campaign Wiz Works His Magic Yet Again," *New York Post*, November 8, 2001, 6.

19 *See, e.g.*, Bob Herbert, "Mark Green's Problem," *New York Times*, November 8, 2001, A27; Frank Lombardi, "Mark is Forced to Confront Suddenly Murky Future," *Daily News*, November 8, 2001, 4.

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

21 Local Law 48 was passed on October 22, 1998 and became effective immediately. It did not ban corporate contributions, but provided the $4-to-$1 matching rate for candidates who did not accept them. The Charter amendment banning corporate contributions for all participants was approved on November 3, 1998 and went into effect January 1, 1999. *See also* *An Election Interrupted…*, "Changes in the Campaign Finance Act."

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

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

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

25 Participating candidates must also abide by separate spending limits for each of the two years preceding an election year.

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

27 At a public hearing on March 16, 2001, concerning Intro. 879, the Council bill confirming the $4-to-$1 match, then-Mayor Giuliani called the Campaign Finance system a "massive subsidy for politicians and the people who work for them." *See* Thomas Leuck, "Giuliani Vetoes Campaign Financing Plan, Forcing Council Showdown," *New York Times*, March 17, 2001, B3. *See also* City of New York v. Campaign Finance Board, Index No. 400550/2001 (Sup. Ct., N.Y. Cty.)

28 All inflation adjustments are based on calculations using the Consumer Price Index. In fact, only $4.5 million in public funds was disbursed in 1989.

29 In 1991, the City Council was expanded from 35 to 51 members.

30 These figures include $407,990 in public funds payments disbursed to two candidates as part of the post-election audit process.

31 *See, e.g., Campaign Finance Board 2001 Hearings*, vol. I, at 115-17 (testimony of Gene Russianoff and Neal Rosenstein), vol. II, at 213-14 (testimony of Oliver Koppell), vol. II, at 240 (testimony of David Yassky), vol. II, at 294-295 (testimony of Betsy Gotbaum).

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

33 *Campaign Finance Reform, Lessons from Los Angeles: A Forum on Local Reform and the 2001 City Elections*, presented by the Los Angeles City Ethics Commission and the University of Southern California Annenberg School for Communication, October 12, 2001, at 60 (testimony of E. Joshua Rosenkranz).

34 *See, e.g.*, *Campaign Finance Board 2001 Hearings*, vol. I, at 70-73 (testimony of Herbert Berman), and at 92-93 (testimony of Stephen DiBrienza).

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

36 Local Law No. 90 of 1996.

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

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

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

40 Bob Port, "Aide Package for Hevesi," *Daily News*, July 20, 2001, 17; Eric Lipton and Adam Nagourney, "What's a Campaign Debt Between Friends?" *New York Times*, July 22, 2001.

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

42 Adam Nagourney, "Finance Ruling Denies Hevesi Matching Cash," *New York Times*, August 7, 2001, A1.

43 For descriptions of some of the lawsuits filed, *see An Election Interrupted…*, "Lawsuits," Chapter 9.

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

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

46 Although the percentage of contributions from these sources decreased, political committee and union contributions increased in absolute terms — from \$1.6 million to \$2.6 million and from \$686,000 to \$782,000, respectively. Unions and political committees comprise all but one of the top ten contributors across all candidates. *See An Election Interrupted…*, Chapter 4, Table 4.2.

47 The Board recommended lowering the contribution limit for citywide candidates to \$5,000, for borough president candidates to \$3,500, and for City Council candidates to \$2,000.

48 These figures do not include contributions over \$4,500, which were either collected for the run-off elections or were illegal over-the-limit contributions. *Total* contributions over \$4,000 accounted for 39% of the citywide candidates' total fund-raising, but represented only 6% of the total number of contributions for these candidates.

49 Reducing the contribution limit to \$4,000 would represent a 2.7% loss to citywide candidates assuming that all contributors who gave contributions above \$4,000 would give the maximum of \$4,000.

50 This was calculated by applying a \$3-to-\$1 formula to the 2001 paid claims. This methodology is limited because participants would of course change their fund-raising strategies based on any change in the matching formula.

51 These numbers are approximations, based on a calculation of amounts actually paid in 2001 (excluding run-off payments).

52 By comparison, the maximum amount of public funds a mayoral candidate may receive increased only 33% in the same time period — from \$2,366,000 to \$3,150,400.

53 Three current City Council districts include areas from two boroughs. Under the proposal, candidates running in these districts could meet the threshold by raising 100 matchable contributions from individuals residing in either borough.

54 This includes matching claims through December 31, 2001, and corrections made as part of the audit process.

55 This exception is narrowly tailored to allow for an unpredictable and often unavoidable election expense, given the ballot access laws in New York. These expenditures are also more easily documented and less subject to abuse.

56 While this is higher than the 2001 limit of \$137,000 per election, it is lower than the inflation-adjusted \$150,000 limit.

57 The Board also recommends that participants voluntarily file additional disclosure statements during the election year to achieve these same goals. At press time, the Board had adopted a rule providing for additional disclosure statement dates.

58 The Court dismissed the action. *See* Ostrom v. New York City Campaign Finance Board, 160 F.Supp.2d 486 (E.D.N.Y., 2001).

59 Currently, the Act provides for public funds payments of \$0.25 for each dollar of public funds received for the preceding election and an enhanced spending limit of half the existing spending limit for an additional day of voting or an election held pursuant to court order, even though the resulting delay may be for a very truncated period, compared with the primary or general election period. *See* Admin. Code §§3-705(5), 3-706(1)(b).

60 *See* Arkansas Educational Television Commission v. Forbes, 523 U.S. 666 (1998).

61 These are the state limits for individual non-family members. In addition, corporations may contribute up to \$5,000 to a citywide candidate per election.

62 *See Voting Matters in New York, Participation, Choice, Action Integrity*, Office of Attorney General Eliot Spitzer, February 12, 2001, p. 72. Another change that would ease the burden for candidates and the Board would be to fix the petitioning period further away from the primary election day.

63 Editorial, *Daily News*, Oct. 29, 2001, 40.

64 Conflicts of Interest Board Advisory Opinion No. 2001-1, January 30, 2001.