

2003



## *City Council Elections*

A Report by the Campaign Finance Board

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New York City Campaign Finance Board

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cover photo — New York City Council 2003  
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## New York City Campaign Finance Board

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**Frederick A.O. Schwarz, Jr.**  
Senior Counsel, the Brennan Center

**Alfred C. Cerullo, III**  
President and CEO,  
Grand Central Partnership

**Joseph Potasnik**  
Executive Vice President,  
New York Board of Rabbis

**Dale C. Christensen, Jr.**  
Partner,  
Seward & Kissel, LLP

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Wachovia Securities, LLC

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**Carole Campolo**  
Deputy Executive Director

**Sue Ellen Dodell**  
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**Man Wai Gin**  
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**Amy M. Loprest**  
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**Diana Lundy**  
Chief of Data Operations

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Chief of Publications

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Jeffrey Levy  
Viktoriya Lyubeznik  
Andrew Mendelson  
Kleanthis Tsillas  
Simon Wu

# Preface

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This report is presented in two parts. Part I contains the New York City Campaign Finance Board's comprehensive mandated report to the mayor and the City Council on the effect of the New York City Campaign Finance Program on the City Council elections of 2003. Part II, on compact disc, located inside the back cover of this report, contains the appendices to Part I. The Report and Appendices are also available in .pdf format on the Board's Web site, [www.nyccfb.info](http://www.nyccfb.info).

## Report Team

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### **Editor**

Molly Watkins

### **Art Director**

Winnie Ng

### **Writers**

Negin Farsad  
Peri Horowitz  
Amy M. Loprest  
Molly Watkins  
Rachael Young

### **Fact Checking/Copyediting**

Gregory Bensinger  
Negin Farsad  
Elizabeth Hogan  
Rachael Young

### **Production Manager**

Elizabeth A. Upp

### **Data Coordinator**

Shawn Crawford

### **CD Interface Designer**

Andrew Mendelson

### **CD Installation Application Developer**

Edgar Gorodetsky

### **Production Assistant**

Crystal Choy

### **Consultant**

Arthur Castle

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## Chapter 1

# What a Difference Two Years Make

“It is a far cry from two years ago, when term limits, coupled with a generous campaign finance law, attracted hundreds of candidates for City Council races,” wrote Jonathan Hicks in the *New York Times*.<sup>1</sup> With few exceptions, the 2003 City Council election was a quiet affair, garnering little press attention and a relatively small number of challengers to seats that had drawn up to 13 competitors just two years before. Even in the Council districts that appeared to have competition, the margins of victory were extraordinarily large, save for a few tight contests. In the end, every member of the City Council running for re-election won — often by a very large margin, and often with the help of large amounts of public funds.

### SUBSIDIZING SURE WINNERS

Immediately after the election was over, the questions started coming — why were large amounts of public funds being spent in races in which there was no real competition? A *Crain's New York Business* editorial said the Campaign Finance Program in New York City had become an incumbent protection program.<sup>2</sup> A *Daily News* column also criticized public funding, saying “City Council candidates went through a total of \$5 million of taxpayer dollars bestowed upon them through the city’s campaign finance program. Here’s the rub: the money is meant to level the political playing field. Yet the Democrats, who glommed the lion’s share of the cash, coasted to victory in 48 of 51 Council races. Every incumbent Dem won with an average of 85% of the vote. No contest. But they used your dough to print up thousands of glossy leaflets promoting themselves.”<sup>3</sup>

Other publications pointed out what they termed as “abuses.” One Brooklyn Council member “requested \$82,500 in taxpayer money from the city’s campaign finance program because she said her opponent had ‘the ability to infuse large sums of money into his campaign.’ So far, [her] opponent — who does not even live in Brooklyn — has raised the ‘large sum’ of \$2,771.” Another Council member “said he needed \$82,500 because ‘the entrenched political machine has repeatedly found means of supporting my opponents.’ However, this ‘political machine’ seems to have broken down a bit, since [his] primary opponent...raised a total of \$1,130.”<sup>4</sup>

## **Current Law**

The Campaign Finance Board has recognized the problem of public funds being disbursed in races for which there was little competition. In its report on the 2001 elections, the CFB concluded that: "It seems wasteful of government resources to provide public matching funds to candidates who only have minimal opposition and therefore need not expend much to become elected."<sup>5</sup> In response, the law was changed in 2003 to limit candidates participating in the Campaign Finance Program to 25% of the maximum amount in public funds available to their campaigns unless: (1) the candidates were opposed in their district by an opponent who had qualified for public funds; (2) the candidates were opposed by a candidate who had spent or received in contributions an amount greater than one-fifth of the expenditure limit; or (3) the candidates submitted to the Campaign Finance Board a signed statement detailing the reason they needed additional public funds. The "Statements of Need" the Board received were posted to the CFB Web site. The Board does not have the power under law to evaluate or contradict the "Statements of Need" submitted by the candidates, but it was hoped that the public posting of the letters would discourage candidates from seeking additional public funding unless there was a true need for it. The new law did not, however, significantly lower public funds payments in noncompetitive races. In fact, in the 2003 elections, nearly half of 31 candidates who received more than 25% of the maximum in public funds won the general election by 60% or more of the vote.

## **Proposed Remedies**

Three new suggestions for toughening the provision are currently part of legislation being considered by the City Council. First, the opportunity to get additional funds by simply submitting a letter of need would be eliminated. Second, the proposal would eliminate the provision for automatic payment of over 25% of the maximum permissible in the event a participant had an opponent who merely met the threshold to qualify to receive **any** public funds. In other words, the fact that a participant reaches the modest threshold requirements to receive public funds would not by itself justify an opponent's receipt of more than 25% of the maximum allowable public funds. Third, there would be fixed monetary triggers for what is raised or spent by an opponent to establish that the opposition was meaningful under the Campaign Finance Act. The existing trigger for City Council is \$30,000. The triggers under consideration are: (1) for mayor, not less than \$500,000; (2) for public advocate and comptroller, not less than \$250,000; (3) for borough president, not less than \$150,000; and (4) for a member of the City Council, not less than \$35,000. The fixed triggers would minimize the number of participating candidates who could qualify for substantial public funding in spite of minimal opposition. If a candidate sought to receive public funds notwithstanding an opponent's failure to meet these triggers, the candidate could appeal to the Board, but the Board would have the authority to deny the request.

## PROPOSALS PENDING IN THE CITY COUNCIL

A series of proposals was introduced in December 2003 by the City Council as a part of a package of changes that included some new items, such as a proposal for “Limited Participation.” Under this new category of participation, self-funded candidates would join the Program without taking public funds, but would be bound by the Program’s expenditure limits, debate and disclosure requirements, and audit by the Board. The bill also included the new curbs on public funds payments in noncompetitive races mentioned above. Other provisions would require all candidates running for office in New York City, regardless whether they participate in the Campaign Finance Program, to abide by the same contribution limits (including a ban on corporate contributions) and electronic disclosure requirements as Program participants. There would also be a broad strengthening of the prohibition on the use of government resources for mass mailings and other mass communications before an election, and the creation of a multi-tiered bonus matching fund system, tied to a multi-tiered spending limit. Finally, the bill included long-sought improvements to the debate program.<sup>6</sup>

The bill did not include many longstanding CFB proposals for legislation, such as a reduction in contribution limits, a reduction in spending limits for City Council candidates, a reduction in the maximum amount in public funds available to City Council candidates, and a ban on organizational contributions. These proposals are summarized in *An Election Interrupted...An Election Transformed*, the Board’s 2001 Post-Election Report. The Board will continue to push for these critical reforms.

## NEW LEADERSHIP FOR THE CFB

The Campaign Finance Board went through its first major leadership change in its 15-year history in 2003.<sup>7</sup> The Board’s much-lauded founding chairman, Joseph A. O’Hare, S.J., president of Fordham University, retired from the Board.

The *New York Times* took the occasion of O’Hare’s retirement to note that the CFB had been shaped “into a formidable enforcement body, which often imposes fines or seeks restitution when rules are broken. The board’s nonpartisan culture and evenhandedness in the heat of campaigns stands in refreshing contrast to the partisan bickering and stalemates that characterize the toothless Federal Election Commission.”<sup>8</sup>

Mayor Michael Bloomberg chose Frederick A.O. Schwarz, Jr., a former city Corporation Counsel and Charter Revision Commission chairman with a long history of commitment to good government, to replace O’Hare.

## AT THE RACES

Some thought the 2003 elections would be competitive. Most members of the City Council were new to the job, having been in office for only two years. The 2001 Council primaries had been extraordinarily competitive, and some expected more of the earlier defeated competitors to return for another go. And

because of the city's fiscal crisis, many Council members had cast a vote that was extremely unpopular among the city's homeowners — an 18.5% property tax increase. On the other hand, some potential candidates may not have been interested in serving a two-year term, and there were no open seats in the 2003 election.<sup>9</sup> In the end, 136 City Council candidates joined the Program, down from the all-time high of 301 in 2001, and also significantly fewer than in the last Council-only election in 1991, when 256 candidates joined the Program.



Laura Altschuler

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*“In 2001, we saw a full complement of competitive City Council races which we attributed not only to term limits, but also to the availability of the \$4-to-\$1 match. While the majority of incumbents were in office for only two years, we saw few competitive races in 2003 as well as uncontested elections in many districts. If a two-year incumbency is enough to discourage so many potential candidates, then the existence of a generous matching program does not accomplish one of its major goals — opening up the electoral process to insurgent candidates.”<sup>10</sup>*

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There were a few races that did capture the public's attention — a last-minute ballot substitution in the Bronx, a rematch of a competitive contest in Queens from 2001, and a contest for the seat of Councilman James Davis of Brooklyn, who was tragically murdered before the general election.

### **Council District 18 — Bronx/Parkchester, Castle Hill, Soundview**

The race for district 18 in the Parkchester/Soundview section of the Bronx started out as a run-of-the-mill re-election campaign for the incumbent, Democrat Pedro Espada, Jr., a former state senator. But instead, Espada surprised observers by announcing that he would not seek re-election and would substitute his son, Pedro G. Espada, on the Democratic primary ballot.<sup>11</sup> The move may have benefited the campaign of healthcare worker Annabel Palma, the candidate preferred by the Bronx Democratic organization, with which the Espada family had openly feuded.

The younger Espada is a former state assemblyman and former City Council member. Name recognition gave him an advantage going into the Democratic Primary, but many initially underestimated the strength of the support that Palma, a union organizer with 1199/S.E.I.U., would receive. According to the *New York Times*, although this was her first run for office, “[o]n any given afternoon, Ms. Palma's campaign

headquarters is filled with many of the hundreds of campaign volunteers in what seems to be a crusade by labor groups to elect one of their own.” Nearly 4,000 members of 1199 are registered Democrats in the district.<sup>12</sup>

While Espada had participated in the Campaign Finance Program in the past, he did not join the Program for the 2003 election. Palma did participate in the Program, and her fund-raising was extensive. Because Espada was not participating in the Program and because he had not filed disclosure statements with the city’s Board of Elections (BOE) that would show how much money he had raised and spent, Palma’s campaign brought to the Board evidence that Espada had spent enough money to trigger additional funds for her campaign, as well as the removal of her expenditure limit. The Board drew negative inferences from the Espada campaign’s failure to submit statements to the BOE. The Board found Palma’s evidence, which included campaign literature and posters, persuasive, and declared the bonus to have been triggered and removed her expenditure limit. In addition to her support from the Bronx Democratic Party, Palma collected endorsements from Bronx Borough President Adolfo Carrion, Jr., former Mayor David Dinkins, and the *New York Times*. She received \$93,750 in public matching funds for the primary.

Palma went on to win the Democratic Primary with 67% of the vote<sup>13</sup>, soundly defeating one of the best-known political names in the Bronx. Espada remained on the Independence Party line in the general election but did not run a vigorous campaign. Palma won the general election with 93% of the vote.

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

Queens Democrat Allan Jennings attracted an extremely high level of attention for a City Council member in his two years in office, including voting against an 18.5% property tax increase backed by the mayor and the speaker of the City Council, being stripped of a Council committee membership, and airing personal matters in public. The Queens Democratic Party took the rare step of not endorsing the incumbent for re-election and instead endorsed one of his opponents, Yvonne Reddick, the district manager of Community Board 12, a Democratic district leader in Queens, and a Campaign Finance Program participant.

Lawyers for Reddick challenged Jennings’ nominating petitions, and he was knocked off the ballot — another rarity for an incumbent Council member. The dramatic contest in an otherwise sleepy election elicited this commentary from *Newsday*’s editorial page:

Nothing against the Queens candidates for City Council, but this year’s primary races are mostly one big yawn. How disappointing, just two years after term limits made for lively competition. It’s so bad that the race with the most intrigue may fall victim to legal challenges.... The primary race to watch is in Council district 28, where the controversial incumbent, Allan Jennings Jr., was knocked off the ballot. If he loses on appeal, Community Board 12 district manager Yvonne Reddick becomes the obvious front-runner. No disrespect to Reddick and her party backers, but the race would be a lot more compelling with Jennings in it.... How could Jennings-Reddick not make for an unpredictable Sept. 9 primary?<sup>14</sup>

*Newsday* got its wish. Jennings was placed back on the ballot after a state appellate court reversed a lower court decision to remove him.

Jennings raised a total of \$43,235 but was ineligible for matching funds because he owed the CFB a repayment of public funds and a penalty payment from the 2001 elections. The Board eventually filed a lawsuit to seek payment of the 2001 funds. Reddick raised slightly more (\$49,035) and was eligible to receive \$82,500 in matching funds, the maximum amount. The other Democrat on the ballot, Inderjit Singh, joined the Program, but disclosed no financial activity with the Board and thus was ineligible for public funds.

Reddick received the endorsement of *Newsday* and Citizens Union and outspent Jennings by more than \$100,000. In the end, the controversial incumbent beat Reddick by a razor-thin margin of 96 votes. Jennings did not face an opponent in the general election.

### **Council District 35 — Brooklyn/Fort Greene, Clinton Hill, Prospect Heights**

In 2001, Council district 35 was the site of an extraordinarily competitive Democratic primary race. Former New York City Police Officer James Davis emerged with the nomination with a bare majority. He went on to a fierce general election battle with one of his primary opponents, Letitia James, running on the Working Families Party line. Davis won. Despite the closeness of the 2001 election, James decided not to challenge Councilman Davis in 2003. His shocking murder in the City Council chamber on July 23, 2003 by political rival Othniel Askew, however, changed the race entirely.

Geoffrey Davis was substituted for his brother James on the ballot. Lawyers for James Davis had already challenged the validity of the nominating petitions of his only opponent for the Democratic nomination, Anthony Herbert. The challenge was successful, and Herbert was removed from the ballot. Geoffrey Davis' financial situation was not as clear. James Davis had raised \$63,370, but if Geoffrey Davis joined the Campaign Finance Program, only \$2,750 of his brother's campaign funds could be contributed to the campaign. If Geoffrey Davis remained outside the campaign finance system, he would be eligible to receive much larger contributions under New York State's lax limits. Davis ultimately decided to join the Program. At about the same time, his brother's formidable 2001 opponent Letitia James began speaking with the Working Families Party about the possibility of becoming the party's candidate in the general election.

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*"This is purely rhetoric and perhaps unfair but I think it is true that a murderer had more effect on the outcome of the elections than everything done by the Campaign Finance Board."*<sup>15</sup>

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**Henry Stern**

While many expected Geoffrey Davis to ride a wave of public sympathy and good will into office, he struggled almost immediately when reports surfaced of a past arrest record. Shortly thereafter, Working Families Party Co-chair Bertha Lewis announced that Letitia James would run on the party's line in the general election. Lewis called it "a very difficult choice given the loss experienced by the Davis family."<sup>16</sup>

Both Davis and James filed petitions for "extraordinary circumstances" to join the Campaign Finance Program after the legally mandated deadline of June 2nd.<sup>17</sup> Both petitions were granted, clearing the way for both candidates to raise money and become eligible for matching funds. After the first disclosure statement for the general election, it was clear that James' status as a third-party candidate was not hampering her fundraising ability. A large financial disparity existed between the candidates, with James reporting \$40,940 in contributions and Davis reporting only \$13,143. The disparity continued to grow over time, and by the date of the first payment, James had collected \$82,480 in public matching funds, while Davis had collected \$18,992.

James started collecting high-level endorsements from former Mayor David Dinkins, State Comptroller Alan Hevesi, and the *New York Times*, but by General Election Day, pundits were still predicting a close race. The race was not close. James won with 77% of the vote to Davis' 18%. Another 2% went for Conservative Party Candidate Abraham Wasserman, and Anthony Herbert, who ran in the general election as a Republican, received 3% of the vote. It was the first win for a candidate running solely on a third-party line in New York City in nearly 30 years.

## ENFORCEMENT AND COMPLIANCE IN 2003

Final audits and enforcement proceedings were ongoing for the 2003 elections at press time.<sup>18</sup> The Board continued to file lawsuits against candidates who owed unpaid penalties or public funds from the 2001 elections, and the Board continued to assess civil penalties for violations of the Campaign Finance Act. In 2003 the Board was sued by a political consulting firm, and 2003 also marked the resolution of a criminal case involving a former borough president candidate attempting to defraud the Campaign Finance Program.

### The Advance Group

In 2003, the CFB — for the first time in its history — found a political consulting firm in violation of the Campaign Finance Act as an "agent" of a campaign pursuant to section 3-711(1) of the Act, which provides that an agent of a participating candidate can be subject to a civil penalty for violating the Act or Board rules. The Board's determination in August of that year ultimately resulted in litigation and a New York Supreme Court ruling in the Board's favor. City Council candidate John Fratta's 2001 campaign had faced a possible assessment of \$3,457 in penalties for various violations of the Campaign Finance Act, including late disclosure statement filings. Fratta appeared at a Campaign Finance Board public meeting to present his case with a partner for the Advance Group, the political consulting firm hired by the campaign. In the Advance Group's testimony before the Board, the compliance duties performed for the campaign by the firm were described, and the Advance Group took full responsibility for the late

submission of the campaign's response to the draft audit report and the late filing of the disclosure statements, further testifying that neither Fratta nor the campaign's treasurer was at fault for these violations. Based on this testimony and after a later presentation by the president of the Advance Group, the CFB ultimately assessed the \$3,157 in penalties against the Advance Group as an agent of the campaign — rather than against Fratta, the treasurer, or the Committee — because the firm had assumed responsibility for the campaign's compliance with the Campaign Finance Act.<sup>19</sup>

The Advance Group challenged the CFB's determination in a lawsuit filed in New York State Supreme Court in September 2003. Justice Marilyn Shafer ruled in the CFB's favor in January 2004, upholding the Board's original determination that the Advance Group could be held liable for violations of the Campaign Finance Act as an "agent" of a campaign.<sup>20</sup>

### **Sheldon Leffler**

Sheldon Leffler, a member of the New York City Council for 24 years (Council district 23, Queens/Douglaston, Fresh Meadows, Glen Oaks, Queens Village), was convicted in New York Supreme Court in November 2003 on charges of attempting to defraud the CFB of \$38,000 in public funds in his unsuccessful 2001 campaign for Queens borough president.<sup>21</sup> The Board referred the matter to the Manhattan District Attorney's office after Board staff discovered 38 contributions in groups of consecutively numbered money orders purporting to come from different contributors.

Rita Stark, a Queens real estate executive who had provided the suspicious contributions to the campaign, told investigators that she and Leffler devised a plan to divide a large contribution from Stark into smaller \$250 contributions in the names of other individuals so that every dollar would be eligible for the \$4-to-\$1 match. (Only \$250 from any one contributor is matchable with public funds.) Using \$10,000 of her money, Stark purchased thirty-eight \$250 money orders and attributed them to various, associates, tenants, and employees, and the campaign submitted the bogus contributions to the CFB for matching funds. Irregularities in the contribution documentation noted by CFB staff caused these contributions to be rejected for matching claims. Leffler's campaign never received the \$38,000 in public matching funds it had been seeking for the fraudulent contributions.

Leffler was indicted on 13 criminal counts in connection with his illegal fundraising tactics, including conspiracy, attempted grand larceny, forgery, and filing false documents.<sup>22</sup> The jury found Leffler guilty of seven counts. He was sentenced to five years of probation and ordered to pay a \$5,000 fine and perform 540 hours of community service. Leffler's campaign committee, Leffler for a Better Queens, was also named in the indictment, convicted of the charges, and fined \$5,000. Leffler was appealing his conviction at press time. On Thursday, August 12, 2004, the Board found that Leffler had breached his certification to the Program and had violated the Campaign Finance Act in a number of ways, resulting in assessed penalties of \$91,850. The finding of breach requires the campaign to return all public funds received, which was \$296,084. The Board stayed enforcement of its determination pending the result of Leffler's appeal, and will re-visit its determination if the conviction is overturned.

## CONCLUSION

In 2003, the Program continued to give the public many of the benefits intended by the enactment of the Campaign Finance Act in 1988. Disclosure of campaign finances was made on the Internet within hours of the submission of disclosure statements by candidates.<sup>23</sup> Contribution limits and other prohibitions placed brakes on the potential for influence by special interests. Expenditure limits helped to rein in excessive spending. Public funds enabled candidates without access to wealth to mount serious campaigns. Compliance by candidates with the Program's requirements was vastly improved.

But in contrast to the 2001 elections, the data from the 2003 City Council elections suggest that the Program in 2003 did not fulfill its goals in two respects: (1) the Program's requirements, instead of helping to "level the playing field," appear to have contributed to greater disparities between office holders' and challengers' campaign finances, and (2) the Public Fund has helped to finance possibly unnecessary campaign expenses and uncompetitive campaigns. While it is certainly to be expected, and can be desirable, that incumbents will win their elections in most cases — and incumbents merit re-election in many cases — it is not to be expected that a system of public campaign financing should create greater disparities between sets of candidates. It is also not desirable for candidates to make use of public funds for any purpose other than the mounting of serious, cost-effective, competitive campaigns.

## NOTES

- <sup>1</sup> Jonathan Hicks, "Challengers in Many City Council Races Are as Familiar as the Incumbents," *New York Times*, September 8, 2003, B3.
- <sup>2</sup> Editorial, "City Campaign Finance Shuffle," *Crain's New York Business*, November 10, 2003, 8.
- <sup>3</sup> Richard Schwartz, "This Defeat Won't Hurt Mike — Just the Voters," *Daily News*, November 6, 2003, 37.
- <sup>4</sup> Mark Berkey-Gerard, "Campaign War Chests," *Gotham Gazette*, November 11, 2003.
- <sup>5</sup> New York City Campaign Finance Board, *An Election Interrupted...An Election Transformed*, September 2002, (hereafter "*An Election Interrupted...*"), 159.
- <sup>6</sup> Intro. No. 124 of 2004. This legislation was first introduced in February 2004 and was pending at press time. A substantially similar bill had been introduced in December 2003.
- <sup>7</sup> The chairmanship of the Board changed hands briefly at the end of 1993, when, on his final day in office on December 30, 1993, Mayor David Dinkins appointed Thomas Schwarz to replace Chairman Joseph A. O'Hare, in what some observers took as a retaliatory move in the wake of a large fine levied against Dinkins' 1993 campaign committee. After public and the media criticism, Schwarz resigned eight days later on January 7, 1994 and O'Hare was reappointed by the new mayor, Rudolph Giuliani. See also New York City Campaign Finance Board, *On the Road to Reform: Campaign Finance in the 1993 New York City Elections*, September 1994 (hereafter "*On the Road to Reform*"), 100.
- <sup>8</sup> Editorial, "A Solid Choice for City Campaign Chief," *New York Times*, March 6, 2003, A30.

- <sup>9</sup> There were technically two open seats in 2003, but one of those seats, in Council district 18, was not vacated by the incumbent until after the ballot petitioning period had ended. The incumbent's son was designated to run in his place. In district 35, the death of Council member James Davis created a vacancy. In 2005, there will be six open seats in the City Council and likely several more due to Council members running for other offices.
- <sup>10</sup> *Hearings before the New York City Campaign Finance Board*, December 8, 2003 (hereafter "*Campaign Finance Board 2003 Hearings*"), at 62 (testimony of Laura Altschuler).
- <sup>11</sup> Bob Kappstatter, "Espada Rules Out New Run — Puts Son On Dem Primary Ballot," *Daily News*, July 16, 2003, 1.
- <sup>12</sup> Jonathan Hicks, "Council Contests: 18th District — Bronx; Unions' Interest Ratchets Up the Intrigue in a Bronx Race," *New York Times*, August 29, 2003, B4.
- <sup>13</sup> Election results are calculated using the total recorded votes.
- <sup>14</sup> Editorial, "Council Races in Queens Look to Be One Big Yawn," *Newsday*, August 21, 2003, A30.
- <sup>15</sup> *Campaign Finance Board 2003 Hearings*, at 10 (testimony of Henry Stern).
- <sup>16</sup> Frankie Edozien and Denise Buffa, "Davis Sib Has Rival For Seat," *New York Post*, August 5, 2003, 2.
- <sup>17</sup> See Administrative Code §3-703(1)(c) and Board Rule 2-01(e)
- <sup>18</sup> At press time, virtually all of the draft audits for candidates in the 2003 elections were completed.
- <sup>19</sup> See Final Determination No. 2003-2 (August 26, 2003).
- <sup>20</sup> *The Advance Group, Inc. v. New York City Campaign Finance Board*, N.Y.L.J., February 3, 2004 (N.Y. Sup. Ct. January 8, 2004).
- <sup>21</sup> Leffler was unable to run again for the City Council in 2001 because of term limits.
- <sup>22</sup> In April 2001, Leffler swore on the CFB's Certification Form that that he had not accepted any contributions in violation of any of the Program's requirements.
- <sup>23</sup> Since the 2003 elections, candidates are able to file via the Internet, making public disclosure even faster.

## Chapter 2

# Money Talks

### INTRODUCTION

In New York City, mayoral elections attract the greatest voter participation and the most money. 2003 was an “off year” election with just the 51 City Council seats, and some other local offices not covered by the Campaign Finance Program, like district attorney and judge, on the ballot. “It’s a dull election,” noted professor and political commentator Doug Muzzio, in a *Newsday* article about the relative dearth of candidates.<sup>1</sup> Political consultant Evan Stavitsky correctly predicted that “without the mayor or a borough president’s race, [Primary Day] should be a calm if not sleepy Tuesday afternoon.”<sup>2</sup> Preliminary figures indicated that fewer than 12% of eligible voters voted that day.<sup>3</sup> Indeed, it took a controversial charter revision proposal on nonpartisan elections to generate media coverage. Much of the coverage of the Council elections emphasized the fundraising prowess of incumbents and their sizable financial advantage over challengers. Nevertheless, only slightly more than 11% of eligible voters voted on Election Day in turnout that was described by the Board of Elections as “light to moderate.”<sup>4</sup>

### CONTRIBUTIONS

The contribution limit was increased from \$2,500 (in effect for the 2001 elections) to \$2,750 (in effect for the 2003 elections), adjusted for inflation as mandated by law. The \$4-to-\$1 matching rate, which contributed to so much competition in 2001, remained in effect in 2003.<sup>5</sup> In 2003, distinctions between participants were largely drawn along the incumbent/challenger divide. Analysis indicates that officeholder advantages remain substantial, but the Program has the potential to mitigate them further.

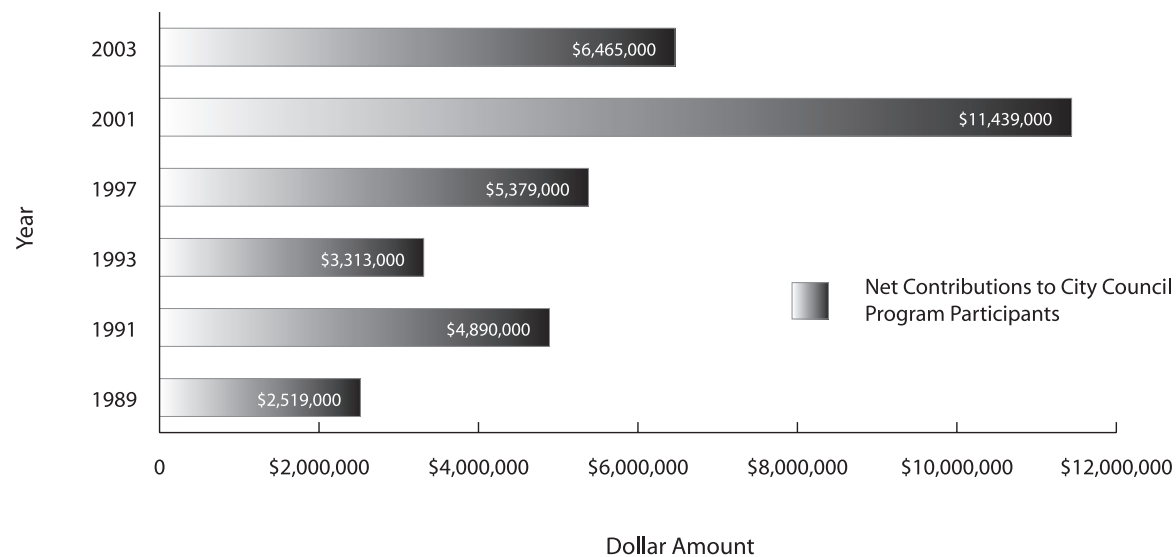
#### **Monies Raised by Participants in 2003<sup>6</sup>**

Total contributions to participating candidates for the office of City Council totaled approximately \$5.4 million in 1997. During 2001, when term limits forced most incumbents from their seats and the \$4-to-\$1 matching rate was in effect for the first time, Program participation for City Council candidates more than doubled over 1997. Contributions also doubled for a total of \$11.4 million. By 2003, total contributions were \$6.4 million (an increase of 18.7% over the amount in 1997), but at the same time the number of City Council candidates in the Program decreased by 26% between 1997 and 2003.<sup>7</sup>

The increase in contributions between 1997 and 2003 without a comparable increase in Program participation can be explained, in part, by the matching rate increase. In 1997, the rate was \$1-to-\$1 for contributions of up to \$1,000 (for a maximum of \$1,000 in public funds per contributor). For the 2001 elections, the rate was changed to \$4-to-\$1 for contributions of up to \$250 (also for a maximum of \$1,000 in public funds per contributor). The new formula, also in effect for the 2003 elections, encouraged more aggressive fundraising directed at smaller contributors, bringing in more money and more contributors. Also, higher spending limits for Program participants, rising from \$124,000 in 1997 to \$137,000 in 2001 and to \$150,000 in 2003, may have contributed to this increase, as participants will raise more if they can spend more.

As a group, the 45 participating Council incumbents in 2003 generated over three times more in contributions than the 57 challengers who appeared on the ballot. Challengers raised only \$1.5 million in contributions while incumbents were able to raise \$4.91 million. Moreover, the average net contributions for each challenger who made it on to the ballot was only \$26,315. The average was significantly higher for incumbents at \$109,220. This represents a 4-to-1 advantage that incumbents enjoyed over challengers in contributions alone. This advantage, however, was offset to some degree by the availability of public matching funds. When these are added in, the average amount of money available to office holders was \$164,433, still nearly two-and-a-half times more than the challengers' average of \$70,100. The fundraising capacity of incumbents was, therefore, a significant hurdle for challengers aiming to mount competitive campaigns.

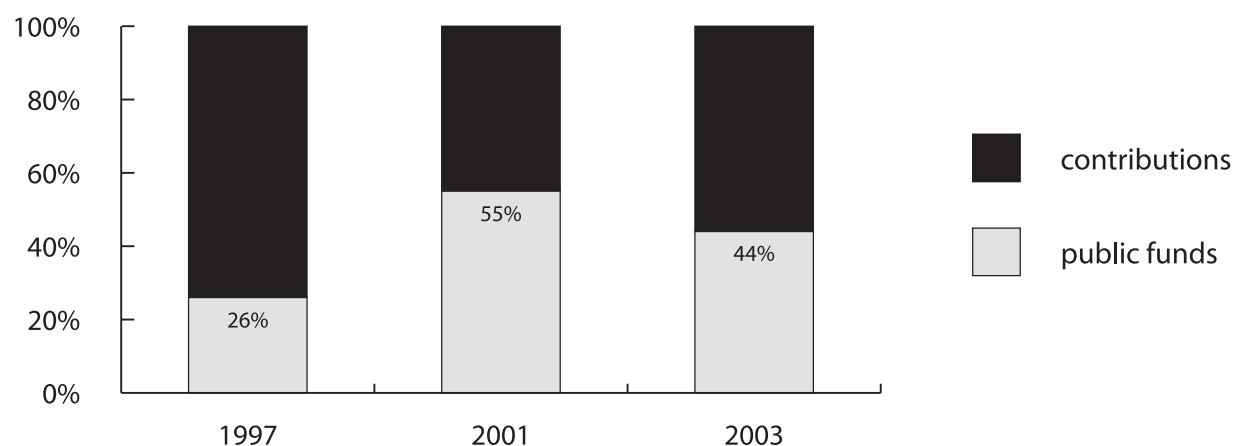
**Figure 1: Total Net Contributions across Council Candidates, 1989-2003**



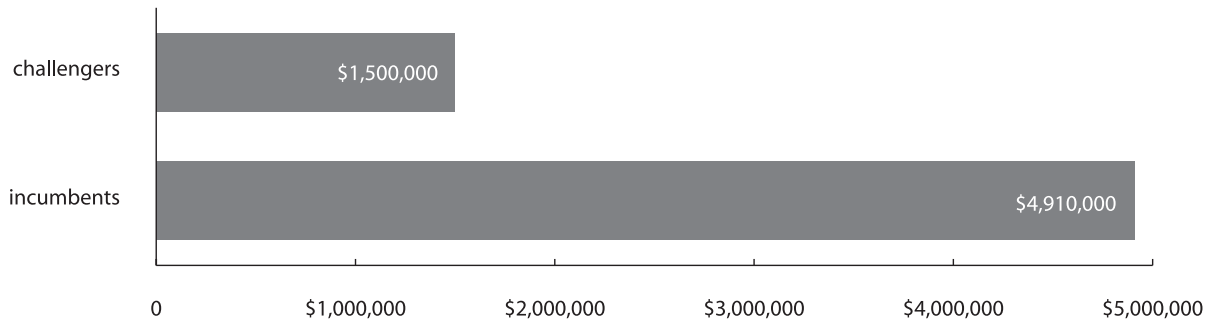
**Table 1: Top 10 Contributors, 2003**

| Contributor                              | Amount   |
|------------------------------------------|----------|
| Local 6/New York Hotel Trades Council    | \$63,000 |
| 1199 SEIU                                | \$54,000 |
| Plumbers Local Union #1                  | \$41,000 |
| Steamfitters Union                       | \$38,000 |
| Katz 2003                                | \$35,000 |
| District Council 37                      | \$31,000 |
| Social Service Employees Union Local 371 | \$24,000 |
| Leonard Litwin                           | \$19,000 |
| NYS Laborers PAC                         | \$17,000 |
| United Federation of Teachers            | \$14,000 |

**Figure 2: Public Funds as a Percentage of Total Dollars Available to City Council Candidates, 1997-2003**



**Figure 3: 2003 Total Contributions — All Challengers vs. All Incumbents<sup>8</sup>**



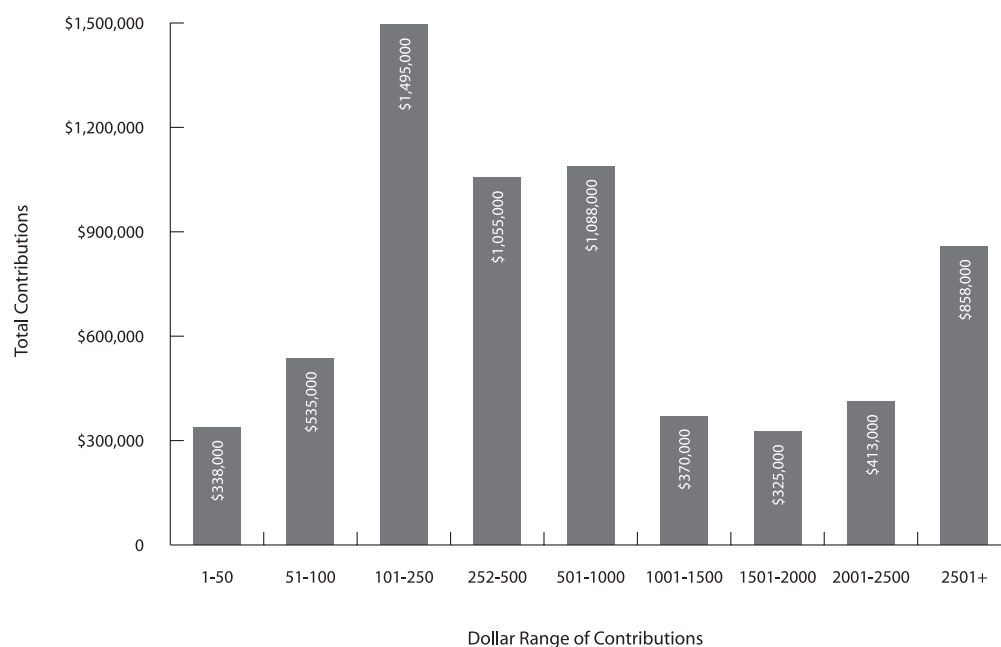
### **How Contributions Were Distributed**

Overall, in 2003, the average amount in contributions raised per candidate was \$62,680. But looking at the distribution of contributions to all candidates, it appears that half raised no more than \$42,165, indicating that among the other half there was quite a number of candidates who had very large total contributions. The average contribution size in 2003 was \$226 per contributor, but half of all donations did not exceed \$100 per contributor. Both the average and median contributions were higher in 2003 than in recent City Council elections. The average was \$170 in 2001, with half the contributions at or below \$75, and in 1997 the average was \$169, with half the contributions at or below \$60.<sup>9</sup> The mode, or most popular contribution amount, in 2003 was exactly \$250, as it was for the first time in 2001. It appears that the growth in 2001 and 2003 contributions over the contributions in 1997 is largely a response to the Program's promise of a \$4-to-\$1 match.

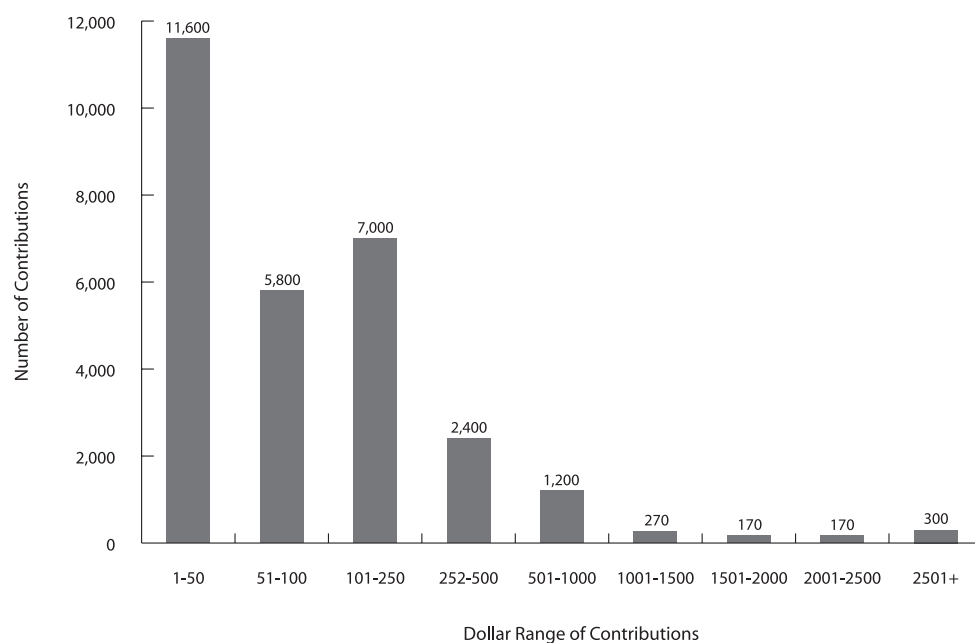
The average contributor made a \$383 contribution to incumbents in 2003 as compared to an average \$209 contribution to challengers. This reflects a concentration of smaller donations for challengers. Incumbents were able to draw larger contributions from preexisting fundraising networks and significant organizational contributions.

Looking at who gave what, nearly 37% of all contribution dollars came from more than 24,000 contributors who gave in the \$1-\$250 range. These donors represented an impressive 84% of all contributions in 2003. This figure is comparable with 89% in 2001.<sup>10</sup>

**Figure 4: Total Contributions Received by Contribution Size — All 2003 Participants**

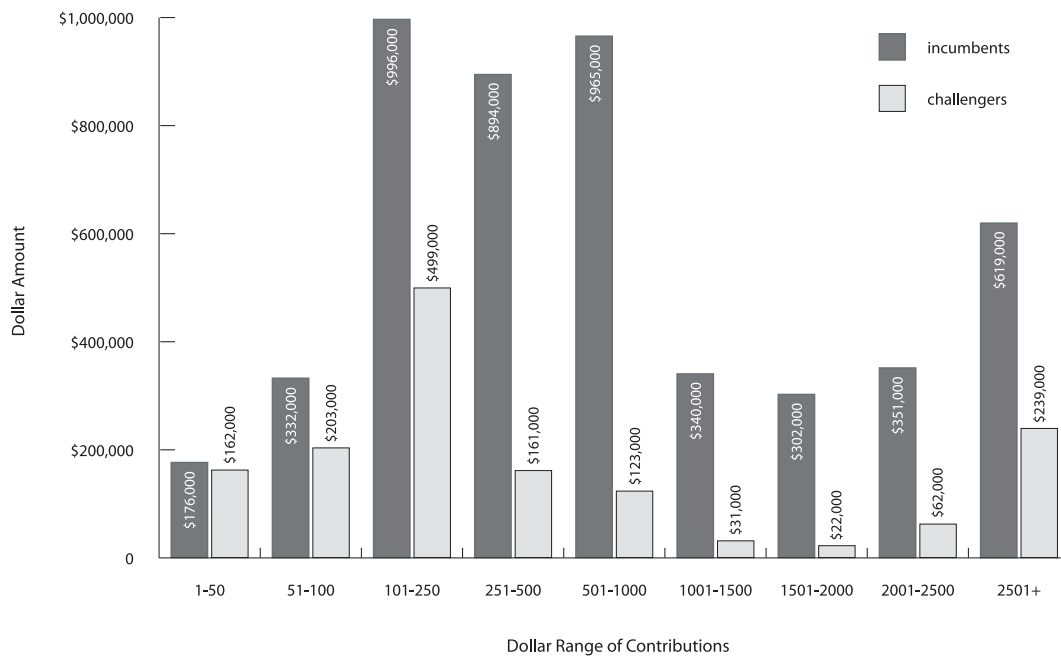


**Figure 5: Total Number of Contributions by Contribution Size — All 2003 Participants**

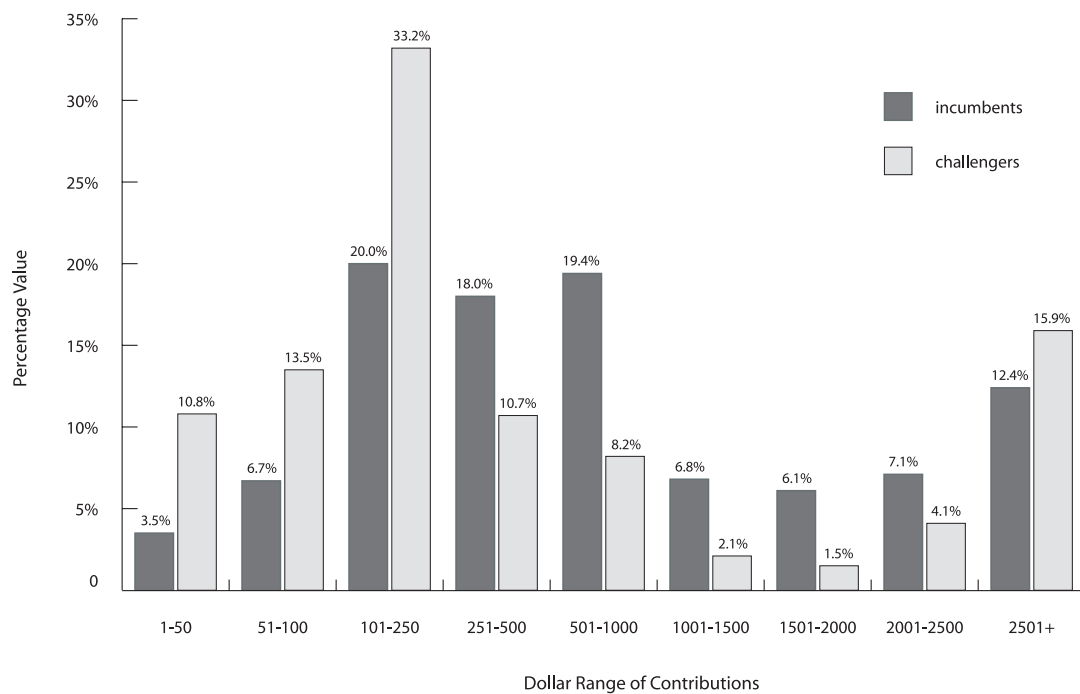


**Figure 6: Distribution of Contributions**

Dollar Distribution of Contributions – All Incumbents and All Challengers Compared, 2003



Percentage of Total Contributions by Contribution Size – All Incumbents and All Challengers Compared, 2003



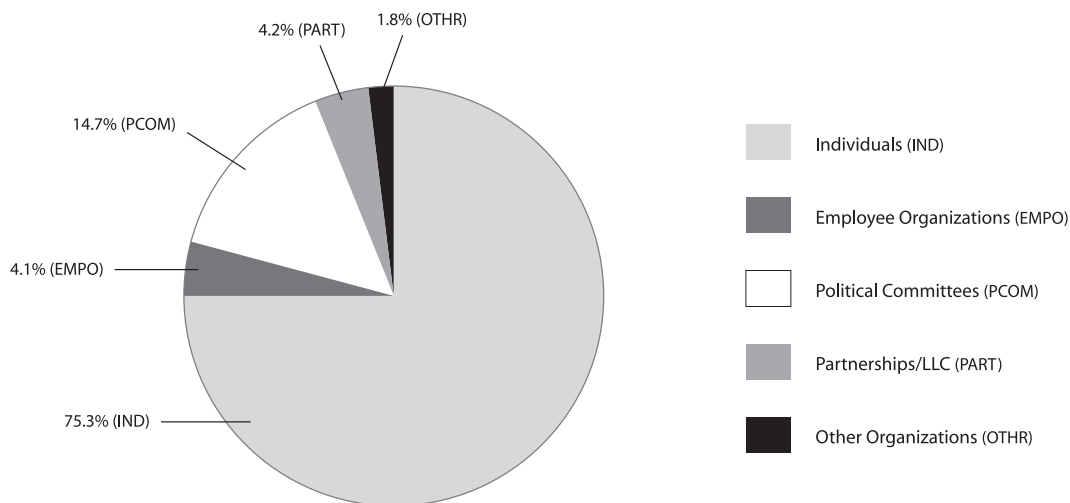
These concentrations change considerably, however, when we consider the frequency of contributions *within* dollar ranges — in other words, the actual number of contributions made in each category. The highest proportion of contributions was made at the very lowest end of the distribution — those under \$50 — accounting for nearly 40% of the total number of contributors. (See Figure 6.)

The dollar distribution for officeholders compared with the distribution for challengers underscores the challengers' tendency to collect smaller contributions and the incumbents' tendency to collect, not only smaller contributions as the challengers do, but *much* larger ones as well. In fact, total dollars to officeholders exceeded total dollars to challengers in every category. At the low end of contributions less than or equal to \$250, officeholders outpaced challengers in the number of donations by about 25%. This ratio increases six-fold for officeholders for contributions ranging from \$251 to \$1,000. (See Figure 6.) High-end contributions exceeding \$1,000 accounted for 32% of the total dollar amount for incumbents and 24% for challengers. Overall, contributions of more than \$500 accounted for 47% of the total dollar amount in contributions. (See also Chapter 3 Figure 10.)

### Contribution Sources: Individuals vs. Organizations

As stated above, a ban on corporate contributions was instituted before the 2001 elections for candidates participating in the Program. The 2003 elections registered a significant decline from 2001 in contributions from individuals (as opposed to organizations), as a percentage of total contributions. Individual contributions amounted to 75% of the total collected in 2003, down from 83% in 2001. (See Figure 7.) This decrease indicates that financially dominant incumbents focused less on individual contributors in order to build viable campaigns. As this would suggest, officeholders were less dependent on matchable contributions. In an election in which incumbents' total average dollars raised exceeded challengers' by a ratio of 3 to 1, this is a disturbing trend.

**Figure 7: 2003 City Council Elections Contributions by Contributor Type**



Organizational giving increased from 16% of total giving in 2001 to 25% in 2003. This represents a substantial shift from individuals to organizational sources of contributions, another indication of the fundraising dominance of incumbents in 2003 over challengers. But it is also a disappointing shift in that organizational sources often represent the very “special interests” whose influence the Program is intended to reduce.<sup>11</sup>

Contributions from unions and employee organizations also increased in 2003, though not substantially. They represented 4% of contributions in 2003, up from 2% in 2001 and similar to the 4% in 1997. A noteworthy shift was in contributions from political action committees, which went from 10% in 1997 to 15% in 2003.

Compared to 1997 Council fundraising, individual contributions increased dramatically from 61% of the total to 75% in 2003. The primary reason for this leap was the ban on corporate contributions that went into effect after the 1997 elections. There was also, however, an overall increase in organizational giving from 18% in 1997 to 25% in 2003.<sup>12</sup> The corporate ban, therefore, shifted donation activity from corporations more heavily onto individual giving, which is the desired effect. However, it appears that other organizational giving — most notably from political committees — increased. In fact, comparing 2003 with 1997, organizational giving not only increased as a proportion of the total but also in absolute dollar figures.

## **Contribution Geography**

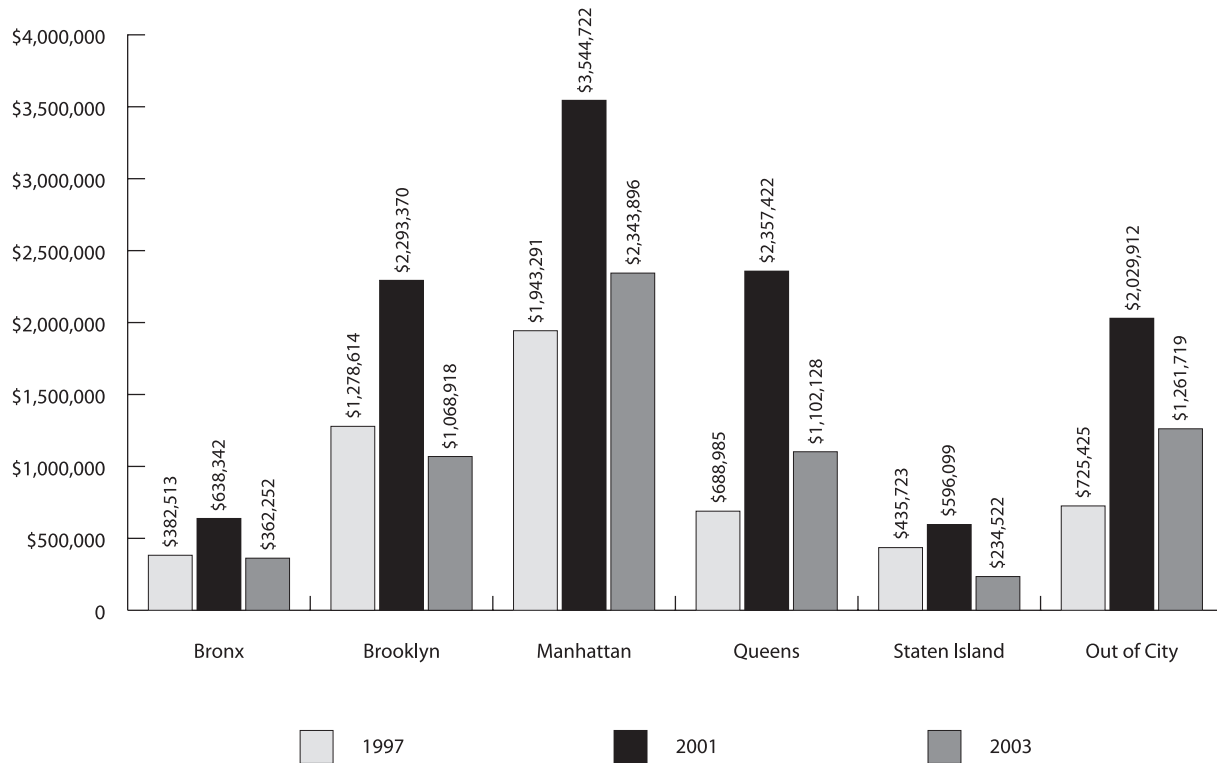
As has been the trend, Manhattan continued in 2003 to outpace the four other boroughs in contributions. Thirty-seven percent of all contribution dollars came from Manhattan, followed by 20% from outside the city. Queens and Brooklyn each accounted for 17% of total contribution dollars, while the Bronx and Staten Island provided 6% and 4% respectively.

The 20% of all contributions in City Council races that came from outside the city was a small increase from 18% in 2001. This increase is not surprising for an incumbent-heavy race; incumbents are more likely than challengers to have access and exposure to out-of-city donors. Many out-of-city residents have business interests in the city and have dealings with the City Council.

The impact of Brooklyn donations to City Council races has been declining in the last two elections. In 1997, Brooklyn accounted for 23% of all contributions, but that figure dropped to 20% in 2001 and 17% in 2003. Staten Island has witnessed a similar downward trajectory with 8% in 1997, 5% in 2001, and 4% in 2003. The Bronx has remained steady at 6% to 7% of the total, while Queens made an initial jump in 2001 (from 13% in 1997 to 21%) but declined in 2003 to 17%.

Contribution geography in a Council election year reflects the fact that there are a different number of districts in each borough, and some districts are wealthier than others. The population of each borough varies widely. In addition, a single competitive district can skew the numbers, making one borough seem more or less active as a fundraising site. The decline in outer borough contributor activity in 2003 (from 2001 and in some cases from 1997) might be explained by any number of factors, not the least of which is that a weak economy might influence some voters not to contribute to campaigns. City Council campaigns

**Figure 8: Total Dollar Amount in Contributions by Borough — 1997, 2001, 2003 Council Races**



still focus on generating contributions in Manhattan — somewhat reducing the role of the other four boroughs in elections. Organizational donors are also more likely to be based in Manhattan, another factor favoring Manhattan’s proportional advantage, especially in an election year that attracted organizational donors in higher proportions.

## Intermediaries

Intermediaries collect, or “bundle,” groups of contributions from other donors and deliver the contributions to campaigns. In 2003, the overall impact of intermediated contributions, as reported, appears to have been less of a factor than in previous Council elections. Only 5% of the total dollar amount in contributions was reported as intermediated, accounting for only 3% of the total number of transactions. In 2003, there were 112 named intermediaries reported as delivering contributions to the City Council candidates — a 71% decrease from the 2001 Council elections. Compared with figures from the 1997 elections, the number of reported intermediaries in 2003 nearly doubled from 60 in 1997 to 112. Of course, analysis of

**Table 2: Top 10 Intermediaries, 2003**

| Rank | Intermediary Name    | Employer                          | No. of Transactions | Amount   | Average Contribution | Candidate                      |
|------|----------------------|-----------------------------------|---------------------|----------|----------------------|--------------------------------|
| 1    | Hochberg, Fred       | Heydey Company                    | 83                  | \$38,275 | \$461                | Quinn                          |
| 2    | Cunningham, Jennifer | SEIU NYS Council                  | 24                  | \$29,350 | \$1,223              | Palma                          |
| 3    | Ricci, Frank         | Rent Stabilization Association    | 55                  | \$25,370 | \$461                | Dilan, Gallagher, Oddo, Rivera |
| 4    | Kasirer, Suri        | Kasirer Consulting                | 26                  | \$20,950 | \$806                | Miller, G.                     |
| 5    | Fine, Peter          | Atlantic Development              | 7                   | \$17,500 | \$2,500              | Serrano                        |
| 6    | Bailey, Regina       | Eshel Management                  | 7                   | \$16,500 | \$2,357              | Felder                         |
| 7    | Anderson, Kay        | 1199 SEIU                         | 25                  | \$11,650 | \$466                | Palma                          |
| 8    | Sheldon Lobel        | Sheldon, Lobel PC                 | 28                  | \$10,100 | \$361                | Comrie                         |
| 9    | Whelan, James        | Brooklyn Alliance                 | 27                  | \$7,250  | \$269                | Davis, J. <sup>13</sup>        |
| 10   | Sachs, Jeffrey       | Jeffrey A. Sachs Associates, Inc. | 12                  | \$7,000  | \$583                | de Blasio                      |

intermediaries' activity is heavily dependent on the campaigns' reporting. While Board staff can and does monitor this reporting and identifies patterns that suggest intermediation of contributions, reporting of intermediaries remains difficult to verify.

Intermediaries have attracted press attention in previous election cycles because of the concern that intermediaries may be exerting the same influence previously exercised by large individual contributors.<sup>14</sup> The raw numbers reflect a greater reliance on intermediaries by incumbents. Incumbents were able to collect a combined \$214,899 in intermediated funds in 2003, an average of roughly \$4,776 per candidate. Challengers — who outnumbered incumbents by 25% — had a total of only \$65,255 delivered to them by intermediaries at a far smaller average of about \$1,231 per candidate. As a proportion of their respective net contributions, however, the disparity narrows. As reported, intermediated funds represented 4% of challengers' and 5% of incumbents' total contributions. Of the ten recipients of the highest amount in intermediated contributions, nine were incumbents and one was a challenger. Considering the low ratios of intermediated funds to total contributions for both incumbents and challengers, intermediation in 2003 was not, and has not been in past elections, a major factor in Council races, and certainly not as compared to citywide races.

**Table 3: Top 10 Recipients of Intermediated Contributions, 2003**

| Rank | Candidate Name   | District | No. of Transactions Intermediated | Amount Intermediated | Average Intermediated Contribution | Average Non-Intermediated Contribution |
|------|------------------|----------|-----------------------------------|----------------------|------------------------------------|----------------------------------------|
| 1    | Palma, Annabel   | CD#18    | 75                                | \$44,141             | \$589                              | \$119                                  |
| 2    | Quinn, Christine | CD#03    | 83                                | \$38,275             | \$461                              | \$192                                  |
| 3    | Serrano, Jose    | CD#17    | 103                               | \$21,330             | \$207                              | \$528                                  |
| 4    | Miller, Gifford  | CD#05    | 26                                | \$20,950             | \$806                              | \$448                                  |
| 5    | de Blasio, Bill  | CD#39    | 39                                | \$20,625             | \$529                              | \$340                                  |
| 6    | Felder, Simcha   | CD#44    | 7                                 | \$16,500             | \$2,357                            | \$618                                  |
| 7    | Weprin, David    | CD#23    | 41                                | \$12,900             | \$315                              | \$447                                  |
| 8    | Davis, James     | CD#35    | 73                                | \$12,318             | \$169                              | \$252                                  |
| 9    | Rivera, Joel     | CD#15    | 61                                | \$10,430             | \$171                              | \$439                                  |
| 10   | Comrie, Leroy    | CD#27    | 28                                | \$10,100             | \$361                              | \$183                                  |

## Contributions and Votes

The relationship between contributions and votes reveals another officeholder advantage. Analysis of participant performance in past elections points to a strong predictive relationship between a candidate's success in collecting contribution money and his or her ability to get votes.

Overall, participating candidates averaged \$18 in contributions for every vote ultimately received in the primary elections in 2003. But the breakdown by challenger/incumbent tells us more: in 2003, incumbents raised more money per primary vote (\$19) than challengers (\$16). The ease with which contributions are raised is evidently a good indication of a candidate's popularity, name recognition, and campaigning prowess. The gap between challengers and incumbents further widens when the level of spending per vote is taken into account. Challengers outspent incumbents by 55% per vote received, but when facing an incumbent, every one of them lost. In general, a well-known incumbent simply does not have to spend as much as a relatively unknown challenger in order to obtain the same number of votes, and probably could generally garner a substantial portion of the total vote without spending anything at all.<sup>15</sup> Indeed, many of the participating incumbents won their elections by a commanding margin. Only 7% of

non-incumbents in the Program won their respective races, and these races were against other non-incumbents. This suggests that a good deal of the fundraising and spending in 2003 was grossly disproportionate to the final electoral outcome.<sup>16</sup>

## EXPENDITURES

### Expenditure Totals

Program participants spent more than \$11 million for the 2003 City Council elections.<sup>17</sup> This figure is far lower than the \$26 million spent by Council participants in 2001, but higher than the approximately \$7 million spent in 1997. Adjusting for inflation, a little over \$27 million in 2003 dollars was spent for the 2001 elections and a little more than \$8 million in 2003 dollars was spent in 1997.<sup>18</sup> Although the campaigns are always thought to be spending increasing amounts of money from election to election,

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*Median spending for the 18 incumbents in a primary was \$143,655, only \$6,000 less than the spending limit. By comparison, median spending for challengers in the primary was about \$72,000, or less than half of the spending limit for the election and just half of the median amount for incumbents. The significant difference between median spending for the seated officeholders and the challengers suggests that the seated officeholders are far more likely to be able to make full use of the spending limit.*

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in inflation-adjusted dollars the total of \$7.6 million spent by all 136 participants on the ballot in the 1991 elections was the equivalent of \$10.1 million today, a very comparable amount to the \$11 million spent by the 102 participants in 2003. When spending is compared on a per-candidate, per-election basis, as opposed to an aggregate basis, however, 2003 spending far exceeds 1991 spending.

In total, participants spent in the neighborhood of \$4.4 million for the primary elections in 2003. The average amount spent for the primary by participants who reported at least some spending was \$97,000. The median amount spent was about \$107,000. Unlike in 2001, when there was a number of small campaigns that spent little or no money and thus could skew the numbers dramatically, there were only

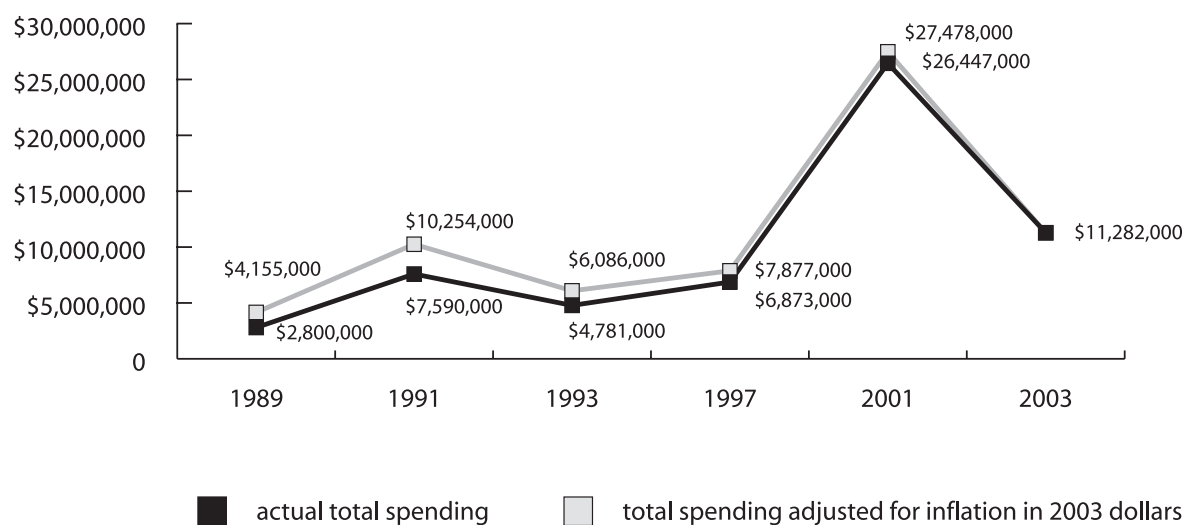
three participating campaigns that reported no spending at all for the primary in 2003. For the primary election, the 18 officeholders who had primaries spent approximately \$2.3 million, and the 28 challengers spent under \$2.2 million in total. The average incumbent in a primary thus spent about \$128,000, while the average challenger spent about \$77,000, or 40% less than the average officeholder. Median spending for the 18 incumbents in the primary was \$143,655, only \$6,000 less than the spending limit. By comparison, median spending for challengers in the primary was about \$72,000, or less than half of the spending limit for the election and just half of the median amount for incumbents.<sup>19</sup> The significant difference between median spending for the seated officeholders and challengers suggests that the officeholders are far more

likely to be able to make full use of the spending limit. One way to adjust for this advantage would be to lower the expenditure limit to an amount that is more equally attainable by officeholders and challengers alike, with the goal of achieving a more level playing field for all Program participants.

For the 2003 general election, participants spent just under \$6 million.<sup>20</sup> Average spending per participant was about \$84,000 for the 70 participants who appeared on the general election ballot and reported spending at least \$10,000. Spending by participants for the 2003 general election reflected patterns similar to those observed in spending for the primary election. The 45 officeholders spent over \$4 million, for average spending of almost \$91,000 per candidate. The 25 challengers who spent at least \$10,000 spent under \$2 million total, with an average of \$71,000 in spending per challenger. Officeholders thus spent an average of \$20,000 more than challengers, a difference of 22%. If all challengers were to be considered, including those who reported no spending at all, average spending would drop to under \$55,000 per challenger, thereby increasing the overall disparity between officeholders and challengers.

Despite the similarity in overall inflation-adjusted spending, the contrasts on a per-candidate basis between 2003 and 1991 are striking. The average amount of spending by the 78 participants who reported spending at least \$10,000 for the 1991 primary elections was just over \$36,000, with a median level of spending just over \$30,000. Adjusted for inflation, average spending was about \$48,000 in 2003 dollars, and median spending was about \$40,000 in 2003 dollars. Using the inflation-adjusted figures, average primary spending in 2003 thus was about double what it was in 1991. Median primary spending in 2003 was two-and-a-half times greater than median primary spending in 1991. In the 1991 general election, participants spent about \$50,000 on average, or about \$67,200 in 2003 inflation-adjusted dollars. Average spending for the

**Figure 9: Total Spending for City Council Candidates 1989-2003 in Actual and Inflation-Adjusted Dollars**



general election by the 14 incumbent Council members seeking re-election was about \$66,000, or about \$88,600 in 2003 dollars. Median participant spending in the general election was about \$58,000, or about \$77,900 in 2003 inflation-adjusted dollars. In comparison, average spending by challengers was \$57,000 across those who spent at least \$10,000, or about \$76,600 in 2003 inflation-adjusted dollars. Median spending by those same challengers was about \$46,000, or about \$61,800 in 2003 inflation-adjusted dollars. The difference between incumbents' and challengers' median spending in 1991 was about \$12,000, meaning that incumbents spent 26% more than challengers in the general election. Despite the very large increases in dollars spent between 1991 and 2003, the relationship between incumbent and challenger spending thus remained proportionate.

### **How the Money Was Spent**

Participants must categorize expenditures by “purpose.”<sup>21</sup> In 2003, participants spent the most on the overlapping categories of campaign literature and campaign mailings, which combined to total more than \$3 million, or 27% of all spending. The next highest category of spending was on consultants, at about \$2.2 million, or 19% of all spending. (See Table 4.)

One would expect the amounts spent in a competitive election to be greater than in a less competitive one. But the percentage of funds spent by Council candidates on consulting went from 13.5% of total spending in 2001 to 19% in 2003. While the campaigns can report anyone working for the campaign as a consultant, a strict reading of the jump in spending on consultants could imply that Council campaigns have become more “professionalized.” This would be consistent with an election cycle whose financial data are very much influenced by the fundraising and spending of the large pool of candidates who are incumbents.

Petition costs, advertising, polling, and interest expenses as percentages of the total funds spent by Council candidates remained the same from 2001 to 2003. In 2003, participants spent more money proportionately on fundraising, rent, and office expenses than their 2001 counterparts, but less proportionately on wages, postage, and print advertising.

The 2003 Council participants spent more than 2001 participants, both in dollar amount and proportionately, on political contributions to other candidates, committees, and clubs. Over \$185,000 was spent on political contributions in 2003 by 24 participants (compared with over \$123,000 by 51 participants in 2001). Much of this spending on political contributions was reported by Council members. (See Table 5.) Of the reported \$185,000 in spending in this category, over \$123,000 was reported as being contributed to other political candidates, including almost \$102,000 to fellow 2003 City Council candidates. (See Table 6.) For the most part, the participants who were among the largest recipients of these contributions tended to have more competitive races. The increase in political contributions may generally be attributed to the relative lack of competitive races, which meant that many candidates had money to spare. It can also be partially attributed to a new provision in the Campaign Finance Act permitting Council candidates to spend up to \$3,000 on contributions to other candidates, committees, and clubs without being subject to reductions in their public funds payments.

**Table 4: Types of Expenditure by Purpose Code, 2003 Elections**

| Expenditure             | Amount      |
|-------------------------|-------------|
| Consultants             | \$2,161,000 |
| Campaign Literature     | \$1,643,000 |
| Campaign Mail           | \$1,488,000 |
| Other                   | \$1,173,000 |
| Campaign worker's wages | \$696,000   |
| Fundraising             | \$652,000   |
| Professional Services   | \$604,000   |
| Postage                 | \$444,000   |
| Print ads               | \$434,000   |
| Office expenses         | \$433,000   |
| Office rent             | \$316,000   |
| Advance repayments      | \$234,000   |
| Television ads          | \$218,000   |
| Political contributions | \$185,000   |
| Polling                 | \$166,000   |
| Radio ads               | \$102,000   |
| Constituent services    | \$47,000    |
| Voter registration      | \$4,000     |
| Interest                | \$4,000     |

**Table 5: Top 10 Spenders on Political Contributions, 2003**

| Participant Committee          | Amount Spent on Political Contributions |
|--------------------------------|-----------------------------------------|
| Katz 2003                      | \$43,150                                |
| Friends of Bill de Blasio 2003 | \$29,625                                |
| Friends of David Weprin        | \$24,350                                |
| Quinn for Council 2003         | \$19,200                                |
| Moskowitz for City Council     | \$16,100                                |
| Friends of Gifford Miller      | \$11,400                                |
| Koppell for Council 2003       | \$10,690                                |
| McMahon for Council 2003       | \$4,225                                 |
| Friends of Phil Reed '03       | \$2,125                                 |
| Bill Perkins 2003              | \$2,050                                 |
| <b>Total: \$162,915</b>        |                                         |

**Table 6: Top 10 Recipients of Political Contributions from 2003 Program Participants**

| Recipients of Political Contributions from 2003 Program Participants | Total Contributions Received from Program Participants |
|----------------------------------------------------------------------|--------------------------------------------------------|
| Friends of Diana Reyna                                               | \$10,500                                               |
| Queens County Democratic Organization                                | \$10,000                                               |
| Friends of Letitia James                                             | \$7,500                                                |
| Dilan 2003                                                           | \$6,750                                                |
| Friends of Vincent Gentile                                           | \$6,100                                                |
| Friends of Miguel Martinez                                           | \$3,800                                                |
| Friends of Robert Jackson                                            | \$3,750                                                |
| Friends of Annabel Palma                                             | \$3,750                                                |
| Working Families Party                                               | \$3,625                                                |
| People for Bing                                                      | \$3,500                                                |

## Qualified Expenditures

Participants are only permitted to use public funds on certain expenditures that advance their candidacies. These expenditures must be fully documented to be considered qualified. The audits of the 2001 participants revealed that an unprecedented number of candidates failed to document sufficient qualified expenditures, and were thus required to return public funds. The difficulty candidates had in documenting sufficient qualified expenditures is one reflection of the far greater proportion of total funds available to Council candidates made up of public funds compared with past election cycles. Prior to 2001, the maximum public funds a Council candidate could receive was \$40,000, with a spending limit of \$124,000. (See “Public Funds” below.) The public funds available thus represented about 32% of the spending limit in the 1997 elections. In 2001, however, a participant could receive a maximum of \$75,350 in public funds toward a spending limit of \$137,000. In 2003, a participant receiving the maximum in public funds for an election could receive up to \$82,500 in public funds toward the \$150,000 spending limit. Thus the 2001 and 2003 participant could receive over half the expenditure limit in public funds. Furthermore, the participant would have to document more than twice the amount in qualified expenditures as a candidate who received the maximum in public funds in an election in 1997. With a larger proportion of funds available for spending constituted by public funds, establishing qualified expenditures becomes critical for more dollars spent by a campaign.

The Board’s experience with Council campaigns is that many do not spend or keep records in a manner that easily establishes compliance with the requirement that all public funds be spent only on qualified expenditures. This could suggest that the large proportion of public funds combined with a relatively high expenditure limit contributes to wasteful spending on items that may not promote a candidate’s current election, and raises the question whether there may simply be too much public funding available in Council races.

One issue regarding qualified expenditures that received considerable attention during and immediately after the election was payments made to family members of participating candidates. Participant Abraham Wasserman, who ran on the Conservative line in district 35 (Brooklyn — Crown Heights, Fort Greene), reported payments to two sons, Haskel Wasserman and Daniel Wasserman, totaling \$9,000 and \$4,500 respectively.<sup>22</sup> Haskel Wasserman was the campaign treasurer and was paid for those services, as well as for services described in the candidate’s disclosure statements as “campaign work.” Prior to amending his disclosure statements, Wasserman had also reported outstanding liabilities of several thousand dollars each to his wife and another son. Wasserman raised approximately \$16,000 on his own and received \$62,700 in public matching funds. He received approximately 360 votes in the general election. He was by no means the only participant who reported expenditures to family members.<sup>23</sup> Other participants who received public matching funds, reported paying family members, and were mentioned in newspaper accounts included Larry Seabrook (district 12), who paid his brother, Oliver Seabrook, over \$30,000 to serve as campaign manager. Seabrook raised \$77,000 in contributions and received \$102,120 in public matching funds. Eva Moskowitz (district 4) paid her husband, an attorney, more than \$16,000 for compliance services. She raised \$185,000 in contributions and received \$120,625 in public funds. Dominic Recchia (district 47) rented office space from a family member for \$2,500. He raised about \$66,000 in contributions and received \$82,500 in public funds. While under no circumstances would

these expenditures to family members be qualified for payment with public funds, media coverage of the expenditures suggested that some candidates were exploiting the Program by using public funds to subsidize their family members. In the past, since expenditures to family members (or to the participant him or herself) could not be paid with public funds and the maximum in public funds was a smaller proportion of all available funds, there had not been much attention paid when the participant has been able to document sufficient qualified expenditures to justify any public funds received. But, since the \$4-to-\$1 matching rate went into effect and the total public funds and expenditure limits were greatly raised for City Council participants, the proportion of campaign funds available in the form of public funds is so high that the appearance of self-dealing becomes troubling.

It is not clear how widespread a “problem” the payment of family members is. The few candidates mentioned in newspaper accounts represent a small fraction of the participants in the Program. Generally, it can be difficult to identify family members of participants in disclosure statements. In many instances, family members have different surnames and/or addresses from the participant, and therefore familial relationships are not immediately obvious. As part of the 2003 post-election audits, participants have been asked to provide the Board with a list of family members and businesses owned by family members to whom their committees made expenditures. This is clearly an area to which further attention must be paid. (See Chapter 3, “New Issues for All Offices.”)

**Table 7: Top 10 Vendors, 2003 Elections**

| Vendor                       | Amount    |
|------------------------------|-----------|
| United States Postal Service | \$442,000 |
| Parkside Group               | \$418,000 |
| Mark Guma Communications     | \$335,000 |
| The Advance Group            | \$289,000 |
| Branford Communications      | \$272,000 |
| Promotional Strategies       | \$240,000 |
| Sheinkopf Communications     | \$206,000 |
| Astoria Graphics             | \$195,000 |
| Knickerbocker SKD            | \$190,000 |
| Laurence Laufer/Run, Inc.    | \$187,000 |

Note: These figures are understated to the extent that they do not include subcontracted work performed by these vendors, and they are overstated to the extent that these vendors subcontracted work to other vendors. The figures are rounded to the nearest thousand dollars.

## **Exempt Expenditures**

Amendments to the Act and Rules early in the 2003 election cycle changed the treatment of expenditures that could be claimed as “exempt” from, or not counted toward, the spending limits. For 2003, candidates were permitted to claim exemption for expenditures for the purposes of compliance with the Program, obtaining petition signatures, and canvassing election results, provided these expenditures did not exceed 7.5% of the expenditure limit. If an expenditure categorized for one of these purposes did not in fact appear to be for a permitted exempt purpose, the campaign was required to submit detailed documentation for the exempt expenditure claim, and if the exempt claims exceeded 7.5%, the campaign was required to submit detailed documentation for all exempt expenditure claims. A preliminary review of the 2003 candidates’ disclosure indicates that most chose the simpler 7.5% option. This choice is consistent with the analysis done on 2001 data that showed that of the 112 Council candidates (out of almost 250) who claimed any exempt expenditures at all, the average exempt expenditure claims totaled 6.8% of the expenditure limit.<sup>24</sup> The preliminary review indicated, however, that there were a fair number of items claimed as exempt that appeared to have no connection whatsoever to the allowable exempt categories. Exempt expenditure claims are, of course, of concern only when a campaign is close to or exceeds the expenditure limit.

## **Subcontracted Expenditures**

A disclosure issue that arose during and after the 2001 elections was the reporting (or lack thereof) of vendors who subcontract work for participants to other vendors. Participants are required to disclose subcontracted providers of goods and services when the value of what they provide is significant. This disclosure allows the public to know who the ultimate recipients of campaign funds are and how the funds are being spent.

As of April 30, 2004, 12 participants for 2003 had reported the use of seven subcontractors by five vendors, for a total of more than \$330,000 in subcontracted work. The largest reported recipient of subcontracted work thus far, Century Direct, a mailing house, would be one of the Top 10 vendors if its subcontracted work, which totaled \$150,000, were added to the approximately \$130,000 in expenditures paid directly to it.

Total expenditures to the United States Postal Service, the single biggest vendor, would increase by about \$20,000 if reported subcontracted expenditures for postage were included. In 2001, the use of subcontractors was frequently reported only well after the election, in response to queries made in the post-election audits. Participants who have engaged certain vendors have communicated to the Board difficulty in obtaining subcontractor information from them, with the vendors citing confidentiality agreements and trade secrets. Of the top ten vendors in 2003, four were reported as subcontracting work.

## **Expenditures in Connection with Ballot Proposals**

The November ballot saw a series of hotly contested proposals made by the 2003 Charter Revision Commission appointed by Mayor Bloomberg, the most contentious of which was the proposal to create a system of non-partisan elections. An advisory opinion request was made of the Board by Herman D. (Denny) Farrell, Jr., chair of the New York State Democratic Committee, posing questions about what spending by participants was permitted on ballot proposals, how the spending (and contribution) limits applied, and whether public funds could be expended on ballot proposals. In response, the Board issued Advisory Opinion No. 2003-2 on July 14, 2003, concluding, among other things, that “participants may not use their principal committees to make expenditures in connection with a position on any ballot proposal, nor may public funds be used for this purpose, unless that activity is in the context of and incidental to promoting the candidate’s candidacy.”<sup>25</sup> Many participants simply added single sentence statements regarding their position on the ballot questions to their ordinary campaign advertisements and literature. Campaign literature collected during the course of the campaign also included instances in which participants who received public funds used campaign funds to advance their positions on the ballot questions while their own candidacies seemed incidental to the treatment of the ballot questions. These matters will be addressed in the context of the Board’s post-election audits. Participants who are found to have used campaign funds to advance ballot proposal positions may be subject to penalties by the Board.

## **Expenditures and Votes**

The relationship between expenditures and votes provides a strong argument against any increases in expenditure limits and indeed, calls for a reduction. In the primary elections, participants spent an average of \$43 per vote received. For the general election, that figure decreased to \$30 per vote, although this decrease is not significant considering that the primary elections were far more competitive. In fact, the figure of \$30 in expenditures per vote is hugely inflated in light of the fact that more than half of all general election races ended in landslide victories. It is safe to assume that spending increases when money is available to spend. As discussed above, candidates, and, in particular, incumbents had a lot of money available to spend in 2003.

Officeholders seeking re-election spent less per vote than challengers. In the general election, officeholders spent \$21 for every vote received, whereas challengers spent \$50 per vote, nearly double that of seated officeholders, but the higher average spending on the part of challengers did not result in higher vote totals. Of the 26 Program participants who challenged a seated officeholder in the general election, none was victorious.

## **High-Spending Non-Participants: Lifting the Spending Limits**

The Board lifted the spending limits in four districts as a result of declaring “bonus” situations. (See “Bonus Determinations” below.) This affected five participants: Eva Moskowitz in district 4 (Manhattan — Midtown East, Murray Hill, Stuyvesant Town, Upper East Side), Ismael Betancourt and Egidio Sementilli in district 13 (Bronx — Morris Park, Pelham, Throgs Neck), Annabel Palma in district 18

(Bronx — Soundview, Parkchester, Castle Hill), and Hiram Monserrate in district 21 (Queens — Corona, East Elmhurst). The final accounting of what these candidates spent must await the Board's final audit reports. In the meantime, based solely on the information contained in disclosure statements filed with the Board, it appears that candidate Moskowitz spent less than the \$150,000 spending limit, but still outspent her non-participating opponent by almost three times. Candidates Betancourt and Sementilli were well under the \$150,000 spending limit, so that the lifting of the spending limit had no effect in district 13. Based on Board of Elections disclosure obtained by the Board, Betancourt spent roughly three times as much as non-participant Council member Madeline Provenzano, while Sementilli spent a virtually identical amount to Provenzano.<sup>26</sup> Candidate Monserrate appears to have slightly exceeded \$150,000 in spending while winning 60% of the vote, compared to an unknown amount of spending by an opponent who failed to file disclosure statements with the BOE. The Palma campaign, according to its disclosure statements, spent about \$190,000 for the primary, but questions about possible unreported coordinated campaign expenditures, the resolution of which may or may not affect this figure, are pending before the Board.

## PUBLIC FUNDS

The disbursement of public funds in 2003 did not generate nearly the excitement or interest that it did in 2001. The \$4-to-\$1 matching formula was old news, the coverage of the elections was less, the number of candidates much lower, the number of open seats almost zero, and the competitiveness of the campaigns limited. Nevertheless, the Board disbursed a total of \$4,952,077 in public matching funds for the 2003 elections to 74 City Council candidates (73% of the 102 participants who appeared on the ballot).

Based largely on the experience of the 2001 elections, the Board originally estimated a need for \$20 million for the Public Fund for 2003. This was a conservative budgeting view that could account for scenarios in which many participants in each Council district qualified for the maximum amount of public funds in both the primary and general elections and in potential bonus situations. Seventeen million dollars for the Public Fund was included in the adopted

budget for the fiscal year covering the 2003 elections. The Board reduced its request once the opt-in date passed and the number of candidates who had opted into the Program was known definitively.<sup>27</sup> In October of 2003, \$10 million from the Public Fund was returned to the city's general fund. Although only about a third of the amount in the adopted budget was actually paid out to candidates during the election period, had all matching funds claims by participating candidates been matched at the \$4-to-\$1 rate without any restrictions or review by the Board, the cost of the Program would have been over \$9 million, almost double the \$4.95 million paid out, resulting in substantial savings to the city.<sup>28</sup>

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This total consisted of \$2,712,046 disbursed for the primaries and \$2,240,031 disbursed for the general election. Forty-two candidates received public funds for the primaries, and 48 candidates received public funds for the general election, including the 16 candidates who received public funds for both the primary and general elections. The average payment amount to candidates who received public funds was \$66,920. The average payment to the 42 participants who received public funds for the primary was \$64,573.<sup>29</sup> The average payment to the 48 participants who received public funds for the general election was \$46,667. As of May 20, 2004, \$211,867 in public funds had been returned to the Board in unspent campaign funds.

**Table 8: Public Funds Disbursed per Election**

| Year | Election Type                       | Amount                     |
|------|-------------------------------------|----------------------------|
| 1989 | Citywide                            | \$4,508,155                |
| 1990 | Off year election to fill vacancy   | \$10,155                   |
| 1991 | Special Elections                   | \$137,650                  |
| 1991 | City Council redistricting election | \$2,660,514                |
| 1993 | Citywide                            | \$6,483,756                |
| 1993 | Special Election                    | \$132,146                  |
| 1994 | Special Election                    | \$60,339                   |
| 1994 | Off year election to fill vacancy   | \$30,677                   |
| 1996 | Special Election                    | \$63,208                   |
| 1996 | Off year election to fill vacancy   | \$81,375                   |
| 1997 | Citywide                            | \$6,951,380                |
| 1999 | Special Election                    | \$788,554                  |
| 1999 | Off year election to fill vacancy   | \$272,961                  |
| 2001 | Special Election                    | \$91,388                   |
| 2001 | Citywide                            | \$42,119,439               |
| 2002 | Off year election to fill vacancy   | \$119,600                  |
| 2003 | Special Election                    | \$475,948                  |
| 2003 | City Council redistricting election | \$4,952,077                |
|      |                                     | <b>Total: \$69,939,322</b> |

The differences between the 2003 and 2001 elections are evident from the amounts of public funds disbursed and the number of participants who were recipients. In 2001, 155 City Council candidates received over \$9.7 million public funds for the primary, and 90 received over \$4.4 million public funds for the general election.<sup>30</sup> The 179 Council candidates in total were paid \$14,144,562 for the 2001 elections. By comparison, about \$6.2 million was disbursed to 273 City Council campaigns in the 1989, 1991, 1993, and 1997 elections combined.

In 2001, candidates for City Council began receiving the maximum possible in public funds, or “maxing out” on a regular basis, when they had not done so in the past. This was due to the implementation of the \$4-to-\$1 match. While the maximum amount in public funds for 2001 was \$75,350 per election, the maximum in public funds that a Council candidate could receive in 2003 was \$82,500 per election. This figure increased because it is tied under the law to the expenditure limit, which is adjusted every four years based on cost of living indices.<sup>31</sup>

A participant would need to raise an additional \$1,788 in valid matchable contributions to qualify to receive the \$7,150 difference between \$75,350 and \$82,500. In 2003, 14 candidates received the maximum in public funds for the primary, and 15 received the maximum in public funds for the general election.<sup>32</sup> There were no candidates who received the maximum in both, which is not surprising given the lack of competitive elections and the relatively few candidates (42 of 102, 41%) who received public funds for

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*Challengers’ public funds made up 63% of the total funds available to them, whereas public funds accounted for only 34% of the funds available to officeholders. Consequently, for challengers, public funds were almost twice as important as they were for officeholders.*

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both elections. The decline in participants receiving the maximum can be explained by a variety of factors. These include the changes in the Act that limit the public funds a participant can receive unless the candidate is opposed by an opponent who receives public funds or meets certain fundraising or spending levels, the well-financed participants who declined public funds, and the number of candidates who faced no opposition or were only opposed in one election and therefore were only eligible for public funding in one election. (See “Statements of Need/Nominal Opposition” and “Not Accepting Public Funds/Returning Public Funds” below.)

In 2003, public funds constituted 44% of the total funds available to participants. Thirty-three sitting officeholders received \$2,484,826 in public funds (50.2% of the total), while 41 challengers received \$2,467,251 (49.8% of the total) in public funds.<sup>33</sup> Although these two amounts are very nearly the same, challengers’ public funds made up 63% of the total funds available to them, whereas public funds accounted for only 34% of the funds available to officeholders. Consequently, for challengers, public funds were almost twice as important as they were for officeholders. This is a significant positive outcome of the Program, which seeks to level the uneven playing field created by incumbency and other factors. Nevertheless, public funds alone were not able to significantly reduce incumbents’ financial advantage in 2003. Holding office enhances a candidate’s ability to tap contributions at both ends of the spectrum: the small donations which generate public matching funds as well as the large donations that are less likely to be available to their challengers. As a result, disparities between incumbents’ and challengers’ war chests

often are only modestly reduced, while at the same time other problems are created. In 2003, half the challengers had total contributions at or below \$18,445, and when augmented by public funds, the median amount of funds available to challengers rose to \$60,439. However, half of the incumbents in 2003 had

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*The large margins of the incumbents' victories do not negate the fact that public funds gave at least some voters a choice of candidates or the fact that public funds allowed challengers to run campaigns with substantive messages that were communicated to potential voters.*

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total contributions at or above \$85,802 to start with, and after augmentation by public funds, their median amount of available funds rose to \$167,250. With an expenditure limit as high as \$150,000, it is easy to see who benefits. Many incumbents who were already well-endowed with large contributions above the \$250 matchable limit effectively doubled their war chests by collecting public funds. The initial disparity between incumbents' and challengers' resources was thus only reduced somewhat with the provision of public matching funds. The public funds achieved a modest reduction in the disparity but were not successful in negating the effects

of high contribution limits most often reached by incumbents. Consequently, public funds cannot guarantee a perfectly level playing field even with respect to monetary equivalencies, but they make it possible for officeholders and challengers who may not have access to large contributions to mount meaningful campaigns.<sup>34</sup>

Public funds also do not make up for other kinds of disparities between officeholders and challengers, as some resources and forms of support cannot be quantified. Running for office as an incumbent is, in general, the best predictor of electoral success. But the large margins of the incumbents' victories do not negate the fact that public funds gave at least some voters a choice of candidates or the fact that public funds allowed challengers to run campaigns with substantive messages that were communicated to potential voters.

In total, challengers had approximately \$3.95 million in combined contributions and public funds available to them, compared to the close to double, or \$7.4 million that seated officeholders had available. This disparity between challengers and officeholders would be even larger but for the facts that all the participants who declined to accept public funds were seated officeholders, as were five of the seven participants whose public funds payments were capped at \$20,625. In addition, a number of incumbents had no opponent in the general election, thereby preventing them from receiving public funds for that election.<sup>35</sup> (See "Statements of Need/Nominal Opposition" below.)

## Statements of Need/Nominal Opposition

One major change in the Act and Rules governing public funds payments prior to the 2003 elections attempted to address the perceived problem of disbursing public funds to candidates who faced limited or nominal opposition. After the 2001 elections, many expressed concern that participants were receiving and spending public funds unnecessarily in their campaigns against candidates who were not competitive.<sup>36</sup> This was of particular concern in times of economic hardship and budget cuts. In addition, it seemed some participants were taking advantage of the funds available to them to increase their name recognition for future aspirations rather than using what was needed to get elected and returning what was not needed. 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.”<sup>37</sup> The Board also stated that it could not apply a subjective standard in disbursing funds and that the Program had historically relied on self-policing by the participants and pressure from the public and the media. Finally, it urged the City Council to consider what levels of opposition might be meaningful, if the Council deemed that legislation was warranted.

The City Council, in response to that invitation, passed an amendment to the Act that attempted to create a standard for who is not a “nominal” opponent. The amendment provided that participants would be limited to 25% of the \$82,500 maximum amount of public funds (or \$20,625) unless one of their opponents raised or spent 20% of the expenditure limit (\$30,000) or was a participant who qualified to receive public funds. The new law also allowed participants to submit “Statements of Need” that would entitle participants to receive additional public funds even if the opponent failed to meet either of those two tests of viability. The Statement of Need would then permit the participant to qualify for up to the full maximum in public funds for the election, or \$82,500. The Statements of Need were required to be signed by the candidates themselves and contained language acknowledging that the submission of the statement would cause the additional disbursement of public funds.

Overall, the participant’s opponent more often than not qualified a candidate to receive public funds above the 25% level. Based on election results in 2003, however, it appears that the low threshold needed to qualify for public funds was not necessarily a reasonable measure of a candidate’s viability to attract many votes. In the end, only seven candidates were actually limited to the 25% cap in 2003. These seven instances generated only limited savings of approximately \$135,000 to the Public Fund.<sup>38</sup> This savings represents less than 3% of the total public funds disbursed for the election.

By contrast, five incumbent Council members who would go on to win their elections with more than 75% of the vote submitted Statements of Need that resulted in the disbursement of more than \$240,000 in additional public funds. This figure represents a little under 5% of the total public funds disbursed for the election. None of their opponents raised sufficient funds to meet the threshold for receiving public funds, and some of these same candidates had in the past expressed concern about the cost of the Program.<sup>39</sup> The Statements of Need in these instances did not serve to even the playing field but still allowed more public funds to go to participants who already held considerable financial advantages over their challengers and funded possibly unnecessary campaign expenditures at a cost to the taxpayers.

Eighteen of the 102 participants who appeared on the ballot submitted Statements of Need (17.6%); 12 of the 18 were incumbents. Of the 18, 11 wrote specifically for the primary election, five for the general election, and two for both elections, for a total of 20 statements received by the Board. Eleven of the 18 statement writers (61%) had opponents who either received public funds prior to the election or were non-participants who raised or spent significant funds. Thus, a majority of the Statements of Need was moot by the date of the relevant election, although some precipitated disbursements of public funds payments earlier that might otherwise have been made later in the campaign season.

All the Statements of Need were published on the Board's website so that the public and the press could review the writer's justification for requesting up to the \$82,500 maximum. The *New York Post* chose to focus on three participants who wrote statements and whose opponents had reported minimal fundraising.<sup>40</sup> A recap of the election in the *Gotham Gazette* focused on the trend of campaign war chests and highlighted some races for which Statements of Need were filed by candidates but the additional taxpayer money was clearly not needed.<sup>41</sup> Based on the lack of meaningful savings to the Public Fund and the continued widespread concern about nominal opponents, the Board will continue to explore other ways of limiting the disbursement of public funds in cases for which they serve no reasonable purpose and to press for changes, including lowering the public funds caps and spending limits for all candidates. (See Chapter 1, "Proposed Remedies" and Chapter 3, "Public Funds and Expenditures.")

### **"Pay Pending"**

A change to the Board's Rules regarding public funds payments after the 2001 elections involved the addition of Rule 5-01(s), which permitted the Board, at its discretion, to approve public funds payments to participants who were otherwise ineligible for payment pending resolution of "limited, isolated, and easily corrected compliance issues."<sup>42</sup> Thus Board staff routinely recommended, and the Board approved, payment to campaigns that, for example, needed only to refund a single prohibited or over-the-limit contribution. Once the violation was corrected, payment was made without further Board action. In certain instances, where very vague complaints had been filed by their opponents against candidates otherwise eligible for payment immediately prior to a payment date, the staff also recommended, and the Board approved, payments to these candidates pending their response to the complaints. These "pay pendings" were announced as part of the regular set of payments at the Board meetings and were posted to the Board's website. The affected campaigns had previously received word of the compliance issues that would otherwise hold up payment during the four-day period following the filing of disclosure statements, during which Board staff reviews the statements before payment. The campaigns were notified of the Board's approval of a "payment pending" and the checks were released to these campaigns after the compliance issues were resolved. (See "Bonus Determinations" below.)

## **Not Accepting Public Funds/Returning Public Funds**

Five participants sent letters to the Board prior to the first payment date on which they would have been eligible for public funds payments stating they were not seeking public funds.<sup>43</sup> All five of these participants were incumbents who had raised well over \$100,000 in contributions. In four of the five instances, the participants would have been eligible to receive only \$20,625, based on the reported financial activity of their opponents, who did not even raise sufficient matchable contributions to meet the required thresholds. Even had they received public funds during the election, it is likely that these candidates would have been required to return them after the election based on the Board's calculation of unspent campaign funds, since they were able to raise so much money and did not need to spend much to be re-elected. Three other candidates returned their public fund checks after they were issued.

## **Bonus Determinations**

The Board made bonus determinations in a number of districts. The number of districts in which bonuses were declared was not unusual, and the Board was faced, as has happened in past elections, with the task of coming to a decision without the benefit of Board of Elections filings. Only in the case of non-participant Madeline Provenzano in district 13 (Bronx — Morris Park, Pelham, Throgs Neck) was Board staff able to review timely Board of Elections disclosure statements to make a recommendation to the Board based upon a factual record that sufficient receipts were reported to trigger the bonus matching rate and spending cap for her two opponents, Ismael Betancourt, Jr. and Egidio Sementilli.

In the other bonus matters before the Board, the Board's decision making was hampered by the absence of disclosure to the Board of Elections that is required by state election law. Non-participant Luis Jimenez, who was running against participant and Council member Hiram Monserrate in district 21 (Queens — Corona, East Elmhurst), had not filed any Board of Elections statements, although he indicated to CFB staff that he intended to do so. The Board thus based its bonus determination in favor of Monserrate on information, documentation, and cost estimates about Jimenez's spending submitted by the Monserrate campaign and on a site visit to the district by a Board staff member who went to observe campaign activity by both candidates.<sup>44</sup>

In the case of non-participant Pedro G. Espada in district 18 (Bronx — Soundview, Parkchester, Castle Hill), an attorney representing his campaign was questioned in detail by Board members at the September 5, 2003 Board meeting, after a representative of participant Annabel Palma described activity of the Espada campaign and brought a poster, campaign literature, and campaign giveaways as evidence that the non-participant's spending justified a Board declaration of a bonus situation, even without Board of Elections disclosure to back it up. The Board drew negative inferences from the Espada campaign's failure to submit statements to the BOE. The Board ruled in favor of the bonus, and the Palma campaign received an additional \$16,250 in public funds and had its expenditure limit lifted.

Similarly, non-participant and sitting Council member James Sanders failed to file disclosure statements with the Board of Elections, forcing participant Everly Brown in district 31 (Queens — Laurelton, Rosedale, Springfield Gardens) to make the case not only that a bonus determination was warranted, as he tried unsuccessfully to do, but also that Sanders should not be considered a nominal opponent. In that case,

the Board decided to issue public funds in the amount of \$20,625, based on Sanders's name recognition and his observed campaign activity and mailings. In an attempt to find out exactly how much Sanders had spent, the Board also asked him to affirm to the level of his campaign activity within a specified time period. Sanders declined to respond to the request by the deadline, so, on October 31, 2003, an additional payment was made to the Brown campaign of \$61,875, bringing him to the \$82,500 maximum for the general election.

In district 4 (Manhattan — Midtown East, Murray Hill, Stuyvesant Town, Upper East Side), participant and incumbent Council member Eva Moskowitz asked the Board to declare a bonus based on the rate at which she projected her opponent, non-participant Michael Cohen, would raise money in the days prior to the general election but after the date of the last Board of Elections filing. The Cohen campaign reported \$69,570 in contributions on its October 24, 2003 Board of Elections disclosure statement. On October 27, the Moskowitz campaign sent a letter to the Board calculating, on the basis of the disclosure statement, that the Cohen campaign would have raised additional contributions that put it over the \$75,000 in contributions required to trigger the bonus if it continued fundraising at the same rate.<sup>45</sup> The Board declined to make a decision based upon a projection of future spending but did ask Cohen to verify how much money he had in fact raised. He declined to respond, and the Board made an additional payment on October 31st to the Moskowitz campaign.

These questions about disclosure, or lack thereof, by candidates running for office outside of the Program underscore the need for legislative changes regarding the disclosure requirements for non-participants and the importance of enforcement of existing disclosure provisions. Legislation under consideration by the City Council would require non-participants to file disclosure statements with the Board, thus addressing one difficulty of assessing "bonus" situations.

## CONCLUSION

By many accounts, 2003 was a "dull" election. All the incumbents won by very large margins. Yet the analyses in this chapter suggest that most challengers had enough money to mount real campaigns and that small individual donors played a major role in their campaigns. Certainly the involvement of individual citizens in the form of contributions advances a Program goal of increasing voter awareness and participation in the political process. Seated officeholders, however, had nearly double the money that challengers had and were much more easily able to spend up to the spending limits. In 2003, not a single participant who challenged an incumbent spent up to the spending limit, in either election. Officeholders had 50% more contributors than challengers and raised three and a third times more contribution dollars than challengers. The 2003 election also saw a spike in giving from political committees and organizational giving overall — and the large majority of those funds went to incumbents. These disparities suggest the Program can be improved to further level the playing field for all participants.

Less money raised usually means smaller matching funds checks and ultimately less money to spend. The law's new provision limiting participants to 25% of the maximum in public funds when facing nominal opposition was easily bypassed by submitting a "Statement of Need." Incumbents spent huge amounts of

public (and private) funds on what amounted to shoo-in victories. It is clear that the issue of sure winners still requires an effective and creative policy solution and/or a greater willingness on the part of candidates to acknowledge that there is not so great a “need” for public funds in many uncompetitive campaigns. Given the disparities in financial resources between officeholders and challengers, it would appear that the contribution and spending limits in effect for the 2003 City Council elections did not provide all of the intended benefits of the Program to New York City voters.

## NOTES

- <sup>1</sup> William Murphy, “Council Race Short On Hopefuls,” *Newsday*, August 18, 2003, A13.
- <sup>2</sup> Id.
- <sup>3</sup> Michael Cooper, “Low Turnout in Primaries Gives Mayor Ammunition,” *New York Times*, September 11, 2003, B1.
- <sup>4</sup> John P. Avlon, “Nonpartisan Post-Mortem,” *New York Sun*, November 6, 2003, 9; Jonathan Hicks and Michael Cooper, “City Votes Down an Effort to End Party Primaries,” *New York Times*, November 5, 2003, A1.
- <sup>5</sup> The Campaign Finance Program matches each dollar an individual New York City resident gives up to \$250 with four dollars in public funds, for a maximum of \$1,000 in public funds per contributor. The total amount each candidate can receive in matching funds for each election is capped at 55% of the spending limit.
- <sup>6</sup> As always in the case of analyzing and comparing the data from different elections, a number of difficulties are posed. Throughout this analysis, comparisons will be drawn between different election cycles, but differences between the election cycles must be understood. The 2001 elections were most unusual in light of the combination first-time imposition of term limits and the first-time implementation of the \$4-to-\$1 matching, yielding a great deal of competition. The 1997 elections, like 2003, were very incumbent-driven and had a comparable number of City Council participants. 1997, however, was a citywide election year, and the matching formula and available public funds were very different from 2003. 1993, like 2003, was an election for a two-year term of office that immediately followed a major change in the City Council. (In 1991, the City Council had been expanded from 35 seats to 51 seats as a result of a major Charter Revision. Similarly, in 2001, term limits unseated a considerable number of long-time office holders.) Like 2003, 1991 was an election for a two-year term following a two-year term and an election in which incumbents participated, but with open questions about the strength of that incumbency. In 1991, the expansion and redistricting of the Council resulted in sitting officeholders seeking seats for offices that were different from those they had previously occupied. In 2003, there were initially questions about whether less than two full years in office after competitive races constituted a true incumbent advantage.
- <sup>7</sup> There were 138 Program participants for the office of City Council in 1997 and 102 in 2003. These figures include only candidates who were on a primary and/or general election ballot.

- <sup>8</sup> There was a total of 90 participating challengers, of whom 57 appeared on the ballot. There was a total of 46 participating incumbents, of whom 45 appeared on the ballot. Data for participants whose campaigns were terminated before the election are not included in any of the analysis. (James Davis' campaign, however, is included. See note 14 below.)
- <sup>9</sup> See *An Election Interrupted...*, 50.
- <sup>10</sup> Id.
- <sup>11</sup> "Organizational giving" includes contributions from political committees, political action committees, partnerships, employee organizations, and other organizations. It does not include corporations, which were banned for Program participants early during the 2001 election cycle.
- <sup>12</sup> Please see Chapter 3 on banning organizational giving.
- <sup>13</sup> Although financial activity for terminated candidates is not included in the election totals, the intermediation activity of James Davis is included here. Prior to his death, Davis had reported active fundraising and spending. Despite his terminated candidacy, his fundraising reveals much about the behavior of incumbents and challengers in the analysis of intermediation. As the tables show, an intermediary who delivered contributions to the Davis campaign was among the largest "bundlers," and the limited Davis campaign was nevertheless one of the top ten recipients of intermediated contributions.
- <sup>14</sup> Candidates who are not participants in the Campaign Finance Program are subject to state campaign finance laws which allow up to \$50,000 from a single contributor.
- <sup>15</sup> Incumbents spent on average \$16 per vote in the primary while challengers spent \$32. See "Expenditures and Votes" in this chapter.
- <sup>16</sup> See Chapter 3 for recommendations minimizing the cost to the public in elections which are essentially noncompetitive.
- <sup>17</sup> This figure includes outstanding liabilities.
- <sup>18</sup> All inflation adjustments are based on calculations using the Consumer Price Index. While the CPI is a standard measure used to calculate inflation, it does not necessarily reflect a sample of goods and services that has any particular bearing on the expenditures typically seen in campaigns.
- <sup>19</sup> The challengers' overall expenditure figure includes a candidate who had significant organizational support and spent more than \$182,000 in the primary election.
- <sup>20</sup> Whether spending is attributable to the primary or general elections is based on the disclosure statements in which campaigns reported expenditures and the election(s) for which the participant appeared on the ballot. For candidates who did not run in primaries, all spending is considered to be for the general election. The breakdown of primary versus general expenditures may not exactly equal the total spending reported, due to the timing of campaigns' reporting.
- <sup>21</sup> A given expenditure may be categorized in multiple ways, but the campaigns must choose one category. Where one campaign might report a mailing in the category of "campaign mailing," another might break the mailing into its component parts and report an expenditure to "consultant" for the design firm that prepared the literature, an expenditure under the code "campaign mailing" for the printing, and an expenditure under the code "postage" for the purchase of stamps.

- <sup>22</sup> Geoffrey Gray, "All in the Family: Bklyn Candidate Paid Kin Kindly," *City Limits*, November 17, 2003. See also Michael Clancy, "Council Candidate Gave \$13K to Family," *AM New York*, November 18, 2003 and David Seifman, "Joke Pol Scores for Kin Using Match Game," *New York Post*, November 23, 2003.
- <sup>23</sup> David Andreatta, "Council Pushing an Anti-Nepotism Bill," *New York Sun*, April 26, 2004, 1.
- <sup>24</sup> The average exempt expenditure claims for all 2001 City Council candidates was just over 3%, or less than half the 6.8% average for those who claimed exempt expenditures.
- <sup>25</sup> CFB Advisory Opinion No. 2003-2 (July 14, 2003). See also letter of Sue Ellen Dodell to Henry T. Berger and Lawrence A. Mandelker, dated July 29, 2003 on file at the Campaign Finance Board.
- <sup>26</sup> In some cases, non-participants may not have filed all Board of Elections disclosure statements. In addition, BOE disclosure is not audited; so that there is no independent verification of the accuracy of the statement.
- <sup>27</sup> Frank Lombardi, "Pol Shortfall, City Savings," *Daily News*, June 20, 2003.
- <sup>28</sup> Restrictions on the amount of public funds a candidate can receive include, for example, whether or not s/he is on the ballot and opposed on the ballot in each election or has met the threshold for receiving public funds, whether s/he has already received the maximum in public funds for each election, the candidate's compliance with the Act and Rules, and the validity of matching funds claims.
- <sup>29</sup> The 42 participants who received public funds for the primary include two, Pasqualino Russo (district 43) and Simcha Felder (district 44), who received primary election public funds payments before their opponents were disqualified from the ballot. Russo received \$20,625, the maximum he could receive based on his opponent's fundraising. Felder received \$100,000, based on the Board's determination that his non-participating opponent, Noach Dear, had triggered the bonus.
- <sup>30</sup> The 2001 figures include post-election payments made through April 30, 2004.
- <sup>31</sup> The public funds cap is equal to 55% of the expenditure limit. In 2001, the expenditure limit per election for a Council race was \$137,000. In 2003, the expenditure limit rose to \$150,000, thereby causing the public funds cap to rise to \$82,500. Prior to 2001, the public funds cap for Council candidates was not tied to the expenditure limit.
- <sup>32</sup> In addition, two candidates who were paid at the bonus matching rate of \$5-to-\$1 for the primary, Hiram Monserrate (district 21) and Annabel Palma (district 18), received more than \$82,500 but less than the \$100,000 maximum permitted for the bonus situation.
- <sup>33</sup> Three incumbents, Gale Brewer, G. Oliver Koppell, and Christine Quinn, returned the public funds checks issued to their campaigns, totaling a combined \$123,750. This amount and these candidates are included in all totals for public funds disbursed for the 2003 elections, but also noted separately as returned funds. Potential payments that might have been due to candidates who advised the Board of their decision not to accept public funds before any checks were issued are not considered in any totals.
- <sup>34</sup> Only a completely publicly-financed campaign system that prohibits any private activity would even come close to a completely level playing field. Even with such a system, however, other advantages such as name recognition and organizational support would continue to play a role.

- <sup>35</sup> Seated officeholders who were not opposed in the general election included John Liu (district 20), Hiram Monserrate (district 21), Helen Sears (district 25), Leroy Comrie (district 27), Allan Jennings (district 28), Melinda Katz (district 29), Dennis Gallagher (district 30), and Simcha Felder (district 44).
- <sup>36</sup> See *An Election Interrupted...*, 104, 159.
- <sup>37</sup> See *An Election Interrupted...*, 159.
- <sup>38</sup> This figure is arrived at using a methodology of calculating valid matching claims for which the participant did not receive public funds in either election, multiplying those unpaid claims by the matching factor, and comparing that amount to the caps that applied in each election.
- <sup>39</sup> Mark Berkey-Gerard, "Campaign War Chests," *Gotham Gazette*, November 11, 2003.
- <sup>40</sup> Stefan C. Friedman, "Pols Greedy For A Win," *New York Post*, August 25, 2003, 2.
- <sup>41</sup> Mark Berkey-Gerard, "Campaign War Chests," *Gotham Gazette*, November 11, 2003.
- <sup>42</sup> See Campaign Finance Board Rule 5-01(s).
- <sup>43</sup> The five participants who sent these letters were: Bill deBlasio (district 39), Eric Gioia (district 26), Peter Vallone, Jr. (district 22), David Weprin (district 23), and David Yassky (district 33).
- <sup>44</sup> The Campaign Finance Board made the unprecedented decision of retracting from the web Voter Guide the portion of Luis Jimenez's statement in which he claimed to have been endorsed by many leading political figures. The Monserrate campaign provided the Board with copies of letters from numerous elected officials confirming that they had not made an endorsement, or had endorsed Monserrate. Jimenez admitted that he had not received these endorsements. See letters of Patti Solis Doyle, Executive Director of HILLPAC (Hillary Rodham Clinton's political action committee), Alan Hevesi, Miguel Martinez, Adriano Espaillat, and Jose Peralta, on file at the Campaign Finance Board. The Board was also concerned about evidence that Jimenez had falsely claimed endorsements in the Board-published Voter Guide that was sent to every household with a registered voter in the district.
- <sup>45</sup> See letter of Eric Grannis to Melanie Whatley, dated October 27, 2003, on file at the Campaign Finance Board.

## Chapter 3

# A Little Rebellion

## Campaign Finance Board Recommendations

*“I like a little rebellion now and then. It is like a storm in the atmosphere.”*

— Thomas Jefferson<sup>1</sup>

The 2003 elections were a disappointment from the point of view of many of the goals of the Campaign Finance Program. After the promise and competition of the historic 2001 elections, competition in 2003 was scarce, and yet almost \$5 million in taxpayer funds were paid out. Newspaper articles and editorials suggested that the Program was becoming another incumbent advantage.<sup>2</sup> Newspapers also pointed directly to problems that had been relatively minor in prior elections (significant public funds payments to candidates who won or lost by wide margins, candidates making payments to family members), but appeared to be growing into larger problems.

But the issues raised in the 2003 City Council elections were not entirely new. Apart from the 2001 elections, the Campaign Finance Program has not been as successful at the Council level as it has been at the other levels of office. At the higher levels of office, the Program’s goals of promoting competition while leveling the playing field among candidates of different means and creating access to financing has been realized for many candidates. In contrast, although the \$4-to-\$1 match has had a positive impact on Council candidates by engaging contributors and encouraging competition, the large amount of public funds available combined with high spending limits have created an uneven playing field in many cases.

It may be that both the 2001 and 2003 elections are anomalies in certain respects. In 2001, the first application of the \$4-to-\$1 matching rate and of New York City’s new term limits law led to extraordinary competition at all levels of office, including unprecedented and meaningful participation in the Program by City Council candidates. The 2003 elections, by contrast, saw few open seats and yielded virtually no significant competitive races, notwithstanding the availability of large sums in public matching funds for small campaigns. This is entirely consistent with the data from past City Council elections, which have seen little meaningful competition except for “open” seats. Over the years, of course, the effects of term limits will be felt more evenly over election cycles, so that by virtue of the number of open seats in any one election, competition can be expected to occur in approximately half the Council districts at any given regularly scheduled election.

But 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.

The Board is mandated to review and propose changes after each election cycle. This mandate is particularly challenging in a two-year election cycle, but is even more difficult when the elections, like the 2001 and 2003 elections, are extreme examples of opposite sides of the competition spectrum. The Board remains concerned that the availability of substantial public funds through the Program itself is driving up the cost of campaigns to a level that is not necessary in order to fulfill the Program's goals. In some cases, it may even be antithetical to those goals by favoring officeholders who can more easily amass private and public funds, allowing them to spend up to the new high spending limits, to the detriment of newcomers to the political scene. Incumbents and experienced candidates are well equipped to take advantage of the Program's generous matching funds, and to spend the maximum, even if the candidate they face is not a serious threat. With much more in public funds available, even less experienced campaigns have learned to employ "consultants" for all manner of purported expertise ranging from transportation to housing. In some cases the consultants are friends and associates of the candidates having no special expertise in political campaigns.<sup>3</sup> When those individuals are paid with taxpayer money, it becomes urgent to question whether cronyism and purchasing of services for select preferred vendors is overtaking the Program's purpose of improving the electoral landscape.

There is also a concern that campaigns for City Council are springing up just to be in the business of collecting matching funds. Board staff conducts site visits to every campaign to determine their legitimacy, but the larger the available pot of public money, the greater the incentive to try to justify high spending and even to engage in fraud. With large amounts of public funds, increased compliance responsibilities also come into play. The more contributions candidates collect, the more public funds they are potentially eligible to receive, leading to more expenses that must be satisfactorily documented to "qualify" for payment with public funds. Documenting expenditures is a critical compliance responsibility that many candidates have not successfully completed, especially when there are large amounts of public funds to account for.

After the 2001 elections, the Board made recommendations based on these trends. Some of these recommendations were adopted into law.<sup>4</sup> Board recommendations remain pending before the City Council at press time.<sup>5</sup> Yet additional Board recommendations are not apparently under consideration by the Council at this time. While the Council has previous Board recommendations under consideration, it is not now making any additional legislative recommendations for the 2005 elections. Instead, the Board will wait until after the 2005 elections to determine whether the trends described above continue or whether incremental changes already passed or passed in time for implementation in 2005 are effective in fostering competition in City Council races, leveling the playing field, limiting wasteful spending of public funds, and creating a simpler Program. If the trends continue after the 2005 elections, the Board now wants to begin discussions of a package of significant reforms for an improved City Council program rather than recommending additional incremental changes to the Program for those campaigns. The Board is publishing these possibly radical changes now to alert the public to an approach for significant change and a framework for analyzing the 2005 elections, allowing significant time for interested groups to consider these potential proposals.

## A POSSIBLE NEW CITY COUNCIL PROGRAM

A new City Council program would be marked by substantially reduced contribution and expenditure limits, a ban on organizational contributions, and a reduced public funds maximum commensurate with the reduction in the spending limit. The changes to be considered should inherently simplify the Program, make it easier to navigate, and force a return to more grassroots campaigning on the City Council level. In addition, further simplifying reporting requirements and refining Program requirements would establish a finite list of items on which candidates can spend public funds and provide unalterable templates for documentation of these expenditures. The following section sets out the framework for considering a new significantly circumscribed program.<sup>6</sup>

After the 2005 elections, the Board will revisit these possible proposed limits and examine whether they are appropriate in light of new data. Some of the possible proposals below are reiterations or refinements of existing Board positions that do not appear to be under consideration at this time for legislation to take effect in 2005.

**Table 9: A New City Council Program**

|                                          | Current                                                                                                                   | Proposed                                 |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| <b>Contribution Limit</b>                | \$2,750                                                                                                                   | \$250                                    |
| <b>Organizational Contributions</b>      | Ban corporate, may only accept contributions from registered political committee                                          | Ban all organizational contributions     |
| <b>Spending Limit</b>                    | 2 years prior to election: \$24,000*<br>Year prior to election: \$40,000*<br><br>Primary: \$150,000<br>General: \$150,000 | Primary: \$100,000<br>General: \$100,000 |
| <b>Maximum Public Funds per Election</b> | \$82,500                                                                                                                  | \$55,000                                 |

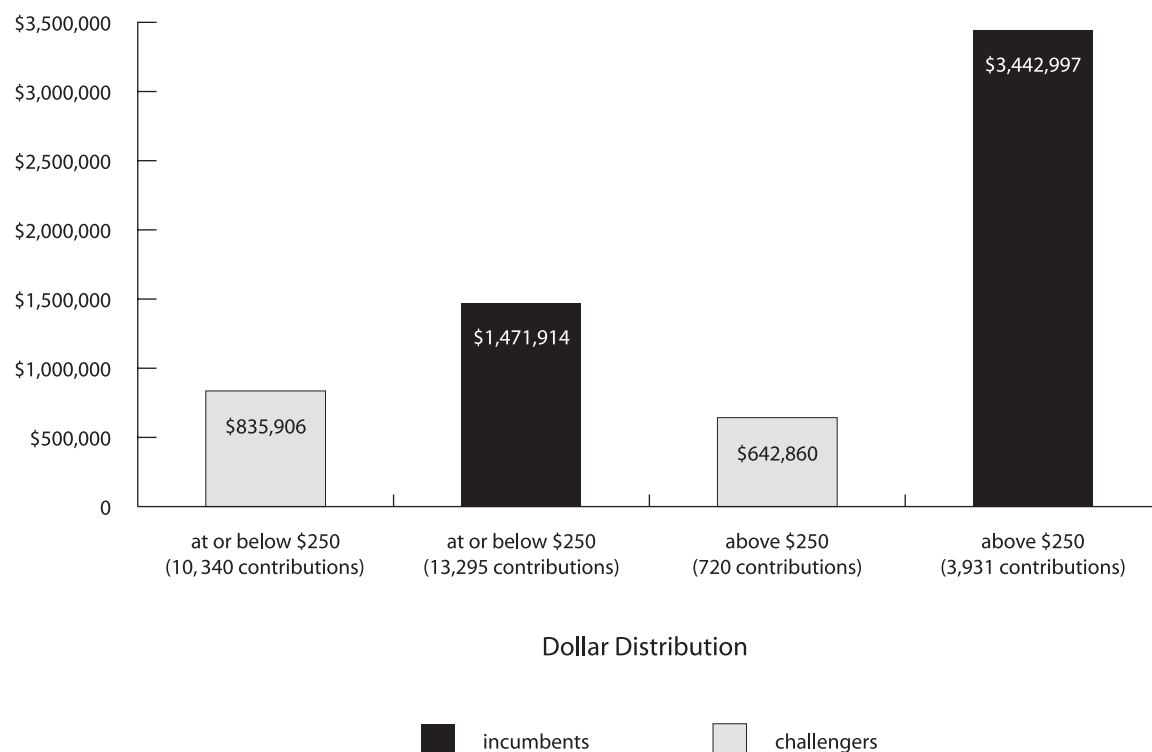
\* Intr. No. 124 of 2004 proposes consolidating these two limits into a single \$24,000 limit.

## Contributions

### *Lower Contribution Limit*

The contribution limit for City Council should be lowered from the current limit of \$2,750. As part of a package of reforms, a contribution limit of \$250 would be a way to lessen the fundraising advantage of incumbents and well-connected candidates. Because the \$4-to-\$1 matching formula only matches contributions of up to \$250, it is already the most frequent contribution level. In fact, 84% of contributions in 2003 and 89% of contributions in 2001 were made at or below \$250. Further, nearly 37% of all contribution dollars were in the \$1 to \$250 range. Of the contribution dollars over \$250 in 2003, 25% were from organizations whose contributions the Board had previously recommended be banned. Lowering the contribution limit to this level would reinforce one of the most positive trends at the City Council level, the increased participation of New York City residents in the contribution process, and would eliminate the disparate impact of large contributions. The \$4-to-\$1 match has made smaller contributions more valuable and therefore has empowered both contributors and candidates of lesser means. This is a trend that would be encouraged when the largest possible contribution is within the reach of many more contributors.

**Figure 10: Dollar Distribution of Contributions — Incumbents vs. Challengers**



### *Ban on Organizational Contributions*

A further way to encourage grassroots contributor involvement is to allow only individuals to give contributions, a long-standing recommendation of the Board for all offices covered by the Program.<sup>7</sup> In 1998, the New York City electorate approved an amendment to the New York City Charter prohibiting Program participants from accepting corporate contributions. The ban on organizational contributions would further include unions, partnerships, limited liability companies, and all political committees.<sup>8</sup>

In proposing the statutory ban on corporate contributions now in effect, the New York City Charter Revision Commission noted in 1998 the dangers of corruption, erosion of confidence in the democratic process, and unfair advantage in the political marketplace created by corporate contributions, and the need to ban corporate contributions to enhance individual citizen participation and equality in city elections. The same rationale applies to other organizational contributions, and the proposed amendment would seek to treat them all in the same manner. Further, unlike limiting contributions from individuals, limiting contributions from organizations does not raise First Amendment concerns. In fact, there is a concern that when an organization gives a contribution, the individual whose money is given (whether it is a stockholder in a corporation or a member of an employee organization) does not have the same control over the contribution and could even be giving contributions against the individual's desire.

The growth of organizational contributions in 2003 emphasizes the need for an overall ban. Organizational giving increased substantially, from 16% at the City Council level in 2001 to 25% in 2003. Not only is this a significant increase at the City Council level, but 25% organizational giving would have been the highest percent for any office in 2001.<sup>9</sup> This represents a significant shift from individuals to organizational sources of contributions. It is a shift that also reflects the fundraising dominance of incumbents in 2003 over challengers. But it is a disappointing shift in that organizational sources almost by definition represent the very "special interests" whose influence the Program is intended to reduce. Some of the growth in the organizational sources derives from the proportion of contributions from unions and employee organizations. These represented 4% of contributions in 2003, up from 2% in 2001 and similar to 4% in 1997. The most glaring increase proportionately, however, was from political committees, which were responsible for nearly 15% of contributions to Council candidates in 2003, but only 8% in 2001 (after the corporate ban first went into effect).

Further, the combination of the lower contribution limit and the ban on organizational contributions would be a major simplification for City Council candidates. There would no longer be any need to ensure that political committees are registered with the Campaign Finance Board, or to attribute partnership or LLC contributions, or to worry about whether a business is a corporation. It would also make monitoring of contributions easier. When a committee received a check that did not have an individual's name on it, the check would simply have to be returned.

## **Public Funds**

### *Timing of Receipt of Matchable Contributions*

One way to limit the fundraising advantage of experienced and well-connected candidates would be to match only those contributions that were raised in the year of the election. In election years before 2003, most City Council candidates generally began their campaigns only in the year of the election. With the increased trend toward professionalized City Council races, campaigns are starting earlier and earlier. Permitting candidates to raise matchable contributions only in the year of the election could stem that trend, allowing Council members to focus on their jobs rather than being prematurely concerned with fundraising, and leveling the playing field for candidates of all experience levels.<sup>10</sup>

### *Public Funds Maximum*

Currently, City Council candidates can receive a maximum in public funds of \$82,500 (55% of the \$150,000 spending limit) per election. This is an extraordinarily large amount of money to reach approximately 71,000 voters per Council district,<sup>11</sup> particularly because the purchase of television time on networks is not a factor as it is for mayoral campaigns. With the \$4-to-\$1 match, City Council candidates are reaching this maximum at a much higher frequency than when the match was \$1-to-\$1, even though the public funds maximum when the \$1-to-\$1 match was in effect was only \$40,000. In 2001, 80 City Council candidates (54% of the candidates who received any public funds) received the maximum in public funds for the primary, and 25 (or 28%) received the maximum for the general election. Thirteen candidates received the maximum in both elections.<sup>12</sup> In 1997, only six candidates (11% of the candidates who received any public funds) received the maximum of \$40,000 for the primary and only four (or 9%) for the general election.

In 2003, 14 candidates received the maximum in public funds for the primary, and 15 received the maximum in public funds for the general election.<sup>13</sup> There were no candidates who received the maximum in both, which is not surprising given the lack of competitive elections and the relatively few candidates who received any public funds at all for both elections. The decline in participants receiving the maximum in 2003 can be explained by a variety of factors, including the well-financed participants who declined public funds, and the number of candidates who faced no opposition or were only opposed in one election and therefore were only eligible for public funding in one election, and (to a small extent) the changes in the Act that limit the public funds a participant can receive unless s/he is opposed by an opponent who receives public funds or meets certain fundraising or spending levels. (See Chapter 2, “Statements of Need/Nominal Opposition” and “Not Accepting Public Funds/Returning Public Funds.”)

In 2002, the City Council passed legislation that limited the amount of public funds a candidate could receive to 25% of the maximum unless certain criteria were met. This limit was an attempt to stem the large amount of public funds being paid to candidates with only minimal opposition. Although there were problems with the new law in practice, in theory, it strove to address a systemic problem. The problem of large amounts of public funds being given to candidates who have only minimal opposition may be more simply and effectively addressed by an overall reduction in the maximum amount of public funds available to all candidates, as long as sufficient funds are still available for candidates to run meaningful campaigns.

While one of the primary purposes of any public matching funds program is to limit the influence of any one contributor by providing “clean” public money, the taxpayers must also be protected from waste of public dollars. The public funds maximum, therefore, would remain at 55% of the spending limit, but there would be a significant reduction in the spending limit, from \$150,000 per election to \$100,000 per election, resulting in a reduction in the maximum allowable public funds from the current \$82,500 to \$55,000.

## **Expenditures**

### ***Reduced Spending Limit***

The high spending limit coupled with the generous amount of public funds available has driven up the cost of City Council campaigns. Functions that previously might have been handled by volunteers are now being performed by paid employees (sometimes, it seems, the same person who would otherwise have been a volunteer). Further, the large amount of public funds available and high spending generally could be reasons why the issue of the payment of family members by candidates has been highlighted by the press. (See “Family Members” below.) The average cost for a City Council primary campaign, as adjusted for inflation, has more than doubled from 1991 to 2003.<sup>14</sup> While the Program helped to increase competition in 2001, this trend is disturbing to the extent that it is the availability of public funds rather than increased costs or modern campaign strategies that may be artificially driving up campaign spending. Lowering the spending limit from \$150,000 to \$100,000 per election would effectively address this concern. This would include an elimination of the pre-election year spending limits. Therefore, all spending prior to the election year would be considered to be for the candidate’s next election, whether a primary or general election.

### ***Elimination of Exempt Expenditures***

To drastically simplify compliance for candidates, expenditures exempted from the spending limit would be entirely eliminated. Exempt expenditures require careful contemporaneous documentation and cause serious problems when a candidate exceeds the spending limit. In 2002, the City Council passed legislation that simplified the exempt expenditure requirements by providing a “safe harbor” for candidates who claimed equal to or less than 7.5% of the spending limit as exempt. Many candidates took advantage of this, although many of those who claimed the safe harbor would not have exceeded the spending limit in any event. Eliminating exempt expenditures would also eliminate an advantage of candidates who have access to wealth. Allowing candidates to shift expenditures to exempt purposes gives an incentive and an advantage to those with additional funds. Further, certain types of exempt expenditures, such as petitioning, may appear to be for “compliance” with the law, can double as an electioneering message, and may even have electioneering as a primary purpose. An exception would be reserved for ballot litigation, which can be a large and unpredictable expense. Although some have argued that candidates will skimp on compliance costs if compliance is no longer an exempt category, continued vigorous enforcement of the Campaign Finance Act should discourage this. As with some other items, this remains a Board recommendation not only for the City Council but for other offices as well.

### ***Spending Public Money***

Currently, the Campaign Finance Act provides that public funds may be “used only for expenditures...to further the participating candidate’s nomination for election or election...”<sup>15</sup> 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 their public funds have been spent appropriately. In 2001, the Board noted during the audit process that candidates had a difficult time documenting sufficient qualified expenditures to justify the expenditure of all the public funds they had received. Consequently, the Act would provide City Council candidates with a finite list of the expenditures that can be made with public funds. Of course, candidates would still be required to document these expenditures, but the limited purposes of the permitted qualified spending would allow the Board to provide strict, circumscribed guidelines for documenting the expenditures, thereby greatly simplifying a process that has been demanding for Council candidates. To protect the taxpayers, certain types of expenditures would be flatly prohibited. These would continue to include, *e.g.*, 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 include: media advertisements; mailing costs; and rent. Because a certain level of personal involvement is necessary to produce literature or advertisements, candidates would be allowed to spend 10% of their public funds on personnel and consulting costs.<sup>16</sup>

### **Other Program Simplifications**

#### ***Reporting Simplifications***

A new City Council program would eliminate certain reporting requirements that provide vital public information for higher offices but that are not widely used by the press or public at the City Council level. The daily contemporaneous disclosure requirement for City Council candidates in the two weeks preceding the election for certain large receipts and expenditures would be eliminated. The change downward in the contribution limit would make these daily statements obsolete for contributions. Also, the reduction in the expenditure limit would make it unlikely that any candidate would be making a single expenditure greater than \$20,000 in the two weeks before the election, which triggers the requirement for filing a contemporaneous pre-election disclosure statement. In 2001, fewer than half of all contemporaneous pre-election disclosure statements filed were filed by City Council candidates and only seventeen such statements were filed in each of the 2003 primary and general elections.<sup>17</sup>

Further, the rule that requires candidates to disclose when a vendor has paid a subcontractor more than \$5,000 would be eliminated, ending a complicated disclosure rule that is often not properly observed. For example, in 2001, of the 263 City Council candidates on the ballot, only 32 reported subcontractors. In 2003, 12 candidates reported subcontractors, and most of those candidates used the same three consultants who reported the subcontractors.

## **NEW ISSUES FOR ALL OFFICES**

### **Family Members**

One issue that received considerable attention during and immediately after the election was payments made to family members of participants.<sup>18</sup> While under no circumstances could these expenditures to family members be made with public funds, media coverage of these expenditures implied that certain candidates were exploiting the Program by using public funds to subsidize payments to their family members. Although there are instances in which family members can be appropriately paid, the Board realizes the need to address the appearance that public funds are subsidizing both appropriate and possibly inappropriate payments to family members.

It is not clear how widespread a “problem” the payment of family members is. The few candidates who have been mentioned in newspaper accounts represent a small fraction of the participants in the Program. Generally, it can be difficult to identify family members of participants. In many instances, family members have different surnames and/or addresses from the participant, and therefore familial relationships are not immediately obvious. Based on what is admittedly incomplete analysis, it appears that payments to family members, except for minimal amounts, are made by only a few candidates.<sup>19</sup> The Board has taken steps to improve disclosure of payments to family members for the future.

The Board believes that because some payments to family members are legitimate, it would be wrong to disqualify candidates who pay family members from receiving all public funds. Therefore, the Board would instead consider recommending that the payment of family members should, like certain other expenditures, result in a deduction from public funds payments.<sup>20</sup> The Board will consider whether this should be done in anticipation of the 2005 elections and, if so, may do so by rulemaking.

### **Doing Business With the City**

In 1998, the voters amended the City Charter to add a provision requiring the Board to promulgate rules for participants to disclose “the acceptance of campaign contributions from individuals and entities doing business with the city.”<sup>21</sup> Acting on that mandate, the Board conducted research into possible ways to define the issue and to achieve this disclosure. In 1999, the Board published three sets of rules for public comment which attempted to define “doing business with the city” and presented several methods for participants to make this disclosure. After significant analysis and consideration, these rules were not adopted.<sup>22</sup> However, the Board, with the assistance of the Office of the Corporation Counsel, continued to investigate the best way to provide disclosure of these contributions without overly burdening participants.<sup>23</sup>

In July 2004, the Administration sent to the Board some recommendations on “doing business” considerations. At press time, the Board was evaluating these proposals and was in discussions with the Corporation Counsel’s Office. The Board is eager to see the problem solved in a meaningful way that ultimately would realistically inhibit or eliminate any overlap between campaign contributors and those doing business with the City and that would standardize the ability to track who does business with the City in a way that would permit comparison with the Board’s searchable database of contributors.

## Durable Goods

In 2002, a bill was introduced into the City Council that would have required that all participants in the Program return to the Board any durable goods, such as computer equipment, purchased by the campaign with public funds. The Department of Citywide Administrative Services was to warehouse those goods and redistribute or sell them.<sup>24</sup> While the policy 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 believes that this issue warrants further study and review.

## CONTINUING RECOMMENDATIONS OF THE BOARD

The Board made extensive recommendations in its 2001 post-election report. The City Council adopted legislation in 2003 that contained some of the Board's 2001 recommendations. Additional legislation containing new matter and some but not all of the Board's past recommendations was introduced in the City Council in December 2003 and at press time had not been acted upon. (See Chapter 1.) The following is a summary of the Board's continuing recommendations that are not reflected in any legislation currently pending before the City Council or the State Legislature.<sup>25</sup>

- **Ban on Organizational Contributions**<sup>26</sup>
- **Lowering Contribution Limits**  
In addition to the reduction in the contribution limit for City Council discussed above, the Board recommends lowering the contribution limit for citywide candidates from \$4,950 to \$4,000 and the borough-president limit from \$3,850 to \$3,000.<sup>27</sup>
- **Elimination of Most Exempt Expenditures**<sup>28</sup>
- **Spending Limits**  
In addition to lowering the spending limit for City Council candidates described above, in 2001 the Board recommended adjustments in the spending limits for the other covered offices which reflect a net increase when combined with the consolidation of the expenditure limits and the elimination of exempt expenditures.<sup>29</sup>
- **Disclosing Intermediaries**  
Participants are currently required to report intermediaries and the contributions that the intermediaries deliver to a candidate. The Board recommends expanding the current definition of "intermediary" to include not only individuals or entities who deliver contributions to a candidate, but also those known to the campaign to have successfully solicited contributions for the candidate, excluding professional fund-raisers and campaign staff workers.<sup>30</sup>
- **Changes to New York State Law**  
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. The Board also recommends shifting the primary date from September to June, which would allow candidates to receive public funds earlier in the year, and increasing the penalties for violating Section 14-120 of New York State Election Law, which prohibits candidates from accepting contributions made in the name of another, or so-called “nominee” contributions.<sup>31</sup>

## NOTES

- <sup>1</sup> Thomas Jefferson (1787), Letter to Abigail Adams. Library of Congress, Manuscript Division.
- <sup>2</sup> See “Subsidizing Sure Winners” in Chapter 1, and Notes 2 and 4 thereto.
- <sup>3</sup> For example, one 2003 candidate spent 85% of his total spending on consultants. No other Program participant has ever reported paying any of the eleven individuals thus identified.
- <sup>4</sup> See Local Law No. 12 of 2003 (adding, for example, a public funds cap for small primaries).
- <sup>5</sup> See Intro. No. 124 of 2004 (see also Chapter 1 p. 2 regarding, for example, eliminating the Statement of Need letter).
- <sup>6</sup> These recommendations are made as a package. It must not be assumed, except where noted, that the Board would recommend any individual recommendation on its own.
- <sup>7</sup> See *An Election Interrupted...*, Chapter 10. A ban on organizational giving that affected only the City Council candidates would obviously be less desirable than a ban affecting all levels of office. This discussion focuses on City Council campaigns because the subject of this report as a whole is City Council campaigns, but if a more limited organizational ban were passed as part of a package of City Council-level reforms, the Board would still consider this a step forward.
- <sup>8</sup> The Board has long made this recommendation and continues to recommend that this ban apply to all offices. See *An Election Interrupted...*, 144.
- <sup>9</sup> By comparison, comptroller candidates in 2001 received 20% of their contributions from organizations.
- <sup>10</sup> In the past, this change could have exposed candidates to greater risk of having unresolved compliance problems at payment time because they reported most of their matching claims in a single disclosure statement filed on July 15 of the election year. This gave less time for the Board staff to review these contributions and less time for the candidates to correct any problems. The Board, however, has added two disclosure statements in the year of the election — March 15 and May 15. These additional disclosure statements should give the Board and the candidates enough opportunity to identify and correct any problems in advance of the June 1 deadline to join the Program.
- <sup>11</sup> March 1, 2004 figures from the New York City Board of Elections. The number of voters varies somewhat from district to district and from the primary to the general election within a district. For example, the average number of voters enrolled in the Democratic Party per Council district is 49,000, and the average number of enrolled Republicans is 8,700. Additionally, Council candidates often focus their campaign efforts on target audiences rather than on all the voters in a district.

- <sup>12</sup> Candidates who came within 2% 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 and penalties. One candidate, Egidio Semintilli, who received \$83,805 in the 2001 primary, is not included in this figure because without the bonus match, he would not have been eligible to receive this level of funding.
- <sup>13</sup> In addition, two candidates who were paid at the bonus matching rate of \$5-to-\$1 for the primary, Hiram Monserrate (district 21) and Annabel Palma (district 18), received more than \$82,500 but less than the \$100,000 maximum permitted for the bonus situation.
- <sup>14</sup> Average inflation-adjusted spending for the primary in 1991 was \$48,000 in 2003 dollars, and median spending was \$40,000 in 2003 dollars. In 2003, these figures rose to \$97,000 and \$107,000.
- <sup>15</sup> See Administrative Code §3-704(1).
- <sup>16</sup> Consulting costs are not intended here to include “hard” costs that are passed through a consultant, so that clear accounting would still enable consultants to operate on a “turnkey” basis.
- <sup>17</sup> Only 15% of all daily disclosure reports filed by City Council candidates in 2001 and 2003 reported expenditures.
- <sup>18</sup> Geoffrey Gray, “All in the Family: Bklyn Candidate Paid Kin Kindly,” *City Limits*, November 17, 2003. See also Michael Clancy, “Council Candidate Gave \$13K to Family,” *AM New York*, November 18, 2003, and David Seifman, “Joke Pol Scores for Kin Using Match Game,” *New York Post*, November 23, 2003.
- <sup>19</sup> This analysis excluded the repayment of advances to the candidate and his or her family members, which is a common occurrence.
- <sup>20</sup> See Campaign Finance Board Rule 5-01(n).
- <sup>21</sup> NYC Charter §1052(a)(11).
- <sup>22</sup> See *An Election Interrupted...*, 160.
- <sup>23</sup> In the 2001 post-election report, the Board recommended that a better approach to this issue would be to regulate the contributors, following the model of the Securities and Exchange Commission. See *An Election Interrupted...*, 160.
- <sup>24</sup> Intr. No. 125 of 2002.
- <sup>25</sup> Intr. No. 124 of 2004.
- <sup>26</sup> See *An Election Interrupted...*, 144.
- <sup>27</sup> *An Election Interrupted...*, 144-145. Intr. No. 124 would allow the Board discretion in applying an inflation adjustment as a way to keep the contribution limit from getting higher automatically. Currently, the law provides that both the contribution and expenditure limits are adjusted for inflation every four years.
- <sup>28</sup> See *An Election Interrupted...*, 150-151.

<sup>29</sup> An *Election Interrupted...*, 151-153. Intr. No. 124 would allow the Board discretion in applying an inflation adjustment as a way to keep the expenditure limit from getting higher automatically. Currently, the law provides that both the contribution and expenditure limits are adjusted for inflation every four years.

<sup>30</sup> Id., 152.

<sup>31</sup> Id., 158.