

20 05

A Report on the **20 05** Elections

PUBLIC DOLLARS *for the* **PUBLIC GOOD**



NEW YORK CITY CAMPAIGN FINANCE BOARD

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A Report on the 2005 Elections



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

Nicole A. Gordon

who has guided the agency from its inception in 1988, successfully creating a program that through her dedication has become a model for the country; developing a reputation as tough but fair; and maintaining an unmatched level of quality, nonpartisanship, and independence.

We wish her well in her future endeavors.

NYC Campaign Finance Board

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Preface

This report is 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 2005 elections. Detailed data are provided as Appendices on a compact disc, which is attached to the back cover of this volume. The Report, including the Appendices, is also available in .pdf format on the Board's website, www.nyccfb.info.

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Foreword

Despite a seemingly lackluster election season due to the small number of open seats and record-low voter turnout, the 2005 elections, the fifth citywide election conducted under the New York City Campaign Finance Program, represented a significant milestone for Campaign Finance Board and its staff.

For the first time in the Program's history, every current elected city officeholder, with the exception of Mayor Bloomberg, has participated in the Program and received public funds for at least one city election.

As a result of new legislation that went into effect for the 2005 elections, candidates who chose not to participate in the Program had to abide by the same contribution limits and disclosure requirements as participants. This new requirement helped level the playing field and allowed the CFB to provide complete and nearly instantaneous public disclosure of financial information for all municipal candidates.

For the second consecutive mayoral election, Mayor Michael Bloomberg's unprecedented levels of spending—more than \$73 million in 2001 and almost \$85 million in 2005—challenged the Program's ability to level the playing field for all candidates. Although this exceptional phenomenon became a prominent topic of debate throughout the 2005 election season, the Program continues to enhance the ability of serious candidates to conduct meaningful campaigns for public office, while successfully reducing the influence of private money in the city's political process.



Frederick A. O. Schwarz, Jr.

Chairman of the
NYC Campaign Finance Board

New laws increased the availability of public matching funds to participants facing high-spending non-participants by providing bonus matching funds at a rate of up to \$6-to-\$1, determined by the non-participant's spending. The new "limited participant" candidate category also attempted to level the playing field by encouraging self-funded candidates to rein in their expenditures voluntarily.

More importantly, however, the 2005 elections will be remembered as the culmination of an era to many at the Campaign Finance Board and throughout New York City. Following the election, Nicole A. Gordon, the CFB's long-time executive director, announced that she would be leaving the CFB after 18 years to become vice president of a philanthropic foundation.

Ms. Gordon has been a creative, committed, and steady leader of the Board's staff since its founding in 1988, when she took on the formidable task of creating a new city agency with an ambitious mandate. Since then, she has assembled a remarkable group of public servants who have worked with her to cultivate and administer the strongly independent and nonpartisan agency the city knows today. Under Ms. Gordon's leadership and vision, the CFB has established itself as a nationally- and internationally-recognized nonpartisan model for reform. Thanks to Ms. Gordon, the Program has also been at the forefront of reform and is widely regarded as one of the country's leading municipal campaign finance systems. It is through her work and the work of the staff that the Program has become an integral part of political life here in New York City.

Ms. Gordon leaves behind a legacy of good-government reform, nonpartisanship, and dedication to the law that will be difficult, if not impossible, to replace. I know that I speak for my fellow Board members, Dale C. Christensen, Jr., Katheryn C. Patterson, Mark S. Piazza, and Joseph Potasnik, as well as my predecessor as chairman, Joseph A. O'Hare, S.J., and all former Board members in congratulating and thanking Ms. Gordon for her service, dedication, and contributions to this agency and to the betterment of New York City. We wish her great success in her new endeavor.

Frederick A. O. Schwarz
Chairman

September 1, 2006

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chapter 1

Setting the Stage

The mission of the independent, nonpartisan Campaign Finance Board (CFB) is to reduce the influence of private money in politics and to increase opportunities for citizen participation. The voluntary Campaign Finance Program (the Program) provides matching funds to qualified candidates for mayor, public advocate, comptroller, borough president, and City Council who agree to abide by strictly enforced spending and contribution limits and other Program requirements, including full public disclosure of all financial transactions and rigorous auditing by the Board.

The Campaign Finance Act (the Act) requires the CFB to review the performance of the Program after each municipal election and make recommendations to the mayor and City Council for legislative improvements.

The Program has brought fundamental changes to New York City politics since its inception in 1988, and has indeed been successful at meeting some of its most basic, central goals. The Program has limited the size of contributions that candidates for city office may accept, easing the political influence the wealthiest donors may wield. The Program forbids contributions from some sources, including corporations. CFB requirements bring a high level of transparency to the political process, giving the public complete access to financial information disclosed by all candidates for office in New York City.

New bonus provisions implemented for the 2005 elections helped to close the financial gap for Program participants facing extremely high-spending non-participants. Even more encouraging, the 2005 elections marked a significant milestone for the Campaign Finance Program. For the first time in the Program's history, *every current elected City officeholder, with the exception of Mayor Bloomberg, has participated in the Program and received public funds in at least one City election.* Of the 59 current officeholders in New York City, 53 (or 90 percent) participated in the Program for the 2005 elections.

Also in 2005, for the first time, candidates who chose not to participate in the Program were required to abide by its contribution limits and disclosure requirements. The new requirements, enacted in 2004, allow for complete and immediate disclosure of financial information for **all** candidates for municipal office, not just for Program participants. Public disclosure in New York City municipal elections is among the most comprehensive in the nation.

Still, there are challenges ahead. In the post-election report issued after the 2003 City Council elections, the Board stated:

The Campaign Finance Program cannot be fully effective if it is only in the instance of open seats that it helps to create vibrant competition on an even playing field. In the best of worlds, the Program should have the potential to yield competitive races in any district in all regularly scheduled elections.¹

For the 2001 (citywide) and 2003 (Council-only) elections, there was a distinct lack of competition except in races for “open” seats (offices for which no incumbent is seeking re-election). Both elections saw a significant disbursement of public funds to candidates who did not face meaningful opposition and consequently won their elections by large margins. From 2001, there were questions whether the Program adequately addressed situations in which a participant faced an extraordinarily high-spending non-participant. However, both elections were anomalous in some respects—2001 for its unprecedented levels of Program participation and competitive open seat races due to the implementation of term limits and the \$4-to-\$1 public funds matching rate, and 2003 for its dearth of open seats and virtual absence of competitive races.

The Board believed that incremental changes implemented by the Council for the 2005 elections could conceivably encourage competition, limit wasteful spending of public dollars, and simplify the Program. Therefore, rather than proposing new legislative changes after the 2003 elections, the Board decided to wait for data on the 2005 elections. That year’s post-election report focused on changes suggested after the 2001 elections that had not yet been implemented by the Council. Still, the Board also presented a package of significant and possibly radical improvements to the Program, particularly at the Council level, that it felt would be worthy of exploration should these negative trends persist.

Now that the 2005 election data have been analyzed, it is apparent that undesirable trends have continued. As discussed in detail in this report, competition remains low or nonexistent in most races in which an incumbent seeks re-election. Meanwhile, many candidates who face little opposition and are elected by huge margins at the polls continue to qualify for and accept significant amounts of public funds, notwithstanding legislation enacted by the City Council which was intended to limit the disbursement of public funds in these races. (See Chapter 6—Public Funds.)

An overview of the races, a discussion of Program participation, and a synopsis of legislative changes affecting the 2005 elections follows. These topics are covered in more detail starting with Chapter 2.

OVERVIEW OF THE RACES

The Program saw 187 candidates join for the 2005 elections; an additional 82 candidates ran as non-participants. (See Fact Sheet 1.1.) Of the 187 participants in 2005, 155 (or 83 percent) appeared on the ballot for a primary or general election. Altogether, Program participants comprised 73 percent of all candidates on the ballot.

FACT SHEET 1.1					
PROGRAM PARTICIPANTS ON BALLOT AND ELECTED TO OFFICE OVER TIME					
Office	Number of Participants	Participants on Ballot	Total Number of Candidates on Ballot	Participants as a % of all Candidates on Ballot	Number of Participants Elected to Office
2005					
Mayor	8	5	13	38%	0
Public Advocate	7	5	8	63%	1
Comptroller	2	1	4	25%	1
Borough President	18	18	23	78%	5
City Council	152	126	163	77%	46
Total	187	155	211	73%	53
2003*					
City Council	133	102	137	74%	47
Total	133	102	137	74%	47
2001					
Mayor	17	10	14	71%	0
Public Advocate	10	7	10	70%	1
Comptroller	2	2	6	33%	1
Borough President	22	20	27	74%	5
City Council	301	241	298	81%	47
Undeclared	1	–	–	–	–
Total	353	280	355	79%	54

The Democratic mayoral primary election featured six candidates, four of whom were Program participants. Fernando Ferrer narrowly avoided a runoff against Anthony Weiner and went on to face the incumbent, Michael Bloomberg, in the general election. Because Mayor Bloomberg, as a non-participant, spent an unprecedented sum of his own money on his campaign, Ferrer benefited from the newly created \$6-to-\$1 bonus matching funds rate. Although Ferrer's campaign spending was dwarfed by Bloomberg's \$85 million outlay, Ferrer nevertheless had overall positive comments about the Program and his participation in it.²

FACT SHEET 1.1 (continued)					
PROGRAM PARTICIPANTS ON BALLOT AND ELECTED TO OFFICE OVER TIME					
Office	Number of Participants	Participants on Ballot	Total Number of Candidates on Ballot	Participants as a % of all Candidates on Ballot	Number of Participants Elected to Office
1997					
Mayor	10	6	9	67%	1
Public Advocate	3	3	6	50%	1
Comptroller	3	3	6	50%	1
Borough President	22	15	27	56%	4
City Council	138	114	181	63%	36
Undeclared	14	–	–	–	–
Total	190	141	229	62%	43
1993					
Mayor	5	4	7	57%	1
Public Advocate	11	6	9	67%	1
Comptroller	3	3	7	43%	1
Borough President	11	7	15	47%	4
City Council	136	87	132	66%	38
Undeclared	20	–	–	–	–
Total	186	107	170	63%	45

In the race for public advocate, Program participant and incumbent Betsy Gotbaum soundly defeated her opponents in both the primary and general elections. Comptroller William C. Thompson, Jr. faced almost no opposition during his successful re-election campaign.

Due to term limits, C. Virginia Fields could not run for re-election as Manhattan borough president in 2005. Thirteen candidates vied for this open seat, 11 of whom were Program participants. Participant Scott Stringer defeated eight other candidates in the Democratic primary election, receiving a plurality of 26 percent, and won the general election over four opponents. He received a total of almost \$709,000 in public funds.

At the Council level, 127 of the 163 City Council candidates on the ballot (78 percent) joined the Program in 2005, compared with 114 (63 percent) in 1997, 241 (81 percent) in 2001, and 102 (or 74 percent) in 2003. Forty-six Program participants were elected to Council seats, but they did not all receive or accept public funds. (See Chapter 6.)

FACT SHEET 1.1 (continued)					
PROGRAM PARTICIPANTS ON BALLOT AND ELECTED TO OFFICE OVER TIME					
Office	Number of Participants	Participants on Ballot	Total Number of Candidates on Ballot	Participants as a % of all Candidates on Ballot	Number of Participants Elected to Office
1991*					
City Council	256	136	239	57%	31
Total	256	136	239	57%	31
1989					
Mayor	10	5	11	45%	1
City Council President	0	0	6	0%	0
Comptroller	5	4	10	40%	1
Borough President	7	6	15	40%	5
City Council	34	33	97	34%	19
Undeclared	1	–	–	–	–
Total	57	48	139	35%	26
* The 1991 and 2003 elections were for City Council seats only.					

WHY CANDIDATES PARTICIPATE

Legislative changes to the Campaign Finance Act in 2004 subject *all* candidates—whether or not they choose to participate in the Program—to contribution limits, financial disclosure, and other Program requirements, including auditing by the Board.³ Some candidates join the Program but do not accept public funds. It is worth asking: why do large numbers of candidates continue to join the Program?

The most common reason why candidates join the Program is the opportunity to receive public funds, particularly at the Council level. The contribution and expenditure limits encourage community participation, while public funds provide many candidates with limited access to financial resources with the means to run for office. The two-tier bonus matching funds rate system introduced for the 2005 elections (discussed in more detail below and in Chapter 6) further increases the amount of public funds available to candidates who face high-spending non-participants.

Another reason candidates join the Program is to demonstrate a commitment to good government and, especially, to limiting the influence of money in politics. For many candidates, declining to join the Program generates negative press and editorial attention.

Since 1996, participating candidates for citywide office (mayor, public advocate, and comptroller) have been required to participate in debates before both the primary and general elections. The law is intended to ensure that candidates face each other in nonpartisan forums for substantive discussions of the issues. These debates help educate voters and allow modestly funded candidates to reach a wider and more diverse audience. (See Chapter 7—Debates 2005.) The public exposure offered by the CFB debates and the opportunity to appear on equal footing with potentially better-known opponents is a compelling motivation for citywide candidates to join the Program.

Some candidates may decline to join the Program because they prefer not to submit to its requirements. Participation in the Program has increased, however, despite oft-repeated warnings from candidates who vow not to join the Program if the Board continues its vigorous enforcement. Now that non-participants are required to comply with many of the same requirements as participants, including financial disclosure, contribution limits, and Board audits, fewer candidates may choose to “opt out” in the future.

Candidates with significant personal resources may have the least incentive to join the Program, because participants are limited to contributing three times the applicable contribution limit to their own campaigns. Under decisions by the U.S. Supreme Court, non-participants have no limits on the amount they can contribute to their own campaigns, and thus can use their personal wealth to self-finance their races and avoid the time-consuming process of fundraising.⁴

LEGISLATIVE CHANGES TO THE PROGRAM

In 2004, the New York City Council passed legislation implementing important changes that affected Program participants and non-participants alike.

Disclosure, Audits, and Penalties

The 2005 elections were the first for which all candidates, participants and non-participants alike, were required to disclose all campaign activity to the CFB.* Previously, only candidates who certified as participants had to file disclosure statements, comply with contribution limits and restrictions, submit to the CFB audit process, and face financial penalties for violations. State Election Law has always required all candidates to file financial disclosure statements manually with the New York City Board of Elections (BOE), but the New York City BOE has not provided public access to disclosure information on the Internet in the past.†

The new city law gave non-participants the same dual disclosure obligations as participants and made it possible for the CFB to provide to the public, via its website, important information about non-participants, including the incumbent mayor and six incumbent Council members.‡ The new law also holds non-participants to the same post-election audit standards as participants, eliminating a possible disincentive to joining the Program.

One negative consequence of this legislation was that many candidates who raised or spent very little money were subjected to additional burdens. Most of these candidates met the standard to file as “small campaigns” (they raised or spent less than three times the applicable contribution limit). Although small campaigns are not required to provide details of their finances to the CFB, they must provide statements on the same disclosure schedule as other candidates certifying that they are small campaigns. This limited disclosure offers little public benefit, but is burdensome for the candidates who periodically must file these statements, and for the CFB, which must process them—particularly considering that these small campaigns are rarely serious contenders to win their races.

* The February 2005 special election in Council district #17 was the first election to which the new law applied.

† In November 2005, the State Election Law was amended to require all local candidates who file with the New York City BOE and who raise or spend (or expect to raise or spend) more than \$1,000 in a calendar year to file their mandated campaign finance statements electronically with the State BOE (which makes them available on the Internet), while continuing to file, in paper or electronic format, with the City BOE. The new law went into effect in January 2006. Municipal candidates are now required to file in three places: the Campaign Finance Board, the New York City BOE (on paper), and the New York State BOE. (See Chapter 3—Public Disclosure.)

‡ Michael R. Bloomberg, Leroy G. Comrie, Simcha Felder, Allan W. Jennings, Jr., Melinda R. Katz, Miguel Martinez, and James J. Sanders, Jr. Without the new legislation, information about these candidates would not have been immediately available to the public.

The “Bonus Situation”

After the 2001 elections, the City Council considered ways to address the challenges posed to the Program by the disparities created when a participant faces an extremely high-spending non-participant, as in the 2001 mayoral election. (See the Board’s white paper, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nycffb.info.) Legislation was introduced that would have increased the bonus matching rate from the then-maximum \$5-to-\$1 rate to as high as \$8-to-\$1 in certain extraordinary circumstances.⁵ The proposed \$8-to-\$1 match—doubling the regular match and providing up to \$2,000 in public funds per contributor—would have been applied only in cases in which a non-participant raised or spent three times the spending limit.⁶ Critics of the proposal maintained that increasing the rate in this way would be too costly for the taxpayers.⁷ Instead, the City Council passed Local Law 58 of 2004, which provides for two major changes to the Program: a two-tiered bonus matching rate system, and a new optional candidate category of “limited participant.”

The two tiers for disbursing bonus matching funds to candidates facing high-spending non-participants are based on the amount raised or spent by a non-participating opponent. Tier 1 is triggered when a non-participant raises or spends over 50 percent of the applicable spending limit. It provides a \$5-to-\$1 matching rate; increases the maximum amount in public funds available to the participating candidate from 55 percent to two-thirds of the spending limit; and increases the spending limit by one-half. Tier 2 is triggered when a non-participant raises or spends over 300 percent of the applicable spending limit. Under Tier 2, the match is increased to \$6-to-\$1, providing up to \$1,500 in public funds per contributor. The maximum amount in public funds available to the participant increases to 125 percent of the spending limit, and the expenditure limit is entirely removed. (See Fact Sheet 1.2.)

The two-tiered bonus matching rate has the potential to increase greatly the total amount in public matching funds available to candidates facing extraordinarily high-spending non-participants. But, the bonus situation is relatively rare: in 2005, the Tier 1 bonus was triggered in two City Council races; the Tier 2 bonus was triggered in one City Council race and in the mayoral general election. (See Chapter 6.)

“Limited Participants”

Without the authority to compel a self-financed candidate to curb his or her spending, under Local Law 58 the City Council created a new candidate category called “limited participant” for the 2005 elections. As noted above, self-financed candidates have a disincentive to join the Program due to the limits on contributions by candidates to their own campaigns. Self-financed candidates can give freely to their own campaigns with no limit on their expenditures if they decline to join the Program. Depending on their level of spending, these candidates can trigger the bonus situation for their participating opponents. Under the new law, entirely self-financed “limited participants” agree to abide by the Program’s expenditure limits *without* giving up the ability to contribute freely to their

FACT SHEET 1.2				
TWO-TIERED BONUS FOR PARTICIPANTS FACING A HIGH-SPENDING OPPONENT				
	Matching Rate	Trigger (Percentage of Spending Limit Raised or Spent)	Maximum Public Funds (Amount of Regular Spending Limit)	Spending Limit (Percentage of Regular Spending Limit)
No Bonus	4:1	n/a	55%	n/a
Tier 1	5:1	50%	66%	150%
Tier 2	6:1	300%	125%	no limit
BONUS AS APPLIED BY OFFICE				
Mayor				
No Bonus	4:1	n/a	\$3,150,400	\$5,728,000
Tier 1	5:1	\$ 2,864,001	\$3,818,667	\$8,592,000
Tier 2	6:1	\$17,184,001	\$7,160,000	no limit
Public Advocate/Comptroller				
No Bonus	4:1	n/a	\$1,969,550	\$3,581,000
Tier 1	5:1	\$ 1,790,501	\$2,387,333	\$5,371,500
Tier 2	6:1	\$10,743,001	\$4,476,250	no limit
Borough President				
No Bonus	4:1	n/a	\$ 708,950	\$1,289,000
Tier 1	5:1	\$ 644,501	\$ 859,333	\$1,933,500
Tier 2	6:1	\$3,867,001	\$1,611,250	no limit
City Council				
No Bonus	4:1	n/a	\$ 82,500	\$150,000
Tier 1	5:1	\$75,001	\$100,000	\$225,000
Tier 2	6:1	\$450,001	\$187,500	no limit

own campaigns.* In exchange, limited participants are allowed to participate in the CFB's official Debate Program and, more importantly, they do not trigger the bonus situation for their opponents, which may be appealing for self-financed candidates who would seek to minimize the expenditure of public funds. The new category attempts to bring candidates who do not want to accept contributions into the Program on some basis. The end result can level the playing field for all candidates.

No candidate at any level, however, opted to join the Program as a "limited participant" for the 2005 elections. Despite calls to do so,⁸ Mayor Bloomberg declined to curb his spending voluntarily or to join the Program as a participant or limited participant.

Use of Government Resources

In an effort to limit the already considerable advantage of incumbency during an election year, and to prevent the misuse of taxpayer dollars for the purposes of electioneering, the limits on the use of government resources during an election year were strengthened for the 2005 elections.

The blackout period prohibiting public servants running for office from sending mass mailings at government expense was extended from 30 days prior to the election to 90 days. An exception is made for one mailing on the executive budget sent within 21 days of its passage. The law specifically exempts "standard communications in response to inquiries or requests"; "ordinary communications between elected officials and their constituents"; and "communications necessary to safeguard public health and safety."⁹

The new legislation also gave the CFB authority to assess whether a proposed mailing was allowable under the specified exceptions, and to enforce the provision through potential penalties. The CFB received approximately 15 requests for advice during the election cycle from officeholders asking whether distribution of assorted newsletters, invitations to community events, holiday greetings, and other announcements were permissible. Although the CFB advised that many proposed communications were consistent with the law, others appeared to exceed its limits. For example, one incumbent sought to redistribute a constituent newsletter *en masse* during the blackout period by hand, but the blackout period restrictions are not based upon the mode of delivery. The CFB also received several complaints about City Council Speaker A. Gifford Miller's expenditure of \$1.6 million on mass mailings that reached voters in the midst of his mayoral bid for the Democratic Party nomination. The CFB determined that it did not have jurisdiction under the law over these mailings because they were mailed just prior to the 90-day blackout deadline. (See Chapter 2—At the Races, Chapter 5—Expenditures, and Chapter 9—Enforcement.)

* Limited participants cannot accept contributions from anyone other than themselves, and may not accept any loans. In addition, they are ineligible to receive public funds. New York City Administrative Code §3-718.

REFERENCES

- 1 New York City Campaign Finance Board, *2003 City Council Elections: A Report by the Campaign Finance Board* (hereafter *2003 City Council Elections*), September 2004, Vol.1, 44.
- 2 Fernando Ferrer, special edition of “Road to City Hall,” NY1, November 6, 2005.
- 3 Local Law 59 of 2004.
- 4 Joe Mahoney, “Only the Megarich Can Afford It,” *Daily News*, November 4, 2005, 4.
- 5 Intro. No. 382-A of 2003.
- 6 *Ibid.*
- 7 Editorial, “Giffie’s Grab,” *New York Post*, December 4, 2003, 30.
- 8 See, e.g., Editorial, “An Endorsement for Mayor,” *New York Times*, October 24, 2005, WK11; Gene Russianoff and Rachel Leon, “Joint Statement of Position on Mayor Michael Bloomberg’s Campaign Spending,” October 12, 2005; Michael Montalvo, “Common Cause/NY Asks Bloomberg to Run on His Record,” *The Activist*, Vol. 8, No. 2, September 2005, 6; Editorial. “A Campaign on the Money,” *New York Times*, August 14, 2005, CY4.
- 9 NYC Charter §1136.1(2)(b).

chapter 2

At the Races— The Program in Action in 2005

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- Very few noteworthy races in 2005
 - Incumbency proved to be a major factor
 - There was record low voter turn-out
 - New record high was spent in the mayoral race
-

Although 187 candidates joined the Program for the 2005 elections, it was a quieter election season than 2001, when term limits produced a record number of open seats. The 2005 election season brought just seven open Council seats, plus the Manhattan borough presidency—and record-low voter turnout. The mayoral race, however, proved newsworthy in some respects, most notably the record-breaking \$84.6 million spent by the incumbent, Mayor Bloomberg, for his successful re-election campaign. What follows is an overview of the three citywide races, as well as selected boroughwide and City Council races that demonstrate how the Campaign Finance Program operated during the 2005 election cycle.

MAYOR

The Primary Election

As in 2001, four well-known candidates contended for the 2005 Democratic mayoral nomination: Fernando Ferrer, a former Bronx borough president and 2001 mayoral candidate; C. Virginia Fields, the term-limited Manhattan borough president; A. Gifford Miller, the term-limited City Council speaker; and Congressman Anthony Weiner, representing the 9th Congressional District in Brooklyn/

Queens.* Thomas Ognibene, a former City Council member, failed to qualify for the Republican primary ballot, leaving Mayor Michael Bloomberg unopposed for the Republican nomination.

The four Democrats—all Program participants—raised more than \$2 million in matchable contributions and received more than \$7 million in public funds for the primary election. Fields received the least—less than \$1.5 million—while Miller received the most, almost \$2.5 million. Ferrer and Weiner received about \$1.7 million each.

Various factors other than money play a large role in swaying voters on election day. Early in the race, the Fields campaign drew unwanted media attention with a campaign flyer entitled “Virginia Fields, Democrat, A Mayor for All New Yorkers.” The flyer included a picture of Fields speaking at a campaign event amid a multi-ethnic group of supporters. Several newspapers pointed out that the picture included images of individuals who had not actually attended the event. The campaign had digitally added their faces to depict a campaign event featuring a diverse base of supporters. Negative reaction to the flyer led to public recriminations between the campaign and Joseph Mercurio, a veteran political consultant who worked with the campaign. After generating significant media attention, Mercurio and the campaign parted company, although neither side accepted public blame.¹

Although Miller was the leading fundraiser, his support in the polls waned after a controversy emerged over his use of Council funds for a mass mailing. Voters in more than 40 different neighborhoods received targeted, glossy color brochures featuring Miller with their local City Council member, while another citywide mailing focused on Miller’s proposal for decreasing class sizes. According an article in the *New York Sun*, Miller’s campaign claimed the mailing was a routine dissemination of information about the city’s budget, and Miller’s Council office at first estimated that it cost \$37,000.² Through a Freedom of Information Law request, the *New York Sun* soon discovered that the actual cost of the mailing was \$1.6 million in taxpayer money.³

These campaign-like mass mailings received a blitz of press coverage and criticism from colleagues, government watchdog groups, and political opponents, and dealt a significant setback to Miller’s mayoral hopes. On July 16, 2005, the *New York Times* reported:

City Council Speaker Gifford Miller faced intense criticism yesterday following reports that his office spent \$1.6 million in Council funds on a series of mailings to millions of households around the city, far more than the \$37,000 figure previously released. The mailings, sent out during the heat of the mayoral campaign, raised anew concerns that Mr. Miller was using taxpayer money to promote his bid for City Hall.⁴

* Two other candidates, Christopher X. Brodeur and Arthur Piccolo, also appeared on the Democratic primary ballot, but raised and spent minimal amounts of money.

Closer to the primary election, the *Times* reported, “Mr. Miller is trying to recover from some of his own blunders, most notably the revelation that his Council office sent out mailings, which included praise for his Council work, that cost taxpayers \$1.6 million.”⁵ A host of editorials also criticized the mailings, referring to them variously as “Flier-gate flap,”⁶ “larceny,”⁷ and a “self-serving raid on taxpayer funds.”⁸ Dick Dadey, Executive Director of Citizens Union, a government watchdog group, remarked that the mailings were “clearly out of the bounds of fair play.”⁹ Council Member Tony Avella, who appeared in a photo with Miller on one of the pieces of literature, noted, “I didn’t ask for it,” and that the piece “does look like campaign material.”¹⁰ C. Virginia Fields remarked that the money spent on the mailings “would have gone a long way in terms of providing over 30,000 meals for seniors.”¹¹ Some of the criticism was accompanied by calls for Miller to reimburse the city for the cost of the mailings. A staff editorial in the *New York Sun* commented:

Taking advantage of his position as the speaker of the City Council, Mr. Miller has dipped into council coffers to mail out a thinly veiled piece of campaign literature...No ordinary New Yorker would want to spend his or her tax money to mail out this kind of political boilerplate. It has no other purpose than to save Mr. Miller’s campaign from using its own money....The appropriate thing for him to do at this point would be to use some of those funds to pay back the city for this mailing.¹²

The Board received several complaints alleging that these publicly funded mailings were thinly disguised campaign literature. However, as the brochures were mailed just before the beginning of the 90-day blackout period, it was consistent with the letter of the law. Though voters received the literature in the height of the election season, the Board did not have the authority to take action. (See Chapter 1 — Setting the Stage and Chapter 9 — Enforcement.)

The Miller campaign also ran into trouble with a CFB rule on exempt expenditures (see Chapters 5 and 9 for more detail). On September 1, 2005, the Board determined that expenditures for petition-gatherers who also distributed campaign literature for Stephen B. Kaufman’s campaign for district 13 in the Bronx were not wholly exempt from the expenditure limit. On September 2, in response to the determination, the “Miller for New York” Committee filed a request for Board guidance with respect to “whether expenditures for ballot petitioning carriers are 100 percent exempt, when those carriers have used literature as an aid in persuading voters to sign ballot petitions.”¹³ The Board issued an Advisory Opinion on September 6, 2005 stating the Board would not accept a 100 percent exempt allocation for Miller’s “Smaller Class Size” party ballot petitioning.¹⁴ At this point the campaign faced a serious risk of exceeding the primary expenditure limit and the Board suspended further public funds payments, declaring in a September 9 statement that the Miller campaign “has not shown to date that it is in compliance with the Program.”¹⁵ The Board also noted that it had not made a finding of violation, and that the Board would not make a final determination until after completion of the audit process.

The Almost-Runoff

In the initial primary vote tally, Ferrer received 39.9 percent of the vote, followed by Weiner with 29 percent. Fields received 16 percent, and Miller received only 10 percent. Two other candidates, Christopher Brodeur, an outspoken artist, and Arthur Piccolo, chairman of the Bowling Green Association in Lower Manhattan, garnered 4 percent and 1 percent of the total vote, respectively.

This put Ferrer just short of the 40 percent of the vote required to prevent a runoff against Weiner.* Nevertheless, on September 16 Weiner conceded the election to Ferrer to ensure party unity and avoid a costly (approximately \$12 million) runoff election. The New York City Board of Elections commented that the only way to stop a runoff, short of an official tally showing Ferrer had reached the mandated 40 percent, would be a court order. That same day, lawyers from the Public Advocacy Group sued to stop the runoff, claiming the uncontested election would violate the state's Constitution and Election Law. This lawsuit became moot when a tally of absentee and affidavit paper ballots and a recount of the original ballots by the BOE showed Ferrer to have slightly more than the necessary 40 percent. His three former major Democratic opponents then announced they were unified behind Ferrer.¹⁶

The General Election

Mayor Bloomberg, a self-financed billionaire, spent \$84.6 million in his bid for re-election — surpassing the \$73.9 million he spent in 2001. Although Bloomberg previously had indicated he did not expect to spend as much money as he had in 2001,¹⁷ he did say that he would “do what’s necessary to get [his] message out.”¹⁸ He eventually spent \$112 per vote to defeat Ferrer by almost 20 percentage points (approximately 250,000 votes). By comparison, Bloomberg spent \$98 per vote in 2001 to defeat Mark Green, narrowly, by only 2.5 percentage points. Green and Ferrer spent about \$23 and \$18 per vote, respectively, in their campaigns against Bloomberg.[†]

Bloomberg’s spending triggered the Program’s new Tier 2 bonus matching rate, allowing the Ferrer campaign to receive public funds at a \$6-to-\$1 rate. Ferrer received \$1.3 million in bonus matching funds, bringing his total public funds to \$3.9 million.[‡] However, he raised less than \$5.3 million in contributions. As a result, Ferrer spent less than \$9.2 million on his campaign, despite having

* New York City is required to hold a runoff primary election when no candidate for citywide office (mayor, public advocate, or comptroller) receives 40 percent of the vote, per New York Election Law §6-162. In late June of 2005, the “Fields for New York” and “Miller for New York” committees requested that the Board issue an advisory opinion authorizing them to raise funds for a potential runoff election. On July 7, 2005 the Board determined that a runoff election in the Democratic mayoral primary election was reasonably anticipated and that candidates could begin fundraising for a runoff election (Advisory Opinion No. 2005-02). This meant that in addition to the original \$4,500 contribution limit, mayoral candidates could raise another \$2,250 per contributor.

† An increasing cost per vote can reflect a decreasing number of voters as well as rising expenditures. BOE data show that mayoral general election vote counts have substantially declined since 1989. Bloomberg’s spending also increased.

‡ Ferrer’s figures are for the primary and general elections combined. (See also Chapter 6 — Public Funds.)

no expenditure limit (under the bonus provisions) for the general election. Even with the \$6-to-\$1 bonus in place, Ferrer received less public funds in 2005 than Green did in 2001 under a \$5-to-\$1 bonus matching rate, because Ferrer raised less in matchable contributions in 2005 than Green did in 2001. In fact, Ferrer raised about \$127,000 *less* in contributions in 2005 than he did during his own 2001 campaign, and spent only about \$450,000 more on the primary and general elections combined in 2005 than he did for the primary and runoff elections in 2001.

Public interest, or lack of it, was also a factor in the 2005 mayoral election. By July 2005, polls were predicting that Bloomberg would soundly defeat any of the Democratic challengers in the general election.¹⁹ Editorial and news coverage by the city's major newspapers reflected generally favorable reactions to the incumbent. One critic claimed that the press outlets had turned "their predictable editorial endorsements of Bloomberg into a campaign-long splurge of double-standard news coverage."²⁰ Overall, Bloomberg's incumbency, his popularity among many influential Democrats, and his campaign's deluge of campaign advertisements and literature made it difficult for Ferrer to raise campaign contributions and diminished his ability to compete.²¹ Observers of the 2005 election cited Ferrer's failure to connect with voters and to raise money—even when Bloomberg's public support was low—as major problems during his campaign.²² The 2005 elections produced the lowest voter turnout—1.3 million out of nearly 4 million eligible voters—in recent New York City history.

The Program came under fire from a number of sources for its failure to neutralize Bloomberg's financial advantage.²³ On the other hand, as Bloomberg's lead grew, the Program's alleged "give-away" of taxpayer money also drew criticism.²⁴ This topic is extensively analyzed in the Board's forthcoming white paper: *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nycfb.info.

PUBLIC ADVOCATE

In 2005, Public Advocate Betsy Gotbaum faced five challengers in the Democratic primary in her bid for re-election. Four of these candidates joined the Program, including former New York Civil Liberties Union Executive Director Norman Siegel, who had waged an unsuccessful campaign for public advocate four years earlier, losing to Gotbaum in a runoff election by an almost two-to-one margin.

As in 2001, Gotbaum had an early lead in contributions. By mid-July, she had raised over \$1.4 million, and added another \$200,000 later in the campaign. The other candidates lagged far behind. Siegel raised \$271,000, and businessman Andrew Rasiej, whose campaign platform included a plan to provide wireless Internet access to all New Yorkers, raised \$209,000. Only these three candidates qualified for public matching funds. For the primary, Gotbaum received over \$1.1 million in public funds, while Siegel and Rasiej received approximately \$729,000* and \$775,000, respectively.

* Part of this total—\$66,292—was paid after the election as part of Siegel's post-election audit.

Questions about the role of the public advocate in city politics became the key issue in the race. Gotbaum's opponents claimed she had failed to use her office effectively in the four years since she was elected.²⁵ Gotbaum responded with a "political pep rally" of prominent politicians and labor leaders to support her re-election campaign and promote the accomplishments of her first term, including her opposition to building the West Side Stadium advocated by Mayor Bloomberg.²⁶ Still, each candidate presented a different view of how the office of public advocate should function to serve the people of New York, including one candidate who argued that the position should be abolished entirely: Libertarian candidate Jim Lesczynski claimed that if he were elected, "the first thing I would do is fire the staff, padlock the door, and return the salary."²⁷

Gotbaum was endorsed by a long roster of elected officials, community organizations, unions, and both the *New York Times* and the *Daily News*. Although Siegel also gathered endorsements from more than two dozen local political clubs, unions, and neighborhood publications, Gotbaum won the primary election soundly, with 49 percent of the vote to Siegel's 30 percent. No other candidate received more than 9 percent of the vote.* Gotbaum went on to win the general election with 90 percent of the vote.

COMPTROLLER

As has been historically true for the office, incumbent Comptroller William Thompson, Jr., did not have a primary opponent, nor did he face significant opposition in the general election. He easily won a second term with 93 percent of the general election vote. Thompson joined the Program and met the threshold requirements, but did not accept public funds.

BOROUGH PRESIDENT

The four incumbent borough presidents were easily re-elected to office in 2005. Queens Borough President Helen Marshall and Bronx Borough President Adolfo Carrion, Jr. did not have primary opponents and faced minimal opposition in the general election. There were no public funds payments in these borough president races. In Brooklyn, Borough President Marty Markowitz declined to accept matching funds. His general election opponent, Green Party candidate Gloria Mattera, received just under \$200,000 in public funds. Staten Island Borough President James Molinaro had no primary, but faced Democratic challenger John Luisi in the general election. Both candidates qualified for public funds: Molinaro received about \$597,000, and Luisi received just under \$108,000. Molinaro went on to win the general election with 59 percent of the vote to Luisi's 41 percent.

* This included Rasiej, who received approximately 5 percent.

Manhattan

The only open borough president seat attracted a long and diverse list of hopefuls. The Manhattan borough presidency has always been an interesting and important office. In recent years, the seat often has served as a launching pad for mayoral ambitions, from David Dinkins to Ruth Messinger to C. Virginia Fields. Nine candidates faced off in the 2005 Democratic primary to succeed Fields. The candidates, described by the *Amsterdam News* as “an embarrassment of riches,”²⁸ consisted of Council Members Margarita López, Eva Moskowitz, and Bill Perkins; former Council Member Stanley Michels; State Assembly Members Adriano Espaillat, Scott Stringer, and Keith Wright; former community school board President Brian Ellner, and Democratic District Leader Carlos Manzano. In addition to including “some of the most talented politicians in the city,”²⁹ the Democratic primary field was also among the city’s most diverse, comprising two openly gay candidates, two African-Americans, three Hispanics, and two women from neighborhoods across the borough, including the East Village, Chelsea, the Upper East Side, the Upper West Side, Harlem, and Washington Heights.³⁰

Although the candidates for Manhattan borough president were diverse, they agreed on the major issues facing their borough, citing a lack of affordable housing as the most immediate and pressing concern. Other issues raised include: the lack of progress at Ground Zero, Columbia University’s campus expansion plan in Manhattanville, traffic in downtown streets and on the city’s highways, healthcare, high rates of HIV and AIDS among borough residents, homeland security, and education.³¹ Most of the candidates campaigned by reminding voters of their political experience, as well as their ethnic, personal, and socioeconomic backgrounds, in an effort to stand out from the pack. Lopez, Espaillat, and Manzano described immigrating to the United States and learning to speak English.³² Perkins cited his childhood growing up on public assistance in Harlem.³³ Ellner appeared in a televised campaign commercial with his male partner, which he claimed was the city’s first campaign commercial featuring an openly gay politician with his same-sex partner.³⁴

All nine candidates participated in the Program and qualified for public funds. More than \$4.4 million in public funds was disbursed for the primary election. Stringer and Ellner both received the maximum \$708,950 in public funds. Moskowitz, Manzano, and Espaillat received totals of \$625,788, \$544,152, and \$498,338, respectively. Lopez received \$453,745. Perkins and Michels received \$418,334 and \$296,716, respectively, while Wright trailed the group with \$173,090.

As the primary election approached, Stringer and Moskowitz emerged as the front-runners, leading the field in both fundraising and endorsements.³⁵ By early September, Stringer and Moskowitz had both raised over \$900,000. Among the others, Espaillat stood out with \$518,133 in contributions. Stringer picked up key endorsements from the *New York Times* and several large unions, including the United Federation of Teachers, and also received strong backing from the Working Families Party. On the eve of the primary election, Moskowitz filed a complaint with the CFB, asking it to halt any further spending by the Stringer campaign in light of the Working Families Party’s expenditures, which she estimated at over \$300,000, including costs for five mailings and a series of telephone calls supporting Stringer. The Stringer campaign stated that it had no knowledge of

these expenditures and that there was no coordination between the Working Families Party and his campaign.* No further action was taken before the primary and the complaint became a part of the post-election audit process, which is still in progress.

Stringer won the primary election with a 26 percent plurality, followed by Moskowitz with 17 percent.† The remaining candidates each received less than 15 percent of the vote. Stringer went on to win the general election against five candidates with 78 percent of the vote.

CITY COUNCIL

As discussed in Chapter 1, the 2005 elections drew far fewer Council candidates than 2001. (See Chapter 1 — Setting the Stage.) Historically, races for open seats have attracted larger numbers of candidates, and more political newcomers, than those in which an incumbent is seeking re-election. The scarcity of open seats in 2005 — only seven at the Council level — resulted in far fewer candidates and slightly lower Program participation at the City Council level, although the participation was higher than in 1997 and 2003 than in 2001. (See Figure 1.1.) Five of the seven open Council seats were in Manhattan; this may account for the fact that races for open Council seats in 2005 were actually *more* crowded than they were four years earlier: the average number of participating candidates for an open Council seat increased from five in 2001 to seven in 2005.

With the exception of Council Member Allan Jennings, every City Council incumbent was easily re-elected. In fact, seven incumbents did not face an opponent in either the primary or the general election. Although this did not make for a very exciting year for City Council elections, there were a few competitive races that captured the public's attention.

Council District 8—Manhattan/East Harlem, Mott Haven, Port Morris, Upper West Side

Council Member Philip Reed was term limited and his open seat drew the interest of six Democratic primary hopefuls, all of whom joined the Program. Four of these candidates—Joyce Johnson, Felipe Luciano, Edwin Marcial, and Melissa Mark-Viverito—were participants in a previous election. Endorsed by the *New York Times* and *El Diario*, Mark-Viverito, a community activist and employee of healthcare union 1199 SEIU, was the front-runner and the only candidate to run on a second line (Working Families Party). Both Mark-Viverito and Johnson, director of a charter school in the Bronx, received the \$82,500 maximum in public funds for the primary election. Media commentator Luciano received \$81,280 in public funds. Democratic district leader John Ruiz and former

* The Program does not restrict spending by third parties on behalf of a candidate as long as the spending is done independently, i.e., there is no coordination between the third party and the campaign. If the Board determines that spending by a third party is not independent, however, the expenditure is considered to be a contribution to and an expenditure by the candidate subject to the contribution and spending limits.

† Only in citywide primary races is a runoff held when no candidate receives at least 40 percent of the vote.

Assembly Member Nelson Denis received \$76,556 and \$70,500, respectively. Edwin Marcial, a community activist, was not eligible for public funds. Mark-Viverito's ties to a number of union organizations, including 1199 SEIU, SEIU 32BJ, and United Food and Commercial Workers, as well as endorsements from groups such as Citizens Union and ACORN, enhanced her front-runner status. Despite immense union support behind Mark-Viverito, the Democratic primary came down to the wire between Mark-Viverito and Luciano. The race was decided by only 167 votes in Mark-Viverito's favor. Mark-Viverito was unopposed in the general election.

Council District 9—Manhattan/Central Harlem, Morningside Heights, Upper West Side, East Harlem

The race to succeed term-limited Council Member Bill Perkins in Upper Manhattan was one of the city's most competitive races. Eight candidates appeared on the ballot for the open seat, six of whom chose to participate in the Program. The early favorite in the race was Inez Dickens, a Democratic district leader for the 70th Assembly District and daughter of the late State Assembly member Lloyd Dickens. In the spring of 2005, members of Harlem's political elite, including former Mayor David Dinkins, Representative Charles Rangel, and former Borough President Percy Sutton, together with Council Members Robert Jackson and Leroy Comrie attended a rally at City Hall to endorse Dickens for the 9th Council District seat. The overwhelming support for Dickens' campaign inspired State Senate Minority Leader David Paterson to ask, "Do I hear a motion to suspend the election and make it unanimous?"³⁶

These early endorsements may have aided Dickens' efforts; by the mid-July filing, she had collected \$126,256 in contributions. Yasmin Cornelius, district manager for Community Board 10 in Harlem and producer and co-host of public access radio show "Harlem 411," reported the second highest contributions at this point in the race, \$70,916. The four remaining participants—Rodney Carroll, Cynthia Doty, Woody Henderson, and Virginia Montague—each reported less than \$28,000 in contributions on the mid-July filing (Statement 10). Not surprisingly, Dickens was the only candidate to qualify for the maximum amount of public funds on the first payment date. As the primary election neared, however, Dickens' opponents picked up speed: ultimately, Cornelius and Montague both received the maximum \$82,500 in primary public funds while Carroll and Doty received totals of \$72,420 and \$65,044, respectively.

The candidates focused their campaigns on education, economic development, affordable housing, health, and the environment, and called for "responsible development" in construction projects throughout the area, criticizing plans to develop a Marriott Hotel and a proposal to expand Columbia University's campus. Despite Dickens' early lead, Cornelius gained ground in the weeks leading up to the primary election, receiving key endorsements from the *New York Times* and the *Daily News*. Although Dickens won, her election was not the landslide victory many had predicted earlier in the year. Dickens won the primary with a plurality of 29 percent of the vote, followed by

Cornelius with 21 percent, Doty with 17 percent, Montague with 13 percent, and Carroll with 9 percent. Dickens won the general election with an overwhelming 81 percent of the vote.

Council District 13—Bronx/Morris Park, Pelham Bay, Throgs Neck, City Island

One of the most highly publicized races for City Council in 2005 was the race to succeed Madeline Provenzano in the northeast Bronx. Five candidates, all of whom participated in the Program, were on the primary ballot in the 13th Council District. The early front-runner was James Vacca, long-time district manager of Bronx Community Board 10, who reported over \$128,191 in contributions by the mid-July filing deadline. His closest opponents, former Assembly Member Stephen Kaufman and Joseph McManus, Bronx coordinator for Steamfitters Local 638, both had raised approximately \$90,000 by the July deadline.

The biggest issue in the 13th district—which in many places resembles a suburb with tree-lined residential streets and grassy front lawns—was overdevelopment. All seven primary candidates weighed in on the importance of preserving the unique character of the district through the creation and enforcement of building restrictions and other “down-sizing” legislation. Although Vacca remained the favorite heading into the Democratic primary, his opponents gained enough support to qualify for large public funds payments: McManus, like Vacca, received the maximum \$82,500 in public funds; Ismael Betancourt received \$79,160; and Kaufman received \$63,528.

It was not the candidates’ fundraising abilities, however, that made headlines in the weeks leading up to the Democratic primary. On September 1, the Board determined that approximately half the \$16,560 in petitioning expenses claimed by the Kaufman campaign as exempt expenditures was not in fact exempt from the campaign’s spending limit. The decision was based on the fact that Kaufman’s petition-gatherers distributed campaign literature (which is not an exempt expenditure purpose) while collecting petition signatures. This determination put Kaufman at risk of violating the expenditure limit and curtailed his ability to spend money in the waning days of the election. Moreover, it raised important questions concerning the definition of exempt expenditures, which had serious implications for mayoral candidate Gifford Miller as well (see above, and Chapters 5 and 9).

Vacca won the primary election with 38 percent of the vote to Kaufman’s 26 percent and McManus’ 21 percent. Republican Phil Foglia, also a Program participant, seemed poised to be a formidable adversary in the general election. Backed by Mayor Bloomberg, Council Member Provenzano, and former Mayor Giuliani, Foglia waged one of the city’s few competitive general election campaigns. Both candidates received the maximum \$82,500 in public funds for the general election, bringing Vacca’s total amount of public funds received for the 2005 election cycle to \$165,000. Vacca went on to win the general election with 64 percent of the vote to Foglia’s 36 percent.

Council District 28—Queens/Richmond Hill, Rochdale Village, South Jamaica

The race for Council District 28 was notable for a number of reasons. The most sensational involved two primary election candidates—Albert Baldeo and Robby Mahadeo—who not only accused one another of wrongdoing during the initial stages of the campaign, but ultimately filed criminal charges against each other.

Incumbent Allan Jennings, who opted not to join the Program, had not yet escaped the negative attention he attracted during 2001, when both his personal and professional behavior had been labeled as “irrational” and “embattled.”^{*37} A \$5,000 fine had been imposed by the City Council after several staffers complained of harassment and discrimination by Jennings. The Board also assessed penalties against Jennings’ 2001 campaign for violations of the Act, including taking contributions from an unregistered political committee, inadequate disclosure of financial transactions, and failure to provide requested documentation. The CFB also determined that the Jennings campaign had obligations to repay public funds. The violations resulted in assessed penalties totaling \$8,374 and \$29,471 in public funds repayments owed to the CFB. (See Chapter 9.)

Jennings’ opponent, former district 28 Council Member Thomas White (who was term-limited out of office in 2001) was also no stranger to negative media coverage during the 2005 elections. Articles in the press emerged about White’s possible misuses of state and federal monies allegedly used to purchase personal items.³⁸ The only candidates to receive public funds in district 28 were Baldeo and White, who each received the maximum. In the end, White emerged the winner. White won the primary by a little more than 700 votes (42 percent of the vote to Jennings’ 31 percent) and went on to win the general election, becoming the first Council member to regain his seat after being term limited out of office, and making Jennings the only incumbent City Council member to lose a bid for re-election in 2005.

* Jennings opposed then-Council Speaker Gifford Miller’s 18 percent property tax increase and was stripped of his committee leadership positions, then compared his troubles to the sufferings of Jesus Christ. He placed ads in Asian-language newspapers professing his love for his current Chinese girlfriend and criticizing his Taiwanese ex-wife. He released the names, job titles, and badge numbers of undercover policemen in a City Council hearing. He was also videotaped throwing a piece of metal at a FOX news reporter outside of his home.

Council District 41 — Brooklyn/Bedford Stuyvesant, Ocean Hill-Brownsville, East Flatbush

The city's most crowded Council race was to succeed term-limited Council Member Tracy Boyland. Ten candidates competed in the Democratic primary election, including Boyland's father, former State Assembly Member William Boyland, Sr.*³⁹

Of the nine candidates who faced off against Boyland for Brooklyn's only open seat, political newcomer Darlene Mealy—community activist and a longtime employee of the New York City Transit Authority—emerged as the toughest challenger to the Boyland dynasty. Advocating affordable housing and public safety improvements, Mealy spoke out against the Boylands, who she claimed had become beholden to developers and out of touch with district residents. Although Mealy—a Program participant—was considered a long shot at first, her campaign quickly picked up steam as she received key endorsements from an array of unions, politicians, and political groups, including strong backing from the Working Families Party.^{†40} Mealy was also endorsed by the *Daily News* and the *New York Times*, the latter describing her as “a ball of fire” with “the makings of a dragon slayer.”⁴¹

Mealy was one of eight participating candidates in the race. Two other candidates, William Boyland, Sr. and Alicka Ampy-Samuel, a former Democratic district leader and former aide to Tracy Boyland, chose not to join the Program. As a non-participant, Boyland was not eligible to receive public funds, but he was required to disclose his campaign finance activity to the Board. He failed to do so, and on August 25 the Mealy campaign cited Boyland's non-disclosure in support of her application for a bonus determination. The Mealy campaign argued that Boyland had raised or spent more than \$75,000—one-half the spending limit for City Council candidates—thereby triggering the Tier 1 bonus matching funds rate for his opponents. Based on the evidence available and the Boyland campaign's failure to provide complete and timely disclosure statements, the Board declared the bonus, making qualified Program participants in the 41st district eligible to receive public matching funds at a \$5-to-\$1 bonus rate and increasing their spending limit by 50 percent, to \$225,000. Ultimately, only four candidates qualified for public funds for the primary: Mealy received the maximum, \$100,000; Royston Antoine received \$59,900; Stanley Kinard received \$58,700; and Danny King received \$39,623.

* The Boylands are regarded as a Brooklyn political dynasty. For nearly 30 years, a member of the Boyland family has represented central Brooklyn in political office. William F. Boyland, Sr. has served the longest, beginning his career in 1982 by filling the State Assembly seat of his brother, Thomas, who died unexpectedly after five years in office. William Boyland, Sr. served as a State Assembly member for nearly 20 years. He resigned before the end of his term in 2003, and the seat was subsequently filled by his son, William Boyland, Jr. His retirement, however, was short-lived. Faced with the loss of his daughter's Council seat to term limits, Boyland, Sr. decided to run for the 41st district seat himself. When asked about the motives behind this decision, Boyland compared his family dynasty to that of the Kennedys and stated, “I ran out of children,” and the seat “needs to stay in the family.”

† The Mealy campaign paid over \$111,000 to the Working Families Party over the course of the 2005 election cycle for campaign and consulting services. The Working Families Party was clearly heavily involved with her campaign.

In a solid victory over one of Brooklyn’s longest-enduring political dynasties, Mealy won the Democratic primary election with 47 percent of the vote to Boyland’s 19 percent. Mealy went on to win overwhelmingly in the general election, receiving 91 percent of the vote.

CONCLUSION

In 2005, all nine newly elected office holders were participants in the Campaign Finance Program and received public funding to help them wage competitive campaigns. Of course, incumbency still remains the surest predictor of success, and all but one incumbent won re-election. Most notably, this is the first time in the Program’s history that every current elected city officeholder, with the exception of Mayor Bloomberg, has participated in New York City’s Campaign Finance Program and has received public funds in at least one election.

REFERENCES

- 1 See, e.g., “Fields Fires an Advisor. He Fires Back.” *New York Times*, July 9, 2005; “Fields Axes Campaign Big Over Pix,” *Daily News*, July 9, 2005; “Fields’ Fired Aide Tells His Side,” *Newsday*, July 9, 2005; “Doctored Flier, Flying Daggers,” *New York Post*, July 9, 2005.
- 2 Jill Gardiner, “Probe Sought of Miller Mailing,” *New York Sun*, June 15, 2005, 1.
- 3 Jill Gardiner, “Miller’s Mailings Cost Taxpayers \$1.6 Million-Not \$37,000,” *New York Sun*, July 15, 2005.
- 4 Nicholas Confessore and Diane Cardwell, “Fierce Criticism of Miller Erupts After Mailings,” *New York Times*, July 16, 2005, B1.
- 5 Patrick D. Healy and Nicholas Confessore, “Miller Hopes a Late Push Can Force a Runoff,” *New York Times*, August 8, 2005, B1.
- 6 “Miller’s Mendacity,” *New York Post*, July 20, 2005, 28.
- 7 “Gifford Miller’s Million-Dollar Ripoff,” *Daily News*, July 16, 2005, 16.
- 8 Wayne Barrett, “Statistics Still Do Lie,” *Village Voice*, August 24, 2005, 21.
- 9 Nicholas Confessore and Diane Cardwell, “Fierce Criticism of Miller Erupts After Mailings,” *New York Times*, July 16, 2005, B1.
- 10 Jill Gardiner, “Miller Mailing from Council Office Comes at Opportune Time,” *New York Sun*, June 8, 2005, 3.
- 11 Meghan Clyne, “Democrats Vie for 2nd Place and a Runoff,” *New York Sun*, August 22, 2005, 3.
- 12 “Give it Back, Gifford,” *New York Sun*, June 8, 2005, 10. See also “Gifford Miller’s Million-Dollar Ripoff,” *Daily News*, July 16, 2005, 16.
- 13 Marshall Miller, “Letter to Campaign Finance Board Chairman re: Miller for New York Exempt Petitioning Costs Application for Immediate Guidance,” September 2, 2005.
- 14 Advisory Opinion No. 2005-3 (September 6, 2005).
- 15 Statement of Campaign Finance Board, September 9, 2005.
- 16 Nicholas Confessore, “As Weiner Begs Off Ballot, Analysis Finds Ferrer at 40 percent,” *New York Times*, September 17, 2005, 1.
- 17 Michael Saul, “Outsider? No, Just an Outspender,” *Daily News*, May 22, 2005, 19.

Chapter 2

- 18 Winnie Hu, "Mayor Vetoes Bill to Expand Public Funds in Certain Races," *New York Times*, November 25, 2004, B3.
- 19 7/22/05 Marist Poll.
- 20 Wayne Barrett, "The 2005 Wacko Awards," *Village Voice*, November 15, 2005.
- 21 Michael Goodwin, "Good Law Gone Bad," *Daily News*, November 2, 2005, 35.
- 22 Julia Levy, "With Ferrer Lagging, Political Class Asks How He Fell Behind," *New York Sun*, November 2, 2005, 1.
- 23 See, e.g., "Give Freddy a Break," *New York Post*, October 13, 2005, 28; Davidson Goldin, "Encouraging Self-Restraint," *New York Sun*, October 31, 2005, 7.
- 24 Michael Goodwin, "Good Law Gone Bad," *Daily News*, November 2, 2005, 35.
- 25 Jonathan P. Hicks, "Rivals for Public Advocate Go After Gotbaum in First Debate," *New York Times*, August 24, 2005, B5; Patrick Arden, "Gotbaum Gang-up in Advocate Debate," *Metro*, August 24, 2005, 3.
- 26 Jonathan P. Hicks, "Amid Heavy Fire of Rivals, Gotbaum Rallies Supporters," *New York Times*, August 23, 2005, B6.
- 27 "The Race for Public Advocate," *Gotham Gazette*, July 22, 2005.
- 28 "Amsterdam News Endorses Wright," *Amsterdam News*, September 1, 2005.
- 29 *Ibid.*
- 30 *Ibid.*
- 31 Gail Robinson, "Can This Island Be Saved?" *Gotham Gazette*, July 18, 2005.
- 32 *Ibid.*
- 33 *Ibid.*
- 34 Jim Rutenberg, "Openly Gay Politician is Openly Paired in Ad," *New York Times*, August 29, 2005.
- 35 Beth Fertig, "Fierce Race for Manhattan Borough President," *WNYC*, September 13, 2005.
- 36 David Greenhouse, "Local Leaders Publicly Support Dickens' Bid for City Council," *Columbia Spectator*, April 8, 2005.
- 37 David Seifman, "Jennings 'Said He Had Power and He Could Do Anything He Wanted'," *New York Post*, April 18, 2005; Jonathan Hicks, "As Rivals Circle, Embattled Councilman Seems Unworried," *New York Times*, August 2, 2005.
- 38 Jose Martinez, "Queens Voters Say It's Send in the 'Clowns,'" *Daily News*, September 11, 2005.
- 39 Jonathan Hicks, "Family Name in Brooklyn Loses Clout with Defeat," *New York Times*, September 15, 2005; "Two for Brooklyn," *Daily News*, September 10, 2005.
- 40 Jarrett Murphy, "Two Blows in Brooklyn Council Battle," *Village Voice*, August 25, 2005.
- 41 "City Council Endorsements," *New York Times*, August 28, 2005.

chapter 3

Public Disclosure — Getting Better All the Time

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- The searchable database is the CFB website’s most widely used feature
 - Candidates can now file disclosure statements via the Internet
 - Real time disclosure provides immediate and accessible candidate compliance and financial information to the press, public, and campaigns
 - C-SMART enhanced to meet City and State BOE filing requirements
-

The 2005 elections reflected groundbreaking changes in public disclosure. In 2004, legislation was passed mandating that all campaigns for the five offices covered by the Program, regardless of Program participation, must disclose their financial records to the CFB. This detailed disclosure has been a boon for good government in the City of New York. Even before non-participants were required to make disclosure to the CFB, the Center for Governmental Studies found:

[T]he electronic filing and disclosure component of the campaign finance program is a resounding success. Candidates, voters, journalists and scholars are able to access candidate contribution and expenditure information almost instantaneously when it is filed with the Campaign Finance Board. The level of disclosure detail required by the city is far greater than that required by the state of New York. Electronic disclosure has revolutionized the dissemination of campaign finance information in New York City elections.¹

What was missing in 2003, when these words were written, was the ability to compare “apples to apples” when a participating candidate was opposed by a non-participating candidate. For example, when non-participating candidate Michael Bloomberg ran in 2001, he was only required to file campaign finance disclosure statements manually with the New York City BOE on forms used

statewide. These New York State BOE forms are less comprehensive than CFB forms as they do not, for example, include fields for contributors' employers or occupations. In addition, New York State BOE forms filed by city candidates were only recently made available online. Thus, anyone wishing to compare the 2001 Bloomberg campaign's finances with those of his participating opponents would have to go to the New York City BOE to look at the Bloomberg filings on paper, but would have access over the Internet to his opponents' filings on the CFB's website, as his opponents were Program participants. For the 2005 elections, the press and public could see financial data for every campaign on the CFB's website.

Another advance was made in public disclosure beginning with the 2005 elections: the Board introduced two new disclosure statement deadlines, in mid-March and mid-May of the election year.

These additional disclosure statements offered two concrete benefits. By submitting matching claims earlier, candidates had the opportunity to correct compliance problems and to review and correct invalid matching claims in advance of their July 15th filing, increasing the likelihood that they would meet threshold and receive a public funds payment on the first payment date. (See Chapter 6—Public Funds.)

The press and the public benefited as well. Until 2005, there was little verifiable information about candidates' fundraising during the election year until just a few weeks before the primary election. With the advent of these two new spring disclosure statements, the public had access to information about their candidates' fundraising activities and expenditures much earlier in the election season.

The CFB always looks to enhance public disclosure. Effective disclosure of campaign finances is a hallmark of the Program, and one of the ways in which the Program has been a consistent and unqualified success.

DATA ON THE CFB'S WEBSITE

The Campaign Finance Board's website, www.nyccfb.info, provides a wealth of data for anyone interested in city politics. It is a one-stop shop for candidate information, providing access to the searchable campaign finance database, the online Voter Guide, and final audit reports. The CFB makes continual updates to its website to ensure the site provides the detailed level of current data upon which candidates, reporters, and the public have come to rely, in an easily accessible and comprehensible fashion.

Just prior to the primary election and continuing until the general election, the website saw a surge in activity, experiencing a nearly 50 percent increase in daily traffic, with roughly 3,500 daily visitors. The online Voter Guide was particularly successful. (See Chapter 8—The Voter Guide.)

The searchable campaign finance database remains the most widely used resource on the CFB website. The searchable database allows the public to “follow the money” across election cycles, offering

in-depth information about candidates' public and private funding going back to 1989. Users can search for information regarding candidates' contributions, expenditures, transfers, loans, intermediaries, and other transactions.* No other jurisdiction in the country—at any level—provides this magnitude of searchable, computerized, and quality-assured campaign finance information. The CFB ultimately audits all candidates, which enhances the reliability of the data contained in the searchable database. For those who want to perform in-depth analyses with more flexibility than is possible using the web-based searchable database, the entire database can also be purchased on CD-ROM.

DISCLOSURE AND THE MEDIA

The real-time disclosure offered by the CFB provides immediate access to candidate compliance and financial information online. On campaign filing days, the CFB updates the site several times throughout the day to reflect the most up-to-date information on candidates' finances.

For the 2005 election cycle, the CFB created an on-line “Press Room” for its homepage. The goal was to create a centralized information section for reporters covering the 2005 municipal races. The Press Room contains agency contact information, press releases, scripts of testimony given by the Board and CFB staff, “frequently asked questions,” and important CFB dates, as well as a tip sheet for using the campaign finance searchable database. The CFB began holding training seminars in April of 2005 for interested members of the media to help them make the most effective use of the searchable database. Representatives from more than 16 different media outlets—including broadcast and print media, national and local media, and English-language and foreign-language media—attended these trainings.

Candidates often use the searchable database for information on their opponents' contributions and spending. Before the primary election, candidate Stanley Michels ran newspaper advertisements listing contributions made by employees and officers of developers to the campaign of fellow candidate Scott Stringer, claiming that “Landlords... are Stringer's biggest contributors!”† The advertisement cited the CFB as a source.

* Private information about contributors, such as addresses, is not made available publicly.

† For further discussion of campaign contributions from sources—such as developers—who may have business before city boards, agencies, or officials, see also the *Interim Report of the New York City Campaign Finance Board on “Doing Business” Contributions*, released in June 2006, attached as Appendix J.

C-SMART

As of the 2005 elections, all candidates for mayor, public advocate, comptroller, borough president, and City Council member are required by law to disclose their financial information to the CFB, regardless whether they join the Program. As a result, the CFB's Candidate Software for Managing and Reporting Transactions, or C-SMART, has become a fixture in all New York City campaigns. C-SMART was developed by the CFB to organize and track campaign finances while allowing easy transfer of data for public disclosure. C-SMART contains numerous features to help candidates comply with the requirements of the Act and to manage the vast amount of campaign data collected during a typical election. Since 1993, C-SMART has been distributed free to all campaigns. The software is updated continually, with major improvements made for each new election cycle. Revisions to C-SMART are informed by candidate surveys and focus groups that help the CFB better address the needs of campaigns with each new version.

Beginning in 2005, the new C-SMART Internet delivery system enabled candidates to submit disclosure statements over the Internet. Backup documentation for matchable contributions or loan documentation must still be hand-delivered or mailed to the CFB by the due date. The new Internet filing feature makes financial disclosure even easier for candidates, and also allows data to be uploaded onto the website and made available almost instantaneously.

In November 2005, State Election Law was amended to require all local candidates who file with the New York City BOE and who raise or spend (or expect to raise or spend) more than \$1,000 in a calendar year, to file their mandated campaign finance statements electronically with the New York State BOE, while continuing to file, in paper or electronic format, with the New York City BOE. The new law went into effect in January 2006. Thus, city candidates must now file in *three* places: the New York City Campaign Finance Board, the New York City BOE, and the New York State BOE.

C-SMART has always assisted candidates with their BOE filing requirements by allowing them to print out the manual forms required by the New York City BOE directly from C-SMART. After numerous campaigns voiced their concerns about re-entering their campaign data into a new and distinct New York State BOE electronic filing system, the CFB created and issued an update to C-SMART 7.0 that allowed candidates to file their mandated disclosure statement for the 2005 cycle directly with the New York State BOE using C-SMART, saving city candidates significant time and effort.

PUBLIC DISCLOSURE OF VIOLATIONS AND PENALTIES

The Board discloses public funds disbursements as they are approved, and also discloses information about candidates who fail to comply with the Act and the Rules. The Board issues press releases, which are posted on the website after each meeting, to alert the public to these actions, and also posts candidates' final audit reports, as well as the names of candidates with outstanding penalties, on the website.

During the 2005 election cycle, the Board began to post the names of candidates who filed their disclosure statements late, or failed to file at all. This practice significantly improved campaigns' compliance with the Board's disclosure deadlines, and enhanced an already extremely useful online resource for voters.

REFERENCES

- 1 Paul S. Ryan, "A Statute of Liberty," *Center for Governmental Studies*, 2003, 27.

chapter 4

Contributions— The Incumbency Effect

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- Incumbents raised significantly more than non-incumbents
 - Average contribution size increased slightly
 - Incumbents raised more money early in the election cycle
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The results of the 2005 elections are consistent with the theory that holds that incumbency is the most reliable predictor of electoral success.* Beyond the advantages incumbents enjoy in terms of voter recognition, media attention, and community visibility, incumbency also attracts money. Incumbents, in general, receive more in contributions than do challengers. Moreover, when an incumbent is seeking re-election, far fewer challengers enter the race. In many cases, the presence of incumbents discourages potential candidates from running and decreases the likelihood that there will be competitive races.† Those challengers who do run often find that not only is public interest lower in these races, but so is the flow of contributions to their campaigns.

Unlike 2001, when term limits first went into effect, resulting in 44 open seats citywide, there were only eight open seats in 2005. As one would expect, the 187 participants who joined the Program in 2005 raised less money, in total, than was raised by the 353 participants in 2001. But while the number of candidates dropped by half, the decrease in total funds raised was only 35 percent. The presence of incumbents in all three citywide elections (mayor, public advocate, and comptroller) as well as 44 of the 51 Council districts, made it unlikely that total fundraising would reach its 2001

* Council Member Allan W. Jennings, Jr. in district 28 was the only incumbent at any level of city office in 2005 to fail in his bid for re-election; this race is covered in more detail in Chapter 2—At the Races.

† In New York City, politics is dominated by the Democratic Party, so Democratic primary winners usually face little opposition in the general election.

levels. But incumbents are raising more, and insurgent candidates are finding it harder to mount serious challenges; data from the 2005 elections show a large disparity between incumbents and challengers in their respective ability to raise private campaign funds.

CHALLENGES TO FUNDRAISING

In 2005, total contributions received by participating candidates for all offices decreased by 28 percent to \$39.6 million from \$54.9 million in 2001 (the most recent citywide election for all covered offices prior to 2005). The total amount of contributions raised by participants in 2005 is closer to the totals in 1997 and 1993, when \$29.3 million and \$30.7 million were raised, respectively, than to the 2001 totals. (See Table 4.1.)

Contributions in the Mayoral Race

At the mayoral level, there was a decrease in total funds raised by participating candidates from \$29.2 million in 2001 to \$15.1 million in 2005. Although the number of major candidates in the race was the same as four years earlier, funds raised decreased by 48 percent. Michael R. Bloomberg's advantages as an incumbent, his high job approval rating, and the broad range of endorsements he received from key civic unions and political figures—both Democrat and Republican—likely contributed to the lower levels of donor interest in the other mayoral candidates, including the Democratic frontrunner, Fernando Ferrer. Before the 2005 primary, a report in the *New York Times* observed that “statements from the high rollers of Democratic Party politics are sending chills through local party leaders, who are seeing many of their biggest donors publicly supporting the mayor this campaign year—and keeping their money in the bank.”¹ Rather, total fundraising in

TABLE 4.1	TOTAL CONTRIBUTIONS TO PARTICIPANTS BY OFFICE — 1997–2005			
Office	1997	2001	2003	2005
Mayor	\$14,856,779	\$29,150,517	n/a	\$15,113,813
Public Advocate	\$ 2,016,977	\$ 4,829,248	n/a	\$ 2,366,238
Comptroller	\$ 1,959,275	\$ 3,670,474	n/a	\$ 3,844,371
Borough President	\$ 5,135,627	\$ 5,668,251	n/a	\$ 8,447,551
City Council	\$ 5,378,986	\$11,546,648	\$6,405,680	\$ 9,850,053
Total	\$29,347,644	\$54,865,138	\$6,405,680	\$39,622,026

FACT SHEET 4.1				
CONTRIBUTION LIMITS BY OFFICE — 1997–2005				
Office	1997	2001	2003*	2005
Mayor	\$7,700	\$4,500	n/a	\$4,950
Public Advocate	\$7,700	\$4,500	n/a	\$4,950
Comptroller	\$7,700	\$4,500	n/a	\$4,950
Borough President	\$5,900	\$3,500	n/a	\$3,850
City Council	\$3,550	\$2,500	\$2,750	\$2,750
* The 2003 elections were for City Council only.				

the 2005 mayor's race was roughly the same as 1997, when there was also an incumbent mayor and participating candidates running for mayor raised about \$14.7 million in total.*

Bloomberg's Democratic challengers individually and collectively raised far less than the candidates who ran in the 2001 Democratic primary. In 2001, the four major participating candidates vying for the Democratic nomination collectively raised \$23.3 million through the primary election, and \$28.6 million for the entire cycle.† In 2005, the four contenders raised \$14 million through their primary, and finished the electoral cycle having raised \$15 million as a group.‡

In 2001, Democratic nominee Mark Green raised a total of \$11.2 million, while in 2005 Ferrer was able to raise only \$5.3 million. Even more surprising, Ferrer raised \$127,000 *more* in contributions in 2001 than he did in 2005, yet in 2001 Ferrer was neither the frontrunner in the primary election nor the Democratic nominee for the general election. In 2005, he was both—and polling as late as March of the election year suggested that Ferrer would beat Bloomberg in the general election.² (See also the Board's white paper: *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nyccfb.info.)

Contribution patterns in other races tend to support the hypothesis that incumbency can be the most reliable predictor of electoral success.

* In 1997, Democratic challenger Ruth Messinger faced Republican incumbent Mayor Rudolph Giuliani after winning a five-way Democratic primary and narrowly avoiding a runoff against Reverend Al Sharpton.

† An additional participant, George Spitz, raised \$6,029 in contributions.

‡ There was a runoff election for the Democratic nomination in 2001; a runoff was averted in 2005. (See Chapter 2.)

Public Advocate

Another story about the privileges of incumbency unfolds in an analysis of the race for public advocate; donors simply seem to have less interest in making contributions to a candidate running against an incumbent. Contribution totals from the past few cycles bear this out: while \$4.8 million was raised by all candidates for the open-seat public advocate race to succeed Mark Green in 2001, only \$2.4 million was raised by all candidates for the 2005 campaign.

As one of several candidates for a vacant position, Betsy Gotbaum raised \$1.8 million to win the job in the 2001 election, out-raising her nearest challenger (then-Assemblyman Scott Stringer) by \$600,000. Three other candidates in the 2001 race raised more than \$500,000 to compete for the office in a spirited campaign. In 2005, while Gotbaum raised some \$200,000 less—about \$1.6 million—for her re-election campaign, it was enough to surpass the fundraising total of her nearest challenger (Norman Siegel) by \$1.3 million.

Borough President

With four incumbents on the ballot in 2005, and a wide-open race to succeed term-limited C. Virginia Fields in Manhattan, fundraising was up considerably at the borough president level from 2001.

Most of those gains were driven by the competitive race in Manhattan. More funds were raised by the 11 candidates contesting the Manhattan race than in the other boroughs combined, some \$4.9 million. That total dwarfed the analogous total for any open-seat race in 2001 (the highest: Brooklyn, \$1.9 million). In 2001, there were ten candidates across the five boroughs who raised more than \$250,000 to run for borough president; in 2005, there were eight in Manhattan alone. The winning candidate, Scott Stringer, raised almost twice as much as had any winning candidate in 2001 (the highest: Marty Markowitz, Brooklyn, \$590,000). Certainly, the numbers from this race would seem to reinforce Manhattan's primacy among the boroughs as a source of campaign funds.

Analysis of the races in other boroughs suggests the relative ease incumbents have in raising campaign money. The incumbents (Markowitz in Brooklyn, Adolfo Carrion, Jr. in the Bronx, Helen M. Marshall in Queens, and James P. Molinaro in Staten Island) raised far more on the average (\$870,000) than did their challengers (\$42,000).^{*} Markowitz, who raised \$590,000 to be elected in 2001, raised almost \$1.7 million for his re-election. Similarly, Carrion raised \$520,000 for his 2001 race; for his re-election, he raised over \$1 million. Interestingly, both Marshall and Molinaro raised less for their 2005 re-election than they had in 2001. Still, none faced a primary, and all four were re-elected handily, with margins ranging from 59 percent (Molinaro) to 81 percent (Markowitz).

^{*} Three challengers raised no money at all; when they are included in the calculation, the average amount raised by challengers in the borough president races drops to just under \$21,000.

INCUMBENCY CONTINUES TO RULE—CITY COUNCIL

At the City Council level in 2005, with 44 incumbents running for re-election in 51 districts, the up-hill battle for challengers proved virtually insurmountable. Of the \$9.8 million in total contributions raised by the 126 participating Council candidates in 2005, over half—\$5.5 million— was raised by the 38 incumbents who joined the Program. In other words, the incumbents, who comprise 30 percent of the Program’s participants, raised well over half (56 percent) of the total contributions raised by participants at the Council level.

When *all* City Council candidates in 2005 are considered (participants and non-participants), the gap widens: 61 percent of total contributions went to incumbents (\$7.1 million out of \$11.7 total). When the numbers are analyzed by district, the disparity widens further: of the 21 incumbents with head-to-head campaigns (in either the primary or general election), 19 raised more than three times as much as their challengers. Of the seven incumbents with multiple challengers, five raised 50 percent or more of the total funds raised by all the candidates in their races. Another 16 incumbents were unopposed entirely. These figures suggest the political prowess of incumbents and their capacity to raise disproportionate amounts of funds compared to their challengers, which could even serve to discourage possible opponents from running at all.

In summarizing the fundraising of the 35 members of City Council elected to their first term in 2001, Table 4.2 illustrates the natural fundraising advantages often enjoyed by incumbents. All but one were re-elected in 2005. Of the 35 members of the “Class of 2001,” 26 raised more money for their 2005 race.* Some raised considerably more; nine more than doubled their fundraising between the 2001 and 2005 election cycles. (See Table 4.2.)

With term limits in effect, the imbalance between incumbents and challengers is not a chronic problem; as these members are blocked from running for re-election again in 2009, we should expect another season of wide-open races in a majority of Council districts. But in the 2005 election campaign, the playing field was clearly tilted in favor of incumbents.

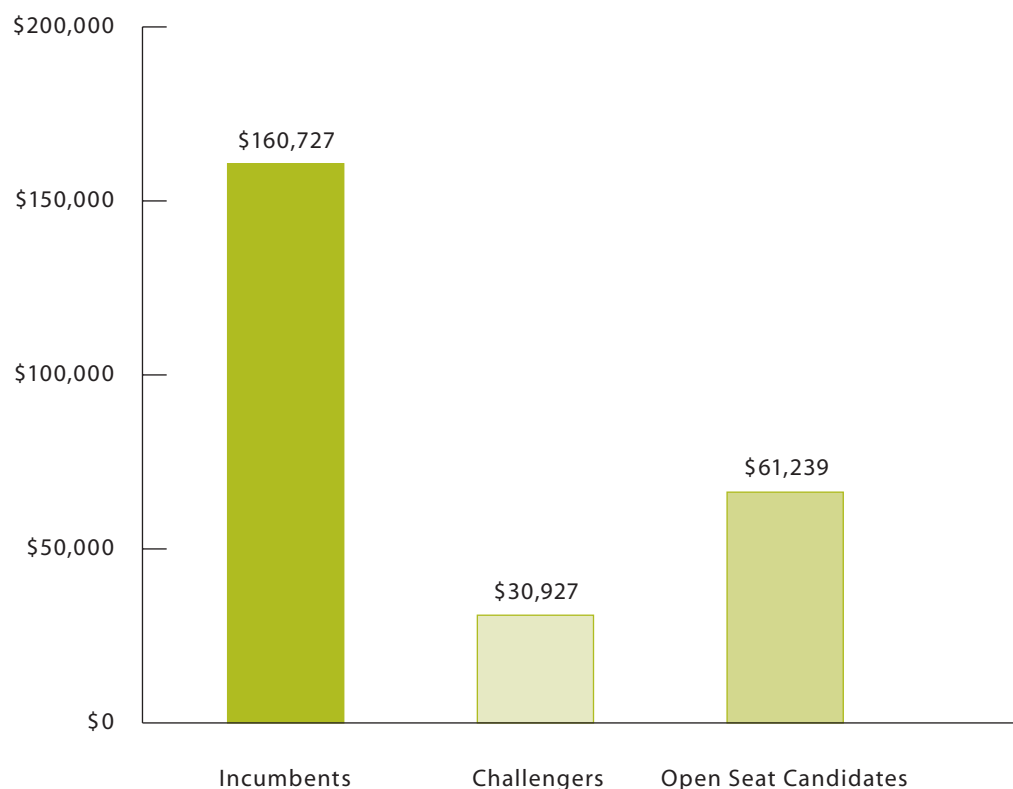
The average incumbent Council member raised \$161,000 for his or her 2005 re-election campaign. Candidates for open seats were unable to compete with those totals—but then, they did not have to compete against incumbents. Fifty-three candidates ran in seven open seat races (districts 2, 4, 5, 8, 9, 13, and 41) in 2005. While not nearly as prolific as incumbents, the average candidate running for an open seat was still able to raise over \$61,000. The average challenger taking on an incumbent, on the other hand, raised less than \$31,000. (See Figure 4.1.) This may be the most clear-cut example of the effect incumbency has on the fundraising of insurgents. A breakdown by district of the total amount of contributions given to participants running for City Council places these seven open-seat districts competitively near the top 15 list of most monies raised per district out of 51. (See Table 4.3.)

* Among the nine who raised less in 2005, eight lacked opponents in the primary, general, or both elections.

TABLE 4.2		"THE CLASS OF 2001" — CONTRIBUTIONS TO COUNCIL MEMBERS ELECTED TO FIRST TERM IN 2001, RE-ELECTED IN 2005*		
District	Incumbent	2001	2005	% Change
33	David Yassky	\$ 86,429	\$ 567,483	556.6%
29	Melinda R. Katz [†]	\$ 156,378	\$ 723,320	362.5%
26	Eric N. Gioia	\$ 122,677	\$ 554,936	352.4%
23	David I. Weprin	\$ 124,139	\$ 507,316	308.7%
44	Simcha Felder [†]	\$ 88,010	\$ 287,862	227.1%
31	James J. Sanders, Jr. [†]	\$ 49,685	\$ 162,462	227.0%
27	Leroy G. Comrie [†]	\$ 87,570	\$ 211,624	141.7%
47	Domenic M. Recchia	\$ 60,864	\$ 140,530	130.9%
21	Hiram Monserrate	\$ 88,606	\$ 185,352	109.2%
25	Helen Sears	\$ 72,300	\$ 139,885	93.5%
24	James F. Gennaro	\$ 115,341	\$ 214,792	86.2%
10	Miguel Martinez [†]	\$ 104,605	\$ 183,817	75.7%
28	Allan W. Jennings, Jr. ^{*†}	\$ 19,113	\$ 32,610	70.6%
30	Dennis P. Gallagher	\$ 77,588	\$ 122,806	58.3%
45	Kendall B. Stewart	\$ 56,075	\$ 87,818	56.6%
14	Maria Baez	\$ 58,346	\$ 90,110	54.4%
42	Charles Barron	\$ 47,285	\$ 65,854	39.3%
11	G. Oliver Koppell	\$ 74,275	\$ 102,186	37.6%
<p>* Allan W. Jennings, Jr. (district 28) was the only incumbent to lose his 2005 campaign for re-election.</p> <p>† Non-participant in 2005.</p>				

TABLE 4.2		"THE CLASS OF 2001" — CONTRIBUTIONS TO COUNCIL MEMBERS ELECTED TO FIRST TERM IN 2001, RE-ELECTED IN 2005 (continued)		
District	Incumbent	2001	2005	% Change
22	Peter F. Vallone, Jr.	\$ 135,385	\$ 186,110	37.5%
34	Diana Reyna	\$ 70,895	\$ 96,227	35.7%
51	Andrew J. Lanza	\$ 43,185	\$ 58,315	35.0%
40	Yvette D. Clarke	\$ 68,933	\$ 89,166	29.4%
39	Bill de Blasio	\$ 173,453	\$ 205,458	18.5%
7	Robert Jackson	\$ 73,149	\$ 83,065	13.6%
20	John C. Liu	\$ 210,650	\$ 230,384	9.4%
12	Larry B. Seabrook	\$ 40,381	\$ 42,717	5.8%
19	Tony Avella	\$ 139,000	\$ 133,307	-4.1%
16	Helen Diane Foster	\$ 97,618	\$ 92,902	-4.8%
6	Gale A. Brewer	\$ 139,952	\$ 111,118	-20.6%
1	Alan J. Gerson	\$ 174,192	\$ 137,651	-21.0%
49	Michael E. McMahon	\$ 179,450	\$ 138,823	-22.6%
37	Erik Martin Dilan	\$ 50,629	\$ 37,165	-26.6%
46	Lewis A. Fidler	\$ 76,106	\$ 43,013	-43.5%
32	Joseph P. Addabbo	\$ 119,156	\$ 47,430	-60.2%
36	Albert Vann	\$ 80,151	\$ 23,280	-71.0%
Totals		\$3,361,571	\$6,136,894	82.6%

FIGURE 4.1: Average Total Funds Raised by Incumbents vs. Challengers vs. Open Seat Candidates—2005 (City Council Only)



CONTRIBUTION SIZE

The total amount of contributions declined from 2001, but the size of the average contribution increased, although not significantly beyond inflation. (See Figure 4.2.) The average contribution amount for Program participants across all offices in 2005 was \$440 per contributor, compared to \$386 in 2001 and \$409 in 1997. Proportionately, contributions received from New York City residents reflected this pattern. In 2005, the average contribution size from a New York City resident was \$255 for all offices, compared to \$228 in 2001 and \$189 in 1997.

Small donors, however, still comprise a majority among political givers. The median contribution size across all offices remained steady at \$100 in 2005 and, among mayoral candidates, it remained steady at \$250. Contributions of \$250, the cut-off for availability of public funds, continue to be extremely common among contributors to candidates for citywide office. In both 2003 and 2005, the median contribution size at the Council level was \$100, compared with \$75 in 2001 and \$60 in 1997. (See Figure 4.2.)

TABLE 4.3		CITY COUNCIL RACES WITH MOST MONEY RAISED (TOP 15) — 2005				
Rank	District	Total \$ Amount Raised	Amount Raised by Incumbent	% of Total Amount Raised by All Candidates	Incumbent	Total Number of Candidates (PE and GE)
1	29	\$742,056	\$723,320	97%	Melinda R. Katz	2
2	4	\$631,678	—	—	no	5
3	33	\$567,483	\$567,483	100%	David Yassky*	2
4	26	\$565,335	\$554,936	98%	Eric N. Gioia*	3
5	13	\$527,672	—	—	no	6
6	23	\$507,316	\$507,316	100%	David I. Weprin*	1
7	2	\$503,104	—	—	no	9
8	5	\$487,879	—	—	no	5
9	9	\$420,793	—	—	no	10
10	41	\$338,973	—	—	no	12
11	8	\$335,590	—	—	no	6
12	28	\$328,319	\$ 32,610	10%	Allan W. Jennings, Jr.†	7
13	24	\$302,699	\$214,792	71%	James F. Gennaro	4
14	44	\$287,862	\$287,862	100%	Simcha Felder*	1
15	3	\$274,528	\$274,528	100%	Christine C. Quinn*	1

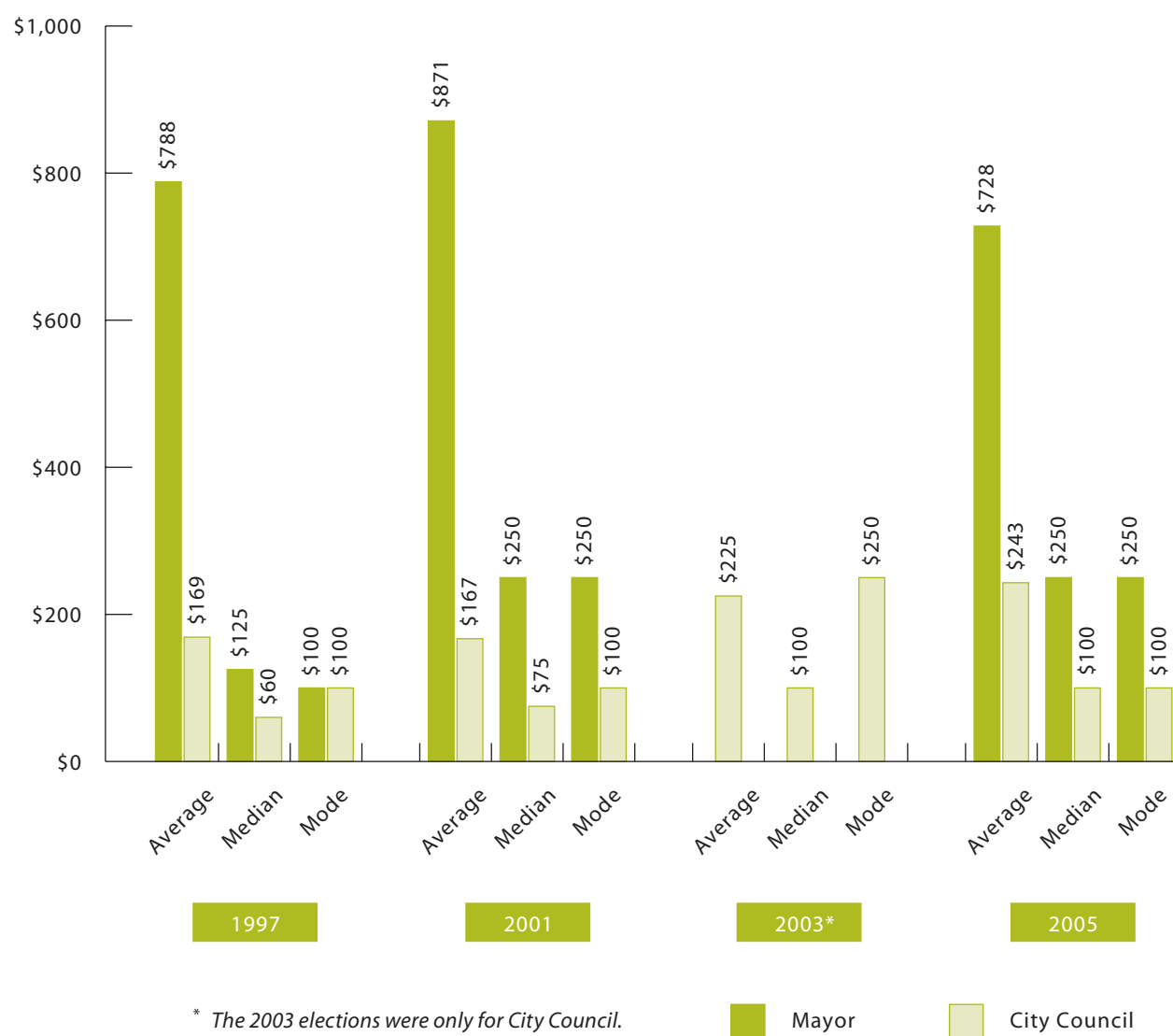
 open seat districts

* There was no Primary Election for this district.

† Only incumbent to lose 2005 race.

Conversely, at the mayoral level the average contribution size decreased to \$728 in 2005 from \$871 in 2001 and \$788 in 1997. (See Figure 4.2.) The decrease is consistent with other races in which challengers had difficulty raising funds to run against incumbents. This decrease in 2005 may be attributable to lack of interest in the race, as was discussed previously, rather than any discernible trend in fundraising for this office. (See also Chapter 2 and *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nycctfb.info.)

FIGURE 4.2: Average, Median, Mode Contribution Sizes—1997–2005



CONTRIBUTIONS GROWING LARGER?

Increases in the average contribution size can be partly explained by the presence of so many incumbents on the ballot in 2005. Certainly on the Council level, incumbents relied much more heavily on large contributions than challengers, while challengers are much more dependent on contributions up to the matchable limit of \$250. (See Figure 4.3.)

TIMING IS CRUCIAL

The timing of contributions, as well as their amount, is critical to campaigns. Contributions received early on, especially prior to the election year, can give campaigns flexibility and help propel a candidate past his or her opponents. Raising significant funds early allows candidates to focus on campaigning rather than fundraising closer to the election. Early money can discourage opponents, and gets a message out to voters before an opposing campaign has the ability to respond. Fundraising can also spur media coverage for campaigns that disclose significant activity early in the cycle. As one would expect, incumbents tend to have the advantage when it comes to raising funds early.

FIGURE 4.3: Percentage of Funds Raised by Contribution Amount at the City Council Level—2005 (All Candidates)

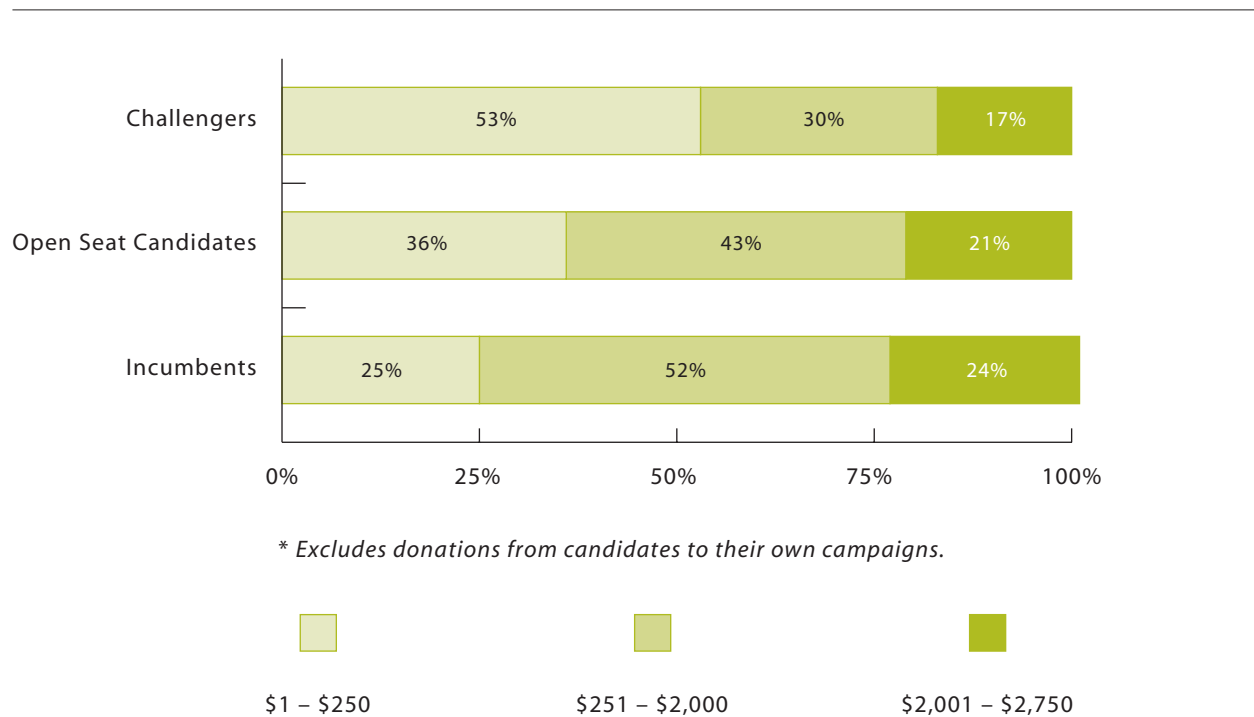
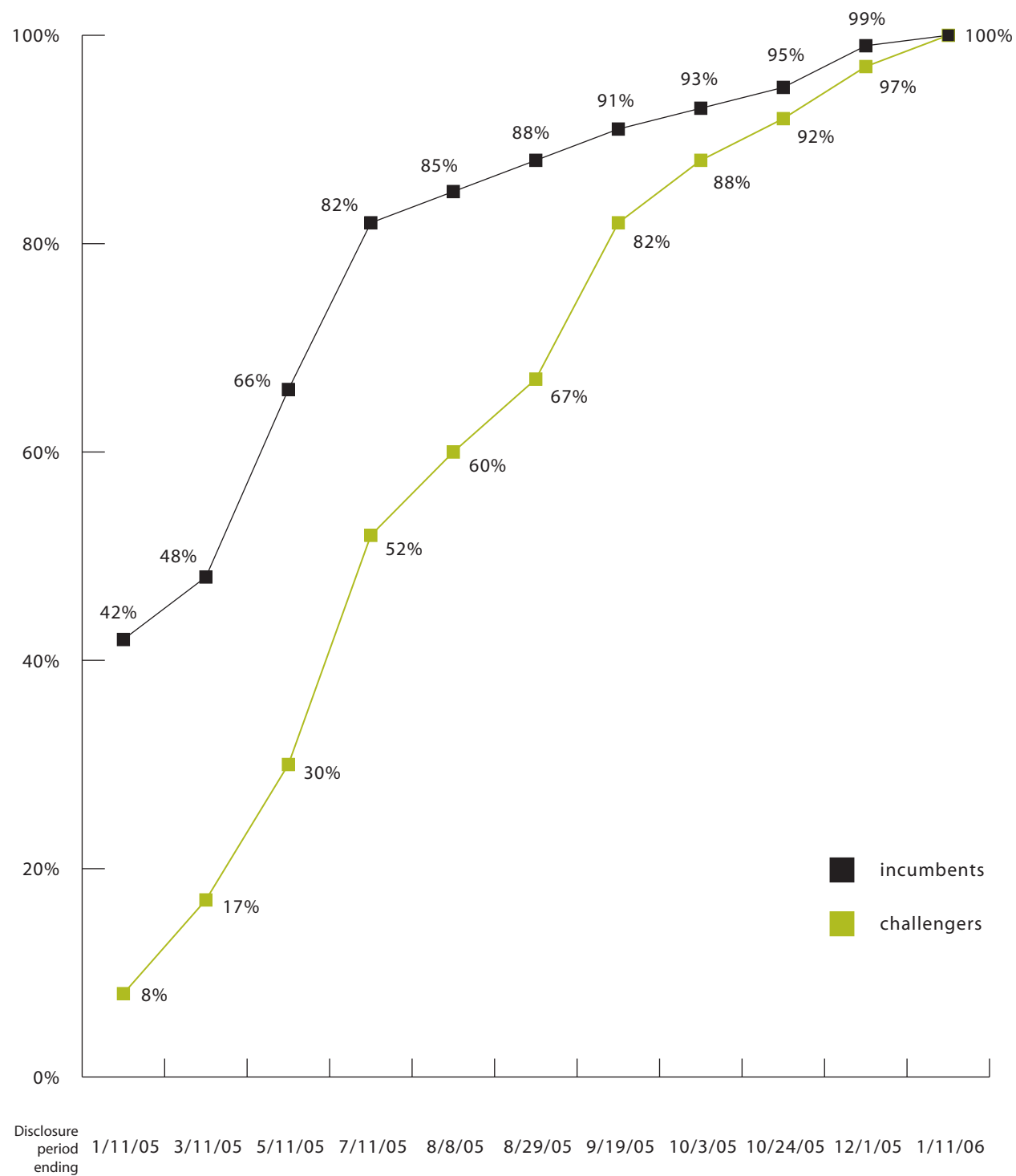


FIGURE 4.4: Percent of Total Contributions Received by Statement Date—2005
Incumbents vs. Their Challengers (City Council Participants Only)



As of January 11, 2005, the 38 participating City Council incumbents had already raised 42% of their money. By that same date, their challengers had only raised about 8 percent. By July 11, 2005, these incumbents had raised 82 percent of their total contributions, on average, while their challengers had raised an average of only 52 percent. (See Figure 4.4.)

These figures support the conclusion that incumbents have a considerable advantage when it comes to fundraising—not only in the amount of money they are able to raise, but also in how early they are able to raise it and, thus, have it available to spend. (See Chapter 10—Board Recommendations.)

SOURCES OF CONTRIBUTIONS

A central goal of the Program—and a continuing effect—is to encourage the participation of individual residents through contributions. The source of contributions has always been a topic of interest, especially after the 1997 election cycle, when a ban on corporate contributions was passed. Other organizations, however, including political action committees (PACs), limited liability companies (LLCs), limited liability partnerships (LLPs), and unions are still permitted to contribute. Individual contributions are, by a large margin, the main source of campaign funds, ranging from 77 percent of total contributions for Council candidates to almost 92 percent of total contributions for candidates running for public advocate. For the 2005 election cycle, the percentage of contributions that came from individuals (in terms of total dollars) decreased slightly to 84 percent across all offices, compared to not quite 87 percent in 2001. Compared to 2001, direct union contributions also decreased slightly, from 1.5 percent in 2001 to 1.3 percent in 2005.* (See Figure 4.5.) At the Council level, individual contributions as a percentage of total contributions decreased from 83 percent in 2001 to 77 percent in 2005.

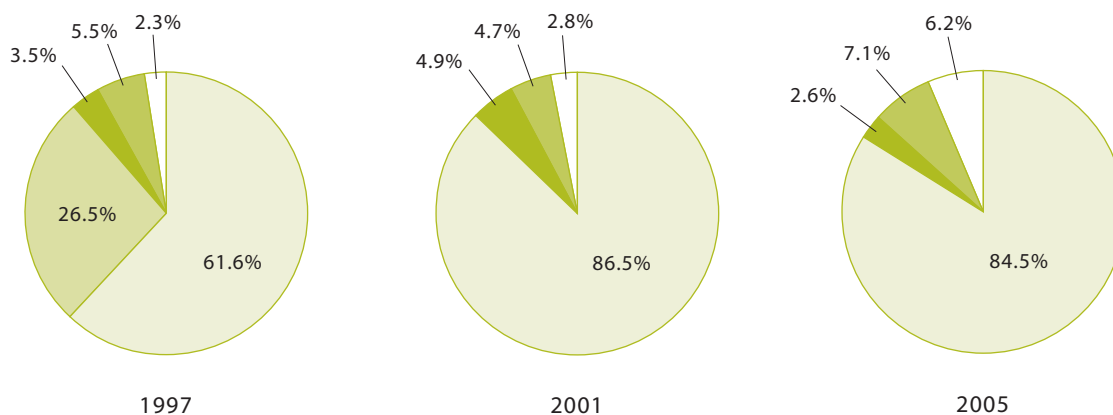
This decreased reliance on individual contributions—as well as the increased average contribution size—runs contrary to Program goals. The increase in “independent” spending by unions on behalf of specific candidates may also serve to dilute the influence of the small, individual donor in city elections. (See also Chapter 5—Expenditures).

Moreover, although organizational contributions comprised less than 25 percent of total funds available to Council candidates (and less than 10 percent of total funds for all offices) in 2005, a different story emerges as far as net contributions are concerned. The top 10 contributors to participants in the 2005 election cycle were all organizations, both across all offices and specifically at the Council level. (See Tables 4.4 and 4.5.)

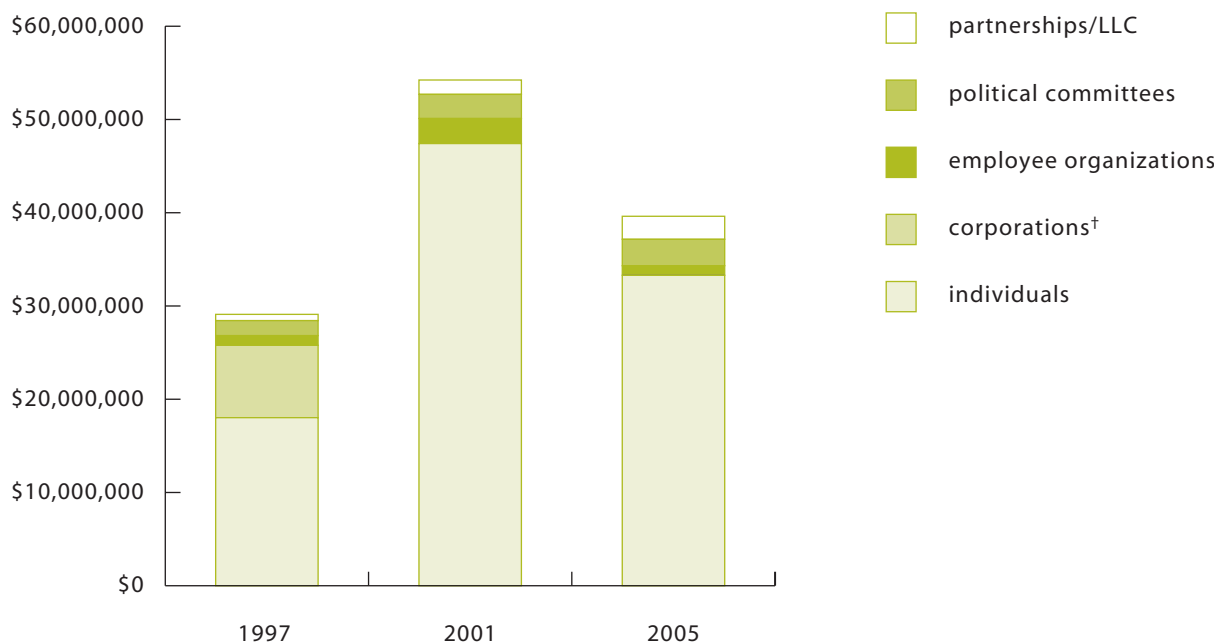
* However, this figure does not include contributions from union-controlled PACs, which are relatively much more significant, and therefore does not accurately reflect the role unions play in city elections.

FIGURE 4.5: Contributions by Type of Contributor as a % of Total Contributions and in Dollars—1997, 2001, 2005 (Participants Only)

As a Percentage of Total Contributions*



Dollar Amount



* May not add up to 100% because of rounding and "unknown contributions" for 1997 and 2001.

† After the 1997 elections, corporate corporations were banned.

TABLE 4.4 TOP 10 CONTRIBUTORS TO ALL PARTICIPATING CANDIDATES — 2005		
Rank	Contributor Name	Net Contributions
1	1199 SEIU	\$143,150
2	Local 6/New York Hotel Trades Council	\$132,100
3	NYC District Council of Carpenters	\$101,800
4	NYS Laborers PAC	\$ 91,525
5	Plumbers Local Union #1	\$ 83,500
6	New Yorkers for Katz/Katz 2003	\$ 79,685
7	Leonard Litwin	\$ 72,075
8	Uniformed Firefighters Association Political Action Committee	\$ 70,150
9	Muss Development Co./Muss Family	\$ 68,433
10	Local 32BJ SEIU NY/NJ American Dream Fund	\$ 66,175

TABLE 4.5 TOP 10 CONTRIBUTORS TO CITY COUNCIL CANDIDATES ONLY — 2005		
Rank	Contributor Name	Net Contributions
1	1199 SEIU	\$101,000
2	Local 6/New York Hotel Trades Council	\$ 83,100
3	NYC District Council of Carpenters	\$ 81,200
4	NYS Laborers PAC	\$ 73,625
5	Plumbers Local Union #1	\$ 64,250
6	New Yorkers for Katz/Katz 2003	\$ 61,000
7	Taxpayers for an Affordable New York	\$ 52,400
8	Local 32BJ SEIU NY/NJ American Dream Fund	\$ 46,425
9	Uniformed Firefighters Association Political Action Committee	\$ 40,780
10	New Yorkers for David Weprin	\$ 35,750

CONTRIBUTION GEOGRAPHY

One of the most important aims of the Campaign Finance Program is to increase the participation and influence of New York City residents in the political process. As Manhattan residents comprise a disproportionate percentage of total contributions in every election year, another aim is to increase participation from the other boroughs.

Looking at contributions to major candidates for citywide office, the data still show that Manhattan residents contribute the overwhelming majority of political dollars raised in New York City.* While the proportion has dropped somewhat from 2001, more than \$3 of every \$5 raised locally for citywide races comes from Manhattan. (See Table 4.6.) But Manhattan's influence is felt disproportionately in Council races as well; with less than 20 percent of the seats on the City Council, Manhattan contributes almost 40 percent of the money raised by Council candidates.

Even within Manhattan, the Upper East and Upper West Sides are dominant. The well-off neighborhoods along either side of Central Park have long attracted solicitations from candidates for local, state, and national office, and they dominate the list of the most generous city zip codes to candidates for citywide office as well. (See Table 4.7.) Analysis of fundraising by the four participating candidates in the Democratic primary for Mayor in 2005 shows the Upper East and Upper West Sides were a main focus of their efforts, with several zip codes making repeat appearances in candidates' Top 5. (See Table 4.8.)

TABLE 4.6				
CONTRIBUTIONS BY BOROUGH TO CITYWIDE CANDIDATES* — 2001 & 2005 (PARTICIPANTS ONLY)				
Borough	2001		2005	
Manhattan	\$16,383,994	68.7%	\$ 8,432,645	63.5%
Brooklyn	\$ 2,871,428	12.0%	\$ 2,434,424	18.3%
Queens	\$ 2,955,937	12.4%	\$ 1,564,460	11.8%
Bronx	\$ 1,003,012	4.2%	\$ 550,320	4.2%
Staten Island	\$ 645,648	2.7%	\$ 293,558	2.2%
Total	\$19,888,320	100%	\$11,105,451	100%
* Contributions from individuals only to candidates who raised at least \$250,000; excludes contributions that were reported without borough or zip code information.				

* This analysis focuses only on citywide offices to diminish the impact that incumbency or other factors may have on patterns of giving across neighborhoods and/or boroughs. For example, overall fundraising for 2005 Council candidates may have been particularly high in Manhattan because there were several competitive races for open seats, but lower than usual in Queens because there were no open seat races. The geographic conditions in citywide races do not change year to year.

TABLE 4.7		CONTRIBUTIONS TO CITYWIDE CANDIDATES FROM TOP 10 NEW YORK CITY ZIP CODES* — 2001 & 2005 (PARTICIPANTS ONLY)		
2001 ELECTIONS				
	Zip	Borough	Neighborhood	Total
1	10021	Manhattan	Upper East Side	\$3,661,013
2	10028	Manhattan	Upper East Side	\$1,291,738
3	10023	Manhattan	Upper West Side	\$1,110,697
4	10024	Manhattan	Upper West Side	\$1,090,871
5	10128	Manhattan	Upper East Side	\$ 998,924
6	10022	Manhattan	Sutton Place/Midtown East	\$ 965,751
7	10025	Manhattan	Upper West Side	\$ 582,233
8	10003	Manhattan	Greenwich Village	\$ 439,787
9	10019	Manhattan	Midtown West/Hell’s Kitchen	\$ 381,782
10	10011	Manhattan	Midtown	\$ 377,363
2005 ELECTIONS				
	Zip	Borough	Neighborhood	Total
1	10021	Manhattan	Upper East Side	\$1,767,570
2	10128	Manhattan	Upper East Side	\$ 560,845
3	10024	Manhattan	Upper West Side	\$ 539,256
4	10023	Manhattan	Upper West Side	\$ 517,372
5	10028	Manhattan	Upper East Side	\$ 494,575
6	10022	Manhattan	Sutton Place/Midtown East	\$ 447,995
7	11223	Brooklyn	Gravesend	\$ 375,525
8	11230	Brooklyn	Ocean Parkway/Midwood	\$ 281,951
9	10025	Manhattan	Upper West Side	\$ 255,494
10	10011	Manhattan	Midtown	\$ 228,818
* Contributions from individuals only to candidates who raised at least \$250,000; excludes contributions that were reported without zip code information.				

TABLE 4.8		CONTRIBUTIONS TO MAYORAL CANDIDATES FROM TOP 5 ZIP CODES* — 2005 (PARTICIPANTS ONLY)			
		Zip	Borough	Neighborhood	Total
Ferrer	1	10021	Manhattan	Upper East Side	\$285,541
	2	10024	Manhattan	Upper West Side	\$109,508
	3	10023	Manhattan	Upper West Side	\$ 76,036
	4	10028	Manhattan	Upper East Side	\$ 68,030
	5	10463	Bronx	Riverdale	\$ 65,670
Fields	1	10021	Manhattan	Upper East Side	\$121,101
	2	10128	Manhattan	Upper East Side	\$ 55,015
	3	10025	Manhattan	Upper West Side	\$ 49,930
	4	10024	Manhattan	Upper West Side	\$ 43,955
	5	10023	Manhattan	Upper West Side	\$ 43,100
Miller	1	10021	Manhattan	Upper East Side	\$597,006
	2	10128	Manhattan	Upper East Side	\$197,668
	3	10028	Manhattan	Upper East Side	\$172,919
	4	10024	Manhattan	Upper West Side	\$159,170
	5	10023	Manhattan	Upper West Side	\$158,991
Weiner	1	11223	Brooklyn	Gravesend	\$212,219
	2	11234	Brooklyn	Marine Park/Mill Basin	\$128,432
	3	11230	Brooklyn	Ocean Parkway/Midwood	\$127,583
	4	10021	Manhattan	Upper East Side	\$ 88,060
	5	11235	Brooklyn	Sheepshead Bay/Manhattan Beach	\$ 82,811
* Contributions from individuals only to candidates who raised at least \$250,000; excludes contributions that were reported without zip code information.					

When candidates are done raising money in Manhattan, many next turn their focus beyond the five boroughs altogether; in 2005 candidates raised 31 percent of all funds outside New York City (a proportion near its 2001 level).

INTERMEDIARIES

In the 2005 election cycle, 346 reported intermediaries* delivered contributions to 38 campaigns totaling about \$2.2 million, or 5.5 percent of the total contributions for the election cycle. This is a steep drop from 2001, when intermediated contributions comprised 17 percent of total contribu-

TABLE 4.9		2005 TOP 10 INTERMEDIARIES*				
Rank	Intermediary Name	Employer	Number of Transactions	Amount Intermediated	Average Intermediated Contribution	Recipient(s)
1	Leo Hindery	HL Capital, Inc.	90	\$230,050	\$2,556	Ferrer
2	Suri Kasirer	Kasirer Consulting	95	\$ 83,750	\$ 882	de Blasio; A. G. Miller; Stringer
3	William Wachtel	Wachtel & Masyr	36	\$ 81,350	\$2,260	Ferrer; Quinn
4	Patricia Belair	St. Barnabas Hospital	153	\$ 73,575	\$ 481	Ferrer
5	Lillian Carino	1199 SEIU	312	\$ 58,277	\$ 187	Ferrer
6	Judith Rubin	Self-Employed	49	\$ 54,600	\$1,114	A. G. Miller; Moskowitz
7	José Velazquez	Tri-Line Contracting	25	\$ 50,550	\$2,022	Carrion; Ferrer
8	Keith Miller	FASS	61	\$ 47,825	\$ 784	López
9	Bill White	Interpid Museum Foundation	13	\$ 46,450	\$3,573	Gotbaum; Katz; A. G. Miller
10	Marc Schur	Orbit Industries, LLC	10	\$ 44,800	\$4,480	Ferrer
* Data on intermediaries are often both under-and over-reported by campaigns.						

* An intermediary, or “bundler,” is a person who solicits, collects, and delivers contributions to a campaign.

tions (about \$9.4 million). In 1997, 13 percent of total contributions were intermediated, or about \$3.7 million. This decrease could be a reflection of an overall theme of this election—with so many incumbents and so few truly competitive races, even intermediated contributions decreased in 2005. The top 10 intermediaries for the 2005 elections are shown in Table 4.9. The top recipients of intermediated contributions for the 2005 elections are shown in Table 4.10.

The CFB's *Interim Report on "Doing Business" Contributions*, released in June 2006, estimated that 23 percent of all intermediaries for candidates in the 2005 election were either lobbyists or city contractors, representing 35 percent of all intermediated contributions (\$2.3 million). This was a decrease from 2001, when 29 percent of intermediaries were "doing business," representing 39 percent of all intermediated contributions (\$3.7 million).

It is interesting to note, however, that the role of lobbyists as intermediaries grew considerably between 2001 and 2005. While lobbyists accounted for 28 percent of intermediaries reported by campaigns in 2001 (and 24 percent of intermediated contributions), in 2005 lobbyists represented half of all intermediaries (and 70 percent of intermediated contributions).

TABLE 4.10		TOP 10 RECIPIENTS OF INTERMEDIATED CONTRIBUTIONS				
Rank	Candidate Name	Office	Number Of Transactions Intermediated	Amount Intermediated	Average Intermediated Contribution	Average Non-Intermediated Contribution
1	Ferrer	Mayor	1295	\$935,030	\$722	\$ 642
2	Miller	Mayor	480	\$339,432	\$707	\$ 699
3	Weiner	Mayor	299	\$164,116	\$549	\$ 622
4	Stringer	Borough President	181	\$149,726	\$827	\$ 397
5	López	Borough President	615	\$115,517	\$188	\$ 290
6	Murphy	City Council	222	\$ 76,355	\$3441	\$ 323
7	Carrion	Borough President	79	\$ 69,180	\$876	\$ 708
8	Thompson	Comptroller	134	\$ 56,290	\$420	\$1,119
9	Katz	City Council	72	\$ 52,550	\$730	\$ 725
10	Moskowitz	Borough President	45	\$ 41,300	\$918	\$ 614

USE OF THE INTERNET—A CONSIDERATION FOR THE FUTURE

At least 88 candidates published websites for the 2005 elections. These sites allowed candidates to spread their messages, and many campaigns solicited contributions through the sites. Website contributions were matchable in this past election if certain verifications were made according to Program rules. As the technology improves, issues regarding the acceptance and matchability of online contributions will certainly be revisited for the 2009 elections, to make it even easier for campaigns to solicit and receive contributions electronically.

REFERENCES

- 1 Jim Rutenberg, "Rich and Influential Democrats are Lining Up With the Mayor," *New York Times*, July 26, 2005, A1.
- 2 Quinnipiac University press release, March 30, 2005, "Fields is Up. Ferrer Down Among Dems in Diallo Flap, Quinnipiac University Poll Finds: Miller, Weiner Trail in Dem Primary Race."

chapter 5

Expenditures — Where Does the Money Go?

-
- Incumbents significantly outspent non-incumbents
 - Spending on consultants up; spending on fundraising down
 - Exempt and independent expenditures both at issue in 2005 campaigns
-

The attention focused on the \$84.6 million spent by Michael Bloomberg on his self-financed 2005 re-election campaign overshadowed other candidates' activities. In fact, Bloomberg's expenditures were more than the combined spending of the remaining 192 candidates who appeared on the ballot for the five offices covered by the Program and who filed disclosure statements with the Board.* Most of the \$63 million-plus expended by the remaining candidates was spent by the 155 Program participants. Program participants spent just under \$61 million during the 2005 elections; only about \$2.3 million was spent by non-participants (excluding Bloomberg).

In non-inflation adjusted numbers, the \$61 million spent by participants for the 2005 elections is only about 64 percent of the \$94.6 million spent by participants during the 2001 election cycle. But in 2005, there were about half as many participants as in 2001; thus, per-candidate spending actually increased.† The 2005 figure also represents an increase of 65 percent over the \$37 million spent by the 141 participants during the 1997 election cycle. These conclusions hold even when the numbers are adjusted for inflation.

* These data are based on disclosure statements filed by all participating and non-participating candidates in the Program. Non-participants filed disclosure statements with the CFB for the first time in 2005. (See Chapter 1 — Setting the Stage.) Some candidates who appeared on the ballot and were required to file with the CFB failed to do so.

† The 2001 spending total also includes spending for the Democratic mayoral and public advocate runoffs, each of which comes with a special public funds grant and its own expenditure limit.

Program participants spent \$24.6 million in the mayor's race. In raw numbers, total spending by participants for mayor and City Council declined from 2001 levels. Spending by mayoral participants in 2001 was about \$38.5 million, or 36 percent higher than 2005 levels, notwithstanding similarities between the groups of candidates in each election. Both elections saw four established political figures vying for the Democratic Party nomination in the primary, all of whom held or had held public office. With Mayor Rudolph Giuliani term limited, however, the four 2001 participants* were able to raise significantly more in contributions in seeking the Democratic nomination in a wide-open race for the mayor's office. These contributions generated more in matching claims for public funds, and more in actual public funds from the taxpayers. In contrast, the 2005 mayoral participants competed in the Democratic primary to face a popular incumbent mayor, making it difficult to raise funds from historically active Democratic donors (see Chapter 4—Contributions). Thus, the 2001 mayoral participants simply had more money available to spend than the 2005 participants did.

Looking at other offices, \$5 million was spent by participating public advocate candidates, \$13.3 million was spent by participating candidates for borough president, and \$15.5 million was spent by City Council candidates in the Program.† In 2005, participants running for City Council spent about 41 percent less than the \$26 million spent by their 2001 counterparts. But because of the much larger number of candidates running in 2001, this actually reflects an *increase* in per-candidate spending. Some of the decrease in total spending can be understood in light of the large number of incumbents seeking re-election; the presence of an incumbent generally leads to a smaller number of candidates (both participants and non-participants). Knowing that term limits will force an incumbent to vacate a seat gives potential challengers a reason to wait until the seat is open. But, the effect of incumbency on overall campaign spending is mixed. Some incumbents have a lot of money available to spend and spend much of it in marginally competitive races. Other incumbents spend little, regardless of who their opponent is or whether they have one at all. (See Figure 5.1.)

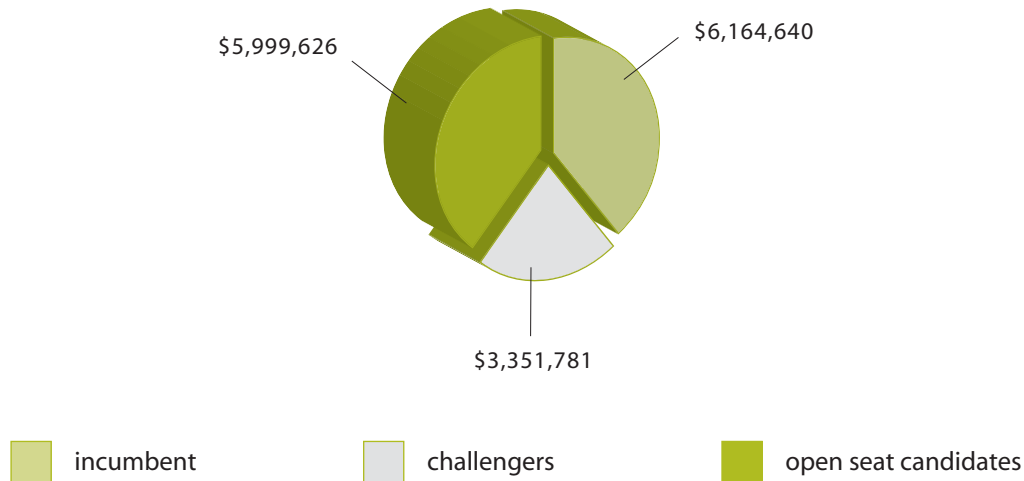
While spending limits, the availability of public funds, and many other aspects of the Program and New York City politics have changed since the start of the Program, overall spending at the City Council level adjusted for inflation has remained essentially flat. In 1989, the first elections under the Program, approximately 33 Council participants spent under \$3 million dollars.‡ The increase in the number of active City Council participants between the 1989 and 2005 elections is approximately 282 percent, while the inflation-adjusted increase in overall spending between the two election cycles is approximately 255 percent.

* Then-Bronx Borough President Fernando Ferrer, then-Public Advocate Mark Green, then-City Comptroller Alan Hevesi, and then-City Council Speaker Peter Vallone.

† The only participating candidate for comptroller, William C. Thompson, Jr., spent \$2.4 million.

‡ Data for 1989 spending and number of active participants are less precise than data for more recent election cycles.

FIGURE 5.1: Spending by Council Incumbents, Challengers, and Open Seat Candidates—2005 (Participants Only)



SPENDING PURPOSES*

Candidates must identify the purpose of each expenditure in their disclosure statements.[†] Spending on television advertising totaled about \$14.5 million—over \$4 million more than the next largest category of spending. Television advertising constituted 23.5 percent of the total expenditures by participants. Eighty percent of television advertising dollars were spent by mayoral participants, who need to reach a citywide audience of voters. Television costs in the New York City market are among the most expensive in the nation, and television advertising has consistently been the highest category of spending in citywide elections since the Program’s inception in 1989. Although spending on television is dominated by candidates in citywide races, this year’s participating borough president participants, mostly from Manhattan, spent almost as much (\$1.2 million) on television advertising as participants in the public advocate’s race (\$1.4 million).

* This analysis of spending purposes only includes participants unless otherwise noted because of the lack of reliable data for non-participants for previous election cycles. This analysis does not consider expenditure refunds.

† A given expenditure could be categorized in multiple ways, but the campaigns must choose one category per transaction. This can lead to some reporting inconsistencies. Where one campaign might report a mailing as one transaction in the category of “campaign mailing” to a single vendor, another might break the mailing into its component parts and report a “consultant” expenditure for the design firm that prepared the piece, a “campaign mailing” expenditure for the printing, and a “postage” expenditure for the purchase of postage.

Overall media spending (including television advertising, radio advertising, newspaper advertising, and campaign mailings and literature) constituted 46.8 percent of total spending by participants. This represents a decline in the percentage of total spending from 2001, when media spending constituted 52.3 percent of total spending. Overall media spending by participants in real dollars declined as well in 2005, totaling \$28.8 million, compared to \$50 million in 2001.

Spending on consulting and professional services* by participants rose to 22.7 percent of total spending in 2005, part of a marked trend across election cycles. In 2001, 18.2 percent of total spending fell in these combined categories, and in 1997, it was only 13.9 percent. Although some of these “professional” or “consulting” services are not performed by individuals who make this their ordinary business, the number of large vendors who were paid hundreds of thousands of dollars by Program participants gives credence to the theory that New York City campaigns are supporting the growth of an industry. (See Table 5.1.)

A different pattern appears to be developing in the area of fundraising costs. As a percentage of participants’ spending, fundraising declined from 10.8 percent in 1997, to 3.3 percent in 2001, and to 4.3 percent in 2005. From anecdotal evidence, it appears that campaigns are relying more on house parties and small gatherings instead of staging more large elaborate events to raise funds. Possibly, technology is cutting the costs associated with fundraising; for example, more candidates may be using electronic mail and the Internet in place of traditional mail, which costs more. In addition to saving campaigns money, smaller gatherings tend to foster the Program’s goal of increasing participation in the process by individual New York City residents. Without question, many campaigns solicit contributions on their websites, which serve multiple purposes, and most of the campaigns that solicit contributions on their websites also have the capacity to accept donations online.† Internet contributions did not exist in 1997, and only a handful of participants accepted online contributions in 2001.

Compared with 1997, participant spending on fundraising for 2005 decreased for borough president, City Council, and most notably for mayor; fundraising expenditures by participating mayoral candidates dropped from 8.9 percent in 1997 to 2.7 percent in 2001, and 3.0 percent in 2005. All three of these election cycles saw similar numbers of major participating mayoral candidates (defined as candidates who raised and spent at least \$250,000): four in 1997, five in 2001, and four in 2005.

* There is often overlap in the use of these two separate codes by campaigns; sometimes a campaign uses these codes interchangeably to describe the same services provided by the same vendor at different times.

† Since websites serve multiple purposes, spending associated with a campaign’s internet presence may not necessarily be reported as a fundraising expense.

The marked decline in fundraising expenditures at the mayoral level could indicate that campaigns are seeking to lower fundraising expenses to maximize their spending on visible campaign activity like television advertising while trying to abide by the expenditure limit. Mayoral expenditures for rent and office expenses also have decreased markedly since 1997: \$1.9 million in 1997, \$1.3 million in 2001, and \$1.2 million in 2005, despite rising overhead costs for businesses in New York City over the same period. It is also possible, however, that fundraising costs have simply been absorbed into the categories “professional services” and “consulting,” as discussed above.

TABLE 5.1		TOP 10 VENDORS — 2005 (PARTICIPANTS ONLY)	
		Vendor	Total [†]
1		GMMB	\$3,058,000
2		Abar Hutton Media, LLC	\$2,716,000
3		LUC Media*	\$2,302,000
4		Mirram Group/Mirram Global/Global Strategies	\$2,292,000
5		Sheinkopf Communications*	\$1,931,000
6		Mission Control	\$1,824,000
7		Squier Knapp Dunn Communications/Knickerbocker SKD	\$1,413,000
8		United States Postal Service*	\$1,353,000
9		Ad Crafters, Inc.	\$1,042,000
10		The Advance Group	\$ 891,000
			\$18,822,000
<p>* appeared on 2001 Top 10 Vendors list</p> <p>† Figures are rounded to the nearest thousand dollars. Figures are understated to the extent that they do not include subcontracted work performed by these vendors and they are overstated to the extent that these vendors have subcontracted work to other vendors.</p>			

TOP 10 VENDORS

The top 10 vendors received about \$18.8 million dollars from 2005 participants, representing about 30 percent of participants' total spending. The top 10 vendors in 2001 received about \$36 million dollars, about 38 percent of the total spending by participants for that election. The top vendor on the 2001 list was, by far, the firm that served as Mark Green's media buyer for the primary, runoff, and general elections.¹ Similarly, six of the top 10 firms in 2005 produced and/or bought air time for television and radio ads for the four major Democratic mayoral candidates, confirming the role that television plays in dominating the cost of a citywide election in New York. (See Table 5.1.)

Squier Knapp Dunn Communications (SKD), a Washington-based firm with a New York division, number seven on the top 10 vendors list for participants, also served as a major vendor for the Bloomberg campaign. With Bloomberg's spending added, SKD is the single largest vendor for the entire 2005 election. In addition to the \$1.4 million in expenditures made to it by participants, SKD received over \$40 million dollars for its services to the Bloomberg campaign. (See Table 5.2.) As one

TABLE 5.2		TOP 10 VENDORS TO BLOOMBERG CAMPAIGN — 2005	
		Vendor	Total*
	1	Squier Knapp Dunn Communications	\$40,508,000
	2	Penn, Schoen, and Berland Associates	\$17,272,000
	3	The Baughman Company, Inc.	\$ 4,904,000
	4	Campaign Research Association, LLC	\$ 1,786,000
	5	Connections Media, LLC	\$ 1,705,000
	6	Geller & Company, LLC	\$ 1,460,000
	7	The Garth Group, Inc.	\$ 1,000,000
	8	Dimension Data	\$ 920,000
	9	TrizecHahn Ave. of the America	\$ 741,000
	10	Kevin Sheekey	\$ 679,000
			\$70,975,000
* Figures are rounded to the nearest thousand dollars. Figures are overstated to the extent that these vendors have subcontracted work to other vendors.			

measure of the sheer magnitude of Bloomberg's spending, his next two largest vendors after SKD were also paid more money than any vendor on the participants top 10 vendors list.

Nine of the top 10 vendors for participating City Council candidates in 2005 appear on the list of top 10 vendors to participating Council candidates in 2003.^{*2} Six of the nine also appeared on the overall 2001 top 10 list.³ In the 2005 elections, these top ten vendors accounted for \$3.8 million, or about 24 percent of total spending by Council participants, compared to \$2.8 million (25 percent) in 2003 and \$7.5 million (28 percent) in 2001. (See Table 5.3.) Approximately 17 vendors received more than \$100,000 from participating Council candidates in 2005.

TABLE 5.3		TOP 10 VENDORS TO CITY COUNCIL CAMPAIGNS — 2005 (PARTICIPANTS ONLY)	
		Vendor	Total[‡]
1		The Parkside Group ^{*†}	\$748,000
2		Squier Knapp Dunn Communications/Knickerbocker SKD [†]	\$469,000
3		Mark Guma Communications [†]	\$459,000
4		Branford Communications ^{*†}	\$428,000
5		United States Postal Service ^{*†}	\$412,000
6		Genova, Burns & Vernoia/Laurence Laufer ^{*†}	\$375,000
7		Promotional Strategies [†]	\$289,000
8		The Advance Group ^{*†}	\$218,000
9		Mission Control	\$216,000
10		Astoria Graphics ^{*†}	\$173,000
			\$3,787,000
<p>[*] appeared on 2001 Top 10 Council Vendors list</p> <p>[†] appeared on 2003 Top 10 Council Vendors list</p> <p>[‡] Figures are rounded to the nearest thousand dollars. Figures are understated to the extent that they do not include subcontracted work performed by these vendors and they are overstated to the extent that these vendors have subcontracted work to other vendors.</p>			

* For the purposes of this comparison, the firm Genova, Burns and Vernoia stands in the place of the 2003 entry for Laurence Laufer/Run, Inc. Mr. Laufer is now with the firm Genova, Burns, and Vernoia.

The overlap between entities providing both campaign consulting services and lobbying was partially at the root of the recent lobbying reform legislation.⁴ In general, when the same person is “wearing two hats,” it is difficult to distinguish where one function ends and the other begins (discussed in more detail below). The Parkside Group, the largest City Council vendor by far, also ranked third on the list of recipients of lobbying fees, according to the New York City Clerk’s office, which publishes a report on lobbying activity every year.⁵ The firm brought in about \$772,000 from participating candidates, mostly from participating Council candidates, and \$2.2 million in lobbying fees. Said Evan Stavisky of the Parkside Group, “Because of the more frequent changes of faces at City Hall, unions and non-profit groups and other clients feel they have to have continuity in their presence at City Hall.”⁶ None of the other top 10 lobbying firms on the City Clerk’s list made it onto the top 10 vendors list for participating candidates in 2005, but the number one-ranked lobbying firm, Kasirer Consulting, was paid just under \$450,000 by the re-election campaign of Comptroller William Thompson.* Two other large lobbying firms, Greenberg Traurig LLP and Constantinople Consulting, were paid minimal amounts by participating candidates.

INCUMBENT/NON-INCUMBENT SPENDING IN CITY COUNCIL ELECTIONS

Just as incumbents raise more money (see Chapter 4), they also spend more than non-incumbents. In the 2005 elections, 38 participating incumbent Council candidates spent slightly less than \$6.2 million dollars, while 88 non-incumbent Council participants spent slightly less than \$9.4 million dollars. Thus, without considering primary challenges or opposition in the general election, participating incumbents on average spent \$162,000, while participating non-incumbents on average spent \$106,000, or only 65 percent of what the incumbents spent.[†] By comparison, in 2003, 45 participating incumbents spent about \$6.7 million, or an average of \$149,000, while 57 participating non-incumbents spent \$4.6 million, or an average of about \$81,000—54 percent of incumbents’ spending.[‡] The larger number of open seat races in 2005 compared to 2003 (seven versus two), in which there was significant spending by multiple non-incumbents, likely shifted the ratio of non-incumbent to incumbent spending.

* About \$428,000 of the just under \$450,000 paid by the Thompson campaign was reported as consulting services. The explanations for these transactions suggest that Kasirer Consulting was paid regular monthly fees for fundraising services. (See discussion on spending purposes above.)

† This average includes 14 participants who spent less than \$20,000. Three of the 14 reported no spending at all, and only two reported spending between \$10,000 and \$20,000. The lowest spending incumbent participant Council candidate reported spending just under \$26,000. Without those 14 campaigns, the non-incumbents’ average spending rises to just over \$125,000, still only 77 percent of participant incumbents’ average spending.

‡ When the 14 participating non-incumbent campaigns who spent less than \$20,000 are excluded, the non-incumbent average rises to \$103,000, or 69 percent of what participant incumbents spent.

Seventeen incumbents (13 participants and four non-participants) faced primary challenges. Those candidates spent about \$2.3 million dollars during the primary period, an average of \$137,000 per candidate.* The 25 opponents running against those 17 incumbents in the primary spent about \$1.9 million, an average of about \$76,000 per challenger.† Candidates for open seats spent more than candidates facing incumbents, but less than incumbents. The 52 candidates competing in primaries in districts with open seats spent over \$4.5 million on their races,‡ an average of \$86,000 per candidate.§

The most expensive primary race in 2005 was for the open seat in Council District 2, where seven Democrats spent amounts ranging from \$24,000 to \$192,000 for a total of \$870,000.¶ Primaries in the seven districts with open seats constituted seven of the eight most expensive primaries. The final primary race to rank among the most expensive was in district 28, where controversial incumbent (and non-participant) Allan W. Jennings, Jr. was opposed by former Council member (and eventual 2005 winner) Thomas White, Jr. and three other participants. The least expensive primary race was in district 36, where incumbent Albert Vann accounted for all \$26,000 in spending.

Seven incumbent candidates did not face primaries and had no opposition on the ballot in the general election. Nonetheless, these seven candidates spent about \$1.1 million dollars, an average of \$153,000 per candidate. (See Table 5.4.) About \$205,000 of the total, or 21 percent, was used for political contributions to other campaigns, party committees, and clubs, in addition to thousands of dollars donated to various local community organizations. Three of these seven candidates—Leroy Comrie, Christine Quinn, and David Weprin—were seeking the Council speakership, and they accounted for 94 percent of the political contributions made by this group.

OPEN SEAT SPENDING IN THE MANHATTAN BOROUGH PRESIDENT'S RACE

The Democratic primary race to succeed C. Virginia Fields as Manhattan borough president was noteworthy for the number of candidates and the amount of money spent. (See also Chapter 2—At the Races.) Nine Democratic candidates received about \$4.4 million in public matching funds, and spent more than \$8.8 million dollars in the primary, or an average of \$979,000 per campaign, and a median of \$799,000. The 1997 Manhattan borough president's race had previously been the

* For the purpose of this analysis, spending during the primary period is defined as spending reported through the first post-primary disclosure statement, due on September 23, 2005, covering the period through September 19, 2005.

† There were six candidates with less than \$20,000 in spending—four of whom reported no spending at all. When they are excluded, the average rises to \$100,000 per challenger.

‡ This includes one race, district 41, where a tier one bonus was declared and the spending limit was increased from \$150,000 to \$225,000.

§ Twelve candidates spent less than \$20,000. If they are not considered, average spending by a candidate in a primary for an open seat rises to \$111,000.

¶ Total includes spending prior to the year of the primary, which is subject to separate limits.

most expensive borough president's contest in Program history, with six participants in a hotly contested Democratic primary for an open seat spending over \$2.5 million, averaging about \$417,000 per candidate.⁷ Even adjusted for inflation, the 1997 average is only half the spending for the average candidate in the 2005 race. The increase can be attributed in part to the increased availability of public funds from the \$4-to-\$1 match. Another factor is television advertising, which was barely used by borough president candidates in 1997, whereas five of the nine Manhattan borough president candidates aired television advertisements at a total cost of over \$700,000 in 2005. In both 1997 and 2005, overall borough president spending was dominated by the Manhattan race. In 2005, all major categories of expenditures rose compared with 1997 expenditures—with the exception of expenditures with the purpose code for fundraising.

SPENDING LIMITS AND EXEMPT EXPENDITURES

Only certain specified expenditures are exempt from the spending limits: spending to comply with the Program or New York State election law (including costs to circulate and file designating and nominating petitions), petition litigation, the canvassing of election results, and debt payments for a previous election.⁸ Under amendments to the Campaign Finance Act meant to simplify the Program, passed prior to the 2003 elections,⁹ candidates who limit their total exempt expenditures to

TABLE 5.4		SPENDING BY UNOPPOSED INCUMBENTS	
Incumbent Candidate	District	Total Spending*	Spending on Political Contributions*
Alan Gerson (P)	1	\$143,000	n/a
Christine Quinn (P)	3	\$190,000	\$65,000
David Weprin (P)	23	\$227,000	\$90,000
Leroy Comrie (NP)	27	\$199,000	\$36,000
Dennis Gallagher (P)	30	\$121,000	\$ 6,000
Joseph Addabbo (P)	32	\$ 27,000	\$ 2,000
Simcha Felder (NP)	44	\$106,000	\$ 9,000
Totals		\$1,074,000	\$206,000
* Figures are rounded to the nearest \$1,000.		(P) Participant	(NP) Non-Participant

less than 7.5 percent of the applicable spending limit need not provide detailed records demonstrating that their claims are truly exempt. However, if exempt claims exceed 7.5 percent of the applicable spending limit, the campaign is required to submit contemporaneous detailed records showing that each expenditure claimed as exempt actually was exempt. This 7.5 percent “safe harbor” is higher than the 6.8 percent average of expenditures claimed as exempt by 2001 Council candidates who made such claims.*¹⁰

In 2005, expenditures reported as exempt from the Program’s spending limits by participating campaigns totaled over \$4.8 million, representing 7.9 percent of participants’ total spending. In 2001, exempt expenditures constituted about \$3.9 million, or 4.1 percent of total spending. In the previous two election cycles, 1997 and 1993, the percentage of expenditures reported as exempt was constant at about 10 percent.†

The concept of exempt expenditures poses a critical dilemma for the Program because it has a direct impact on the expenditure limit, the single most critical component of the Program. Other violations can be remedied; for example, the various contribution prohibitions, if violated, can be corrected by refunding an illegal contribution. Campaigns can give back a contribution, but they cannot take back an expenditure. Once breached, an expenditure limit violation cannot be undone. The playing field is made fundamentally unequal because the spending has occurred and provided an advantage for the spender. Throughout the history of the Program, the Board has always taken a strict approach to issues that affect the expenditure limit. Indeed, the Act, in recognition of the heightened importance of expenditure limit violations, sets a higher penalty scale—up to three times the amount by which the limit is exceeded—for violations of the spending limit.

There were few expenditure limit violations in the early years of the Program. Since the advent of the \$4-to-\$1 public funds matching formula, the frequency of expenditure limit violations has risen significantly. (See also Chapter 9—Enforcement.) In particular, the increased public funds cap for City Council has given more campaigns the ability to spend far greater amounts of money, seemingly facilitating spending at or even above the spending limit. (See Fact Sheet 5.1.) From the start of the Program in 1989 until just before these changes took effect for the 2001 elections (three citywide elections, one Council election, and eight special or off-year elections), there were only seven expenditure limit violations by Council candidates. In the short period of time since the change in the matching formula (one citywide election, one Council election, and six special or off-year elections, not including the 2005 elections), there have been 17 expenditure limit violations at the Council level.‡

* Out of almost 250 candidates for Council in 2001, only 112 claimed any exempt expenditures.

† Data for these earlier election cycles are less precise than for more recent election cycles.

‡ This includes an expenditure limit violation in the 1999 special election, the first election in which the \$4-to-\$1 public funds matching factor was applied. As of this writing, the Board has not made any final determinations regarding any potential expenditure limit violations in 2005, which were the second citywide elections since the change in the matching formula.

The increase in expenditure limit violations has been accompanied by a measurable increase in exempt expenditure claims at the Council level. In 1997, when the maximum amount of public funds available to a City Council candidate was \$40,000 (about 32 percent of the applicable expenditure limit) and matching claims were matched at a \$1-to-\$1 rate (up to \$1,000), exempt expenditures constituted about \$290,000, or 4 percent of total Council spending. In 2001, the percentage rose slightly, to 4.4 percent. In 2003, however, with the 7.5 percent safe harbor option in effect, exempt expenditure claims jumped to 8.1 percent of participating Council candidates' total spending, and in 2005, the percentage increased even further, to 10.2 percent.

Most of these exempt expenditures were reported as “compliance” costs—almost 80 percent. Most of the remainder—17.6 percent—were claimed for petitioning purposes. Over time, compliance costs are constituting a significantly greater proportion of total Council spending. In 1997, exempt compliance costs were 1.5 percent of Council participants' total spending. The percentage of exempt compliance costs has been steadily rising since then: 3.1 percent in 2001, 5.9 percent in 2003, and 8.1 percent in 2005. This more than fivefold increase cannot be explained by any other change in the Act, Rules, or State Election Law.*

Exempt expenditures for petitioning have also increased noticeably as a share of total spending by participating Council candidates—an increase that, again, cannot be attributed to any change in State Election Law, which over time has become somewhat less burdensome, not more. In 1997, exempt claims for petition expenditures constituted 0.7 percent of Council participants' total spending. This increased to 1.1 percent in 2001, 1.5 percent in 2003, and 1.8 percent in 2005. Thus, as a share of Council candidates' total spending, petitioning costs claimed as exempt have more than doubled since 1997. The increase in these exempt claims seems directly related to the greater amount in public funds that is available, which gives candidates more money to spend, including on exempt services that previously may have been performed by volunteers. Under the \$4-to-\$1 matching rate, it is not that uncommon for City Council participants to have access to significantly more money, in contributions and public funds combined, that they can spend under the cap. This creates an incentive to classify more and more spending in the exempt category.

It thus appears that the attempt to simplify the Program by creating the 7.5 percent “safe harbor” has had the unintentional consequence of creating more exempt claims, particularly at the Council level, where other changes to the Program have resulted in a significant increase in available funds and, potentially, the incentive to stretch the spending caps by broadening what is classified as exempt. (See Chapter 10—Board Recommendations.)

* The only significant changes in compliance requirements to affect City Council candidates was the outright ban on corporate contributions and the requirement that political committees must register before contributing to participating candidates. These changes have been in effect since 1998, and could not account for a dramatic increase in compliance costs.

FACT SHEET 5.1					
EXPENDITURE LIMITS OVER TIME*					
Office	1989 [‡]	1993	1997	2001	2005
Mayor	\$3,000,000	\$4,000,000	\$4,732,000	\$5,231,000	\$5,728,000
Public Advocate [†]	\$1,750,000	\$2,500,000	\$2,958,000	\$3,270,000	\$3,581,000
Comptroller	\$1,750,000	\$2,500,000	\$2,958,000	\$3,270,000	\$3,581,000
Borough President	\$ 625,000	\$ 900,000	\$1,065,000	\$1,177,000	\$1,289,000
City Council	\$ 60,000	\$ 105,000	\$ 124,000	\$ 137,000	\$ 150,000
<p>* Limits are per office and apply separately to the primary and general elections in the election year. Separate "out-year" limits also apply to the first three years of the election cycle.</p> <p>† Replaced the office of City Council President after the 1989 elections.</p> <p>‡ In addition to the expenditure limit, participants were also permitted a fundraising allowance. For mayor, the allowance was \$600,000, for City Council president and comptroller it was \$350,000, for borough president it was \$125,000, and for City Council member it was \$20,000.</p>					

Shortly before the Democratic primary in September, exempt expenditures became a major focus of the Board's attention. In the routine course of monitoring campaigns' compliance with the expenditure limit as the primary approached, Board staff advised the campaign of Stephen Kaufman (district 13) that his campaign appeared to have exceeded the limit, and asked the campaign to submit documentation to substantiate its exempt claims, which exceeded the 7.5 percent safe-harbor level. After a review of the campaign's response, it still appeared the campaign had spent more than the applicable \$150,000 spending limit. Board staff rejected certain exempt expenditure claims because the documentation supplied indicated that some non-exempt functions were being carried out in conjunction with exempt functions, although the campaign had claimed the expenditures as wholly exempt.

At its September 1, 2005 meeting, the Board ruled that the paid staff time of Kaufman's petition workers could not be wholly exempt because in addition to gathering petition signatures, the campaign's own records demonstrated that the petition workers' duties included distributing campaign literature, a non-exempt campaign activity. The Board determined that the division was more appropriately 50 percent exempt and 50 percent non-exempt. Using this ratio, the Kaufman campaign no longer appeared to have exceeded the spending limit.

The Board's decision precipitated a request a day later from the Miller campaign for mayor, seeking guidance on "whether expenditures for ballot petitioning carriers are 100 percent exempt, when those carriers have used literature as an aid in persuading voters to sign ballot petitions."¹¹ At the same time

as the Miller campaign submitted its request for guidance, the campaign filed its last pre-primary disclosure statement. Including the expenditures reported in that filing, the Miller campaign reported over \$1 million dollars in exempt expenditures related to petitioning, with just over \$800,000 of that for the payment of workers.

The Miller campaign engaged in two petition efforts: designating petitions to appear on the Democratic ballot, and independent nominating petitions to appear on a second “Smaller Class Size” ballot line. The campaign provided samples of literature distributed by petition gatherers while collecting signatures for the “Smaller Class Size” petitions. The handouts included information about the date of the Democratic primary, but made no mention of petitioning. According to its reporting, the Miller campaign made just under \$200,000 in exempt claims for petition workers through July 11, 2005, the first day for filing designating petitions for the Democratic primary, and more than \$600,000 on petition workers during the period to collect signatures for the “Smaller Class Size” line.

On September 6, 2005, the Board issued Advisory Opinion 2005-3, summarized as follows:

As the Miller Campaign’s petition-gatherers were distributing campaign material while they were getting signatures for an independent nominating line, the Board concludes that this effort appears disproportionate to petitioning purposes, and the Board does not accept a 100 percent exempt allocation in light of (1) the magnitude of the costs; (2) the timing of the petition drive; and (3) the fact that the literature distributed refers to the Democratic Party primary date, which is irrelevant in the context of a petition process for the general election ballot.

In the case of the Democratic Party petitioning activity, the Board declines at this time to respond to the Miller request to accept a 100 percent exempt allocation in light of allegations by other campaigns that activities presented as petitioning should be treated as part of a campaign field operation.

As a result of the Board’s ruling, and a New York State Supreme Court ruling in favor of the Board,¹² the Miller campaign—which was close to the spending limit—cancelled several hundred thousand dollars of planned television advertising in the days before the primary that would otherwise have counted toward the expenditure limit.¹³ (See also Chapter 9.)

During the 2005 elections, 12 campaigns were questioned by Board staff because they appeared to have violated the primary election expenditure limit. Many of these preliminary findings were at least partially (and in some cases, wholly) related to issues about improper claims and/or inadequate documentation of exempt expenditures. While some campaigns were able to respond satisfactorily to the preliminary findings, the Board is engaged in ongoing audits of these and all campaigns for compliance with all applicable limits.

The Board's experience with exempt expenditures during the 2005 elections, as well as the increases in exempt expenditure claims over several election cycles, serve to underscore the Board's previous and continuing recommendations regarding the restriction of exempt expenditures to the specific, narrow purpose of defending challenges to petitions. (See Chapter 10.)

SPENDING LIMITS AND INDEPENDENT EXPENDITURES

Expenditures made by an "independent" entity in coordination with a participating campaign represent another threat to the integrity of Program spending limits. These non-independent expenditures are treated as in-kind contributions to a campaign, subject to Program limits on spending and contributions.* It can be difficult, however, to substantiate a case of suspected coordination, and sometimes problematic to assign a value to non-independent activities against the limits.

During the 2005 campaign, there were more, and broader, allegations of non-independent expenditures than were made in previous elections. Some allegations came in the form of formal complaints filed with the Board; others were brought to the Board's attention through more informal means, while yet others were identified by Board staff during the course of routine reviews. While audits are ongoing in all potential instances of non-independent activity, a few cases became matters of public record during the election.

At its meeting on September 1, 2005, the Board heard presentations regarding a formal complaint filed by the campaign of Nelson Denis (district 8) against an opponent, Melissa Mark-Viverito, alleging non-independent spending (mostly in the form of phone banking) by Service Employees International Union Local 1199, where Mark-Viverito had formerly been employed. The Board directed the Mark-Viverito campaign to answer additional questions from the staff and from the Denis campaign, but deferred making a decision on the merits of the complaint.

On the day before the primary, the campaign of Eva Moskowitz for Democratic nomination for Manhattan borough president filed a formal complaint against the campaign of Scott Stringer, alleging that expenditures for literature and recorded phone calls by the Working Families Party were not independent, and should be reported as in-kind contributions and charged against Stringer's primary election spending limit. In addition to implicating Board rules regarding in-kind contributions by a party to its "nominee," these expenditures also raised questions about State Election Law provisions limiting political party activity during the primary.†

During the general election period, the press and the Bloomberg campaign raised questions about possible non-independent activity on behalf of Ferrer's mayoral campaign.¹⁴ To date, the Board has

* See Board Rule 1-08(f) for a list of the factors the Board considers in determining whether an expenditure is independent.

† Two recent court rulings place in question New York State's longstanding prohibition against party spending in primary elections. (See Chapter 10.)

not issued final determinations in these or any other case of allegedly non-independent spending; these matters are under review as part of post-election audits of expenditure limit compliance.

QUALIFIED EXPENDITURES

Program participants who receive public funds are constrained in how they may spend them. “Qualified expenditures” are expenditures by a participant’s principal committee to further the participant’s nomination or election.¹⁵ To be considered qualified, the expenditure must be timely and accurately reported, and the campaign must be able to demonstrate the expenditure is qualified through the maintenance and submission of documentation. Certain categories of expenditures are not qualified, including cash payments and payments made to candidates, their family members, or businesses in which they have a significant ownership stake. If a participant cannot show that his or her public funds were used for qualified expenditures, the participant must return to the public treasury the difference between the amount of public funds received and the amount of qualified expenditures documented by the campaign.

In response to campaigns seeking guidance, and with the hope of reducing the number of campaigns required to return public funds because of lack of documentation, the Board made a concerted effort prior to the 2005 elections to increase education about qualified expenditures, and explain the importance of recordkeeping to substantiate them. Treatment of qualified expenditures was expanded in candidate training sessions, and the 2005 candidate handbook provided sample forms for timesheets and contracts. Nevertheless, a preliminary review of documentation for expenditures for the 2005 elections indicates ongoing problems, particularly at the Council level, with campaigns’ recordkeeping in support of qualified expenditures, as well as some underlying problems with the nature of the expenditures, e.g., being paid to family members, being advanced, or being made in cash. As noted in the Board’s 2003 post-election report, this ongoing problem suggests that the current level of public funds available to campaigns—in proportion to an unnecessarily high expenditure limit—may not be in the best interests of the taxpayers.¹⁶ (See also Chapter 6—Public Funds and Chapter 10.)

CONCLUSION

As far as expenditures are concerned, the biggest story of the 2005 elections is the historic spending by Michael Bloomberg on his re-election campaign. At the City Council level, the story of spending in the 2005 elections is driven largely by incumbents. Incumbents, on average, outspent their challengers. Open seats attracted more candidates, but they too, on average, were outspent by incumbents. Meanwhile, an ever-greater portion of the increased spending total is being claimed as exempt from the spending limits, and the spending limits are being approached and breached with greater frequency.

Disclosure requirements for non-participants, in effect for the first time in 2005, have resulted in a far better picture of overall spending and will allow for much more detailed comparisons in future elections. In addition, improvements to disclosure provisions for participants give the public more information about how campaign money is being spent.

FACT SHEET 5.2
EXPENDITURE FACTOIDS
Expenditure by participants to “petty cash” or “cash” totaled \$140,000.
Participants reported 190 \$1 transactions.
Participants reported 2,826 transactions in the amount of \$10 or less.
The single largest transaction reported by a participant was a \$1,717,881 media buy by the Ferrer campaign.*
The single largest transaction reported by any candidate was a \$2,517,072 payment by the Bloomberg campaign for voter list development. †
The median transaction amount for all reported expenditures by participants was \$182.
The average transaction amount for all reported expenditures by participants was \$1,268.
Participating campaigns reported a total of \$650,000 in advances, of which just under \$230,000 was advanced by the candidate him- or herself.
Incumbents’ campaigns reported \$410,000 in advances, out of a total \$760,000 reported by all 2005 campaigns. Bloomberg’s campaign reported \$88,000 in advances.
Twenty-four participating campaigns reported over \$5.5 million in subcontracted expenditures. No non-participating campaign reported the use of subcontractors by its vendors.
Participants reported spending about \$48,000 in payments to the New York City Environmental Control Board and the Department of Finance for violations including illegal posting and parking tickets.
* This does not necessarily mean that this was the largest media buy overall. As discussed, campaigns break down expenditures in different ways.

REFERENCES

- 1 *An Election Interrupted...An Election Transformed*, New York City Campaign Finance Board, September 2002 (hereafter “*An Election Interrupted...*”), Vol. 1, 81.
- 2 *2003 City Council Elections*, Vol. 1, 28.
- 3 *An Election Interrupted...*, Vol. 1, 81.
- 4 Local Laws 15, 16, and 17 of 2006.
- 5 The City of New York Office of the City Clerk, *Lobbyist Annual Report 2005*, May 17, 2006, 8.
- 6 Frank Lombardi, “Lobbying Pays Off,” *Daily News*, June 3, 2006, 4.
- 7 *A Decade of Reform 1988-1998*, New York City Campaign Finance Board, September 1999 (hereafter “*A Decade of Reform*”), Vol. 1, 51.
- 8 New York City Administrative Code §3-706(4).
- 9 Local Law 12 of 2003.
- 10 *2003 City Council Elections*, Vol. 1, 29.
- 11 Marshall Miller, “Letter to Campaign Finance Board Chairman re: Miller for New York Exempt Petitioning Costs Application for Immediate Guidance,” September 2, 2005.
- 12 *Miller for New York v. N.Y. City Campaign Fin. Bd.*, Index No. 112409/2005 (N.Y. Sup. Ct. Sept. 14, 2005).
- 13 Winnie Hu, “Miller Cancels More Ads In Dispute On Spending,” *New York Times*, September 9, 2005, B6.
- 14 Jim Rutenberg and Diane Cardwell, “Volunteers of Big Union Come to Aid of Ferrer Drive,” *New York Times*, October 22, 2005, B2; William Murphy, “Board Warns Party Helping Ferrer,” *Newsday*, November 3, 2005, A8.
- 15 New York City Administrative Code §3-704 and Campaign Finance Board Rule 1-08(g).
- 16 *2003 City Council Elections*, Vol. 1, 27.

chapter 6

Public Funds— Money with No Strings Attached

-
- Incumbents becoming more reliant on larger and/or non-matchable contributions
 - Law going further to level the playing field
 - Protecting the taxpayers’ dollars
 - New requirements, old results
-

Public funds, the foundation of the Campaign Finance Program and the fundamental reason that most candidates join, help to level the playing field by providing eligible candidates with the financial resources to get their messages out to the voters. Public funding reduces the need for candidates to spend time fundraising, and provides campaigns with “clean money” — money the public can be sure comes with no strings attached. Public funds also enhance public participation in the political process by matching contributions made by New York City residents with public tax dollars. Each dollar a New York City resident contributes is matched with four dollars of public funds, up to a maximum of \$1,000 in public funds for a \$250 contribution.* Contributions from other sources are not matched, but are permitted.† As previously mentioned, all current officeholders except the Mayor have received public funds from the CFB for at least one of their elections—a first in the Program’s history. (The amount of public funds disbursed in each election since the inception of the Program is provided as Fact Sheet 6.2 at the end of this chapter.)

Public funds may be spent only on certain specified “qualified expenditures.” Public funds may not be spent on ballot litigation, payments to candidates or their relatives, and other expenses not

* The matching rate increased after the 1997 elections, from a \$1-to-\$1 match up to the first \$1,000 contributed by a New York City resident to a \$4-to-\$1 match of the first \$250 in 2001.

† Contributions from political action committees (PACs) that have not registered with the CFB and contributions from corporations are banned.

directly related to campaigning, such as contributions or loans to other candidates or political committees. If a campaign receives public funds, any money it has left over after the election must be returned to the public up to the total amount received. Campaigns must also document that public funds were spent only on qualified expenditures, and return any funds that were not. (See Chapter 5—Expenditures.)

DISBURSEMENT OF PUBLIC FUNDS

Just over \$24 million in public funds was disbursed to participating candidates in the 2005 citywide elections: \$19 million for the primary, and another \$5 million for the general election.* Of the 155 participating candidates who appeared on the primary and/or general election ballot, 108 of them (70 percent) received public funds. Sixteen participants received public funds for both a primary and general election campaign; 47 participants did not receive any public funds.†

Vigilant auditing by CFB staff may have saved the taxpayers approximately \$10 million.‡ Had all the matching claims submitted by participants in 2005 been matched in full, including those submitted by candidates who failed to qualify for public funds because they did not meet threshold or did not fully comply with Program requirements, approximately \$34 million in public matching funds would have been disbursed.

The amount of public funds disbursed for a particular office is related to the number of candidates running, which increases with the number of open seats. This is most interesting at the City Council level. In the 2005 elections, the average payment per Council district was \$152,000, only a little more than half the 2001 average of \$279,000, but still higher than the 2003 average of \$100,000. An average of 1.75 Council candidates per district received public funds in 2005; again, less than the 3.5 average in 2001 but more than the 1.5 average in 2003. The decline in both the average number of candidates receiving funds and the average amount they received seems to reflect the lack of competitive races. In 2005 and 2003, races in which incumbents faced minimal opposition to re-election were the rule, unlike the 2001 elections, which had many more open seats. In the seven open City Council seats (districts 2, 4, 5, 8, 9, 13, and 41) in 2005, public funds payments accounted for almost half the \$6.5 million in public funds disbursed at the City Council level. Thirty-six of the 47 participants appearing on the ballot in the primary and/or general election in these districts received public funds. In these races for open seats, an average of 5.14 candidates per district received public matching funds, compared with an average of only 1.75 per district where an incumbent was seeking re-election.

* These funds were disbursed to 75 candidates for the primary and 51 for the general election. The total amount will likely increase slightly as final audits are concluded and some candidates receive post-election payments to cover outstanding liabilities.

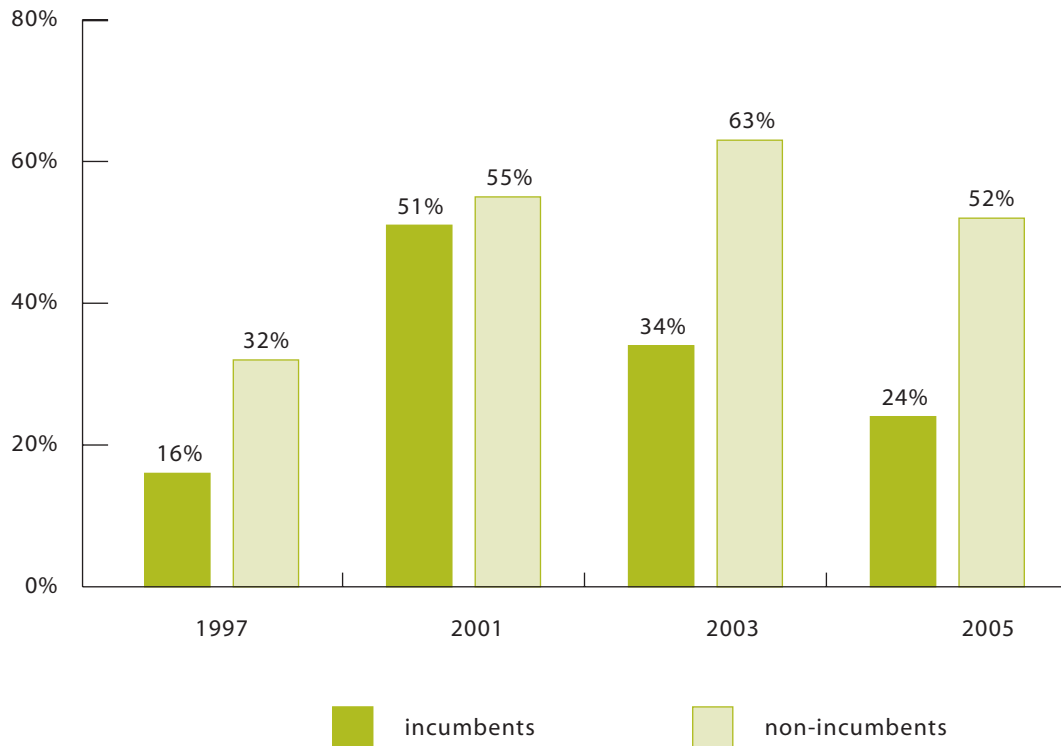
† Of these, five were unopposed, nine declined to accept matching funds, 29 failed to meet minimum threshold requirements, and five failed to comply with other Program requirements.

‡ This figure includes some funds that were declined by participating incumbents.

At the Council level, public matching funds as a percentage of the total dollars available to candidates increased from 26 percent of total funds available in 1997 to 55 percent in 2001,^{*} and then dropped to 44 in 2003 and to 36 percent in 2005.[†]

Incumbents have always been less reliant on public matching funds than non-incumbents.[‡] (See Figure 6.1.) In 2005, participating incumbents received an average of \$45,000 in public funds, while non-incumbents received an average of \$52,000. Participating incumbents raised a total of

FIGURE 6.1: Public Funds as a Percentage of Total Dollars Available to City Council Candidates — 1997–2005



* In 1997, participating Council candidates could receive a maximum of \$40,000 in public funds, which equaled about 32 percent of the spending limit. In 2001, the maximum amount of public funds at the City Council level was changed to 55 percent of the spending limit to conform with all other offices covered by the Program.

† Public funds as a percentage of total dollars available to candidates for all offices has varied over time as well, from 19 percent in 1997 to 43 percent in 2001 and 37 percent in 2005.

‡ With the possible exception of the 2001 elections, when the small number of incumbents running appear to have taken full advantage of changes in the law that allowed all participants to receive more public funds. (See also Chapter 4—Contributions.)

\$5.5 million in contributions (an average of \$142,000 per participating incumbent) and received a total of \$1.8 million in public funds, making public funds just 24 percent of their total available funds.* Non-incumbent participants running for City Council, on the other hand, raised \$4.4 million in contributions (an average of \$49,000 per participating challenger) but received \$4.7 million in public funds—so matching funds made up more than half their total funds available.

Incumbents are generally better able to raise very large contributions, at or near the maximum of \$2,750, than their challengers. While a \$250 contribution from a New York City resident is worth \$1,250 to a campaign, that sum still cannot compete with a (Council maximum) \$2,750 contribution, regardless whether it is from a matchable source. This gap undermines the Program's goal of encouraging smaller contributions from a larger number of the constituents candidates are seeking to represent. The Board is therefore recommending a sizable reduction in the contribution limit at the City Council level. (See Chapter 10—Board Recommendations.)

WHAT'S NEW

The Five Percent Reserve

In previous elections, many candidates received the maximum in public matching funds by the first or second payment, and then had little incentive to file timely subsequent disclosure statements. This impeded the Board's ability to audit and publicly disclose these candidates' activity during the rest of the election. Changes in the law for 2005 allowed the CFB to hold a five percent reserve from each candidate's public funds payments until the final payment before each election day. The reserve accomplished its goal in two important ways: first, almost every campaign filed its required disclosures on time; second, it encouraged more complete compliance with CFB regulations. The CFB saved the taxpayers \$143,000 in public funds withheld from campaigns ruled ineligible for payments because of compliance problems.

Even though the reserve affords some protection to the public, it may be advisable to increase the percentage of public funds held in reserve, particularly at the Council level, where the dollar amount of the reserve is especially small—a maximum of \$4,125.

Electronic Funds Payment

In all previous elections, candidates who received public funds were paid by check. Candidates had to pick up their checks, deposit them, and wait for the check to clear before they had access to these funds. For the 2005 elections, the CFB arranged for campaigns to sign up for payment by Electronic Funds Transfer (EFT), a process similar to the direct deposit of paychecks. The response to this volun-

* These figures include participating incumbents who declined to accept public funds.

tary offering was overwhelming: 95 of the 108 participants who received public funds signed up. Electronically transferred public matching funds were available within a few hours of Board approval of payment, rather than a few days.

As in past years, the due date for the final primary disclosure statement fell on the Friday before Labor Day weekend, and therefore the final payment occurred only days before the primary was held. Payment by EFT gave candidates access to the funds for those critical last few days before the primary election.

EFT not only vastly improved service to the candidates who signed up and received their payments more quickly and easily, but also alleviated administrative burdens on CFB staff, who otherwise had to process the checks, document their manual distribution, and pursue campaigns that were not picking up their checks. The Board will consider making EFT mandatory in the future.

Conflicts of Interest Board Filings

New legislation for the 2005 election cycle required that candidates who wished to receive public funds produce a receipt from the Conflicts of Interest Board (COIB) certifying that they had submitted their personal Financial Disclosure Statement, which is a filing required of all elected officials, candidates, and policy-making city employees.*

The City Council concluded that withholding public funds until participants filed with the COIB would strengthen the COIB's disclosure requirement. Unfortunately, this requirement caused a great deal of confusion for candidates. On numerous occasions, candidates brought the wrong documentation and were required to return to the COIB for the correct document, thus jeopardizing their campaigns' timely receipt of public funds.†

In the end, one primary and one general election payment were delayed and one general election payment was not disbursed in part because of failure to submit COIB documentation by the relevant deadlines. At the time of publication, 16 participants still had not filed their COIB receipts with the CFB.

The burden of the new requirement fell most heavily on non-incumbents. Incumbents had the advantage of familiarity with the annual COIB disclosure requirement, and could file their forms as elected officials through their elective offices, while non-incumbents were less likely to know about the requirement, and could not use government staff to file.

* The Campaign Finance Board opposed this legislation because when the enforcement of other admittedly important legal requirements is tied to the receipt of public funds this can unfairly burden those candidates who choose to participate in the Program and who most need the public funds.

† The law requires candidates to submit a document showing that they are in compliance with the COIB disclosure requirements (called a "certification" by the COIB). The CFB could not legally accept the dated cover sheet routinely issued by the COIB as a receipt. Unless candidates specifically asked the COIB for the "certification," it was not provided.

PUBLIC FUNDS FOR REAL RACES

Statements of Need and The 25 Percent Cap

After the 2001 elections, there was widespread concern that some participants were receiving and spending public funds unnecessarily when faced with little or no opposition, as evidenced by huge margins of victory.¹ In addition, there was concern that some candidates might be taking advantage of the funds available to them to increase their name recognition for future campaigns, rather than using what was needed to run the current election and returning the rest.² In its report following the 2001 elections, the Board stated, “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.”³ The Board stated that it could not apply a subjective standard in disbursing funds, and that the Program had historically relied on self-policing by participants and pressure from the public and the media to deter the wasteful use of taxpayer money. Finally, the Board urged the City Council to consider what levels of opposition should trigger the outlay of public funds.

In response to that invitation, the City Council passed an amendment to the Act in 2003 that set such a standard. The amendment provides that participants are limited to receiving 25 percent of the maximum amount of public funds unless they have an opponent who raises or spends at least 20 percent of the expenditure limit, or who qualifies to receive public funds under the Program.⁴ (See Table 6.1.) The new law, however, allows participants whose opponents do not meet those standards to submit “Statements of Need,” which entitles them to receive public funds up to the maximum—even if their opponent(s) fail to meet either of those criteria. Statements of Need must be signed by the candidates themselves and contain language acknowledging that the submission of the Statement will cause the additional disbursement of public funds. All Statements of Need are disclosed publicly on the CFB’s website.

TABLE 6.1		PUBLIC FUNDS CAP IN RACES WITH MINIMAL OPPOSITION AND INTENDED SAVINGS		
Office	Trigger (20% of Expenditure Limit)	Maximum Public Funds Payment	25% of Maximum Payment	Potential Savings to the Taxpayers (per candidate)
Mayor	\$1,145,600	\$3,150,400	\$787,600	\$2,362,800
Public Advocate & Comptroller	\$ 716,200	\$1,969,950	\$492,488	\$1,477,462
Borough President	\$ 257,800	\$ 708,950	\$177,238	\$ 531,712
City Council	\$ 30,000	\$ 82,500	\$ 20,625	\$ 61,875

The 2005 elections showed that the majority of candidates who face any opposition meet one or more of the criteria set in the law to receive the full amount of public funds for which they qualified, even though many of them continued to win with large margins of victory. For the primary election, only five participants* filed Statements of Need with the CFB, and only one—Charles Barron—would have been limited to 25 percent under the new amendment had he not filed a Statement. The other four faced opposition that eventually triggered full disbursement of public matching funds for these candidates (some time after they had filed their Statements of Need). Nonetheless, by filing the Statements, these candidates were able to receive public funds earlier than they would have otherwise.

Ten candidates filed Statements of Need for the general election.† Of these, five—Barron, Fidler, Mendez, Oddo, and Seabrook—would have been limited by the 25 percent cap without a Statement of Need; the other five candidates faced opposition that ultimately triggered the full disbursement of funds. Four candidates (Barron, Mendez, Oddo, and Seabrook) received a combined \$170,827 in taxpayer funds that would not have been disbursed without a Statement of Need.‡

Three candidates with minimal opposition in the general election did not file Statements of Need and received only 25 percent of the maximum public funds: Helen Diane Foster (district 16), Oliver Koppell (district 11), and Darlene Mealy (district 41). This resulted in savings to the taxpayers of \$67,742.§

In the 2003 elections, seven candidates ultimately were limited to the 25 percent cap, which saved the taxpayers approximately \$135,000. Five incumbent Council members¶ who each submitted a Statement of Need would go on to win their elections with more than 75 percent of the vote; their requests resulted in the disbursement of more than \$240,000 in public funds.

Some media outlets accessed the Statements of Need published on the Board's website to review candidates' justifications for requesting the maximum amount of public funds. In 2005, the *New York Post* chose to focus on three participants who filed Statements of Need despite minimal fundraising reported by their opponents.⁵ A recap of the election in the *Gotham Gazette* focused on the trend toward larger campaign war chests, and highlighted some races for which Statements of Need were

* Charles Barron (district 42), Lewis A. Fidler (district 46), Letitia James (district 35), Diana Reyna (district 34), and Kendall B. Stewart (district 45).

† Barron (district 42), Fidler (district 46), Erlene J. King (district 45), Andrew J. Lanza (district 51), Michael E. McMahon (district 49), Rosie Mendez (district 2), Michael C. Nelson (district 48), James S. Oddo (district 50), Domenic M. Recchia (district 47), and Larry B. Seabrook (district 12).

‡ Fidler qualified for and received \$12,092 for the general election, which is less than the 25 percent cap; therefore his Statement of Need did not result in any additional funds being disbursed for the general election.

§ Koppell and Mealy were not subject to the 25 percent cap for the primary election. Foster did not have a primary and, during the post election audit process, she returned the public matching funds she did receive.

¶ Barron (district 42), Lanza (district 51), Nelson (district 48), Oddo (district 50), and Sara Gonzalez (district 38).

filed by candidates who clearly did not need the additional taxpayer money.⁶ Because the current law has not resulted in meaningful savings to the Public Fund, and considering the continued widespread concern about nominal opposition, the Board is making recommendations to further limit the disbursement of public funds in races with minimal opposition. (See Chapter 10.)

Sure Winners

A significant amount in public funds was disbursed to candidates (primarily incumbents) who won their races easily. Although public funds account for a smaller percentage of incumbents' total available funds compared with non-incumbents, the total amount of public funds disbursed to these "sure winners" in dollars and as a percentage of funds disbursed is quite substantial. In the 28 contested City Council races during the 2005 general election, 10 candidates won with more than 80 percent of the vote (five of them in three-way races). Six additional candidates won with 70–79 percent of the vote (three of them in three-way races), and six more won with 60–69 percent of the vote (two of them in three-way races). These 22 Council candidates who won with 60 percent of the vote, or more, received \$1.1 million in public matching funds, or 52 percent of all public funds disbursed to City Council candidates for the general election.*

In the 24 contested City Council primary races, two candidates won with 80–85 percent of the vote; six candidates won with 70–79 percent of the vote (one of them in a three-way race); and two candidates won with 60–69 percent of the vote (both in three-way races). These 10 candidates—all incumbents—received \$761,732 in public matching funds.

A Truly Objective Standard

Even before the enactment of New York City's landmark program, and indeed, a concern voiced nationwide during debate on the value of public funding, is whether it amounts to another form of "incumbent protection."

The Board has long believed that without a truly objective measure for determining when to distribute full public funds to candidates, the public may lose confidence in the Program. Rather than simply allowing candidates to send in a letter asking for additional public funds, there should be a more authoritative measure of a participant's need for the maximum amount of public funds. The Board recommends multiple tiers for paying additional public funds to candidates based on their opponents' levels of fundraising and spending, similar to the way bonuses are triggered by non-participants. (See Chapter 10.)

At the Council level, the current system triggers a full payment of public funds to any participant whose opponent: (a) qualifies for public funds under the Program; or (b) spends as little as \$30,000 as a non-participant. In other words, a "nominal" participating candidate raising as little as \$5,000

* At the Council level, 45 participants received public funds in the general election.

in matchable contributions and receiving \$20,000 (or less) in public funds triggers disbursement of up to the maximum \$82,500 in public funds to his or her opponent, who will likely have a far larger amount of private money to spend on top of these public funds. The low trigger set by current law can serve to exacerbate the inequities between incumbents and insurgents, instead of helping to level the playing field, as the law intended.

PARTICIPANTS WHO WERE NOT PAID

Threshold Issues

Public funds are one of the means by which the Program helps to level the playing field. In order to be eligible for public funds, candidates must join the Program by the deadline and then must meet a two-part threshold which consists of (1) raising a specific amount of money from individual New York City residents, and (2) collecting a specific number of contributions of \$10 or more from individuals within the area they seek to represent. (See Fact Sheet 6.1.) The purpose of the threshold requirements is to ensure that candidates who receive public funds can show that they have significant support in their communities.

FACT SHEET 6.1		
THRESHOLD CHART		
Office	Dollar Amount [*]	Number of Contributors [†]
Mayor	\$250,000	1,000 New York City Residents
Public Advocate	\$125,000	500 New York City Residents
Comptroller	\$125,000	500 New York City Residents
Borough President		
Bronx	\$26,653 [‡]	100 Bronx Residents
Brooklyn	\$49,307 [‡]	100 Brooklyn Residents
Manhattan	\$30,744 [‡]	100 Manhattan Residents
Queens	\$44,588 [‡]	100 Queens Residents
Staten Island	\$10,000	100 Staten Island Residents
City Council Member	\$ 5,000	75 Residents from the District
[*] Including all matchable contributions from New York City residents in amounts of up to \$1,000. [†] Each must have given a matchable contribution of \$10 or more. [‡] These amounts are based on 2000 Census figures for the population in each borough.		

To receive public funds, participants also must be in compliance with the Program's other requirements, such as filing timely and complete disclosure statements. Finally, participants can only qualify for public matching funds if they are opposed by at least one other candidate on the ballot.

In December 2004, the City Council increased from 50 to 75 the number of valid matchable contributions of \$10 or more from district residents required of Council candidates to meet the threshold for receiving public funds. To quantify the effects of changing the threshold requirement, it is interesting to see how quickly candidates have been able to achieve it. In previous Council elections, roughly half of all candidates who received public funds for the primary qualified for funds by the first payment date (48 percent in 2001, and 47 percent in 2003). After the rules for qualifying changed for the 2005 elections, it is clear there has been no adverse effect; in fact, for the 2005 election, 65 percent of all primary candidates who qualified for public funds did so by the earliest possible date.

In each election, there will be candidates who are unable to meet the threshold requirements because they do not have sufficient support in their communities. There appears to be another category of City Council candidates who do not qualify, composed of candidates who concentrate on larger contributions from non-matchable sources, such as political committees and non-incorporated businesses, and have focused less on gathering contributions from residents within their districts. These candidates may be making a calculation that they can raise more money with larger donations than by qualifying for public matching funds. Four Council candidates, all incumbents, exceeded the dollar amount required to meet the threshold—some raised as much as three times the threshold dollar amount—but did not raise the required 75 contributions from district residents and thus did not qualify for matching funds.*

Participants Who Decline Public Funds

Some candidates decline matching funds even though they have met the requirements to receive them. In these cases, either the candidate does not need the funds, or the candidate has raised so much in contributions that he or she will be forced to return funds after the election in accordance with the Act, which requires the return of unspent funds up to the amount of public funds received. These candidates have raised, or will raise, more than enough private money to run an effective campaign. In fact, many could not spend public dollars without exceeding the spending limit.

Other candidates face minimal opposition, and do not plan to spend a large amount. Some candidates, instead of affirmatively declining public funds, choose not to claim any matchable funds in their disclosure statements, or return the public funds to the Board immediately after receiving them. In some instances, candidates appear on the ballot who are not actively campaigning and therefore are not spending money on qualified expenditures. This sometimes occurs when a candi-

* Maria del Carmen Arroyo (district 17), Maria Baez (district 14), Erik Dilan (district 37), and Joel Rivera (district 15).

date loses the primary election, but runs on a second line in the general election. Finally, a candidate may have unresolved compliance issues, and may defer responding to Board inquiries by declining public funds.

HIGH-SPENDING NON-PARTICIPANTS

In 2005, City Council legislation created a two-tiered bonus system that increases the amount of public funds available to participants who have an extremely high-spending non-participating opponent.⁷ The legislation also makes it mandatory for all candidates for city elections—even those not participating in the Program—to file disclosure statements with the CFB. Both the two-tiered bonus and the non-participant filing requirements furthered the goals of the Act: first, by leveling the playing field with additional public funding in extreme cases; and second, by providing equally detailed, timely, and accessible financial disclosure to the public for *all* City campaigns. (See Fact Sheet 1.2.)

For a detailed analysis of the issues surrounding high-spending non-participants, see the Board's white paper, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nycctfb.info.

Tier 1

The Tier 1 bonus is triggered when a non-participant raises or spends at least 50 percent of the applicable spending limit. For other candidates in the race, the CFB matches up to \$250 contributed by a New York City resident at a rate of \$5-to-\$1 (rather than the standard \$4-to-\$1), for a total of up to \$1,250 per contributor. The maximum amount of public funds available to participants is increased from 55 percent to two-thirds of the spending limit. The spending limit for participating candidates also increases by 50 percent.

In 2005, Tier 1 bonuses were triggered by high-spending non-participants in two City Council Democratic primaries: Council Member Sanders in district 31 and William F. Boyland, Sr. in district 41.* After Sanders' financial disclosure was received, the Board declared the bonus and his sole opponent, David Hooks, Jr., became eligible to receive matching funds at the \$5-to-\$1 bonus rate. Boyland's participating opponents—Royston Antoine, Pamela Junior, Stanley Kinard, Danny King, Darlene Mealy, David Miller, and Maryam Samad—became eligible for the bonus once Boyland submitted a missing statement. Only Antoine, Kinard, and Mealy received additional public funds, as they were the only candidates who met threshold and were in compliance with the Program at the time the bonus was triggered.

* Both non-participants failed to file required disclosure statements in a timely manner, which hampered the Board in making bonus determinations in these two districts. Sanders filed his first disclosure statements with the CFB only 12 days before the primary election; Boyland failed to file one disclosure statement in a timely fashion, but it was the statement that would ultimately trigger the bonus. (See also Chapter 9—Enforcement.)

FACT SHEET 6.2		
PUBLIC FUNDS DISBURSED BY ELECTION		
Year	Office	Total Payment
1989	Mayor	\$ 2,779,508
	Public Advocate	N/A
	Comptroller	\$ 421,665
	Borough President	\$ 421,665
	City Council	\$ 421,665
	Total	\$4,508,155
1990	Staten Island / 1 st Council District [*]	\$ 10,155
1991	City Council [†]	\$ 2,660,514
	Brooklyn / 29 th Council District ^{* ‡}	\$ 137,650
	Queens / 22 nd Council District ^{* ‡}	\$ 0
	Total	\$2,798,164
1993	Mayor	\$ 3,262,250
	Public Advocate	\$ 947,189
	Comptroller	\$ 1,066,802
	Borough President	\$ 64,956
	City Council	\$ 1,142,559
	Total	\$6,483,756
1994	Manhattan / 4 th Council District ^{* ‡}	\$ 132,146
	Staten Island / 51 st Council District [*]	\$ 30,677
	Staten Island / 51 st Council District ^{* ‡}	\$ 60,339
1996	Total	\$ 91,016
	Manhattan / 5 th Council District [*]	\$ 81,375
	Manhattan / 5 th Council District ^{* ‡}	\$ 63,208
1997	Mayor	\$ 3,431,133
	Public Advocate	\$ 427,575
	Comptroller	\$ 247,054
	Borough President	\$ 968,208
	City Council	\$ 1,877,410
	Total	\$6,951,380
	Bronx / 17 th Council District ^{* ‡}	\$ 0
[*] Off-year election to fill a vacancy. [†] City Council redistricting election (in 1991, the City Council was expanded from 35 seats to 51 seats). [‡] Denotes special election.		

FACT SHEET 6.2 (continued)		
PUBLIC FUNDS DISBURSED BY ELECTION		
Year	Office	Total Payment
1999A	City Council ‡	\$ 788,554
1999	City Council	\$ 272,961
2001A	City Council ‡	\$ 91,388
2001	Mayor Public Advocate Comptroller Borough President City Council Total	\$12,862,667 \$ 5,435,250 \$ 2,673,219 \$ 7,063,563 \$14,217,206 \$42,251,905
2002A	City Council ‡	\$ 62,224
2003A	City Council ‡	\$ 475,948
2003	City Council †	\$ 5,110,863
2005A	City Council ‡	\$ 68,947
2005	Mayor Public Advocate Comptroller Borough President City Council Total	\$ 9,530,299 \$ 2,674,456 \$ 0 \$ 5,472,804 \$ 6,495,579 \$24,173,138
Sum of all Total Payments		\$94,415,283
<p>* Off-year election to fill a vacancy. † City Council redistricting election (in 1991, the City Council was expanded from 35 seats to 51 seats). ‡ Denotes special election.</p>		

Tier 2

The Tier 2 bonus is triggered if a non-participating opponent raises or spends more than 300 percent of the applicable spending limit, at which point up to \$250 contributed by a New York City resident is matched at a rate of \$6-to-\$1, up to \$1,500 per contributor. The maximum amount in public funds a participant can receive is increased to 125 percent of the spending limit, and the spending limit is lifted completely. Both Mayor Michael Bloomberg and Council Member Melinda Katz (district 29) triggered the Tier 2 bonus in the 2005 election. Katz had accumulated a war chest of over \$300,000 by the July before primary election, which triggered the Tier 2 bonus for her opponent, community activist Joseph Nocerino, as soon as he qualified for public matching funds. Nocerino received an additional \$25,000 in matching funds as a result of the bonus. Katz, who garnered 82 percent of the vote in the primary, ultimately raised the most money of any City Council candidate—despite running unopposed in the general election.

As of the July 15, 2005 filing, Mayor Bloomberg reported contributions he made to his own campaign totaling \$23.7 million, which exceeded the Tier 2 trigger of \$17,184,000. As a result, his general election opponent, Fernando Ferrer, was therefore eligible to receive the Tier 2 bonus, and ultimately received an additional \$1.3 million in public funds. While the additional public funds Ferrer received equaled only 1.5 percent of Bloomberg's total spending, his campaign did receive a significant benefit as a result of the bonus system. The new bonus matching rate notwithstanding, it was clear that neither of the candidates in the Tier 2 bonus situation would be able to compete with their opponents' spending.

REFERENCES

- 1 *An Election Interrupted...*, 159.
- 2 Michael Goodwin, "Good Law Gone Bad," *Daily News*, November 2, 2005, 35.
- 3 *2003 City Council Elections*, 35.
- 4 Local Law 12 of 2003.
- 5 David Seifman, "Council Pols' \$6.5M Public-Purse 'Snatch,'" *New York Post*, November 14, 2005, 2.
- 6 "Campaign 2005: Elections Themselves are Issues", *Gotham Gazette*, August 25, 2005.
- 7 Local Law 58 of 2004.

chapter 7

Debates 2005— Public Discourse Enhances Democracy

-
- For the first time, debates broadcast in Spanish, Chinese, and Korean
 - New “lightning rounds” posed provocative “yes” or “no” questions
 - Bloomberg bows out of Apollo Theater debate
-

New York City’s Debate Program arose from public frustration during the 1993 mayoral campaign, when Rudy Giuliani and then-Mayor David Dinkins failed to debate one another because they could not agree on terms.* Editorial page reaction was strong, especially since the two candidates had received more than \$3 million in public matching funds.¹ In 1996, the Campaign Finance Act was amended to establish mandatory debates for citywide candidates who join the Campaign Finance Program,² to ensure that citizens would hear from citywide candidates in forums promoting substantive discussion of the issues—at least when these candidates are receiving public funds. By law, the Debate Program is administered by the CFB, but the individual debates are sponsored by various media, educational, and civic groups and broadcast citywide.

Based on lessons learned from the 1997 and 2001 Debate Programs, the CFB made recommendations in its 2001 Post-Election Report for changes in the debate law, including: 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 runoff

* The disagreement was over whether to include George Marlin, a third-party general election candidate, in a debate between the two major candidates. Dinkins refused to participate in a debate that excluded Marlin, while Giuliani refused to participate in a debate that included him. The Debate Program, as eventually established, struck a compromise between the two positions by relying on a lower threshold for Program participants for Citywide office to qualify to appear in the first of two mandatory debates, while reserving the second debate for “leading contenders.” In 2005, for example, the Debate Program’s criteria allowed for the inclusion of Conservative Party candidate Thomas Ognibene in the first mayoral general election debate and his exclusion—due to inadequate levels of financial and public support—from the second mayoral general election “leading contenders” debate.

debates; and removing the provision in the law requiring debate sponsors to indemnify the city.³ The first three recommendations were passed into law in 2004.⁴ The recommended change in the indemnification provision was not.

Under the amended law, which applies both to contested primary and to general elections, city-wide candidates are required to participate in one debate prior to each election if they (a) join the Program; (b) appear on the ballot; (c) have raised or spent at least 20 percent of the monetary threshold to receive public funds; and (d) have satisfied any other nonpartisan, objective criteria set by the sponsors in advance.⁵ A second debate is also required of Program participants who are determined to be “leading contenders.”⁶ Uniform, objective criteria for determining leading contenders are proposed by the debate sponsors and may include additional financial criteria or criteria such as polling results.⁷ Debate sponsors are now also permitted to invite non-participants who satisfy the pre-set criteria to take part in any debate.⁸

SELECTION OF DEBATE SPONSORS

The CFB solicits debate sponsor applications by writing to hundreds of academic, civic, community, and news organizations and issuing a press release announcing the application guidelines. In 2005, the CFB received six applications from 11 organizations, some of which applied jointly.

After a period of intense review, the CFB selected NY1 News, WNYC, and *Newsday* to sponsor the first primary and general election debates and WNBC-TV to sponsor the second (or “leading contender”) primary and general election debates.*

REACHING THE VOTERS

The CFB advertised the debates in the same four languages in which the Voter Guide is published: English (see Figure 7.1), Spanish, Chinese, and Korean. Subway and bus signs were posted throughout the city and in a number of widely read Spanish, Chinese, and Korean newspapers. For the first time, the CFB employed Google AdWords, which ensured that a prominent link to the CFB’s website appeared whenever “NYC Debates,” “NYC elections,” “NYC Mayor,” or other related phrases were entered into Google’s search engine.

Each sponsor worked with foreign-language media to provide foreign-language access to the debates. NY1, WNYC, and *Newsday* provided simultaneous translation of the debates in Spanish on the television station NY1 Noticias, and rebroadcast the debates translated into Chinese and Korean

* A selection committee comprised of CFB staff members and Board Chairman Frederick A.O. Schwarz, Jr., as well as an outside consultant—former Federal Election Commission Chairman Trevor Potter—interviewed each organization to discuss proposed question formats, accommodation for foreign language coverage, and promotional plans.

debates 2005
PRIMARY ELECTION

MAYOR

1st debate (Dem.):
Tuesday, August 16, 2005
7:00-8:30 p.m. on Channel 1
Sponsors: NY1, WNYC, Newsday, NY1 Noticias

1st debate (Rep.):
Wednesday, August 17, 2005
7:00-8:00 p.m. on Channel 1
Sponsors: NY1, WNYC, Newsday, NY1 Noticias

2nd debate (Rep.):
Sunday, September 4, 2005
12:00-1:00 p.m. on Channel 4
Sponsors: WNBC, Telemundo 47

2nd debate (Dem.):
Wednesday, September 7, 2005
7:00-8:00 p.m. on Channel 4
Sponsors: WNBC, Telemundo 47

Runoff debate (if required):
Thursday, September 22, 2005
7:00-8:00 p.m. on Channel 4
Sponsors: WNBC, Telemundo 47

PUBLIC ADVOCATE

1st debate:
Tuesday, August 23, 2005
7:00-8:00 p.m. on Channel 1
Sponsors: NY1, WNYC, Newsday, NY1 Noticias

2nd debate:
Sunday, August 28, 2005
6:00-7:00 a.m. on Channel 4
Sponsors: WNBC, Telemundo 47

Runoff debate (if required):
Sunday, September 25, 2005
6:00-7:00 a.m. on Channel 4
Sponsors: WNBC, Telemundo 47

All debates will be carried live on WNYC AM820.

Broadcasting will also be made available to The Korean Channel (TKC Channel 76), New Tang Dynasty Television and SinoVision Television.

FIGURE 7.1:
Primary Debates
Advertisement

on New Tang Dynasty and The Korean Channel, respectively. WNBC-TV worked with its sister station, Telemundo47, to broadcast in Spanish and with SinoVision and The Korean Channel for Chinese and Korean airings of the debates. Each broadcast featured information about the Voter Guide, alerting viewers that it would be coming to them in the mail before the election.

As it has since the inception of the Debate Program, WNYC aired all the CFB-administered debates live on its radio stations, and provided detailed information about the CFB, the debates, and the Voter Guide on its website.

THE DEBATES

Mayoral Primary

The first mayoral primary debate was heavily promoted by the sponsors: NY1 News, WNYC, and *Newsday*. NY1 News' corporate owner, Time Warner, provided Jazz at Lincoln Center as the site for the first mayoral Democratic primary debate on Tuesday, August 16, 2005. The debate included the four Democratic primary candidates who were Program participants: Fernando Ferrer, C. Virginia Fields, A. Gifford Miller, and Anthony Weiner.

The highlight of the debate was the “lightning round”—a series of provocative questions that had to be answered with a simple “yes” or a “no.” The lightning round, the large live audience, and the

political supporters thronging Columbus Circle injected vitality into a debate some had predicted would be lackluster. According to one report:

What had been a fairly colorless, sometimes plodding contest among the four Democrats ... seemed more like a lively political race yesterday in the wake of the debate. According to the rival camps and independent political analysts, the televised debate evinced more flashes of personality than the candidates typically show, along with a telling gaffe or two and some political points.⁹

The second primary debate was held in sponsor WNBC-TV's Manhattan studios one week before the primary. WNBC's pre-set criteria limited the debate to those candidates who had raised or spent a minimum of \$250,000 and had polled at least 10 percent (minus the margin of error) among NYC registered voters. All four Democratic candidates who had participated in the first debate qualified.

Gabe Pressman moderated, and four political reporters from WNBC and Telemundo⁴⁷ posed a number of wide-ranging questions to the candidates. WNBC-TV also sent reporters to each borough to allow residents to voice concerns about problems specific to their neighborhoods.

Mayoral General Election

In what was sometimes described as a sluggish election, the Debate Program provided a spark of controversy—in this case because of the site of the debate rather than its content.¹⁰

The NY1 News-sponsored first mayoral general election debate was to be held at Time-Warner's historic Apollo Theater in the first week in October. Three candidates qualified to participate: Democratic candidate Ferrer, Republican candidate and incumbent Bloomberg, and Conservative Party candidate Thomas Ognibene. Bloomberg's campaign announced six days beforehand he would not be attending the debate.¹¹ Bloomberg instead decided to attend the annual fall dinner for the Empire State Pride Agenda and to receive an award from the Turkish-American Education Foundation.¹² The decision to forgo the "Apollo debate" set off a controversy. Bloomberg's campaign questioned the debate's "lightning round" format; cited the precedent of Mark Green's reluctance to debate during the 2001 campaign^{*}; and argued that the debates he chose to participate in were closer to election day and would be broadcast to a wider audience.¹³ The Bloomberg campaign also referred to its objection to the inclusion of third-party candidate Ognibene in the first debate.¹⁴

The Ferrer campaign and others, however, focused on the racial symbolism of the debate's location. Skipping a debate held at the Apollo Theater was seen by some as a slight.¹⁵ Other observers suggested that the Mayor's decision was a political judgment, and that participating only in later

^{*} In 2001, Bloomberg pressed his mayoral general election opponent Mark Green to participate in four debates; Green agreed to two.

debates would not only deny Ferrer an early opportunity to raise his profile,¹⁶ but would also prevent the Mayor from committing any gaffes could potentially benefit Ferrer. Furthermore, when the Mayor held an emergency press conference announcing a potential terrorist threat to the New York City subway system just hours before the Apollo debate, some critics questioned the timing of the announcement.¹⁷ The sponsors placed an empty podium on the debate stage, underscoring Bloomberg's absence.

A number of editorial boards and community groups focused on the fact that the Bloomberg campaign bypassed this CFB debate (despite the change in the debate law allowing qualified non-participants to participate in all the debates).¹⁸ Good-government groups criticized the Bloomberg campaign for participating in only two debates both held within a week of the election,¹⁹ one of which was not a part of the city's Debate Program. Newspaper editorials argued that Bloomberg's refusal to debate in the first CFB debate undermined the Program, claiming his money allowed him to "buy his way" out of the debate.²⁰

Ultimately, Bloomberg's absence generated publicity for the remaining CFB-administered debates, but any impact it may have had on the Debate Program is unclear. He did participate in the CFB's second leading contender general election debate on November 1st, sponsored by WNBC-TV. To qualify for this debate, candidates needed to have raised or spent at least \$250,000 and received 15 percent (minus the margin of error) of public support in the polls, which limited the debate to Ferrer and Bloomberg.

As in the primary election leading contender debate, the candidates answered questions from a panel of WNBC and Telemundo⁴⁷ political reporters, as well as taped questions from reporters stationed in the five boroughs. Both candidates addressed a host of topics affecting New York City, as well as questions relating to national and international issues. Despite a large gap between these candidates in the polls, this first match-up between the two leading candidates garnered heightened public interest due to the political fallout from the Apollo Theater debate.

Public Advocate Debates

NY1, WNYC, and *Newsday* sponsored the first primary election debate on Tuesday, August 23rd. WNBC-TV broadcast the leading contender primary election debate on Sunday, August 28th. The law set the financial threshold for qualification at a minimum of \$25,000 raised or spent and, because no polling was available and no changes were made to the monetary criteria set by the debate sponsors, the same four candidates—Betsy Gotbaum, Norman Siegal, Andrew Rasiej, and Jay Golub—appeared in both primary debates.

The general election debates were held on Tuesday, October 11th and Sunday, October 23rd, with NY1 News, WNYC, and *Newsday* sponsoring the first, and WNBC-TV holding the second, leading contender debate. Because the same financial threshold was applied as for the primary debates,

Democratic primary winner Gotbaum—a candidate who raised over a \$1 million in contributions—debated Golub, who ran on the Conservative line and raised a little over \$50,000 (most of which came in the form of loans by Golub to his own campaign).

CONCLUSION

The CFB's experience with the Debate Program this year was, overall, very positive. The changes made to the debate law by the City Council in 2004 resulted in substantive, engaging debates among viable candidates and significant press coverage. Questions remain, however, about how much control debate sponsors should be allowed to exercise in: (1) choosing the format for the debates in order to produce engaging and newsworthy events; and (2) making subjective judgments about who should be allowed to participate. The role of sponsoring news organizations must be balanced with the need to ensure these government-mandated debates remain fair, objective, non-partisan, and non-discriminatory.

The 2005 comptroller debates highlighted the need to permit sponsors, in consultation with the Board, to determine whether to shorten a debate or cancel it altogether. The law currently mandates sponsors to produce debates for a minimum of one hour, commercial-free. Applying the standard for participation in the debates, the CFB and the sponsors were left with only one participant in the general election for comptroller in 2005, incumbent Bill Thompson. To hold a one-man debate would have presented a significant financial burden for the sponsor organizations, with questionable benefit to voters. Under the law, the debate could not be canceled without the agreement of the one qualifying candidate, who fortunately agreed with the Board's and sponsors' wishes. The language of the law should be modified to require approval only by the Board and sponsors to cancel or shorten a debate under these circumstances.

Mayor Bloomberg's decision not to participate in the Apollo Theater debate revealed the need to find additional means to encourage a non-participating candidate, who is not required to appear in any CFB debates, to take part. (See Chapter 10—Board Recommendations.)

REFERENCES

- 1 Gail Collins, “They’re Still Acting Like Babies,” *Newsday*, October 21, 1993, 4; October 22, 1993, 7; October 23, 1993, 6; October 25–27, 1993, 5; and October 28, 1993, 6.
- 2 Local Law No. 90 of 1996.
- 3 “*An Election Interrupted...*,” 155–156.
- 4 Local Law No. 58 of 2004.
- 5 New York City Administrative Code §§3-709.5(1)(a), (5)(b)(i).
- 6 New York City Administrative Code §3-709.5(5)(b)(i).
- 7 New York City Administrative Code §3-709.5(5)(b)(i).
- 8 New York City Administrative Code §3-709.5(5)(b)(ii).
- 9 Patrick Healy, “Suddenly, An Exciting Race,” *New York Times*, August 18, 2005 Metro, B5.
- 10 Stephan C. Friedman, “Miffed Bloomberg nixed TV debate in Feud with NY1,” *New York Post*, October 5, 2005, 10; Diane Cardwell, “Debate in Harlem Remains Contentious Issue,” *New York Times*, October 4, 2005, B5; Dave Evans, “Bloomberg Tangles with Press Over Apollo,” *WABC*, October 6, 2005; Stephanie Gaskell, “Vacant Spot to Stand in for Bloomy As He Skips Debate to Fete Gays And Turks,” *New York Post*, October 6, 2005, 4; Celeste Katz and Michael Saul, “No-show Bloomy is bashed at debate,” *Daily News*, October 7, 2005, 39.
- 11 Bloomberg Campaign 2005, “Statement by Bloomberg 2005 Senior Advisor William Cunningham,” September 30, 2005.
- 12 Stephanie Gaskell, “Vacant Spot to Stand in for Bloomy as He Skips Debate to Fete Gays and Turks,” *New York Post*, October 6, 2005, 4.
- 13 Lisa L. Coglangelo, “Mike Hits Back in Debate Flap,” *Daily News*, October 3, 2005, 14; Dan Janison, “He’s Adamant: Two is Enough!” *Newsday*, October 7, 2006, A4; Bloomberg ‘Not Afraid’ to Debate in Harlem,” *wnbc.com*, October 5, 2005; Bloomberg Campaign 2005, “Statement by Bloomberg 2005 Senior Advisor William Cunningham,” September 30, 2005; Jill Gardiner, “Bloomberg Pins Blame for Skipping Debate on Former Opponent,” *New York Sun*, October 3, 2005, 3.
- 14 Stefan Friedman, “Miffed Bloomberg Nixed TV debate in Feud with NY1,” *New York Post*, October 3, 2005, 10.
- 15 Scott Michels, Veronika Belenkaya, Celeste Katz, “Reverend Al Rips Mayor Over Debate Snub,” *Daily News*, October 2, 2005, 19.
- 16 Nicholas Confessore, “Ferrer Attacks Bloomberg for Skipping Harlem Debate,” *New York Times*, October 2, 2005, 37; Frankie Edozien, “No Mike at Forum,” *New York Post*, October 1, 2005, 4.
- 17 Dave Seifman, “‘Freddy Cops’ Slam Mike’s Subway Alert,” *New York Post*, October 12, 2005, 2.
- 18 See, e.g., Editorial, “A gift from Bloomberg,” *Newsday*, October 6, 2005, A50.
- 19 “Statement by Civic Groups on Mayoral Debates,” Citizens Union Foundation, Common Cause NY, and New York Public Interest Research Group, Tuesday, October 4, 2005.
- 20 Editorial, “The Shunned Debate,” *New York Times*, October 9, 2005, CY11.

chapter 8

The Voter Guide— Voter Education Gets a Makeover

-
- More than 6.6 million Voter Guides distributed
 - Distributed in English, Spanish, Chinese, and Korean
 - New format, color graphics and photos, and voter’s district printed on the mailing label
 - Online users can personalize the format for district-specific information
-

For 17 years, the Campaign Finance Board has produced and distributed the official New York City Voter Guide before each regularly scheduled municipal election. The Voter Guide provides information about candidates running for the five offices covered by the Program as well as general voting information and coverage of local ballot proposals. The Guide is mailed to the millions of households with registered voters citywide in numerous language- and district-specific editions. For the 2005 elections, more than 2.7 million primary Guides were produced and mailed in 12 editions, and more than 3.6 million general election Guides were mailed in 24 editions. In addition, approximately 370,000 Guides were provided to community organizations, libraries, colleges, and other distribution sites.

All candidates who are planning to run for these offices are encouraged to submit a profile for inclusion in the nonpartisan Voter Guide. The CFB sends hundreds of letters to political clubs, community board leaders, district leaders, party leaders, civic groups, and elected officials in the spring of each municipal election year, alerting them to the upcoming Voter Guide and the submission requirements. To help candidates prepare their submissions, the CFB developed a simple software application, the **Voter Guide Wizard**, which allows candidates to view, edit, and print a draft of their profiles, and provides assistance to help them produce error-free submissions that meet the requirements for publication.

The Guide is a tremendous resource for candidates, because it provides them with a free opportunity to reach their targeted constituency. All candidates benefit from appearing in the only official non-

partisan Voter Guide covering New York City elections. For candidates with limited funds, publication in the Guide may be their best opportunity to reach the widest possible pool of potential voters.

Clearly the Guide is a valuable tool for candidates, but its main purpose is civic in a more general sense: the Guide was mandated by law in order to provide clear, concise, nonpartisan information about municipal elections to New York City voters. In addition to candidate profiles, the Guide provides answers to common questions about voting, describes how and when to be in contact with the Board of Elections (BOE), outlines voters' rights, and illustrates how to use the voting machine.

Moreover, the Guide provides comprehensive, nonpartisan coverage of local ballot proposals. This coverage includes plain-language summaries; arguments for and against each proposal, based on information gathered at public hearings, in the press, and from submitted public commentary; and excerpts of public commentary for or against each proposal, as space permits. In 2005, for the first time, the CFB included the same information for two state ballot proposals as well. This was a change from previous practice of including only the official text and summary for state issues. The Guide is produced in English and Spanish as mandated by the Charter. A second edition, translated into Chinese and/or Korean, is mailed to voters in targeted election districts consistent with the federal Voting Rights Act.

2004 SURVEY: HOW ARE WE DOING SO FAR?

The Voter Guide has always provided valuable election information in multiple languages in a convenient package. But, its black-and-white booklet-size format (see Figure 8.1) did not lend itself to much in the way of design or eye-catching graphics. Inside the brightly colored cover, the interior was tightly packed text on newsprint. With full citywide elections, and especially when there were complex ballot proposals, the Guide sometimes appeared a bit daunting to readers.



FIGURE 8.1: The Old Voter Guide Design

As the 2003 elections approached, the CFB contracted with the Peter Harris Research Group to determine whether the voters were reading the Guide, what they liked and did not like about it, what changes they would like to see made to the Guide, and, for those who had not been reading it, what changes could entice them to start. The Peter Harris Research Group began the Voter Guide survey project by conducting focus groups with registered city voters of different educational levels. The first group was composed of voters with relatively less education (a high school diploma or less); the second group was composed of voters with relatively higher education ("some college education" up to "post-graduate degree").

The less well-educated group of voters seemed to have only a passing familiarity with the Guide. After taking a brief look at a recent copy—which most in this group failed to recognize, even though they would have received it in the mail—they expressed little interest in reading a document that they felt looked boring, contained legalistic language, was published on cheap-looking paper, and contained uninspiring graphics, with little to capture their attention or make them quickly understand the value of exploring the contents.

The better-educated group seemed to be more aware of the Guide and generally had a greater appreciation of its value. More of these voters occasionally or regularly read the Guide, but they also had a somewhat muted enthusiasm for it. These voters felt generally unmotivated to read a Guide they felt was visually unappealing and poorly organized. They could not understand why the candidate information was not up front and why they had to receive information about candidates outside their districts. Other than information on candidates, most of the group was generally unfamiliar with the specific contents of the Guide.

After examining a 2003 Guide more closely, several voters in the less-educated group expressed surprise that the Voter Guide contained more and better information than they had thought. Some seemed more inclined to consider reading it in the future; one noted that the information would be helpful for “other” voters. Many in the higher-educated group were more interested in the information in the Guide and indicated they would be more likely to read it if it was better organized and made more visually appealing, with its purpose, importance, and contents communicated more clearly to voters. Both groups felt that the Voter Guide could be transformed into a far more inviting and engaging document.

Suggestions for improvements included: making the Guide bigger, like a magazine; using a larger typeface; adding color photos and graphics; putting candidate profiles up front; and having simpler and much less text. When told that many of these changes would raise the cost of the taxpayer-funded Voter Guide, most focus group members said it would be worth spending the extra money.

The focus groups also revealed considerable alienation among voters toward politicians and the political process, particularly among less-educated voters. Some expressed interest in having candidates answer questions about specific local issues so that voters could have a public record of candidates’ positions to hold elected officials accountable for their actions.

A telephone survey confirmed high levels of voter alienation, but indicated slightly more familiarity with the Guide and substantially more support for it. Over 800 randomly selected registered voters were polled throughout the five boroughs.

The survey found that:

- Nearly 70 percent of NYC registered voters had read the Guide at least once.
- The vast majority of respondents (89 percent) thought the Guide is a good idea and the city should continue to publish it*; 87 percent agreed that the Guide is “good for democracy.”
- 72 percent *disagreed* that “you already know enough about candidates and issues without reading the Voter Guide.”†
- 35 percent of Latino voters and 33 percent of African-American voters rated the Guide a “10” (out of 10) on its importance in helping them decide which candidates to vote for, suggesting the Guide is particularly important amongst historically underrepresented voting groups.
- Regular Guide readers were more likely to vote in every election.
- Regular Guide readers were more likely to feel very well-informed about mayoral candidates, and *twice as likely* as non-readers to say they feel very well-informed about non-mayoral candidates.
- Voters found *all* the information in the Guide to be important (at least a 70 percent positive response for every section), but they ranked the candidate profiles and ballot proposal section most important.
- Nearly 80 percent of registered voters say the Guide was useful for making more informed decisions about both candidates and ballot proposals, but less than 45 percent rated it *very* useful. Likewise, while 75 percent indicated they were satisfied with the Guide, only one-third were *very* satisfied. These figures indicated that while the Guide was fulfilling its mandate, there was significant room for improvement.‡

The results of the 2004 focus groups and phone survey indicated that the Campaign Finance Board should undertake a redesign of the Voter Guide, using the criticisms, concerns, and reading patterns of the voters learned during the study.

* This rises to 93 percent for Latinos, African-Americans, *and* foreign-born voters.

† 60 percent of prime voters (those who say they vote in most elections and follow politics closely) and 83 percent of less-avid voters *disagreed* that they know enough without the Guide, indicating that even the most involved and active group of voters need the Guide to be well informed about local elections.

‡ Another clear indication that the Guide could be improved is that fact that 50 percent of voters said that when the Guide arrived in the mail, they “put it aside for later”; of those, 62 percent said they rarely or never got around to reading it after they put it aside. A disheartening 16 percent reported that they just throw the Guide away. Conversely, those who most frequently read the Guide were the most likely to find it very useful and very important.

THE 2005 REDESIGN

CFB staff studied the results of the 2004 survey and also considered a variety of comments and suggestions that had been made over the years by voters, good government groups, and CFB staff. The staff developed prototypes that added color, reduced and reorganized the standard text, and in some cases changed the size and layout of the Guide. A new focus group was held with a number of high-level New York City print and packaging designers. This group did not make specific recommendations, but seemed to agree that while the prototypes improved upon the current Guide specifications, what the CFB really needed to do was start from scratch with a completely new concept.

At this point, CFB staff met with the company under contract with the Board to provide design and formatting services for the Guide. D-Zine, Inc. was given the prototypes and a synopsis of the survey results, and asked to bring in at least three new concepts that incorporated the best of these changes. The result: a dramatic redesign for the 2005 Voter Guide. (See Figure 8.2.)

The new Guide is a full-color, news magazine-style publication with color photos and brightly colored images on a lightweight, magazine-style paper stock. The Guide has grown from its original 4.25 x 11 inch booklet size to an oversized 11 x 15 inch publication (folded in half to fit in city mailboxes), but instead of 64 pages in each language, it now has a mere 14.

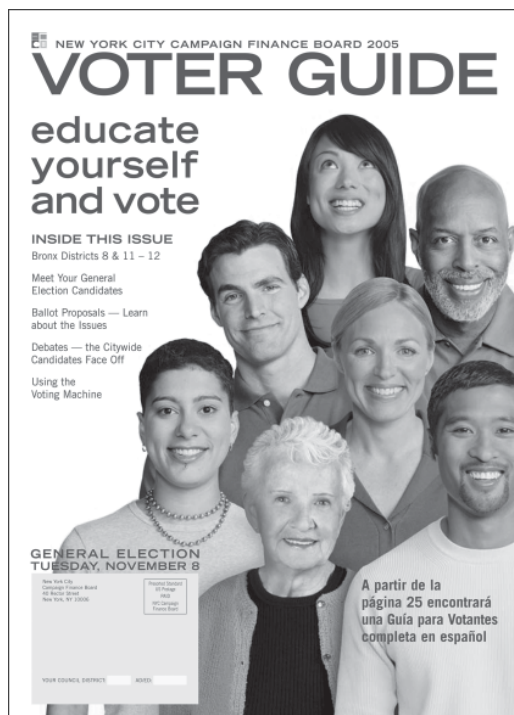


FIGURE 8.2: Redesigned 2005 Voter Guide

Inside, black and white text has given way to colorful graphics and color blocks highlighting important information. Outside, highlights of the contents are the main focus of the striking cover, which set theme for this year's Guide: "Educate Yourself & Vote." On mailed copies, the council district, assembly district, and election district numbers for the intended recipient are printed prominently on the address label area (see Figure 8.3), making it easier for voters to find their candidates in the Guide, and to choose the correct polling booth on election day.

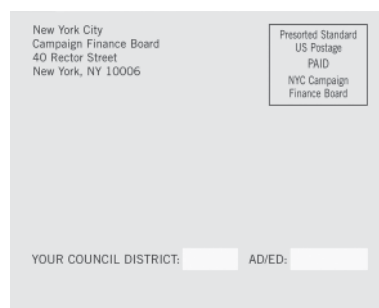


FIGURE 8.3:
The New
Mailing Label

The new concept represents a dramatic change in size, materials, and the “look and feel” of the Guide, but it embodies more than cosmetic changes. The information that had always been provided in the Guide was rewritten, reorganized, and reformatted in more eye-catching and reader-friendly ways.

Targeted Editions

The first NYC Voter Guide, covering the 1989 citywide elections, was produced in five bilingual editions before the primary and again before the general election: one edition per borough. By 2001, this was no longer feasible; far too many candidates were running for office, and the larger boroughs required several editions each.

The 2005 redesign efforts took into account, to the degree possible, the voters’ desire to read only about the people running in their council district, for their borough presidency, and for citywide office. It proved infeasible to produce a separate edition for each of the city’s 51 Council districts. However, it was possible to limit most editions to just two or three Council districts, greatly mini-

FIGURE 8.4: Candidate Profile Pages

borough president

BROOKLYN

educate yourself
vote!

BOROUGH PRESIDENT
The Borough Presidents are the chief executives of each borough. They have the power, for their boroughs, to consult with the Mayor in the preparation of the annual executive budget; to make recommendations on budget priorities, capital projects, and other matters; to review land-use decisions and proposed sites for City facilities; to monitor the delivery of City services and the performance of contracts; and to have legislation introduced in the City Council. Borough Presidents earn an annual salary of \$135,000.

CANDIDATES
Theodore Altabas (R, C)^{*}
Marty Markowitz (D, WF)
Gloria Mattera (G)
Gary Popkin (LBT, REF)

PARTY KEY
R = Republican
D = Democrat
C = Conservative
WF = Working Families
G = Green
LBT = Libertarian
REF = Reform Party

^{*} Candidate did not submit a Voter Guide profile in time for inclusion in this Voter Guide.

MARTY MARKOWITZ
D, WF
PARTY ENROLLED IN: Democrat
OCCUPATION: Brooklyn Borough President
EDUCATIONAL BACKGROUND: Public Service
EDUCATIONAL BACKGROUNDS: Bachelor's Degree from Brooklyn College
EDUCATIONAL AFFILIATIONS: Founder of the Senior League of Parkville, the Parkway Street Senior Center, and the Elderly Food House Senior Center; also co-founder of the Parkville Development Corporation
PRIOR PUBLIC EXPERIENCE: New York State Senate 1979-2001

1. WHAT IS THE MOST IMPORTANT ISSUE IN BROOKLYN YOU WOULD ADDRESS IF ELECTED? Brooklyn is second to none and I have spent the last four years making sure that everyone knows that. The most pressing issue that we in Brooklyn face is managing all the new growth so that we maintain affordable housing, preserve neighborhood character and create jobs. Brooklyn is big investment town, and we must preserve that character through smart development that works for all of us. Brooklyn must remain a place of character and of innovation!

2. WHAT OTHER IMPORTANT ISSUES WOULD YOU ADDRESS IF ELECTED? My other major priority is fixing Brooklyn's growing health care crisis. I have already created the Brooklyn Center for Health Disparities to study and address access to health care in our neediest communities. The Center is just starting to get up and running and there is much left to do and I will continue this work in a second term. As the federal and state government cuts benefits to hospitals, we must make sure that access to quality health care is never sacrificed, particularly for the under-served and under-insured.

3. WHAT WOULD YOU THE BEST CANDIDATE FOR THIS OFFICE? I am proud to say that I will always be as Brooklyn as my career. I've spent my entire life in Brooklyn and I have dedicated my life to making sure that it remains the greatest city in America, where legends are born and dreams come true. I have made the job of Borough President relevant to every corner of the borough, and there are no other agendas, other than what is good for Brooklyn is good for New York City. With a new plan for downtown, Brooklyn Bridge Park, the return of a national sports franchise, the major subway extension to the Rockaway Peninsula, a new chapter in Brooklyn has begun. I promised that Brooklyn would never be in financial trouble and that Brooklyn would be permanently recognized and celebrated throughout the city, nation and beyond. Promise made – promise kept. It's so hip to be a dog that leads with 1,2,3!

Approved as required by the candidate. Participating in the Campaign Finance Program.

GLORIA MATTERA
G
PARTY ENROLLED IN: Green
OCCUPATION: Program Director, Child Life & Developmental Services
EDUCATIONAL BACKGROUND: Social Education preschool teacher
EDUCATIONAL BACKGROUNDS: M.Ed., Supervisor/Administrator, Rock Street College of Education, M.S., Special Ed., Rock Street College
EDUCATIONAL AFFILIATIONS: Physicians for a National Health Program, Child Life Council, Women's International League for Peace & Freedom
PRIOR PUBLIC EXPERIENCE: City Council candidate, 2001 & 2003
Contact my campaign: info@gloriamattera.org
On the Web: www.gloriamattera.org

1. WHAT IS THE MOST IMPORTANT ISSUE IN BROOKLYN YOU WOULD ADDRESS IF ELECTED? High end and high rise construction projects are displacing long-term residents and fundamentally pushing up rents, threatening to become unaffordable.

2. WHAT OTHER IMPORTANT ISSUES WOULD YOU ADDRESS IF ELECTED? High end and high rise construction projects are displacing long-term residents and fundamentally pushing up rents, threatening to become unaffordable.

3. WHAT WOULD YOU THE BEST CANDIDATE FOR THIS OFFICE? Brooklyn needs a different direction. I'm for genuine community involvement in development, not corporate control of politicians who cut development deals behind closed doors. I'm for public space facilities, not a new suburban arena for a privately owned team. I'm for careers with value benefits, and not for perks and parking lots.

4. WHAT OTHER IMPORTANT ISSUES WOULD YOU ADDRESS IF ELECTED? Expanding green space can both improve quality of life and counter steadily global warming. I will embrace existing laws, and use public-private partnership. Community board members will be selected through a participatory process, not appointed.

Incumbent Marty Markowitz wants the borough to be a leader capital. I want Brooklyn to be an education capital with a stellar public school system, well-paid and respected teachers, and a tuition-free CUNY.

Brooklyn's high schools need to be free of aggressive military recruiters. Our kids need real job options, not a war of wits.

5. WHAT WOULD YOU THE BEST CANDIDATE FOR THIS OFFICE? Through Hall today in a public relations office for corporate development. I will lead it with a staff of one, participation, with open access to give each neighborhood, worker, youth, immigrant and women's organizations driving to improve our borough.

Brooklyn needs a real leader, not a cheerleader. I am prepared to be that leader.

Approved as required by the candidate. Participating in the Campaign Finance Program.

GARY POPKIN
LBT, REF
PARTY ENROLLED IN: Republican
OCCUPATION: Retired after teaching 34 years at New York City College of Technology
EDUCATIONAL BACKGROUND: N/A
EDUCATIONAL AFFILIATIONS: PhD in Operations Research, Polytechnic University in Brooklyn
EDUCATIONAL AFFILIATIONS: N/A
PRIOR PUBLIC EXPERIENCE: Elected to Community School Board 15, 1999
Contact my campaign: GaryPopkin@BrooklynNY.com
On the Web: www.GaryPopkinforBrooklynNY.com

1. WHAT IS THE MOST IMPORTANT ISSUE IN BROOKLYN YOU WOULD ADDRESS IF ELECTED? Protect Private Property
Lack of respect for private property is hurting Brooklynites three ways. As Prospect Heights, people are being threatened with loss of their homes and businesses to benefit a private developer. In some Brooklyn neighborhoods, the construction of much needed housing is threatened as property owners are reluctant to build. Bids are being under the draconian anti-smoking ordinance that prevents owners from serving their customers' needs.

2. WHAT OTHER IMPORTANT ISSUES WOULD YOU ADDRESS IF ELECTED? Brooklyn is the poorest Borough. Brooklyn has the lowest average family income of any borough. As Borough President, I would work to make Brooklyn vibrant from all the ways, regulations, fees, taxes, and taxes that strangle small business. The economic backbone of Brooklyn.

3. WHAT WOULD YOU THE BEST CANDIDATE FOR THIS OFFICE? I know that small business and housing construction should be encouraged. I know how a society creates wealth. The Borough President should fight for the economic needs of Brooklyn, not use his position of public trust for chicanery and wealth loss.

Approved as required by the candidate. Not participating in the Campaign Finance Program.

SEE YOUR CANDIDATES ON TV!
Watch the "Video Voter Guide" on Channel 74
This election season, watch candidates make campaign statements on TV on Channel 74 on the "Video Voter Guide." The Video Voter Guide is managed and produced by New York City's Coordinator of Voter Assistance, in conjunction with the City's Voter Assistance Commission (VAC) and NYC TV. Candidate statements are also available in streaming video at www.nyc.gov/voteguide.

Each night of the week a different borough will kick-off the Video Voter Guide program, beginning with citywide and borough-wide offices at 8 p.m.

DAY	ORDER*
Tuesday 11/1	Q, SI, BX, BK, M
Wednesday 11/2	BX, BK, M, Q, SI
Thursday 11/3	SI, BK, BK, M, Q
Friday 11/4	BK, M, Q, SI, BX
Saturday 11/5	M, Q, SI, BX, BK

* BX = Brooklyn, BK = Bronx, M = Manhattan, Q = Queens, SI = Staten Island

Each evening program will be repeated the following morning at 9 a.m. After Saturday's repeat program, statements from participating candidates will be aired weekly around the clock through election day.

English and Spanish transcripts of the entire Video Voter Guide, and Chinese and Korean transcripts for voters assistance, can be accessed at www.nyc.gov/voteguide or by calling 212 or the Voter Assistance Commission at 212-780-8666.

Note in and then on November 8th, make your voice heard. Vote!

2005 General Election Tuesday, November 8 6 a.m. to 9 p.m. 13

mizing the amount of extraneous information each voter received. Council district numbers were made prominent in the interior of the Guide so readers could easily skip past districts of no interest to them.

Candidate Information

The new design has space for four candidate profiles on a single page, in many cases allowing all the candidates for one office to be viewed without turning the page. Large, vibrant artwork on the opening page for each office helped draw attention to the description of that office and the list of candidates on the ballot at press time. As voters requested, profiles now begin in the front of the Guide, on page 4.

Rather than providing a single, lengthy statement, candidates answered three questions in their profiles, which allowed voters to compare opposing candidates' responses. Biographical information was set apart in a colorful box that also highlighted the campaign's email and/or website address, so voters could contact the campaigns directly for more information. (See Figure 8.4.)

FIGURE 8.5: The City Ballot Proposals Section

NYC CHARTER REVISION BALLOT PROPOSALS

educate yourself
vote!

QUESTION 3: Ethics Code for City Administrative Judges

Currently, Administrative Law Judges (ALJs) and Hearing Officers who preside over the City's administrative tribunals are not generally subject to a uniform code of professional conduct covering their official duties, but are subject only to the City's general Code of Ethics Law. The proposed amendment to the City Charter requires the Mayor and the Chief ALJ of the Office of Administrative Trials and Hearings, a City agency with authority to conduct administrative hearings for other City agencies, jointly to issue rules establishing a code of professional conduct for the City's ALJs and Hearing Officers, after consulting with the City's Conflicts of Interest Board, the Commissioner of Investigation, and all affected agency and tribunal heads. ALJs and Hearing Officers would be subject to disciplinary action for violating the new rules.

QUESTION 4: Balanced Budget and Other City Fiscal Requirements

Currently, a New York State law called the New York State Financial Emergency Act for the City of New York, often "FEA," requires certain aspects of the City's finances. The FEA was enacted in response to the City's 1975 fiscal crisis, which was precipitated by the City's issuance of a large amount of short-term debt to cover budget deficits, as well as the City's inadequate financial reporting and accounting practices. The FEA mandated that the City submit annual financial management plans, including a general balanced budget and a detailed four-year financial planning process. The FEA also created the Financial Control Board (the "FCB"), a financial monitor composed of both City and State members, to oversee the City's finances and enforce the financial management provisions of the Act. Currently, if the FCB determines that the City has failed to satisfy the Act, it has the power to impose a "fiscal period" over the City during which period the City must adopt a large measure of fiscal austerity and must submit all financial plans and forecasts, as well as certain contracts, to the FCB for approval.

The Charter Revision Commission (the "CRC"), a governmental body appointed by the Mayor every year ago to consider changes to the City Charter, has made two proposals you will vote on this year.

Prior to making these proposals, the CRC held public meetings and hearings, and has published reports on its work. Transcripts of the meetings and hearings, and copies of the reports, are available from the CRC at (212) 676-2060 and on their Web site, www.nyc.gov/html/chartcr/home.html.

See page 18 for general information about ballot proposals.

about the charter workbooks of this change since we believe that the change could have been effected either through executive order or City Council action. Citizens Union believes that the proposed charter is a necessary and needed. For that reason alone, Citizens Union supports the proposal.

—Citizens Union

This proposal will fairly establish a uniform code of conduct for the City's Administrative Law Judges and Hearing Officers. It will enhance accountability among the more than 100 officials exercising over the lives of thousands of cases handled annually, and provide a more efficient and consistent system for resolving disputes. Early Justice requires nothing less.

—Stephen J. Fain, CRC Commissioner

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—Stephen J. Fain, CRC Commissioner

QUESTION 3: Ethics Code for City Administrative Judges

Reasons to Vote YES

- The proposed Charter amendment to establish a code of conduct for the City's administrative law judges will offer needed centralized coordination of the City's various tribunals and increase their professionalism. The proposal will encourage uniform conduct among administrative judges, improving the fairness, uniformity, and efficiency of hearings.

Reasons to Vote NO

- A Charter amendment is not necessary to create the proposed code of conduct, which could be created by regulation or executive order.
- The proposal specifies what will be the control of the code and the process by which the Mayor and the Chief Administrative Law Judge will develop it. The voters therefore have insufficient information to make a meaningful decision about the proposal.

Excerpts of Public Commentary — PRO

Citizens Union... remains troubled by the way in which Mayor Charter Commission are sometimes used to make changes to the City Charter that may not be necessary to solve for the functioning of government but are imposed. A case in point is the proposed change... did establish a uniform code of conduct or ethics for Administrative Law Judges and hearing officers. Though Citizens Union has concerns

Excerpts of Public Commentary — PRO

During the 1970s fiscal crisis, the State began requiring the City to balance its budget in accordance with generally accepted accounting principles, prepare a four-year financial plan, and submit a balanced budget to the City Council. These requirements have prevented responsible budgeting and fiscal planning, but they are expected to expire during the next fiscal year. New Yorkers can't afford to let that happen.

Excerpts of Public Commentary — PRO

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NYC CHARTER REVISION BALLOT PROPOSALS — PRO & CON

QUESTION 3: Administrative Judicial Code of Conduct

Reasons to Vote YES

- The proposed Charter amendment to establish a code of conduct for the City's administrative law judges will offer needed centralized coordination of the City's various tribunals and increase their professionalism. The proposal will encourage uniform conduct among administrative judges, improving the fairness, uniformity, and efficiency of hearings.

Reasons to Vote NO

- A Charter amendment is not necessary to create the proposed code of conduct, which could be created by regulation or executive order.
- The proposal specifies what will be the control of the code and the process by which the Mayor and the Chief Administrative Law Judge will develop it. The voters therefore have insufficient information to make a meaningful decision about the proposal.

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Ballot Proposals

The ballot proposal section was streamlined and refitted. In the old booklet style, coverage of ballot proposals could run 20 pages or longer. Research suggested most readers only looked at the first few pages, and may not even have noticed the “pro” and “con” arguments or public commentary. The solution: a single 2-page spread covering local proposals (with an additional two-page spread for statewide proposals). Plain-language summaries were provided on the left, with the official text of each proposal “as it will appear on the ballot” highlighted in a sidebar. The right-hand page was devoted to “Reasons to Vote YES/Reasons to Vote NO” on each proposal, along with brief excerpts of statements submitted by elected officials, good government groups, and interested citizens. (See Figure 8.5.)

General Voting Information

Contact information for the BOE, a list of voters’ rights, the election date, and other vital information were presented on the first page opposite a “Welcome” section outlining the improvements made to the Guide. Broadcast information for the CFB’s Debate Program received its own page, while colorful banners and mini “advertisements” sprinkled through the Guide reminded readers about the election date, poll site hours, and how to find their council district, and provided the CFB and BOE website addresses.

“Questions and Answers” and the pictorial “How to Use the Voting Machine” sections were pared down, rewritten, made more vibrant, and moved to the end of the Guide, along with information about the Campaign Finance Program and the Board, based on the order in which respondents ranked these sections.

WHAT DO YOU THINK OF US NOW?

Considering the dramatic changes made to the Guide, the Board felt it was important to conduct a second survey after its release, to gauge public response. Peter Harris Research Group was again selected to conduct a phone survey and focus groups on the new design. The preliminary results of the phone survey are quite encouraging. The draft report on the 2005 phone survey indicated that, among readers of the 2005 Guide:

- 92 percent were satisfied with the 2005 Guide—including 50 percent who were very satisfied.
- 91 percent gave the 2005 Guide an overall positive rating of either excellent (36 percent) or good (55 percent).

- 86 percent said it was easy to understand the descriptions of this year’s ballot proposals.
- 90 percent gave a positive rating for “how easy it is to read the Voter Guide in terms of the print size and layout.”
- 88 percent gave a positive rating for “how easy and comfortable it is to hold and look through the Voter Guide.”
- 81 percent thought the design and appearance of the Guide made people “feel like looking through it” and that the new organization made it easy to find information.
- 79 percent thought that voters were more likely to read the redesigned Guide.*
- 78 percent found the specific questions asked of candidates useful.
- 69 percent of those who also read the Guide in previous years said the larger print and new layout of the 2005 Guide made it easier to read.†
- 59 percent of those who read the Guide in previous years said they found it easier to understand the information in the 2005 Voter Guide. This increased to 70 percent amongst voters who had a copy of the 2005 Guide to refer to during the interview.

These responses appear to demonstrate that many of the goals of the redesign effort—to attract new readers, to make it easier to find the information each reader seeks, and to draw attention to sections readers may have skipped in previous Guides—were achieved.

Long before the survey was conducted, however, the CFB had quite a bit of anecdotal evidence that the new Guide was well received by the public. For the first time since the publication of the very first official NYC Voter Guide in 1989, the CFB was overwhelmed by letters, phone calls, and emails in praise of the new Guide. One email received by the Board stated:

Your 2005 Primary Guide is EXCELLENT. The new larger format, with color photos and larger print is certainly going to catch the eye of the electorate.

* Only 6 percent thought voters were less likely to read it, while 9 percent thought the redesign didn’t make any difference. The remaining 6 percent were not sure.

† This increased to 83 percent among those who still had the Voter Guide in their homes to refer to during the interview.

In many cases, the correspondent appeared to believe the Guide was a new initiative, suggesting that the redesign had garnered new readership—a key goal of the redesign efforts. An email received after the general election Guide was mailed to voters stated:

I just wanted to let you know that I found your 2005 voters guide INCREDIBLY helpful in understanding the candidates' viewpoints on different issues, as well as the pros & cons on some of the key questions facing the city. I usually go to the voting booths incredibly confused and only educated on the top candidates who are spending the most on advertising or get the most media time. This year, I was happy to get some insight into the people running for city council in my district, the Borough Presidents, Public Advocates etc. In addition, the "question" section was very helpful and allowed me to form an opinion on key issues that are up for debate. Thank you for putting together a one stop spot for me to obtain valuable information and for making my voting experience much easier. Please keep this coming for 2006 and beyond!

The new and improved 2005 Guide afforded each New York City voter the opportunity to "Educate Yourself & Vote," fulfilling one of the CFB's most important mandates and enhancing the democratic election process in New York City. Bigger, better, and by most accounts, much appreciated by the public, the 2005 Guide continued to serve voters and candidates successfully—as it has since 1989—at minimal cost to the taxpayer: about 48 cents per copy plus postage.

THE ONLINE VOTER GUIDE

In 1998, the CFB published its first online version of the Voter Guide, and in 2001, an important interactive feature was added: visitors to the CFB's website could type in their address to find out their Council district and view a personalized Guide onscreen.

The 2005 online Guide was redesigned and updated in concert with the printed version and made it even easier for visitors to find the election information they sought. Voters could go directly to any section of the Guide using the menus at the top of each screen. With one click, a visitor could jump to the list of candidates for any office, or skip directly to ballot proposals, Debate Program information, or any other section that interested them.

The candidate profile layout was designed to complement that of the printed Guide, and provided a brand-new feature: when you viewed a profile, pictures of each of that candidate's opponents were

displayed to the left as icons that linked to *their* profiles.* (See Figure 8.6.) This allowed voters to easily navigate amongst all the candidates for any particular race.

The CFB publicized both the printed and online versions of the Guide on subway and bus posters, in newspaper ads, and with public service announcements. Google search words were also purchased, so that if someone entered, for example, “NYC Voter Guide” in the Google search engine, a link to the CFB’s online Guide would appear prominently onscreen.

Altogether, the online Guide received 216,426 visits in the days leading up to each election, more than an eleven-fold increase over the 2003 online Guide, and in the week before each election, the online Guide was one of the 10 most popular pages on the CFB’s website.

In 2005, voters had a new source of information in the video voter guide, produced by the New York City Voter Assistance Commission (VAC). Candidates taped 2–4 minute statements that aired on NYC-TV 74, New York City’s official network. The taped statements were also made available



FIGURE 8.6:
A Candidate
Profile in the
Online Guide

* The names of candidates who failed to submit a profile, or did not submit it in time for inclusion in the Guide, were displayed without photos, and with a link to a footnote to that effect.

on the Internet as streaming video. The Board provided links in its online Guide to the video voter guide's homepage, and provided information about the video voter guide in each edition of the Board's printed 2005 Voter Guides.

FOR THE FUTURE

Although the CFB is extremely pleased with the public's reaction to the redesigned Voter Guide, there is still more work to be done.

One area being investigated by the staff concerns the mailing to registered voters. Both anecdotal evidence and preliminary data from the 2005 telephone survey indicate a significant percentage of registered voters say they did not receive a copy of the Guide; in fact, non-receipt is the most frequent reason cited in the survey why a respondent did not read the Guide. The CFB is looking into ways to obtain the most up-to-date mailing data possible from the New York City BOE, and to work even more closely with post offices to make sure they understand the importance of this critical mailing and deliver it expeditiously. Part of the problem, however, could be a lack of recognition; so much election-oriented mail is received by the average voter—not to mention ordinary “junk” mail—the Guide may simply get lost in the mix.

For example, only a tiny percentage of respondents in the telephone survey could correctly describe the Voter Guide subway poster, despite a 4-week campaign of advertisements prior to each election. The ads featured the same artwork printed on the cover, so if voters didn't notice the ads, it is possible that they didn't recognize the Guide when it arrived. According to preliminary analysis of the telephone survey, increasing voter recognition of the Guide should have a positive impact on readership.

The CFB plans to focus its efforts on revamping the Voter Guide promotional campaign in the hopes of significantly increasing recognition and readership for the 2009 elections. In addition, the CFB will work closely with its vendors to refine and improve the next edition, with the goal of attracting and educating even more voters.

ACKNOWLEDGMENTS

Numerous agencies and organizations provided assistance to the CFB's Voter Guide project. The New York City BOE has provided the CFB with specially prepared registered voter mailing tapes before each election since 1989, and its website, www.vote.nyc.ny.us, has been a valuable resource for election information for this and other CFB projects over the last several years. NYPIRG's CMAP Project provided borough maps for both the print and online Voter Guides, as they have for the past several elections, and also provided the underlying technology for the find-your-district capability featured in the online Voter Guide.

chapter 9

Enforcement — Protecting Public Dollars

-
- Contemporaneous penalty proceedings had a positive effect on compliance
 - Issues arise regarding the 90-day blackout period on officeholder mailings
 - Enforcement efforts recoup public dollars
-

One of the hallmarks of the New York City Campaign Finance Program has been vigorous enforcement. A strong enforcement practice that evolves in response to new challenges is crucial to achieving the important goals of the Program. Without highly effective enforcement, well-intentioned campaign finance reform can easily devolve into mere “welfare for politicians.”

The CFB provides comprehensive education to help candidates avoid violations that arise out of mistakes or ignorance of the law and rules. All campaigns are advised at the outset that they will be audited by the Board. Most campaigns do a creditable job adhering to the Act and the Rules. Despite this advance caution, however, the Board’s audits continue to uncover the full range of campaign omission, error, and, unfortunately, even criminal wrongdoing.

In furtherance of its efforts to obviate and help campaigns avoid violations, the Board also issues advisory opinions to clarify matters of general interest. These preventive measures, of course, are supplemented by continuing evaluation of campaigns’ compliance before, during, and after the election. Timely public disclosure of campaign finances, compliance visits during the campaign season, and requests for information before the election are part of this evaluation. The Board also conducts comprehensive post-election audits of every campaign to bring to light irregularities and possible violations. Audits require detailed review of documents as well as extensive communications between the CFB and the campaigns. At times, this process may be lengthy. These audits are followed, if necessary, by penalty proceedings and findings of violations and assessments of penalties by the Board. Penalty determinations are published in routine press releases and on the CFB website.

Public funds that were improperly used by campaigns, inadequately documented, or simply left over at the end of the campaign are brought to the campaign's attention and recouped for the public. The Board pursues litigation, if required, to compel satisfaction of penalty or repayment obligations. New enforcement initiatives instituted during the 2005 election cycle include litigation in the Small Claims Part of the New York City Civil Court and the expanded use of post-judgment enforcement processes, such as property liens and wage garnishment.

The CFB's enforcement efforts have been successful in finding minor and serious violations of the Act and Rules and protecting the public fund through the collection of penalties and public funds repayments. In connection with the 2001 citywide elections, the Board has collected \$904,021 in repaid public funds from 71 participants and \$711,545 in outstanding penalties from 186 participants. In connection with the 2003 City Council elections, the Board has collected \$308,843 in repaid public funds from 36 participants and \$103,348 in outstanding penalties from 46 participants.*

Even as the CFB's enforcement practices have become more varied and sophisticated, however, a small number of campaigns continue to commit serious violations of the Act and Rules. In some cases, these violations lead to a finding of breach of certification. In 2000, the Board adopted a rule that states that certain very serious violations such as fraud may be found to constitute a breach of the certification a candidate signs to join the Program. The consequence of a finding of breach is that a campaign is not entitled to receive public funds and must return all public funds already received. In the 2001 elections, four participants were found in breach of certification: two borough president candidates (Sheldon Leffler and Pedro Espada, Jr.)[†] and two City Council candidates (Margarita López and George Martinez). In 2003, three of 102 City Council participants on the ballot were found in breach (Geoffrey Davis, Anthony Herbert, and David Miller). As of publication of this report, penalty proceedings that may result in findings of breach of certification are pending against one additional 2001 campaign and two additional 2003 campaigns. Because the 2005 post-election audits are still in progress, the number of 2005 campaigns that may be found to have violated the Act and Rules is not yet known.

In the 2001 elections, misrepresentation or fraud-related violations were found in connection with six of 280 campaigns,[‡] four of which were Council campaigns. In the 2003 elections, such violations were found in connection with six of 102 Council campaigns.[§] As of publication of this report, penalty proceedings in which fraud and/or misrepresentation are alleged are pending against two additional 2003 campaigns and one additional 2001 campaign.

* These figures for total collection amounts are current as of June 13, 2006.

† Leffler was convicted of fraud and forgery in criminal court. Several individuals connected to the Espada, Jr. campaign were convicted of, or pled guilty to, larceny, scheme to defraud, and/or perjury, although Espada, Jr. himself was not charged.

‡ These were the City Council campaigns of López, Martinez, Elizabeth Crowley, and Kendall Stewart, and the borough president campaigns of Espada, Jr. and Leffler.

§ These were the City Council campaigns of Davis, Herbert, Miller, Maria Baez, Omar Boucher, and Samuel Taitt.

Over time, campaigns have also violated the expenditure limit. In the 1993 elections, three of 107 participating campaigns and, in the 1997 elections, three of 141 participating campaigns, were found to have exceeded the expenditure limits. In the 2001 elections, however, the number increased to 14 of 280 participating campaigns. In the 2003 elections, four of 102 participating campaigns exceeded the expenditure limit. (See Chapter 5—Expenditures.)

These serious compliance problems may result from a willingness on the part of certain campaigns to violate or at least “bend” the Act and Rules in high-pressure and competitive races. The \$4-to-\$1 public funds matching rate may be the most important temptation for non-compliance. Regardless of the causes, however, violations of the Act and Rules represent a continued challenge to the integrity of the Program.

PENALTY PROCESS IN THE 2005 ELECTIONS

Most penalty proceedings are initiated after the elections have taken place, as part of the post-election audits. In certain circumstances, however, contemporaneous, “real time” enforcement during the election is appropriate to preserve a level playing field as much as possible, to alert the public to potential violations of the Act, and to prevent more serious violations or inequities.

Failure to File Timely Disclosure Statements

In 2005, for the first time, the Board published on its website—in advance of any finding of violation—a list of all candidates who failed to file disclosure statements by the due dates. In most cases, penalties for any late filings will be considered in the post-election audit process. During the 2005 primary election, however, the Board initiated penalty proceedings against the campaigns of two non-participants whose failure to provide timely disclosure hampered the Board in making accurate bonus determinations during the election based on the non-participants’ spending.

On August 17, 2005, in district 41, Darlene Mealy submitted a request for a bonus determination based on the spending of William F. Boyland, Sr. The Boyland campaign had failed to file the most recent disclosure statement. Board staff issued a notice recommending a penalty for the missing statement and informed the campaign that if it filed the statement promptly, the penalty might be reduced. The campaign filed the statement in response to the notice, and the Board assessed a lower penalty. According to the new filing, the Boyland campaign had triggered the bonus, and the Board granted the bonus petition. (See also Chapter 2—At the Races, and Chapter 6—Public Funds.)

In the second case, James J. Sanders, Jr. in district 31 had failed to file his disclosure statements, which deprived the Board of information needed to determine the amount of public funds due to his opponent, David Hooks, Jr. On the first primary election payment date, Hooks’ public funds payment was limited to the 25 percent cap because Sanders had not filed and the Board could not determine whether he had raised or spent more than one-fifth the amount of the expenditure limit.

On the next payment date, the Board lifted the 25 percent cap for Hooks because campaign activity indicated that Sanders was running a full-fledged campaign. In response to the notice of recommended penalties, the Sanders campaign filed the missing statements; the Board assessed a reduced penalty and declared a bonus situation for Hooks. (See also Chapter 2.)

Penalties for the Failure to Respond to the Initial Requests for Campaign Records

Contemporaneous penalty proceedings are also useful in the immediate post-election period when a campaign fails to respond to the Board's initial request for campaign records, because prompt enforcement encourages the submission of such records and allows an effective audit.

Even as the victors celebrate and the defeated quietly close up shop, campaigns are apt to forget that their responsibilities under the Campaign Finance Act do not end with the election. Campaigns must participate in a comprehensive post-election audit, including a full response to the Board's request for campaign records, so the Board can fulfill its mandate to verify compliance with the Act. Failure to respond to the Board's requests for documentation is a serious violation of the Act, particularly when a campaign has received public funds. It also delays the post-election audit process. The Board rules require that, to the extent practicable, the Board issue draft audit reports by the end of the year after the elections. One frequent request from campaigns is that the Board conduct an expeditious audit, but this cannot be accomplished when campaigns are not responsive.

In furtherance of the Board's goal of conducting prompt and thorough audits, if a campaign fails to respond to the request for campaign records, CFB staff immediately refer the campaign to the Board for consideration of penalties. These penalty referrals remind campaigns that their ongoing and prompt cooperation is necessary throughout the post-election audit. Usually, the penalty proceedings spur the campaigns to provide the requested documentation. In the 2005 post-election period, immediate penalty proceedings were initiated against 18 campaigns that had failed to respond to the initial request for audit documentation. Fourteen campaigns ultimately submitted the necessary documentation as a result of the pending proceeding but before a penalty was assessed, resulting in far lower penalty assessments. In 2003, these proceedings were initiated against four campaigns.

EMERGING ISSUES IN THE 2005 ELECTION

Use of Public Resources by Incumbents for Campaigning Purposes

The use of government resources by public officials running for re-election poses another challenge to the Program's goal of leveling the playing field. During the 2005 elections, several officeholders used public resources to distribute constituent literature in the midst of their re-election campaigns. Even though the literature did not explicitly refer to the incumbent's candidacy, the potential value of getting the incumbent's name out during an ongoing campaign was clear. The Board's jurisdiction in this area, however, extends only to enforcing the 90-day "blackout period" before the election,

during which a public servant who is a candidate in the election may not use government resources for mass mailings.¹

The most dramatic instance of a taxpayer-funded mass mailing was that of City Council Speaker Gifford Miller, who spent an estimated \$1.6 million in City Council funds to distribute over five million pieces of mail, just before the onset of the 90-day period. (See Chapter 2.) Because of the timing, the mailing was consistent with the letter of the 90-day blackout period, even though voters were receiving the literature at the height of the election season.* The crescendo of public concern over what may be a technically legal use of public resources in the midst of a heated election has brought the efficacy of the 90-day blackout period into question. (See Chapters 2 and 5.) A 90-day blackout period may be insufficient to ensure a level playing field and to prevent the distribution of significant amounts of literature at public expense at a time when this results, or appears to result, in private political gain.

Before the City Council amended the Charter in December 2004, the blackout provision covered only a 30-day period prior to an election. Expanding the blackout period to 90 days was a step in the right direction. The large-scale mailings of Miller and other incumbents, however, has led some to question whether the blackout period should be further extended and whether other restrictions should be placed on the use of public resources prior to elections.

In addition to the Miller case, the Board reviewed numerous proposed and actual expenditures of public resources by incumbent candidates during the 2005 election season that tested and clarified the scope of the Charter's blackout provision. Over a dozen office holders asked the Board whether expenditures on assorted newsletters, holiday greetings, invitations to community events, informational pamphlets, advertisements, and other announcements would be permissible during the blackout period. The Board also investigated several expenditures of government resources on its own initiative.

The Board found certain uses and proposed uses of public resources to be consistent with the law because of their timing, volume, or content. For instance, the blackout provision does not limit "ordinary communications between elected officials and their constituents" or "communications necessary to safeguard public health and safety."[†] The Board determined that other uses of public resources by incumbents, however, such as a holiday mass mailing, could not be reconciled with the blackout provision. In another example, a City Council member inquired whether it would be

* Other Charter provisions not within the Board's jurisdiction include a prohibition on the spending of public resources by public servants on electioneering messages, and violations of this provision may be prosecuted as a misdemeanor. Charter §2604(b)(2) also prohibits public servants from having interests or engaging in activities that conflict with their official duties, and Charter §2604(b)(3) forbids public servants from using their positions for personal gain. Jurisdiction over Charter §§2604(b)(2) and (3) lies with the New York City Conflicts of Interest Board.

† Charter §1136.1(3)(a) also specifically exempts "standard communications in response to inquiries or requests," and §1136.1(2)(b) exempts one mailing on the executive budget sent within 21 days of its passage.

permissible to use government resources to reprint and redistribute *by hand* a budget-related constituent newsletter that she had already mailed to constituents. The Board determined that the proposed distribution was not permitted under the Charter, given that the blackout period was not limited to mass mailings delivered through the postal service. Further, limiting the blackout provision to items sent in the mail would reduce its value in leveling the playing field and preventing the misuse of taxpayer resources.

2005 ELECTION-RELATED LITIGATION

A. Gifford Miller

Approximately one week before the September 13, 2005 Democratic Party primary election, the Board received a request for an advisory opinion from Miller's Democratic mayoral campaign raising the question "whether expenditures for ballot petitioning carriers are 100 percent exempt, when those carriers have used literature as an aid in persuading voters to sign ballot petitions."* On September 6, 2005, the Board issued an advisory opinion stating that the Board could not consider all \$560,000 spent by the campaign on independent nominating petitions to be exempt from the expenditure limit. Consistent with the Board's prior guidance and its current and past treatment of exempt petitioning claims submitted by other campaigns, the Board explained that, at some point, "what was labeled petitioning was in reality campaigning."^{†2} (See Chapter 5.)

The same day the Board issued the advisory opinion, the Miller campaign sued the Board and requested a preliminary injunction in New York State Supreme Court prohibiting the Board from not accepting as exempt all the campaign's expenses for independent nominating petition carriers. On September 14, 2005, the Court denied the campaign's request for a preliminary injunction. The Court found that the Miller campaign had failed to show that the Board had "not adhered to its own prior precedents or that the Board's construction of the Act [was] irrational or unreasonable."³ Citing the Board's advisory opinion, the Court reiterated the importance of the expenditure limit in helping to level the playing field, "especially when a candidate exceeds the [spending] limit in the final days prior to an election." The Court noted that Miller had voluntarily agreed to abide by the Program's rules in exchange for accepting public funds, and "[i]f he did not understand its rules or found them to be ambiguous, his remedy was to seek clarification in a timely manner, rather than to proceed at his own risk." The Miller campaign discontinued its litigation against the Board following the Court's decision.

* Although Program participants are subject to an expenditure limit, expenditures necessary to comply with state election law, including the costs of circulating designating and nominating petitions, are exempt from the expenditure limit. (See Chapter 5.) Campaigning expenditures, such as literature distribution, are not necessary to comply with state election law, however, and thus are never exempt under the Act.

[†] Board member Dale C. Christensen, Jr. issued a separate opinion, which was published as an exhibit to the Board's advisory opinion and can be viewed at www.nycclfb.info.

Challenges to Program Requirements

The 2005 election cycle brought a series of lawsuits filed by candidates who missed the deadline for joining the Program, or chose not to join the Program, but nonetheless sought public funds or participation in the Debate Program. In the 1997 elections, candidate Roland Rogers filed an action of this kind in New York federal district court, as did candidate Sonya Ostrom in the 1999 elections. Both actions were dismissed. In 2005, Arthur Piccolo brought suit, claiming that the Program deadline and the Voter Guide deadline violated his constitutional rights; Jimmy McMillan, the mayoral candidate of “The Rent Is Too Damn High” party in the 2005 general election, challenged the Board’s requirements for participation in the Program and the debates. In the Piccolo case, the Court denied the request for preliminary relief enjoining the enforcement of the Board’s June 1, 2005 deadline for joining the Program, stating that “because the deadline is content neutral, race neutral and neutral in every other respect, the deadline is valid because it furthers governmental interests, such as the promotion of good government reforms.” The court also upheld the Voter Guide deadline. Both actions were dismissed.*

PRE-BOARD DETERMINATION COURT CHALLENGES

In 2005, a number of campaigns from various election cycles have attempted to avoid Board penalty proceedings by resorting to litigation. Rather than responding in writing or in person to the Board’s notice of alleged violations and recommended penalties, and then (potentially) challenging the Board determination in court, these campaigns turned to the courts to enjoin the Board’s proceedings prior to any determination by the Board.

Under New York law, a party subject to the authority of a city administrative agency such as the Campaign Finance Board may not appeal to the courts until the agency has reached a final determination or action in its case and the party has exhausted all possibilities of obtaining relief at the administrative level. In apparent contravention of this settled New York law, the 2001 campaigns of Miguel Martinez and Arthur Cheliotis and the 2003 campaign of Annabel Palma sought temporary restraining orders to block Board penalty proceedings, which were granted in the Martinez and Palma cases. Such attempts to circumvent the Board’s hearing and penalty proceedings are a direct challenge to the Program.

BOARD ENFORCEMENT ACTIONS

If a campaign does not repay public funds or pay penalties owed to the Board, the Board will bring an enforcement action to collect these monies. The Board has a strong record of winning these enforcement actions.

* Piccolo filed an amended complaint, adding a claim for \$2.5 million in monetary damages. This case is still pending.

In 2004, for example, the New York State Supreme Court held that the 2001 City Council campaign of Edward J. Lewis had to pay \$356 in penalties and repay \$19,226 in public funds to the Board pursuant to final Board penalty and repayment determinations. In 2005, the Court upheld final Board determinations against the 2001 City Council campaign of Jean Vernet and held that the Vernet campaign must pay \$10,874 in penalties to the Board and repay \$43,215 in public funds. In both of these cases, the Court also imposed significant *additional penalties* against the campaigns for their conduct.

Using Small Claims Court

In February 2004, the Board began initiating lawsuits in the Small Claims Part of the New York City Civil Court against candidates owing smaller amounts of public funds and/or penalties from the 1997, 2001, and 2003 election cycles. The Board's efforts have been extremely successful, resulting, to date, in recovery of a total of \$50,679 from 42 campaigns and one agent of a campaign. The success of these enforcement efforts affirms the Board's "zero-tolerance" policy towards non-payment of outstanding public funds and penalties, even in the case of relatively small amounts of money.

Small Claims Action against the Advance Group

One of the defendants the Board sued in Small Claims Court was the Advance Group, a political consulting firm that represented 2001 City Council candidate John Fratta. In 2003, the Board—for the first time in its history—found a campaign's agent, the Advance Group, in violation of the Campaign Finance Act pursuant to section 3-711(1) of the Act. The Advance Group explicitly accepted responsibility for the violations found against the Fratta campaign. The Advance Group went to court, challenging the Board's determination that the Advance Group could be held liable for violations of the Campaign Finance Act as an "agent" of a campaign. The Court ruled in the Board's favor. Ultimately the Board had to turn to Small Claims Court to collect the \$3,424.50, including penalties and court-imposed interest, that the Advance Group owed. On November 3, 2004, after appearing before an arbitrator, the Board received a judgment in its favor. The Advance Group then remitted payment.

Small Claims Action against Kenny Kramer

The Board brought a notable small claims action to collect \$2,193 in penalties owed by Kenny Kramer, the Libertarian Party candidate for Mayor in the 2001 general elections, who is widely acknowledged as the real-life inspiration for the character "Kramer" on the popular sitcom "Seinfeld." Kramer, proceeding *pro se*, responded to this action by demanding a jury trial. The request for a jury trial was ultimately denied, and Kramer complied with the Court's order to remit the \$2,193 in penalties to the Board.

POST-JUDGMENT COLLECTION EFFORTS

Even after the Board obtains a favorable judgment requiring a campaign to satisfy its debt, not all debtors will pay of their own accord. The Board has compelled payment successfully from a number of recalcitrant campaigns by initiating a range of post-judgment enforcement proceedings, such as entering the judgment as a lien against the debtor's real property, issuing information subpoenas, and restraining the debtor's assets. For instance, in 2005, for the first time in the history of the Program, the Board garnished the wages of an incumbent City Council member. After Allan W. Jennings, Jr. refused to satisfy a \$45,383 judgment⁴ voluntarily, the Board successfully garnished Jennings' City Council wages.* In an effort to collect fines it had levied against Jennings, the City Council also attempted to garnish Jennings' Council wages. However, Jennings' term of office ended before the Council could collect any of the monies owed.

2005 CHALLENGE TO THE PROGRAM'S CONSTITUTIONALITY

James Lesczynski, Jr., the Libertarian Party candidate for Public Advocate, brought a constitutional challenge to the Program. Lesczynski argued that giving public matching funds to candidates forced him to fund political speech to which he vehemently objected, in violation of his free speech rights.⁵ The Court dismissed Lesczynski's lawsuit, holding that Lesczynski lacked standing to challenge the Program's constitutionality.

REFERENCES

- 1 New York City Charter §1136.1(2)(b).
- 2 A.O. No. 2005-3 (September 6, 2005).
- 3 *Miller for New York v. NYC Campaign Finance Board*, Index No. 112409/2005 (N.Y. Sup. Ct. Sept. 7, 2005) (Silberman, J.).
- 4 *NYC Campaign Finance v. Jennings, Jr., et al.*, Index No. 402998/2003 (N.Y. Sup. Ct. May 23, 2005) (Lebedeff, J.).
- 5 *Lesczynski v. Bloomberg*, Index No. 102751/2005 (N.Y. Sup. Ct. Nov. 18, 2005) (Feinman, J.).

* So far the Board has received approximately \$5,000 in repayments through the garnishment.

chapter 10

Board Recommendations— Meeting the Goals

Since its inception in 1988, the Campaign Finance Program has done much to amplify the voice of individual New Yorkers, to keep them informed about candidates for public office, and to help bring corruption-free elections to their city. However, the 2005 elections exposed a still-considerable distance between political reality and the Program’s ultimate goals.

Outside of a relatively small number of hotly contested races for open seats, the 2005 elections were marked by a distinct lack of competition. The elections repeated a phenomenon experienced through many election cycles; when no incumbent is involved, the Program has enabled more candidates to get involved in their community by running for public office, empowered many citizens to play a part in political campaigns, and provided voters with a wider range of choices. The Program has done so by providing money to candidates who would not otherwise have had access to the resources necessary to run an effective campaign.

But—as noted in the Board’s post-election report following the 2003 elections—the Program cannot be judged a success if it helps create vibrant competition on an even playing field only in instances of open-seat races. In a perfect world, the Program would have the capacity to enable competitive races in any district, in every election.

Several other concerns came to the attention of the Board over the course of the 2005 campaign, from high-spending candidates who opt out of the Program, to the increasing cost of campaigns, to the potentially wasteful use of taxpayer funds.

The Campaign Finance Act wisely requires the Board to report to the mayor and the City Council after each citywide election* about the Program’s effect on political campaigns, and to submit

* Or “at such other times as the Board deems appropriate.” NYC Administrative Code §3-713.

recommendations to improve the Program. Each election, the Board conducts public hearings, distributes surveys to candidates, evaluates data compiled by staff, and receives formal and informal comments from candidates, government reform advocates, and others. In preparing its recommendations, the Board relies on information from those sources and on its 18 years of experience administering the Program.

The ultimate question driving this post-election report is whether the Program is meeting its fundamental goals as effectively as possible. The recommendations that follow are designed to suggest ways in which the Program might be improved to do so. The Board's goals include:

1. **Increasing the role of the individual donor.** Amplifying the voice of small, individual donors is the animating idea behind the provision of public matching funds to candidates. The \$4-to-\$1 matching grant to Program participants has made small contributions more valuable to candidates. However, large contributions still wield a disproportionate weight in city electoral politics. More can be done to mitigate their influence.
2. **Enhancing competition for elective municipal offices.** As noted throughout this report, the advantages of incumbency can result in inequities that few challengers find ways to overcome. But whether or not they are incumbents, some candidates have access to funds or opportunities that are simply unavailable to others. The Program should find more ways to equalize opportunities for serious candidates to run effective campaigns.
3. **Increasing public information about campaigns and local issues.** The Board's disclosure regime is easily among the most comprehensive and accessible anywhere. And the Board's efforts do not end with providing information on the sources and uses of campaign funds. With the Debate Program and the Voter Guide, the Board provides voters with opportunities to hear candidates speak for themselves in substantive, unbiased, nonpartisan forums, and the Board will continue to supply even more avenues to improve popular understanding of local issues.
4. **Further streamlining the Program.** To comply with the many requirements of the Act, campaigns must shoulder a considerable burden of recordkeeping and disclosure. Some campaigns may find themselves in violation for failures of comprehension instead of intent. It is incumbent on the Board to find ways to simplify the procedures necessary for compliance as best as it can, without sacrificing the integrity of the Program. To paraphrase Einstein, rules should be as simple as possible, but no simpler.
5. **Protecting taxpayer money from waste.** To maintain public support for the Program, the Board must ensure taxpayers get the best value for their public investment in the political process. This means finding ways to prevent the expenditure of public funds in cases in which those funds are spent inappropriately.

The Board's recommendations are organized under these headings. Separately, the chapter outlines a new program for City Council candidates. Other issues of concern to the Board, and issues that fall outside the Board's jurisdiction, are listed separately as well.

RECOMMENDATIONS OF THE BOARD

1. Increasing the Role of the Individual Donor

Lower Contribution Limits

The Board has recommended a reduction in the contribution limits several times in the past. Occasionally, the Council has heeded those proposals; in 1998, the limits were lowered from \$7,700 to \$4,500 for citywide candidates, from \$5,900 to \$3,500 for borough president, and from \$3,550 to \$2,500 for Council.*

The Board recommends further reductions in the contribution limits—to \$4,000 for citywide candidates, and to \$3,000 for borough president. A separate set of reforms to the Program for Council candidates would lower the contribution limit for this office to \$250. (See “Create a New Program for City Council Candidates” on page 132.)

It is foremost among the Board's priorities to moderate the influence of wealthy interests and large contributors in the political process through various means. This concern must always be balanced against preserving candidates' ability to wage competitive campaigns. Still, it is clear that high-end contributions play a disproportionate role in funding city campaigns.

For participating citywide campaigns, contributors who gave more than \$4,000 were less than 6 percent of the candidates' aggregate total number of contributors. But those relatively few contributors were the source of 40 percent of the total funds raised by participants for the three citywide offices. It is clear that candidates with access to the wealthiest donors have a substantial advantage over opponents who do not. While this advantage is offset to a certain extent by the \$4-to-\$1 match, as long as the contribution limit is higher than the matchable amount, candidates have an incentive to chase after large contributions. Lowering the contribution limits would narrow this gap. (See also Chapter 4—Contributions.)

For purposes of comparison, the current individual contribution limit to a candidate for federal office is \$2,100 per election, for a total of \$4,200 for a primary and general election. So, under current law, a candidate for public advocate can raise \$750 more per contributor than a candidate for president of the United States.

* These limits were adjusted for inflation in 2002 to \$4,950, \$3,850 and \$2,750 respectively. As a measure intended to keep the growth of the limits in check, Local Law 58 of 2004 postponed any scheduled inflation adjustment in contribution limits until 2018.

Lowering the contribution limits as recommended by the Board would not present a hardship to citywide candidates. For the 2005 elections, if all larger donations to participating candidates for mayor, public advocate, and comptroller were restricted to \$4,000, those candidates would have lost only 8 percent of their total funding, in the aggregate. (The Board's recommendation for a new City Council program can be found on page 132.)

Ban Organizational Contributions

An essential step toward renewing and affirming the central role of the individual contributor at the grassroots level in New York City politics is an amendment to the Act allowing only individuals to contribute to campaigns. A prohibition on all organizational contributions for all offices is a key, long-standing recommendation of the Board.*

In 1998, the New York City Charter Revision Commission proposed the ban on corporate contributions now written into the law. In doing so, it took special note of the potentially corrupting influence of corporate money in the political marketplace, and the corresponding erosion of confidence in the electoral system. With the ban, the Charter Revision Commission sought to eliminate the inequalities created by corporate contributions and enhance the value of citizen participation. Those same arguments and concerns apply to campaign contributions from partnerships, limited liability corporations (LLCs), and political action committees (PACs). Similar concerns are true of contributions from unions.

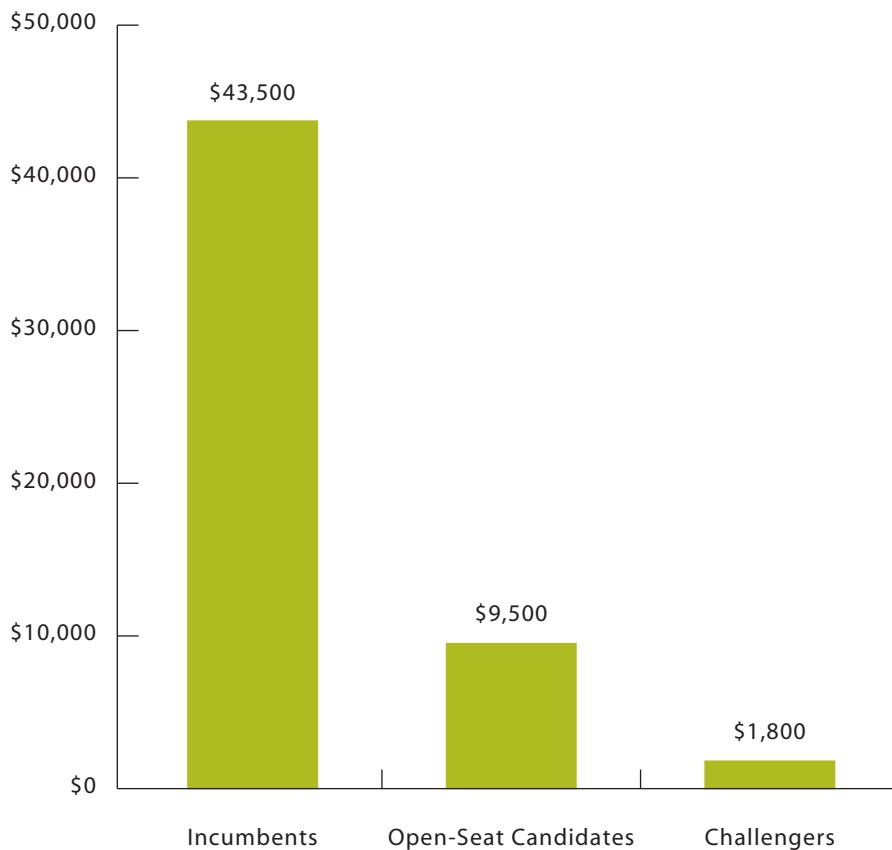
Though the corporate ban that took effect before the 2001 elections significantly decreased the proportion of organizational contributions among Program participants, since 2001 the percentage has started to rise again. In the 2001 elections, with many first-time candidates, 13 percent of funds raised came from organizations. In 2005, with more incumbents at all levels of city office, organizational contributions comprised 16 percent of total funds raised.† (See Chapter 4.)

Organizational contributions represent a particular and considerable advantage for incumbent candidates. In the 2005 elections, the average incumbent for a Council seat collected 78 contributions from organizations, totaling \$43,500. His or her average challenger gathered only two contributions from organizations, totaling \$1,800. Open-seat candidates did slightly better, averaging \$9,500 from 10 organizational contributions.‡ (See Figure 10.1.)

* San Diego and San Diego County, and other municipalities within San Diego county, ban campaign contributions from non-individuals. These laws, enacted in 1973, have never been challenged.

† In the 2003 Council-only elections, organizational contributions comprised 25 percent of all funds raised.

‡ Organizational contributions made up 27 percent of all contributions for incumbents in 2005, and 7.5 percent for challengers. Candidates for open seats collected 15 percent of their contributions from organizations.

FIGURE 10.1: Average Organizational Contributions to all Council Candidates by Campaign—2005*

* Includes participants and non-participants.

Disclosure of individual contributions provides a high level of transparency in the political process. Campaigns are required to collect and report information on contributor addresses, employers, and occupations. Little can be known about an organization, however, simply by looking at its name or address. Organization names can be used to obscure the identity or business of the ultimate source of a contribution. The Board's *Interim Report of the New York City Campaign Finance Board on "Doing Business" Contributions* (provided as Appendix J) identified LLCs as a particular transparency problem; many are involved in city business (especially land use), yet often there is no information in the public record about a particular LLC's owners or principals. Indeed, LLCs are growing more active as a source of campaign funds; while they represented 2.8 percent of total contributions to participants in 2001, they gave 6.2 percent of all funds raised in 2005 by participants. Prohibiting these

contributions is one important way to minimize the impact of “doing business” contributors. (See also recommendation on “doing business” contributions below.)

A ban on organizational contributions would also represent a major simplification of the rules and reduction of paperwork for city campaigns. Instead of asking whether a PAC is registered with the CFB, or determining whether a particular business is a corporation or an LLC, campaigns would simply forgo any contribution that does not come from an individual.*

Enact Legislation Regulating “Doing Business” Contributions

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. In response, the Board conducted research and solicited public comment on the issue, and in 1999 proposed three sets of rules governing “doing business” contributions. Among the problems of implementing any regulation of “doing business” contributions was the lack of any usable city database(s) that would make compliance and enforcement feasible. Though these rules were not adopted, discussions have continued about how best to meet the mandate to disclose and regulate these contributions without placing new, unreasonable burdens on participating campaigns. In addition to the Board’s work, the city has begun—but has not by any measure completed—database(s) that record those who might or should be included in the definition of doing business (the area of land use requires the most additional work).

In creating any potential “doing business” regulation, the Board has a role to play to ensure city decisions are made with the best interests of the city in mind—rather than the best interests of a campaign contributor.† “Doing business” contributions create inequalities (real and perceived) in the political marketplace as well, diluting the impact of individual contributors. Individuals or entities with hundreds of thousands of dollars of city business at stake do not have to think twice before making a maximum donation to a candidate. In addition, incumbents—who can exert influence on particular city decisions as elected officials—have much greater access to these large donations than do non-incumbent candidates.

In June 2006, the Board published its *Interim Report of the New York City Campaign Finance Board on “Doing Business” Contributions* (provided as Appendix J), which suggested that up to 22 percent of funds raised by candidates in the 2005 election came from contractors, lobbyists, or lobbyist clients—who comprise only 5 percent of the number of contributors. (The proportion for the 2001 election was even higher: 25 percent of the funds from 4 percent of the contributors.) The research

* With an organizational ban, candidates would also not have to engage in the complex process of attributing partnership or LLC contributions greater than \$2,500. See Rule 1-04(i).

† Of course, there are many regulations already in existence to safeguard the interests of the public, including extensive contracting procedures and open processes for land use decisions. (See official transcript of the Board’s hearing on “doing business,” April 18, 2006, available at www.nyccfb.info.)

suggests that most “doing business” donors are indeed large donors, and that many—especially lobbyists—play an active role as intermediaries.

This research was based on data available from the online VENDEX database of city contractors and the NYC Lobbyist Search database maintained by the City Clerk’s office. Thus, the study’s research definition was limited by the availability of data on entities involved in doing business with the city.

Several commentators have maintained, and the Board agrees, that any regulation to restrict “doing business” contributions would be incomplete without governing entities involved in land use decisions. As much as—if not more than—contractors, real estate interests depend upon decisions by city boards or agencies regarding the disposition of city resources to generate profits for their businesses. For decades, studies of campaign giving have reflected this reality, consistently listing real estate interests among the top contributors to candidates for city office. Indeed, preliminary research in the *Interim Report* showed that including land use actors in a regulation would increase the proportion of contributors defined as “doing business” considerably.

The next steps toward workable enforcement of a “doing business” regulation must include improvements to existing city databases that aggregate information about these entities. Data collection on contractors must be improved, standardized, and quality-controlled, and the VENDEX database modified so that its database is compatible with the CFB’s own databases. Similarly, if land use actors are to be included in a “doing business” regulation, an extensive effort to collect and aggregate data on applicants to the appropriate city boards and agencies must be undertaken.

Such a data collection effort should be feasible if the legislative will is present. As part of the lobbying reform law enacted earlier this year (Local Laws 15, 16, and 17 of 2006), the City Council mandated that contributions from lobbyists are not eligible for matching funds. To enforce the new law, the lobbyist database will be redesigned to collect the information needed to determine which contributions are ineligible for matching funds, and to permit easy compatibility with the CFB disclosure databases. A similar legislative mandate could result in a similar transformation of the disclosure apparatus for city contracts, and the creation of a similar effort for land use applicants.

It is the Board’s conviction that addressing the “doing business” issue would be best and most comprehensively achieved through legislation, rather than through CFB regulation. The model for a “doing business” restriction is the Securities and Exchange Commission (SEC) rule governing municipal securities brokers. Rule G-37 prohibits any dealer or broker from engaging in business with a municipality if that broker has made a donation to a public official in that municipality worth \$250 or more.

The key to the SEC rule is that the burden of enforcement is on the bond professional seeking to do business. The rule encourages self-enforcement. Brokers who make prohibited contributions risk losing business. If an enforcement regime puts contractors or developers who violate the law at pain of losing a contract or other approval, they are far more likely to obey the law.

Conversely, regulation that places the burden entirely on campaigns and all their contributors would be unduly complicated. The vast majority of contributors are not “doing business” with the city, and enforcement of a regulation that requires verification of this fact would be more diffuse and less effective. Casting a wide net has the potential to discourage the individual contributor from lawfully participating in the political process and undermines one of the central purposes of the Act. According to the *Interim Report*, about five percent of contributors from the 2005 cycle are “doing business” with the city. In the Board’s estimation, an effective regulation would target those five percent, rather than casting a net that encompasses the 95 percent of donors who are not.

Diminishing the influence of “doing business” contributions can also be achieved, of course, by lowering the contribution limits. In the 2005 election, 95 percent of all contributions were for \$2,000 or less; 75 percent were \$250 or less. Lowering the contributions limits for all offices, then, is a possible alternative that could more easily and efficiently address the perception of undue influence gained by large campaign contributions from all sources, including those who do business with the city.

In the absence of legislation implementing these recommended changes, the Board is likely to promulgate rules governing “doing business” contributions.

Require Transition and Inauguration Entities (TIEs) to Conform to the Same Limits and Prohibitions on Contributions as Campaigns

The Act requires winning candidates to disclose the fundraising and expenditures associated with commencing their term in office. Rules for TIEs apply to all candidates for city office, whether or not they participate in the Program.

Although donations to TIEs are limited by the Act,^{*} there is concern that transition and inauguration expenses are an avenue for donors to curry influence with elected officials above and beyond what the Program’s campaign contribution limits allow. Indeed, a contribution to a TIE has a greater potential to influence its recipient, who is no longer a candidate for office, but now an elected official.

In addition, while campaigns have been prohibited from accepting contributions from corporations since 1998, TIEs may accept donations from any source. This has the effect of “rewarding” successful candidates with access to corporate dollars—and the potential influence-seeking that represents. Contributions to TIEs classified as “corporate” made up about 30 percent of all funds raised for transition and inauguration expenses in 2001, and rose to 35 percent in 2005.[†]

The Board recommends that the Act be amended to conform TIE contribution requirements to those for participating campaigns—specifically, that corporate contributions be prohibited, and

^{*} \$4,500 for mayor, public advocate, and comptroller; \$3,500 for borough president; \$2,500 for City Council.

[†] Only four officeholders formed TIEs following the 2003 election. The figures for 2001 and 2005 do not include Bloomberg, who funded a TIE with his own money after both elections.

that all other restrictions contemplated for contributions to campaigns, including lower contribution limits and a prohibition on organizational giving, apply to TIEs as well.

2. Enhancing Competition for Elective Municipal Offices

Restrict Contributions Eligible to be Matched with Public Funds to the Same Year as an Election

As noted earlier in this report (see Chapter 4), early fundraising represents a significant advantage for incumbents. Most officeholders have access to political donors throughout their term in office—whether they are hoping to remain visible and active among their constituency, or are dealing with lobbyists in the course of their duties. The same holds true for current officeholders looking to run for a new position at the end of their current term.*

Challengers, on the other hand, are often limited to gathering contributions much closer to the election date—that is, if other candidates decide to enter the race at all. Incumbents who raise massive “war chests” early in a campaign cycle are often able to scare off potential competition. Candidates who challenge incumbents find themselves playing catch-up from the start, as early expenditures on media and other forms of campaigning help incumbent candidates define themselves to voters and promote their message long before challengers have the ability to do so.

The Board recommends limiting eligibility for matching funds to contributions made in the calendar year in which the election will be held. The Board understands that such a restriction may only encourage some candidates to pursue larger contributions or organizational contributions (if not banned) earlier in the election cycle, potentially increasing the imbalances created by those sources of revenue. Still, limiting matching funds to the final year of an election cycle could help to diminish the fundraising advantages held by incumbent officeholders and is an experiment worth implementing.

Institute Flat Grants for Runoff Elections

In the case of a runoff election, current law provides that candidates receive public funds payments equal to 25 percent of the matching funds their campaigns received for the original election. There were no runoff elections in 2005. Two situations from the 2001 election, however, exposed a possible inequity perpetuated by the 25 percent rule.

Mark Green, the second-place finisher in the 2001 Democratic mayoral primary, received \$712,000 in public funds for the runoff, while Fernando Ferrer received only \$574,000. Similarly, Betsy Gotbaum, the first-place finisher in the Democratic primary for public advocate the same year, was

* As an illustration, 25 candidates submitted disclosure statements on the July 17, 2006 filing date—the first for the 2009 city election cycle—having raised a total of \$3.7 million, mostly for “undeclared” offices. Of those, 21 are current officeholders, accounting for 98 percent of the funds raised: 18 are prevented by term limits from running for re-election to their seat; two more are first-term members of City Council, and another is a member of the State Assembly. The filings contained almost \$587,000 in potential matching claims in total.

far and away the leading fundraiser in her race, and was granted \$303,000. Norman Siegel, certified as the second-place finisher, qualified for a payment of only \$114,000. In the compressed time period between an election and a runoff (about two weeks), these inequities in public funds disbursements exacerbate the financial advantage one candidate has over another.

In the interest of leveling the playing field, the Board recommends instituting a flat grant for runoff candidates equal to 40 percent of the runoff election spending cap.* Under this proposal, Green and Ferrer would have each received \$1,046,200 for their 2001 runoff, and Gotbaum and Siegel would each have received \$654,000. With more substantial, equal grants to campaigns before a runoff, candidates can spend less of their scarce time fundraising, and more time communicating with the public.

3. Increasing Public Information about Campaigns and Local Issues

Refine the Definition of “Intermediaries”

The Act currently requires participating candidates to disclose intermediaries and the contributions they solicit and actually deliver. Responding to the way the law is written, campaigns may under- or over-report their use of intermediaries. (See Chapter 4.) To clarify the requirement and provide fuller, more comprehensive disclosure of so-called “bundling” activity, 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 fundraisers and campaign staff workers.

Strengthen the Threshold for Eligibility in Program Debates

Changes to the debate law passed in 2004 provided some objective criteria to help limit the presence of so-called “fringe” candidates, including a minimum threshold of support for debate participants, and limited the second debate to “leading contenders.” (See Chapter 7 — Debates 2005.) Still, the Board must constantly weigh the imperative to provide a broad and inclusive range of perspectives on the issues against the obligation to produce events that will best help illuminate the choices that voters must make on Election Day.

The current criteria generally limit the debates to viable candidates.† Still, in 2005, one candidate exploited a loophole and qualified for primary and general election debates by loaning personal funds

* The expenditure cap for runoff elections is set at one-half the applicable limit for the primary and general election. See NYC Administrative Code §3-706(b)(i).

† In addition to financial thresholds, the law provides that sponsors may apply additional pre-determined, objective, nonpartisan and non-discriminatory criteria to determine eligibility for debates—including polling data, as some sponsors did in 2005. Not all polls are created equal, however. The methods and reliability of polls are often called into question; some polls excluded potential debate candidates, and few citywide polls included the comptroller’s or public advocate’s races. This is a topic for future study and discussion between the Board and debate sponsors.

to his campaign, allowing him to meet the threshold of \$25,000 “raised or spent.”* While he satisfied the letter of the law, he undermined its intent: to ensure that significant levels of community support establish a participating candidate’s viability and eligibility to debate.

The Board therefore recommends the minimum financial threshold used to determine debate eligibility should be raised for all offices, especially for the “leading contender” debates. Furthermore, the Board proposes to address the loophole by changing the law to require candidates to have “raised *and* spent” this increased financial threshold to determine eligibility, ensuring citywide debates are limited to truly viable candidates.

Keep the Current Number of Debates

One real success of the Debate Program has been its ability to provide both lesser-known candidates and leading contenders with a forum to reach the largest possible audience of voters.† The Board recommends maintaining the current number and type of debates.

There are several reasons to do so. Some groups that are uninterested in committing to the debate law requirements have hosted their own debates, as have groups not chosen through the Board’s sponsor selection process. Increasing the number of CFB-administered debates could hamper these other organizations from scheduling debates in an already crowded pre-election calendar.‡ These other groups have greater freedom to tailor the topics, participants, and audiences of their debates or forums, and perform an important public service in doing so.

Increasing the number of CFB-administered debates could also discourage sponsors from applying to host the debates. Sponsors must adhere to stringent legal guidelines in staging debates; while assuring the debates will be fair and nonpartisan, these requirements also limit the pool of sponsors willing to bear the potentially large financial and logistical burdens. It would be harmful to the Program if qualified sponsors opted out of the process.

Provide Better Incentives for Non-Participants to Take Part in Program Debates

Mayor Bloomberg’s decision to forgo the Board-sponsored debate at the Apollo Theater during the general election campaign revealed the need to find additional means to encourage a non-participating candidate—who is not otherwise required to appear in any debates—to take part in Board-sponsored debates. One presenter at the CFB’s post-election hearings suggested providing flat grants or

* Jay Golub, a candidate in both the Democratic primary and on the Conservative Party line in the general election for public advocate.

† The success of the Debate Program has led to the occasional suggestion that the law should be expanded to include City Council and borough president offices. There has not traditionally been, however, a record of failure for candidates at these levels to participate in debates, nor a lack of forums in which they may do so.

‡ The CFB—and all potential debate sponsors—must remain sensitive to the needs of the public and candidates and, therefore, has to exclude federal and religious holidays, and dates conflicting with major sporting events, among other concerns, when determining the debate schedule.

increased bonuses for Program participants who take part in a Board-sponsored debate where a non-participant fails to appear.¹ The Board supports this proposal.

Indemnify Debate Sponsors against Debate-Related Litigation

Sponsors have repeatedly questioned the logic of a debate law that requires sponsors to limit participation and to bear the burden of legal action related to this requirement. Some have cited their lack of legal protection under the law as a disincentive to sponsoring a debate. The threat of lawsuits brought by disgruntled candidates is a potential burden many sponsors are loath to incur.

Only a few marginal candidates sued sponsors to protest their exclusion from the 2005 debates, but any litigation can be draining for a civic group to bear. Sponsor applications declined in both 2001 and 2005 compared to 1997, particularly from smaller civic organizations—exactly the types of organizations that should be encouraged to sponsor debates, but are least able to shoulder the potential cost of defending against a frivolous lawsuit.

The Board renews its recommendation to repeal the debate law's requirement that sponsors indemnify the city for any liability arising from any acts or omissions of the sponsors. Instead, the city should extend legal protection to sponsors, indemnifying them against any acts or omissions that may arise from the debate law's requirements.

Allow the Board to Cancel or Shorten Debates Featuring Only a Single Participant

The 2005 comptroller's race highlighted the necessity of allowing sponsors, in consultation with the Board, to shorten or cancel a debate under certain circumstances. (See Chapter 7.) The law mandates sponsors to produce one-hour (minimum), commercial-free debates. With only one qualifying candidate in the general election for comptroller, these requirements would have presented a significant financial burden for the sponsor organizations, with questionable benefit to voters. Under current law, the debate could not be canceled without the agreement of the candidate, who fortunately agreed. The Board proposes modifying the law to require approval only by the Board and sponsors to cancel or shorten a debate when only one person qualifies.

4. Further Streamlining the Program

Eliminate Most Exempt Expenditures

Expenditure limits for participating candidates are a core feature of the Program, and an inviolable condition for receiving public matching funds. The spending caps exist to help level the playing field. After the recent changes to the law mandating that non-participating candidates must join Program participants in complying with contribution limits and full disclosure, the expenditure limits are arguably the principal benefit the public receives from the disbursement of public funds to candidates.

Certain expenditures are exempt from the spending limits. The Act, as amended in 2002, provides a “safe harbor” for campaigns that keep their exempt spending at or below 7.5 percent of the spending limit. Since the creation of the safe harbor, however, campaigns have claimed a growing proportion of expenditures as exempt. The Board, in its report following the 2003 elections, suggested that “certain types of exempt expenditures, such as petitioning...can double as an electioneering message, and may even have electioneering as a primary purpose.”² Indeed, in 2005, some participating campaigns came under close scrutiny over their reporting of exempt expenditures (See Chapter 5—Expenditures, and Chapter 9—Enforcement). Allowing these claims to stand can create a further advantage for well-funded campaigns.

The Board recommends, as it has in the past, eliminating exempt expenditures for all offices.³ A lone exception would be made for legal fees incurred challenging and defending ballot petitions, which can be an unpredictable expense. This proposal would eliminate a confusing gray area for campaigns, greatly simplify the Program, decrease the waste of taxpayer funds, and further help level the playing field between small and large campaigns.

To compensate for counting previously exempt expenditures against the spending cap, the Board recommends that spending limits be increased by five percent, so that candidates remain able to incur necessary and reasonable compliance expenses without hampering their ability to run an effective campaign.

There are alternative measures the Board could suggest if a complete elimination of exempt expenditures is not adopted. One such proposal would be to make spending reported as exempt ineligible to be counted as part of a campaign’s qualified expenditures.* Campaigns may spend public funds only on qualified expenditures—essentially, expenditures that are related directly to the business of getting a candidate elected. While compliance with local and state law is important for any campaign, the Board believes it is reasonable to expect that taxpayer money is expended wholly on those functions contemplated by the purposes of the Program—that is, directly related to electioneering.

Establish Guidelines Governing Spending for a “Reasonably Anticipated Primary”

Board rules allow for participating campaigns to spend money under the expenditure limit for a primary election if a primary is “reasonably anticipated,” meaning that this spending is permitted even if the candidate ultimately does not face primary opposition. Without an objective standard or authority to govern this determination, it is difficult for the Board to conclude otherwise when candidates essentially decide for themselves that a primary is reasonably anticipated. Such a determination essentially doubles a participating candidate’s expenditure limits. While the Board recognizes that there are situations that clearly require such a provision, being able to expend funds “in expectation of” having an opponent represents a considerable advantage for incumbent or party-supported

* Further, the Board would recommend that taxes paid on investment income be made exempt from the spending cap.

candidates over potential challengers in both the primary and general election, at a time when challengers may only be just starting to consider a run for office and have not yet begun to raise funds or organize a committee.

To allow expenditures for a primary election prior to the certification of a challenger, the Board recommends instituting a procedure similar to that for reasonable anticipation of a runoff election. Before accepting contributions for a runoff election, a candidate must first demonstrate that a runoff is reasonably anticipated. The burden of proof rests with the participating candidate, who is not asked to show that a runoff is probable, only that it is reasonably anticipated.

In requesting a determination that a primary is reasonably anticipated, the formation of a candidate committee by a challenger, along with evidence of specific activities or accounts of activities by a presumed challenger, would be considered by the Board. A more objective process like this one would serve to further level the playing field between incumbents and challengers, and protect the wasteful use of public funds.

Require Candidates to Establish Eligibility for Public Matching Funds Prior to Election Day

To become eligible for public matching funds, candidates must meet a threshold that demonstrates they have a minimum of community support by raising a baseline amount of money from New York City residents, and collecting a baseline number of contributions (of \$10 or more) from within the area they are hoping to represent. In December 2004, the Council voted to raise the threshold standard for Council candidates from 50 in-district contributions to 75 (See Chapter 6—Public Funds).

Still, there is no deadline by which candidates must meet the threshold to receive public matching funds—indeed, some do not become eligible for payments until after the votes are cast. The Board recommends instituting a deadline for meeting threshold some time prior to the appropriate election. One possible deadline is by the 32-day pre-election disclosure statement (due August 12, 2005 for the 2005 elections) for the earliest election for which the candidate appears on the ballot.* As the overwhelming majority of Council candidates who met threshold in 2005 did so by the July 15 disclosure statement, this requirement would not be overly burdensome. (See Chapter 6.)

Requiring campaigns to achieve eligibility for public funds before the election would help ensure that public money is indeed spent for its intended purpose—directly advocating for the election of participating candidates. It would also help ensure that public funds are distributed only to serious candidates. This requirement would benefit campaigns by providing incentive to qualify for, receive, and spend public funds before election day.

* Reports (or amendments to reports) submitted after the deadline showing a candidate had indeed reached the threshold prior to the deadline date would be acceptable to establish eligibility for public funds.

5. Protecting Taxpayer Money from Waste

Limit the Amount of Public Money Available in “Sure Winner” Races

To many political observers, one of the most troubling aspects of the Program is the fact that public funds are spent to subsidize the campaigns of “sure winners.” To prevent the unnecessary expenditure of taxpayer funds in races in which a heavily favored candidate faces minimal opposition, the Council amended the Act in 2003 to limit public funds payments to 25 percent until an opponent meets certain campaign finance benchmarks.* (See Chapter 6.)

Despite this reform, two significant problems with the current system remain. As suggested earlier in this report, the Board believes the current trigger is too low to justify the maximum payment of public matching funds to a candidate who is likely to win his or her race by a lopsided margin. In addition, for cases in which an opponent has not triggered full payment, candidates may submit Statements of Need—which are posted on the Board’s website—to release the full payment of public funds for which they would otherwise qualify. (See complete discussion of Statements of Need in Chapter 6.)

To ensure that excessive amounts of taxpayer dollars are not spent in races without serious competition, the Board recommends revising the Program to eliminate Statements of Need and create escalating tiers for the disbursement of public funds.

Instead of a single trigger that removes the 25 percent cap and enables a maximum payment, the Board’s proposal contemplates a series of campaign fundraising or spending benchmarks; each would trigger a successively higher disbursement of public funds to a participating campaign until the maximum payment is reached. This proposal would also include a process through which candidates can petition the Board to address issues that fall outside this framework, such as facing an opponent with significant name recognition or celebrity whose spending still falls well short of the threshold for maximum payment.

A more objective system like this would help achieve two important Program goals. It would help level the playing field by decreasing the amount of public matching funds available to well-funded “favorites” in races against long-shot challengers, and it would protect taxpayers by withholding public money from races in which payments only reinforce inequities between candidates, or help boost a candidate’s name recognition for future contests.†

* Currently, a campaign can access full payment of public funds when (a) its opponent qualifies for public funds, (b) when its opponent spends one-fifth of the applicable expenditure limit (for Council, \$30,000; for borough president, \$322,250; for comptroller and public advocate, \$895,250; for mayor, \$1,432,000), or (c) when it files a Statement of Need.

† Initial CFB analysis suggests that the savings for the 2005 election cycle from such a multi-tiered system would have been in the hundreds of thousands.

Raise the Tier 1 Bonus Trigger for Candidates Running against High-Spending Non-Participants

The bonus system for candidates who run against high-spending non-participants provides candidates with an improved matching formula (\$5-to-\$1), a higher maximum public funds payment (up to two-thirds of the spending limit), and an increased spending limit (by 50 percent) when a non-participant opponent raises or spends at least 50 percent of the applicable spending limit.*

Evidence from the past few elections suggests the 50 percent spending bonus “trigger” may be too low. Of 11 Council races where a bonus determination was granted in the 1999, 2001, 2003, and 2005 election cycles, seven featured “high-spending” non-participants who were, in actuality, significantly outspent by a participant.†

To maintain public confidence in the Program, it is important the Council take measures to protect the expenditure of taxpayer funds. Where public matching funds do not help further the Program’s aims, there should be stricter limits on their use. The Board recommends that the Council consider raising the Tier 1 bonus trigger from 50 to 75 percent of the applicable spending limit.

CREATE A NEW PROGRAM FOR CITY COUNCIL CANDIDATES

After the 2003 elections, the Board contemplated a proposal that would re-shape the Program’s approach to City Council campaigns, with a very different set of limits on expenditures, contributions, and public funds than are contained in current law.⁴ Council races are materially different from citywide or boroughwide races. Contribution and spending limits are lower, reflecting the smaller geographic area—and narrower range of interests—a Council member represents. These material differences generate a set of concerns specific to Council campaigns.

In the wake of the 2003 Council-only elections, the Board cited several of these concerns. Among them were: the lack of vibrant competition in seats for which an incumbent ran for re-election; the appearance that the availability of public funds was driving up the cost of campaigns; the expenditure of public funds by experienced candidates in races in which the opposing candidate was not a serious threat; and the possibility that campaigns were “springing up just to be in the business of collecting matching funds.”⁵

The Board outlined a set of reforms to be reviewed against the experience of the 2005 elections. Data from the 2005 elections only reinforce the Board’s concerns from the previous campaign year, suggesting the modifications proposed in 2003 are still relevant.

* In 2005, the Council added a second tier bonus, triggered when a non-participant spends 300 percent of the spending limit. (See Chapter 6.)

† This includes both primary and general elections.

Therefore, the Board recommends the creation of a new City Council program, which would be marked by substantially reduced contribution and expenditure limits and a reduced public funds maximum commensurate with a lower spending limit. Combined with changes proposed for candidates at all levels, including the ban on organizational contributions, eliminating matching funds for contributions raised prior to the year of the election, and eliminating exempt expenditures, these changes should simplify the Program, make it easier to navigate, and foster a return to grassroots campaigning on the City Council level. Further reforms simplifying reporting requirements and refining Program requirements would clarify the purposes for which candidates can spend public funds, and provide a clear framework for documenting these expenditures. These recommendations are made as a package. It must not be assumed that the Board would advocate any individual recommendation on its own.

Lower the Contribution Limit

The contribution limit for City Council should be significantly lowered from the current limit of \$2,750. As part of a package of reforms, a contribution limit of \$250 would be an effective way to lessen the influence of large donations on Council elections and lessen the fundraising advantage of incumbents and well-connected candidates.*

Because of the \$4-to-\$1 match, \$250 is already the most frequent contribution size. In the three elections since the matching formula was changed prior to 2001, the vast majority—four out of five—of contributors to Council candidates have been small donors, giving \$250 or less. In 2001, 89 percent of contributions to participating Council candidates were for \$250 or less. In 2003 and

TABLE 10.1 A NEW CITY COUNCIL PROGRAM		
	Current	Proposed
Contribution Limit	\$ 2,750	\$ 250
Spending Limit	prior to year of election: \$ 40,000 Primary: \$150,000 General: \$150,000	Primary: \$100,000 General: \$100,000
Maximum Public Funds per election	\$82,500	\$55,000

* The U.S. Supreme Court recently struck down Vermont's contributions limits as too restrictive in the context of that state's election system in *Randall v. Sorrell*, 126 S.Ct. 2479 (2006). A \$250 contribution limit for New York City Council races would still be far larger than Vermont's lowest limits (measured relative to the size of the constituency), without taking into account public matching funds. (For further discussion of the Court's decision in *Randall*, see the Board's white paper, *The Impact of High-Spending Non-Participants on the Campaign Finance Program*, which will be available at www.nycclfb.info.)

2005, 84 and 83 percent of contributors respectively gave \$250 or below. Lowering the contribution limit to this level would enhance the relative value of individual New York City residents' participation in the political process and eliminate the disparate impact of large contributions.

That impact favors incumbents over challengers. Incumbents, on the average, raised 5 times as much as their challengers for the 2005 election. Lowering the limit could help narrow these wide gaps in funding. In the 2005 election cycle, challengers raised more than half (53 percent) of their funds in small contributions of \$250 or less. Incumbents, on the other hand, raised about one-fourth (27 percent) of contributions in sums of \$250 or below. Candidates for open seats, meanwhile, raised 36 percent of their funds from small contributors. (See Chapter 4.)

The \$4-to-\$1 match has made smaller contributions more valuable and has thus empowered both small contributors and candidates of lesser means. It has strengthened the connection between New York City residents, their political system, and their government, as candidates reached out to expand their base of contributors and take advantage of the matching rate. These trends would be reinforced if all contributors are given essentially equal weight and importance by limiting contributions to Council candidates to \$250.

Reduce the Spending Limit

When complemented by the generous amounts of public funds available to participating candidates, the high spending limit has helped fuel the rising cost of Council campaigns. The current maximum of \$150,000 is an extraordinarily large amount of money to communicate with approximately 71,000 voters per Council district.*

The average amount spent on a City Council primary campaign, as adjusted for inflation, more than doubled between 1993 and 2005.† Yet campaigns are run essentially the same way now that they were a decade ago, with few real innovations. It is unnecessary for Council campaigns, covering a small geographic area, to speak to voters through television advertisements; candidates still rely on less expensive, more targeted, grassroots-oriented media. But many functions that might previously have been accomplished with volunteers are now routinely performed by paid employees, and spending on “consultants” and professional services has consistently increased. (See Chapter 5.)

* March 1, 2004 enrollment figures from the New York City Board of Elections. If anything, the average number of voters per district considerably overstates the actual number of people a campaign is trying to reach. The number of registered voters varies somewhat from district to district, and only certain subsets of the total registered voting population within a district can participate in party primaries. For example, the average number of voters registered with the Democratic Party per Council district is 49,000, and the average number of registered Republicans is 8,700. Additionally, Council candidates often target their campaign efforts to likely, sympathetic voters rather than focusing their efforts on all registered voters within a district.

† In constant 2005 dollars, the average spending on a Council campaign in 1993 was \$55,000; in 2005, the average spending was \$117,000.

The availability of public funds seems to be driving up the cost of campaigns. Spending may have actually been too low through the 1990s. But with the advent of the \$4-to-\$1 match in 2001, spending on Council campaigns increased dramatically, to a point where it is almost certainly too high. Lowering the spending limit from \$150,000 to \$100,000 per election would effectively address this concern. This would include eliminating the pre-election year spending limit, so that all spending prior to the year of the election would be counted against the limit for the coming election, whether it is a primary or general election.

To help mitigate the impact of a reduced spending limit (and a reduced maximum public funds payment) on Council campaigns, the Board recommends that the Program provide participating Council candidates who meet the existing threshold for public funds with postage for a single mailing to all registered voters in their respective districts. A “franked” mail piece would increase candidates’ opportunities to communicate with voters, especially those who are not often targeted by political campaigns.

Reduce the Maximum Public Funds Payment

Currently, City Council candidates can receive a maximum in public funds of \$82,500 (55 percent of the \$150,000 spending limit) per election. In 2005, 35 Council candidates (59 percent of the Council candidates who received public funds) received the maximum in public funds for the primary, and 14 (32 percent) received the maximum for the general election.* Three received the maximum payment in both the primary and general elections. These proportions have risen only slightly since the introduction of the \$4-to-\$1 match; in the wide-open 2001 elections, 82 Council candidates (53 percent) received the maximum for the primary, and 25 (27 percent) received the maximum for the general election.

In 1997, the last election with a \$1-to-\$1 match (up to \$1,000), by contrast, only six candidates (11 percent) received the then-maximum \$40,000 for the primary and only four (nine percent) for the general election. The increased matching formula has clearly enabled more candidates to receive the maximum payment of public funds, which is now more than double.

Although a primary purpose of the Program is to limit the influence of wealthy contributors by providing candidates with “clean” money to run their campaigns, the taxpayers must also be protected from the waste of their public dollars. Under the proposed Council program, the public funds maximum would remain at 55 percent of the spending limit, but with a reduction in the spending limit from \$150,000 per election to \$100,000 per election, the maximum allowable public funds would be reduced from the current \$82,500 to \$55,000.

* Candidates who came within 2 percent of receiving the maximum in public funds are included in these figures, as they had the capacity to receive the maximum but did not due to minor withholdings. One candidate (Mealy, district 41) received \$100,000 in public matching funds after a Tier 1 bonus was declared in her race.

Place Additional Limits on Qualified Expenditures

Currently, the Act provides that public funds may be “used only for expenditures...to further the participating candidate’s nomination for election or election.”⁶ The Act contains a number of prohibitions on the use of public funds. As part of its audit process, the Board requires candidates to document that public funds have been spent appropriately. While most candidates for citywide or boroughwide office can easily document an appropriate amount of qualified spending on the costs of media alone, accounting for the proper expenditure of public funds in Council campaigns can often be a frustrating exercise.

The Board recommends amending the Act to provide for Council candidates a finite, affirmative list of expenditures that can be made with public funds. Of course, candidates would still be required to document these expenditures, but explicit purposes for qualified spending would allow the Board to provide strict, circumscribed guidelines for documenting the expenditures, simplifying a process that has to date proved difficult for some Council candidates. To protect the taxpayers, certain types of expenditures would be flatly prohibited. These would continue to include, for example, expenditures made in cash and payments made to the candidate or to his or her family members. Public funds would be available to be spent only on “hard” goods. Allowable expenditures would be: printing; television, print, and radio advertisements; mailing costs; and rent. Because a certain level of personal involvement is necessary to produce literature or advertisements, candidates would be permitted to spend 10 percent of their public funds on personnel and consulting costs.

Simplify Reporting

As part of a new Council program, the Board believes the elimination of certain reporting requirements should be considered. These may provide important public information about candidates for higher office, but are not widely used to examine candidates at the Council level, thus imposing burdensome and unnecessary paperwork burdens on campaigns. The daily contemporaneous disclosure requirement for Council candidates in the two weeks preceding the election for certain large receipts and expenditures would be eliminated. Reductions in the contribution and expenditure limits would make it unlikely that Council candidates would trigger the requirement for a contemporaneous pre-election disclosure statement, in any event.* Further, the rule that requires Council candidates to disclose when a vendor has paid a subcontractor more than \$5,000 is often disregarded by campaigns. The Board feels the elimination of this complex rule should be considered.

* Contributions or loans of \$1,000 or greater from a single source, or single expenditures of \$20,000 or more.

OTHER ISSUES OF CONCERN TO THE BOARD

Durable Goods

In 2002, a bill was introduced into the City Council to require all participants in the Program to return to the Board any durable goods, such as computer equipment, purchased during the campaign. The Department of Citywide Administrative Services was to warehouse those goods and resell them to the City.⁷ While the policy objective behind the proposed legislation—defraying the cost of the public matching funds program, and making use of reusable goods—is laudable, the administrative problems attendant on such a program are enormous and probably of greater cost to implement than any net gain to the city. The Board does recommend, however, that durable goods bought late in the election cycle be presumed to be for non-campaign purposes, and that public funds not be permitted to be used for such purchases.

Candidate Misrepresentations

Several participating candidates have raised concerns about false statements made by candidates in campaign literature. These include misrepresentations of a candidate's own educational or professional experience, endorsements from public figures, or of another candidate's positions. Certainly, it is regretful and inappropriate that some public funds are used in this manner, and the Board understands candidates' frustration at opponents who exercise these tactics. The implications of a law that restricts candidates' speech, however, make it unlikely any such law would survive a constitutional challenge. Any such law would place an enormous burden on the agency asked to "fact-check" candidates' messages, on the courts, and on the candidates themselves. A better solution may be a voluntary certification with a civic organization that candidates will refrain from dishonesty or personal attacks.⁸

Questionable Uses of Public Funds

Several trends in campaign expenditures have proven troubling to the Board. Although legal, they raise serious concerns whether campaigns are spending public funds wastefully. These include: payments to vendors contingent on the receipt of public funds; bonuses to contractors or consultants written into contracts in advance; campaigns' failure to seek the best prices for goods or services; purchases of durable goods late in the election cycle; and a marked increase in payments to family members. The Board will continue seeking ways to minimize these occurrences and maximize the proper use of taxpayer money.

Transfers

The Act's provisions on transferring campaign funds from a non-city political committee were designed to protect the integrity of the Program; the accounting requirements mandated by the Act should ensure that prohibited contributions permitted by other jurisdictions are kept out of

a city candidate's campaign, and that the contribution limits on individuals are not exceeded. As amended in 2004, the law includes a requirement that a candidate who transfers money from another committee must obtain the permission of each contributor. While the law ensures contributors who give to campaigns are not unknowingly supporting candidates' campaigns other than those for which the donations were explicitly given, the Board is concerned that this requirement is overly onerous for campaigns. A total ban on all "war chests" would lessen the unfair competitive advantages enjoyed by candidates who have money remaining from previous elections. The Board recommends a prohibition on participating candidates and their committees from using any such surplus funds in future elections.

ISSUES OF CONCERN OUTSIDE THE JURISDICTION OF THE BOARD

Free Postage for Voter Guides

The Board recommends that New York City band together with other localities that publish non-partisan voter guides to request free postage from the federal government to deliver this informative resource to voters. In New York City, with 3.8 million active registered voters, this is not an inconsiderable expense; this assistance would be a valuable investment in providing voters with the information they need to actively participate in the political process.

Laxity of State Election Law on Expenditure Purposes

A persistent complaint about New York State Election Law is its laxity when it comes to the purposes of campaign expenditures. A news story quoted a spokesman for the New York State BOE on what the law will allow: "Unless you out-and-out stick it in your pocket and walk away, everything's legal."⁹ The permissiveness of state law regarding campaign expenditures places the state at cross-purposes with the Program's restrictions on spending by city candidates. The Board supports legislation that has been introduced in Albany to define the acceptable uses of campaign funds in more explicit detail.

Party Spending During a Primary

Two recent court rulings place in question New York State's long-time prohibition against party spending in primary elections.¹⁰ City elections have often featured a nominee of one party running in the primary of another. In 2005, as the endorsed candidate of the Working Families Party (WFP) for Manhattan borough president, Scott Stringer was the beneficiary of WFP expenditures promoting his candidacy before the Democratic primary, and one of his opponents protested to the Board about what she believed to be a coordinated expenditure. The court decisions could open the door for parties to affect one another's primary elections. As the Board resolves the Stringer matter, and reviews the recent court rulings, it will determine what remedies are available. (See also Chapter 2—At the Races and Chapter 5.)

Increase Disclosure and Regulation on Contributions to and Spending by Political Parties

The Board recommends that state law be amended 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.

Restrictions on the Use of Governmental Funds

The Board recommends that current law on the use of government resources for political purposes be strengthened by banning the use of government funds to distribute gifts that 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 ban have occurred, and, if a violation has been detected, that the Board be given the authority to investigate and determine whether a prohibited use of government resources also violates the Act.

Stricter Penalties for “Nominee” Contributions

The Board recommends 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 person, or so-called “nominee” contributions.¹¹ The lack of serious criminal consequences discourages enforcement of the statute, as most prosecutors decline to spend their limited time and resources on cases without significant penalties.

Disclosure for Not-For-Profit (NFP) Organizations Run by Elected Officials

While not explicitly for electioneering purposes, organizations associated with particular officials can be used as a vehicle to curry influence with those officials, by making contributions to these organizations not subject to, and potentially in excess of, the contribution limits applicable to candidates. The Fund for Public Advocacy, a NFP founded by Betsy Gotbaum to fund programs in the public advocate’s office in a time of budget cutbacks, is only one example; the Gracie Mansion Conservancy is another. The Conflicts of Interest Board mandates disclosure statements for officials’ NFPs, but the disclosure contains little detail, and is not easily accessible to the public. The Board believes that mandating more complete information and easier access for NFP disclosure would help the public better understand the relationships that exist between elected officials and the groups they support.

Earlier Primary Date

The Board recommends shifting the primary date from September to June. There are several reasons for an earlier primary: it gives voters more time between a primary and general election to learn about the candidates and the issues; it allows for more time for a runoff election, if necessary; it gives the Board of Elections longer to plan successive elections within a particular election year.

This recommendation would also allow candidates who participate in the Program to receive public funds earlier in the year.

Runoffs for Non-Citywide Races

Current law provides for runoff elections for citywide primary races *only*, if no candidate in a multi-candidate field receives 40 percent of the vote. Though there were none in 2005, there were runoffs for mayor and for public advocate in 2001. This creates some illogical and undemocratic situations in races for lower office. For instance, Scott Stringer, the current Manhattan borough president, was elected the Democratic nominee in a nine-candidate field with 26 percent of the vote. It can undermine public confidence in the Program when taxpayer funds are spent to subsidize a race that produces a winner with the support of less than two-fifths of the voters. The Board believes a change in State law to allow for runoff elections in borough president and City Council races is a necessary one.

Term Limits

A topic of much discussion in political circles is the possibility that the City Council will move to change the existing term limits law before the terms of current Council members are up. Indeed, several of the candidates for Speaker made the repeal a central issue in their appeals to their colleagues.¹² The Board takes no official position on term limits, but notes a pattern is emerging with one election made up of mostly wide-open races and many candidates, and the next with few open seats and drastically fewer candidates. While over time this trend may adjust itself, the Board has made recommendations that ensure the Program meets its goals in any election.

CONCLUSION

One might be tempted to view the list of recommendations that accompany this report as a critique. In truth, New York City's landmark Campaign Finance Program successfully performs many valuable functions within the city's political system. More candidates are empowered to run for office than otherwise would be able. Those candidates are better able to run competitive campaigns, and are less reliant on so-called "special interests" for campaign funds than they would be without the Program. More citizens can participate fully and knowledgeably in the electoral process, each with the assurance his or her voice does indeed count.

Indeed, it is a measure of the Program's success that each of these benefits has been accepted as part of the New York City political landscape, as a matter of course. Yet each election cycle highlights new challenges for the Program, and 2005 was no different. It is the uniquely experimental nature of our democratic political system that demands citizens continually try to perfect the institutions they create, and it is the Board's hope to meet those challenges with the same spirit and urgency that animated the Program's creation.

REFERENCES

- 1 Dan Forman, WNBC-TV, Post-Election Hearings Transcript, December 13, 2005.
- 2 *2003 City Council Elections*, Vol. 1, 49.
- 3 *An Election Interrupted...*, Vol. 1, 150-151.
- 4 *2003 City Council Elections*, Vol. 1, 43.
- 5 *Ibid.*, 44.
- 6 Administrative Code §3-704(1).
- 7 Intr. No. 125 of 2002.
- 8 See, e.g., Ethical Campaign Practices Ordinance, Section 2-11.1.1 of the Code of Miami-Dade County, Florida.
- 9 Jennifer Medina, “State Campaign Finance Rules Need Tightening, Study Says,” *New York Times*, May 26, 2006, B4.
- 10 *Kermani v. New York State Board of Elections*, Index No. 106-CV-0589 (N.D.N.Y. July 25, 2006);
Avella v. Batt, Index No. 98847 (N.Y. App. Div. 3d Dept. July 20, 2006).
- 11 *An Election Interrupted...*, Vol. 1, 158.
- 12 Editorial, “There Are Limits, City Council,” *Daily News*, December 19, 2005.