



# a statute of liberty

How New York City's Campaign Finance Law  
is Changing the Face of Local Elections



Written by Paul Ryan for the CGS Series:  
**Public Financing in American Elections**

# **A STATUTE OF LIBERTY**

**HOW NEW YORK CITY'S CAMPAIGN FINANCE LAW  
IS CHANGING THE FACE OF LOCAL ELECTIONS**

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## Foreword

The Center for Governmental Studies (CGS) has spent more than a year studying the strengths and weaknesses of campaign finance laws and practices in New York City. The ensuing report draws on a detailed textual analysis of New York City law; New York State law; interviews with candidates, government administrators and political experts; relevant literature; experience from other jurisdictions; and court decisions.

This New York City report is the fourth in the series of CGS reports examining local government public financing programs. Earlier reports focused on public financing programs in Los Angeles, San Francisco and Suffolk County (NY). Forthcoming reports in the series will examine public financing programs in local government jurisdictions such as Tucson (AZ), Long Beach (CA), Oakland (CA) and Boulder (CO), as well as public financing programs in the states of Maine, Massachusetts, Vermont, Arizona, Hawaii, Minnesota, Wisconsin and others.

CGS research on state and local campaign financing issues dates to 1983. Its first report, *The New Gold Rush: Financing California's Legislative Campaigns* (1985), examined campaign financing problems in the California State Legislature and offered two model laws to remedy them. The 353-page report served as the model for California's statewide Proposition 68 in the June 1988 election and New York City's 1988 campaign finance law. CGS published an *Update to the New Gold Rush* in 1987. The third CGS report, *Money and Politics in the Golden State: Financing California's Local Elections* (1989), focused on campaign financing in seventeen California cities and counties.

These reports provided the foundation for the 1990 Los Angeles City campaign finance ordinance, analyzed more than a decade later in the 2001 CGS report, *Eleven Years of Reform: Many Successes—More to be Done, Campaign Financing in the City of Los Angeles*. The CGS March 2002 report, *On the Brink of Clean: Launching San Francisco's New Campaign Finance Reforms*, and its most recent report, *Dead on Arrival? Breathing Life Into Suffolk County's New Campaign Finance Reforms*, have stimulated reform debates in both jurisdictions. Local campaign finance laws throughout the nation have been based on CGS work, including the laws of Los Angeles County, Long Beach, Oakland, San Francisco and Miami-Dade County, Florida.

CGS wishes to thank its Project Director, Paul Ryan, who prepared this report, and its entire staff. CGS Chief Executive Officer Tracy Westen and President Bob Stern supervised the study and provided valuable editing suggestions. Consultant Carmen Williams assisted in legal research. The New York City Campaign Finance Board and its staff provided valuable information for the preparation of this report. Richard Briffault, Vice-Dean of Columbia Law School, provided insightful comments on early drafts of the report. CGS especially thanks Carnegie Corporation of New York for funding this study. The views in the study do not necessarily reflect the opinions of Carnegie Corporation, and it takes no responsibility for any of the statements or views in the report.

## Executive Summary

New York City's public campaign financing law, enacted in 1988 by a combined city council-approved local law and a voter-approved charter amendment, serves as a model for the United States. By contrast, New York State's election and campaign finance law ranks among the nation's worst. Unfortunately, New York City's campaign finance laws only apply to candidates who voluntarily agree to comply with them; those who do not are governed by New York State's law.

New York City provides candidates who voluntarily comply with a detailed regime of campaign fundraising and spending restrictions with \$4 in public funds for every \$1 in private contributions of \$250 or less made by New York City residents. This \$4-to-\$1 match has enabled candidates lacking access to wealthy campaign contributors to wage competitive campaigns, increased the importance of small campaign contributions from city residents, encouraged nearly all of the city's serious candidates to agree to limits on fundraising and spending and dramatically improved campaign finance disclosure.

New York City's campaign finance program, combined with the city's term limits law, encouraged a record number of candidates to run for office in 2001, noticeably increasing the racial and gender diversity of New York City's elected leaders. New York City's nationally recognized public financing program has cost city residents only \$0.57 per year over the program's 14 year history.

New York City candidates who do not voluntarily abide by New York City's laws, however, are subject only to the much weaker New York State law. They may accept contributions up to \$200,000 in a citywide office race, compared to the city's \$4,500 limit. New York state law also allows large independent expenditures to go unreported. New York state ballot access laws force the late distribution of public funds to city candidates. Ambiguous state "home rule" laws discourage New York City from applying its campaign finance laws to all candidates.

Based on legal analyses and interviews with candidates, government administrators and political experts, CGS proposes a series of reforms to city and state law to make New York City's public financing program operate more effectively. The core CGS recommendation is to urge New York City to extend its contribution limits and disclosure laws to all candidates, regardless of a candidate's willingness to participate in the public financing program. CGS also recommends that both the city and state of New York adopt strong independent expenditure disclosure laws. Only if independent expenditures are disclosed can New York City provide assistance to candidates opposed by large independent expenditures. CGS recommends that New York City lift its spending limits for candidates facing large independent expenditures and provide them with additional public financing as well.

Other recommendations include increasing the additional public funds received by candidates facing high-spending opponents; imposing time limits on when candidates may fundraise; distributing public funds to candidates earlier; simplifying and adjusting spending limits; and reducing the city's contribution limits.



# I. Introduction

New York City's public campaign financing program, enacted in 1988, provides candidates, who voluntarily agree to contribution and spending limits and meet other requirements, with public dollars to match private contributions raised by candidates. The number of candidates participating in the city's program and the amounts of public funds distributed to them have grown throughout the last fourteen years.

New York City's 2001 election provided the most significant administrative challenges ever to the city's Campaign Finance Board. In 1998, the city council quadrupled the matching funds rate to \$4 in public funds for every \$1 in private funds raised, up to specified limits. This public matching funds increase coincided with the city's term limits law, inspiring the largest number of candidates to run for public office in the public financing program's history. In 2001, 355 candidates appeared on the city ballot, up from a former high of 239 candidates in 1991.

Compounding the administrative difficulties created by the sheer number of candidates were the tragic events of September 11, coincidentally the scheduled date of New York City's primary election. The election was abruptly halted by the terrorist attacks on the World Trade Center. The Campaign Finance Board's office is located just three blocks away from the World Trade Center. The events of September 11 forced both the rescheduling of the primary election and the temporary relocation of the Campaign Finance Board's office.

The New York City Campaign Finance Board and staff responded to the crisis in exceptional fashion. Despite losing access to office space, equipment and on-site records, the Campaign Finance Board effectively administered the public financing program for the rescheduled primary election on September 25, the October 11 runoff primary election and the November 6 general election. The Campaign Finance Board received the international Council on Governmental Ethics Laws' (COGEL) Special Recognition Award for "extraordinary service rendered by the board and staff . . . during the tragic events surrounding the 2001 primary election."<sup>1</sup>

Notwithstanding the events of September 11, New York City's public financing program combined with its first term limits made the 2001 elections the most competitive in the city's history. For this reason, 2001 is an excellent opportunity to examine the city's public financing program both to determine its strengths and weaknesses and to suggest improvements for future elections.

While New York City's public financing program involves some of the best provisions in the United States, they are undermined by unnecessary exemptions, undisclosed independent spending, wealthy candidate spending and excessive deference to state law.

New York City's contribution limits, for example, only apply to candidates who voluntarily participate in the city's public financing program. Candidates who choose not to participate in the public financing program, as well as all non-candidate political committees, are regulated only under state law, which is among the weakest in the United States. The state's contribution limits are among the highest in the country, its disclosure

requirements for independent expenditure activity are virtually nonexistent and New York State Board of Elections enforcement of law violations is notoriously lax.

Loopholes in New York State's and New York City's campaign finance laws threaten the integrity of the city's public financing program. New York City has interpreted state law conservatively, insisting that state law prohibits the city from applying its campaign finance laws—including contribution limits and disclosure requirements—to all city office candidates. Instead, the city applies its laws only to candidates who voluntarily agree to participate in its public financing program. Consequently, candidates who choose not to participate in the public financing program must comply only with the state's ridiculously high contribution limits and lax disclosure requirements. CGS believes that New York City has the authority to extend, and should extend, its contribution limits and disclosure requirements to all candidates for city office. Candidates who voluntarily comply with spending limits should be eligible for public financing, as in other cities.

Evidence gathered in preparation of this report reveals significant independent expenditure activity in New York City elections. Yet weak independent expenditure disclosure laws at the state and local level make it impossible to measure how much money is being spent to affect city elections by labor unions and other organizations independently of candidate campaigns. Candidates bound by spending limits but opposed by large independent expenditures are at a significant disadvantage. New York City should amend its laws to release such candidates from spending limits and provide these candidates with additional public funding.

New York City's 2001 mayoral race was one of the highest profile races in the United States. The Democratic Party primary race was hotly contested between four highly qualified frontrunners, all of whom participated in the public financing program. Mark Green, the Democratic Party primary runoff winner, faced Republican nominee Michael Bloomberg in the general election. Bloomberg, a billionaire businessman with no prior elective office experience, rejected public financing and spending limits and spent more than \$73 million of his personal fortune to defeat Green—outspending Green by more than 4-to-1. New York City should increase the amount of public funding available to candidates who face high-spending and often personally wealthy opponents.

This report thoroughly explores the shortcomings of New York City's public financing program, along with its many strengths. The report begins with a brief history of campaign finance reform in New York City, followed by a summary of the city's campaign finance law. The remainder of the report is dedicated to specific recommendations for addressing identified weaknesses.

## II. New York City Campaign Finance Law

### A. History of Reform

New York City is the most populous in the United States. Its total population of 8,008,278 includes 6,068,069 residents of voting age<sup>2</sup> and just over 4 million registered voters.<sup>3</sup> New York City also has the largest municipal government in the nation. Voters elect 51 city council members, 5 borough presidents, a comptroller, a public advocate and a mayor in partisan elections held once every four years in an odd-numbered year. Party primary elections are held in September of an election year, followed by a November general election.

Unlike most city governments, which exist within a single larger county, New York City comprises five separate but smaller counties—the borders of which coincide with those of New York City’s five boroughs.<sup>4</sup> The five counties that make up New York City have no separate county governments.<sup>5</sup> New York City residents live only under city, state and federal governments.

As of April 2001, eight political parties qualified for the ballot in New York City.<sup>6</sup> The Democratic and Republican parties hold primary elections, while the six minor parties frequently do not. Voter registration in New York City favors Democrats five-to-one over Republicans.<sup>7</sup> As a result, the most intense competition takes place in the Democratic primary election. Winning the Democratic nomination is tantamount to winning office in most districts.<sup>8</sup> All eight parties typically nominate candidates in the general election, with the major party candidates frequently receiving cross-nominations by one or more minor party. The state of New York is one of very few states to allow such cross-nomination ballot fusion, and the only state in which such fusion is used extensively.<sup>9</sup>

State law entirely governed New York City elections prior to 1988, when the city adopted its own laws. The state’s campaign finance laws are among the least restrictive in the United States. The major state provisions were adopted in 1974, during a flood of post-Watergate political reform activity that occurred throughout the country. The state campaign finance law, which includes contribution limits and disclosure provisions, is riddled with loopholes that allow near unregulated flows of money into the electoral process.

New York City activists had for years advocated campaign finance reform. The city’s 1988 adoption of public financing, lower contribution limits and stricter disclosure requirements, however, was spurred by a corruption scandal with no direct relationship to campaign finance. In 1986, the U.S. Attorney for the Southern District of New York launched an investigation into the operations of the city’s Parking Violations Bureau, revealing a lucrative scheme of bribes to a small group of city officials made in exchange for an exclusive city contract. At the center of the scandal was Queens borough president and Democratic party leader Donald Manes—a close political ally of Mayor Koch. Shortly after the scandal broke, Manes committed suicide. Several of his cohorts were tried, convicted and sentenced to prison for their participation in the bribery scheme.<sup>10</sup>

In the scandal's aftermath, then-Governor Mario Cuomo created the New York State Commission on Government Integrity (the Feerick Commission) to examine state ethics and campaign finance laws. Cuomo and Mayor Koch jointly created a New York City equivalent, the State-City Commission on Integrity in Government (the Sovern Commission). These commissions issued reports calling on the state and the city to overhaul campaign finance and ethics laws and establish public financing programs at the state and local levels. The state legislature failed to act, forcing campaign finance reformers in New York City to design their own system that would co-exist with state law.<sup>11</sup>

With less than two years remaining in their terms, the mayor and many Democratic council members were anxious to distance themselves from the scandals that had dominated newspaper headlines for two years. Although the scandals were unrelated to campaign finance, incumbents saw campaign finance reform as the most visible means of demonstrating their commitment to good government. Compounding the pressure on elected officials was the fact that a Charter Revision Commission was prepared to place a proposal for public financing on the 1988 ballot for voter approval. With voters expected to approve the public financing charter amendment, the mayor and council chose to take credit for campaign finance reform they would be forced to live with in any event.

Koch submitted a draft public financing bill to the city council late in 1987. The city council adopted the New York City Campaign Finance Act in February 1988 by a vote of 24 to 9. Mayor Koch signed the public financing act into law later that month.<sup>12</sup> Koch referred to the public financing law as “the most fundamental reform of the political process ever enacted by the city.”<sup>13</sup> The public financing program was further strengthened in November of 1988, when the voters approved the Charter Revision Commission's charter amendments related to the public financing program by a 79% majority. The charter amendments established the Campaign Finance Board as a charter agency—which added a significant degree of security to the board's continued existence and independence.<sup>14</sup>

All aspects of New York City's public matching funds program are administered by the New York City Campaign Finance Board. Mechanical aspects of city elections are administered by the city's Board of Elections.<sup>15</sup>

## **B. Current Law**

The New York Campaign Finance Act, combined with the 1988 charter amendments, mandated the creation of a city Campaign Finance Board to administer a voluntary matching funds program and a comprehensive regime of campaign finance regulations not existing under state law. Because city officials have incorrectly interpreted state law as prohibiting local governments from enacting mandatory campaign finance regulations, including contribution limits that bind all candidates for local office, they have only applied the local Campaign Finance Act to candidates who voluntarily agree to participate in the matching funds program.

New York City's voluntary public financing program participants must agree to spending limits, lower contribution limits and more stringent disclosure requirements

than non-participants. By contrast, most other jurisdictions with voluntary public financing programs require all candidates to abide by the same contribution limits and disclosure regulations whether or not they accept public financing. The sections that follow describe New York City laws that bind voluntary program participants, as well as New York State contribution limits and disclosure requirements that cover non-participating candidates.

## ***1. Matching Funds Program***

### ***a. Offices Covered***

Public campaign financing is available to candidates for the city offices of mayor, public advocate, comptroller, borough president and city council.<sup>16</sup> Public financing is not available to candidates running for district attorney in each of the five boroughs.

### ***b. Funding the Program***

The Campaign Finance Act created the New York City campaign finance fund as the financial instrument for distribution of matching funds to program participants. The act requires the Campaign Finance Board to submit an estimated budget to the mayor for inclusion in the city's executive budget. Two city charter provisions significantly strengthen the appropriations mechanism of the Campaign Finance Act. First, the charter requires that the mayor include the Campaign Finance Board's budget estimate in the executive budget *without revision*.<sup>17</sup> This provision was the result of a charter amendment adopted by city voters in 1998. Prior to adoption of the amendment, the mayor could, and frequently did, reduce the board's estimated budget before submitting his executive budget to the city council.<sup>18</sup>

Second, a charter amendment approved by voters shortly after the city council's passage of the Campaign Finance Act in 1988 gives the Campaign Finance Board authority to draw program funding directly from the city's general fund if the mayor and council have failed to appropriate a sufficient amount to fulfill candidates' matching funds claims.<sup>19</sup> This general fund "draw down" provision is unique to New York City and is considered a last-resort funding mechanism. The draw down provision has never been utilized.

### ***c. Ballot Qualification***

To receive public financing, a candidate must first qualify to have his or her name on the ballot.<sup>20</sup> A candidate must also be opposed by a candidate who qualifies for the ballot in order to receive public funds.<sup>21</sup>

### ***d. Written Certification***

Candidates wishing to participate in the public financing program must file with the Campaign Finance Board a written certification of the candidate's agreement to comply with the rules and regulations of the public financing program no later than the first day of June in the year of a regular election, or the seventh day after the proclamation of a special election.<sup>22</sup>

A participating candidate must also agree that if he or she is a candidate for such office in any other election held in the same calendar year (*e.g.*, runoff-primary election or general election), he or she will be bound in each such other election by the rules and

requirements of the public financing program.<sup>23</sup> Candidates who are contested in a primary election and do not file this written certification are not eligible for public funds for any election to that office in the same calendar year (*e.g.*, runoff-primary election or general election) other than a special election to fill a vacancy.<sup>24</sup> New York City’s system differs in this respect from the federal presidential public financing system, where a candidate can reject public financing for primary elections but opt into the public financing program for the general election. (George W. Bush accepted public financing in the 2000 general election, but not in the primary.)

#### ***e. Campaign Finance Disclosure***

A participating candidate must disclose campaign finance activity in detailed periodic statements filed with the Campaign Finance Board. Candidates who choose not to participate must submit less detailed disclosure statements to the city’s Board of Elections. In addition to the campaign finance information mandated by the state, the Campaign Finance Board requires participating candidates to disclose the occupation and employer of each campaign contributor and “intermediary”—meaning an individual or an organization that collects and delivers contributions from another person to a candidate’s committee.<sup>25</sup> Campaign finance information disclosed to the Campaign Finance Board is available to the public on the board’s Web site.

This disclosure of campaign finance activity by intermediaries is intended to shed light on the practice of “bundling,” where a single individual or organization collects a large number of contributions within the contribution limits and delivers those contributions in one bundle to a candidate.

#### ***f. Public Matching Funds***

Program participants who meet all qualifying requirements are eligible for \$4 in public matching funds for every \$1 in private contributions received from residents of the city, up to \$1,000 in public funds per contributor in the case of a regular election, or up to \$500 per contributor in the case of a special election. Public funds may not exceed 55% of the applicable spending limit, except in the event that the candidate qualifies for additional public financing and the elimination of the spending limit because of a high-spending opponent.<sup>26</sup>

In the event of a runoff primary election or an election held pursuant to court order, a participating candidate receives public funds in the amount of \$0.25 for each dollar of public funds received by the candidate for the preceding election.<sup>27</sup>

#### ***g. Fundraising Threshold***

To qualify for public matching funds, a participating candidate must raise a specified sum of money in matchable contributions.<sup>28</sup> A matchable contribution is a contribution to a candidate made by an individual resident of the city (as opposed to a political committee) of up to \$1,000 in a regular election, or up to \$500 in a special election, but only the first \$250 of a contribution can be matched with public funds.<sup>29</sup>

- Candidate for mayor: 1,000 contributions of \$10 or more for at least \$250,000 total.

- Candidate for public advocate or comptroller: 500 contributions of \$10 or more for at least \$125,000 total.
- Candidate for borough president: 100 contributions of \$10 or more from residents of the borough for at least \$.02 per borough resident, or \$10,000, whichever is greater.
- Candidate for city council: 50 contributions of \$10 or more from residents of the council district for at least \$5,000 total.

Any participating candidate who meets the fundraising threshold for a primary election is deemed to have met the eligibility threshold for any other election for the same office held in the same calendar year (*e.g.*, runoff-primary election or general election).<sup>30</sup>

#### *h. Spending Limits*

New York City’s public financing program requires participants to limit campaign spending during the four years prior to the election. The limits on non-election year spending are intended to reduce the ability of officeholders to begin significant campaigning for re-election as soon as they take office, while still allowing officeholders to raise and spend modest sums of money for work-related expenses that the city budget will not fund (*e.g.*, sponsoring a baseball team in the district, mailers to constituents regarding important community policy issues, conference travel). Other jurisdictions, such as the City of Los Angeles, accomplish this goal through the creation of “officeholder accounts.”

To be eligible to receive public matching funds, a participating candidate’s expenditures during the next citywide election year (2005) may not exceed the following amount per election, which are adjusted for changes in the cost of living:<sup>31</sup>

- |   |             |
|---|-------------|
| • candidate for mayor:                          | \$5,728,000 |
| • candidate for public advocate or comptroller: | \$3,581,000 |
| • candidate for borough president:              | \$1,289,000 |
| • candidate for city council:                   | \$150,000   |

A participating candidate's expenditures in the calendar year prior to the election year must not exceed the following amounts, which are *not* adjusted for changes in the cost of living:<sup>32</sup>

- |  |           |
|--|-----------|
| • candidate for mayor, public advocate or comptroller: | \$180,000 |
| • candidate for borough president:                     | \$120,000 |
| • candidate for city council:                          | \$40,000  |

A participating candidate's *combined* expenditures in the third and fourth calendar years prior to the election year must not exceed the following amounts, which are *not* adjusted for changes in the cost of living:<sup>33</sup>

- |  |          |
|--|----------|
| • candidate for mayor, public advocate or comptroller: | \$90,000 |
| • candidate for borough president:                     | \$60,000 |
| • candidate for city council:                          | \$24,000 |

***i. High-Spending Opponent Trigger Provision***

If a candidate declines to participate in the public financing program and receives contributions or makes expenditures in excess of 50% of the applicable spending limit, the spending limit is no longer binding on any other candidate running for the same office, in the same election, who is participating in the program. Furthermore, the participating candidate receives matching funds at the increased rate of \$5 in public funds for each \$1 in matchable contributions, up to \$1,250 in public funds per contributor in a regular election or up to \$625 in public funds per contributor in a special election. However, the participating candidate may under no circumstances receive public funds exceeding two-thirds of the applicable spending limit for the office.<sup>34</sup>

***j. Mandatory Debates***

To be eligible to receive public matching funds, participating candidates for citywide office are required to appear in two public debates prior to the primary election, at least one debate prior to the general election, and possibly a second debate prior to the general election if the program participant is determined to be a leading contender. The Campaign Finance Board selects sponsor organizations for the debates. Any organization that is not affiliated with any political party, officeholder or candidate, and has not endorsed any candidate in the pending election, is eligible to sponsor a debate. Choosing the date, time, location, and rules for conducting the debate is the responsibility of the sponsoring organization. The second debate prior to a general election includes only those candidates whom the sponsor has determined are the leading contenders for the office on the basis of objective, non-partisan and non-discriminatory criteria and may include nonparticipants.<sup>35</sup>

***2. New York City and State Contribution Limits***

New York State law limits contributions to *all* candidates running for public office in the state. New York City law only limits contributions to candidates participating in its public financing program. New York State law uses complicated formulas to determine contribution limits, based on the number of registered voters in the electoral district, but with statutory minimum and maximum amounts which vary depending on the office. State contribution limits in primary elections vary depending on the political party. State law also places different limits on contributions from a candidate's relatives and non-relatives.

New York City's limits are lower than state limits in most instances. There are circumstances, however, when the state's formula for determining the contribution limit yields a lower limit than the city's.<sup>36</sup> Under such circumstances, a New York City candidate must abide by the lower state limit regardless of whether the candidate chooses to participate in the public financing program. In races where the city's limit is lower, candidates choosing to participate in the public financing program must abide by the city's lower limit, while nonparticipants are bound only by the state's higher limit.

***a. City Limits on Contributions to Participating Candidates***

To receive public funds, a candidate must agree to the following limits on contributions from all sources. The city's limits are aggregate limits on contributions from any single contributor made during the four-year election cycle for *all elections* held



*in the same calendar year.*<sup>37</sup> State contribution limits apply to only a *single election*, making it necessary to combine state primary and general election limits for an accurate comparison to the city’s limits. The city’s adjusted limits for the 2003 and 2005 elections are as follows:

- Citywide Office: \$4,950
- Borough President: \$3,850
- City Council: \$2,750

In the event of a runoff primary election or special election, participating candidates may accept additional contributions up to one-half of the contribution limit listed above. Where state law prescribes a contribution limit of a lesser amount than the city limit, the lower state contribution limit is binding on public financing program participants.<sup>38</sup>

***b. Comparing City and State Contribution Limits***

**Figure 1** provides a side by side comparison of city and state limits on contributions *from non-relatives* to Democratic party candidates. State limits on contributions *from relatives* are much higher and are discussed below. Due to the variation in state primary election contribution limits from party to party, only a single party’s limits could be displayed in the chart below.

**Figure 1**

<b>Comparison of City and State 2001 Limits on Contributions from Non-Relatives to Democratic Party Candidates</b>				
	<b>City Limits on Contributions Per Election Cycle</b>	<b>State Limits on Contributions to Democratic Primary Election Candidates</b>	<b>State Limits on Contributions to General Election Candidates</b>	<b>Total State Limits for Democratic Primary and General Elections Combined</b>
<b>Citywide Office</b>	\$4,500	\$14,700	\$30,700	\$45,400
<b>Borough President</b>	\$3,500	\$38,345— \$5,143 <sup>39</sup>	\$50,000— \$11,256 <sup>40</sup>	\$88,345— \$16,399
<b>City Council</b>	\$2,500	\$3,597— \$1,515 <sup>41</sup>	\$4,513— \$2,377 <sup>42</sup>	\$8,110—\$3,892

State contribution limits applicable to all parties are detailed below. Because Democrats outnumber Republicans five-to-one in the city and outnumber other minor parties by an even greater margin, state contribution limits for primary elections—based on the number of voters registered with the party—are much higher for Democrats than all other candidates.<sup>43</sup>

For example, the state contribution limit for candidates in the 2001 9<sup>th</sup> council district Democratic Party primary was \$3,597, while the state contribution limit for candidates in all other party primaries in the 9<sup>th</sup> council district was \$1,000.

Finally, for the offices of borough president and city council, the chart displays the range of contribution limits applicable in the five boroughs and 51 council districts.

***c. City Limits on Contributions to and from Corporations, PACs and Political Party Committees***

Participating candidates may only accept contributions from political committees that have voluntarily registered with the Campaign Finance Board.<sup>44</sup> Contributions to participating candidates from all political committees—including PACs and political party committees—are limited to the amounts noted in the previous subsection.

The city charter and campaign finance law prohibits participating candidates from accepting campaign contributions from corporations.<sup>45</sup> A corporation may form a PAC, which in turn is permitted to make contributions to participating candidates so long as the PAC agrees not to use any corporate funds for contributions. Instead, the corporate PAC must fundraise from individuals and non-corporate entities. The PAC may, however, use corporate funds to pay operating costs (*e.g.*, office space, phones, salaries, fundraising activities).

State law provides the only limits on the size of contributions that an individual may give to PACs and political party committees. In 2001, an individual could contribute up to \$76,500 to a political party, and up to \$150,000 to a PAC. However, the city’s “single source” rule prevents an individual contributor from evading the city’s candidate contribution limit by establishing multiple PACs, contributing large sums to those PACs, and then directing the PACs to contribute to a participating candidate. Under the “single source” rule, an individual and any political committees controlled by that individual are considered a single source.<sup>46</sup>

Likewise, the city’s “earmarked contribution” rule prevents an individual from evading the candidate contribution limit by making contributions to a political party that are earmarked to be transferred to a particular candidate. Earmarked contributions are considered to be from both the individual and the political committee and thus, when totaled with contributions made directly to the candidate by the individual, must not exceed the contribution limit.<sup>47</sup>

***d. City Limits on Candidate Personal Wealth Expenditures***

A participating candidate’s contributions to his or her own campaign are also limited. A participating candidate may not use personal funds in excess of three times the contribution limit for the office sought in connection with his or her campaign. In the 2003 and 2005 elections, candidate personal wealth expenditures are limited to the following amounts:

- Citywide Office: \$14,850
- Borough President: \$11,550
- City Council: \$8,250

***e. City Loan Restrictions***

City law mimics state law with regard to loans. A loan made to a candidate *not* in the regular course of the lender’s business is deemed a contribution by the lender, to the extent not repaid by the date of the election. A loan made to a candidate *in* the regular course of the lender’s business is deemed a contribution by the obligor on the loan and by any other person endorsing, cosigning or otherwise providing security for the loan, to the extent not repaid by the date of the election.<sup>48</sup>

***f. State Limits on Contributions to Candidates from Non-Relatives***

State contribution limits are based on the number of registered voters in a district and, consequently, vary based on the office sought by the candidate. A candidate is permitted to receive larger contributions from relatives than from non-relatives. The state law formulas for limits on contributions to New York City candidates from non-relatives are as follows:<sup>49</sup>

- Party Nominating Elections (Primary and Primary Runoff Elections): the number of active registered voters in the candidate’s party in the district multiplied by \$0.05.
- General Elections: the total number of active registered voters in the district multiplied by \$0.05.
- However, in the case of a party primary election for any citywide office in New York City the amount shall not be less than \$4,000 nor more than \$12,000, adjusted for changes in the cost of living (2001 COLA: \$4,700 and \$14,700, respectively).
- In the case of a general election for any citywide office in New York City, the amount shall not exceed \$25,000, adjusted for changes in the cost of living (2001 COLA: \$30,700).
- In the case of any election for borough president or city council, the amount shall not be less than \$1,000 nor more than \$50,000, with no adjustment for changes in the cost of living.

**Figure 2**

<b>State Law Limits on Contributions from Non-Relatives (2001)</b>				
	<b>Democratic Primary</b>	<b>Republican Primary</b>	<b>Minor Party Primary</b>	<b>General Election</b>
<b>Citywide Offices<sup>50</sup></b>	\$14,700	\$14,700	\$4,900	\$30,700
<b>Borough President<sup>51</sup></b>	\$38,345— \$5,143 <sup>52</sup>	\$6,884— \$2,288 <sup>53</sup>	\$1,000	\$50,000— \$11,256 <sup>54</sup>
<b>City Council<sup>55</sup></b>	\$3,597—\$1,515	\$1,662—\$1,000	\$1,000	\$4,513—\$2,377

This combination of statutory formulas, minimums and maximums, has created a confusing regime of contribution limits. In many electoral districts the contribution limits are determined by application of the formula, while in other districts the limits are determined by statutory minimums or maximums. To clarify this complicated scheme, **Figure 2** displays the actual contribution limits in effect for the 2001 elections. The accompanying endnotes detail how the limits were derived.

***g. State Limits on Contributions to Candidates from Relatives***

New York State law establishes higher limits on contributions from a candidate’s relatives as compared to other persons. The state law formulas for limits on contributions to city candidates from any candidate’s child, parent, grandparent, brother, sister, and the spouses of such relatives are as follows:<sup>56</sup>

- Party Primary Elections: the number of active registered voters in the candidate’s party in the district multiplied by \$0.25.
- General Elections: the total number of active registered voters in the district multiplied by \$0.25.
- However, under no circumstance shall the contribution limit be less than \$1,250 nor more than \$100,000.

**Figure 3** lists the actual limits on contributions to candidates from relatives in the 2001 New York City elections. The amounts listed in the rows for borough president and city council, as well as in the column for minor party primaries, denote the range of contribution limits (from highest to lowest) in the multiple races covered by these categories.

**Figure 3**

<b>State Law Limits on Contributions from Relatives (2001)</b>				
	<b>Democratic Primary</b>	<b>Republican Primary</b>	<b>Minor Party Primaries</b>	<b>General Election</b>
<b>Citywide Offices</b>	\$100,000	\$100,000	\$11,059— \$1,250	\$100,000
<b>Borough President</b>	\$100,000— \$25,715 <sup>57</sup>	\$34,424— \$11,444	\$3,564—\$1,250	\$100,000— \$56,284 <sup>58</sup>
<b>City Council</b>	\$17,988— \$7,576	\$8,310—\$1,250	\$1,250	\$22,569— \$11,888

***h. State Limits on Contributions to and from Political Party Committees***

Under New York State law, a political party committee is excluded from the definition of “contributor” and is therefore not bound by state contribution limits.<sup>59</sup> A party committee may make unlimited contributions to the party’s candidates.

Contributions by individuals to political parties are limited, although these limits are very high. In 2001, aggregate contributions to a political party by an individual were limited to \$76,500 per year.<sup>60</sup>

State law includes a provision that purports to limit party spending on behalf of candidates. As a result of the 1976 U.S. Supreme Court decision in *Buckley v. Valeo*, striking down mandatory spending limits, the provision has never been enforced.<sup>61</sup>

***i. State Limits on Contributions from Corporations***

New York State law limits corporations, except corporations organized or maintained only for political purposes, from making political contributions or expenditures in excess of \$5,000 in the aggregate to all candidates running for office in the state in any calendar year.<sup>62</sup> Each affiliated or subsidiary corporation, if a separate legal entity, has its own limit.<sup>63</sup>

***j. State Loan Restrictions***

Under New York State law, a loan made to a candidate or a non-party committee *not* in the regular course of the lender's business is, to the extent not repaid by the date of the election, deemed a contribution.<sup>64</sup> A loan made to a candidate or a non-party committee *in* the regular course of the lender's business is, to the extent not repaid by the date of the election, deemed a contribution by the obligor on the loan and by any other person endorsing, co-signing or otherwise providing security for the loan.<sup>65</sup>

***k. State Aggregate Limit on Contributions and Loans to Candidates and PACs***

No individual, other than the candidate and the candidate's family members, may contribute or loan more than a total of \$150,000 in connection with the nomination or election of persons to state or local public office in any one calendar year. This aggregate limit only applies to such loans as are not repaid or discharged in the calendar year in which they are made.<sup>66</sup> The aggregate limit applies only to individuals.<sup>67</sup> Consequently, this provision limits the amount of money that an individual may contribute to a PAC, but there is no limit on the amount of money that one PAC may contribute to another PAC. The \$150,000 aggregate limit serves as the only limit on the size of contribution that an individual may make to a PAC.

***3. Voters Guide***

The city charter charges the Campaign Finance Board with the publication of a voters guide for every contested city election containing information about all candidates, regardless of whether or not the candidate participates in the matching funds program.<sup>68</sup> Each voters guide must contain material explaining:<sup>69</sup>

- biographical information on each candidate;
- concise statements by each candidate;
- concise statements explaining each ballot proposal or referendum;
- the date and hours during which the polls will be open for the election;
- how to register to vote;
- how to vote by absentee ballot; and
- maps showing the boundaries of council districts.

#### ***4. New York City Campaign Finance Board***

The Campaign Finance Board is composed of five part-time members, with two members (not registered in the same political party) appointed by the mayor, two members (not enrolled in the same political party) appointed by the speaker of the council, and the fifth member—who serves as chairperson—appointed by the mayor after consultation with the speaker. Each board member must be a resident of the city. The board members serve staggered five year terms, are not subject to term limits and thus may be reappointed.

The board is charged solely with the implementation of the matching funds program and *does not* regulate government ethics or the campaign finance activities of non-program participants. The board's duties include:<sup>70</sup>

- Investigation and auditing to ensure compliance with program rules and regulations;
- Rendering advisory opinions with respect to questions arising under the Campaign Finance Act;
- Receiving campaign finance disclosure reports from program participants;
- Development and maintenance of a computer database of campaign finance information for all program participants, which is accessible to the public via the internet;
- Improving public awareness of the candidates, proposals or referenda in all city elections through publication of a non-partisan, impartial voters guide.

The Campaign Finance Board has the power to investigate all matters relating to its administration of the city's campaign finance laws. The board has the power to subpoena persons and evidence related to an investigation, as well as examine and take testimony under oath of such persons.<sup>71</sup> The board may also institute civil lawsuits against candidates and campaigns.

In addition to collecting any public funds wrongfully obtained, the board may assess a penalty on participants who violate the city's campaign finance law in an amount not to exceed \$10,000, except in the event that a violator has exceeded an applicable spending limit. A participating candidate who exceeds the spending limit may be fined up to three times the amount by which the limit was exceeded. In addition to these penalties, the intentional or knowing violation of the campaign finance law is punishable as a class A misdemeanor crime.<sup>72</sup> Finally, the Campaign Finance Board is authorized to publicize violations of the campaign finance law and does so regularly.<sup>73</sup>

### III. A Model For the Nation

#### A. \$4-to-\$1 Match Increases Importance of Small Contributions, Expands Political Participation and Reduces Candidate Dependence on Wealthy Donors

New York City's public financing program, as originally enacted in 1988, matched contributions up to \$1,000 per contributor on a dollar-for-dollar basis. The Campaign Finance Board recommended in its first major report, *Dollars and Disclosure* (1990), that city law be amended to match contributions up to \$500 per contributor at the increased rate of \$2 in public funds for each \$1 contributed. The law was not amended and the board repeated this recommendation in its second report, *Windows of Opportunity* (1992). The board believed that matching smaller contributions at a higher rate would "provide added financial rewards for candidates who collect smaller contributions"<sup>74</sup> and "democratize" fundraising.<sup>75</sup>

The Campaign Finance Board again recommended an increase in matching funds in its report *A Decade of Reform* (1998). This time, however, the board changed its earlier recommendation and suggested that the city match contributions up to \$250 at the rate of \$3-to-\$1.<sup>76</sup>

The city council finally amended the campaign finance law in 1998, making candidates willing to forego corporate contributions eligible for matching funds at the increased rate of \$4-to-\$1. Candidates choosing to accept corporate contributions would still be eligible for matching funds at the \$1-to-\$1 rate.

Shortly after the council increased the matching rate for candidates foregoing corporate contributions, New York City voters adopted a charter amendment banning corporate contributions to all candidates participating in the public financing program. The Campaign Finance Board interpreted the charter ban on corporate contributions as making all publicly financed candidates eligible for the \$4-to-\$1 match.<sup>77</sup>

In 2001, after several special elections in which matching funds were distributed by the board at a \$4-to-\$1 rate, the Giuliani administration challenged the board's interpretation of the law in court, arguing that the \$4-to-\$1 match was intended only as an enticement for candidates to forego corporate contributions. Before the lawsuit was decided, the city council adopted a local law—over Giuliani's veto—supporting the Campaign Finance Board's position and clearly establishing the \$4-to-\$1 match for all participating candidates. Giuliani's lawsuit was dismissed as moot.<sup>78</sup>

New York City's 2001 elections were the first citywide elections to be held under the \$4-to-\$1 match. Participating candidates were eligible to receive \$4 in public funds for every \$1 in private contributions of \$250 or less from individual residents of the city.

By raising the matching funds rate to \$4-to-\$1, the city council hoped candidates would solicit more small contributions from New York City residents who could not afford to make large contributions. A candidate in 1997 needed to receive a \$1,000 contribution from a donor to leverage the \$1,000 available in public funds per contributor. In 2001, the new matching formula rewarded a candidate with \$1,000 in

public funds for a \$250 contribution. In other words, a \$250 contribution was worth \$500 to a candidate in 1997 but \$1,250 in 2001.

Candidates forced to raise as much money as possible without the benefit of a generous matching funds program typically ignore small donors and focus instead on wealthy donors capable of writing \$1,000 checks. Contributing to a political campaign is a form of electoral participation. Broader participation means more democracy.

According to Campaign Finance Board statistics, the number of contributions to candidates participating in the campaign finance program nearly doubled, from 71,600 in 1997 to 139,400 in 2001. The number of contributors increased by more than 40,000—from approximately 60,000 in 1997 to about 102,000 in 2001.<sup>79</sup> As a result of the increased number of candidates and the \$4-to-\$1 match, the 2001 elections involved the largest number of contributors in the program's history.

Newly elected Councilwoman Helen Foster, an African American who represents a predominantly African American district in the Bronx, noted that the \$4-to-\$1 match “allowed people from [her] district, which is a district that is relatively poor, to make their donations count.” She testified, “I was very encouraged. People would come and give me \$10 and happily give the \$10 knowing that it could multiply.”<sup>80</sup>

Candidates were asked if any voters criticized their use of public funds to run their campaigns. Candidates said they received nothing but positive feedback from the public. Newly elected Councilman David Yassky told CGS:

I never had anyone raise it to me in a critical way. At all of my fundraisers, when I explained the campaign finance system and the 4-to-1 match, people were often astonished at the generosity of it. People undoubtedly gave more money than they otherwise would have, because of the campaign finance system. I explained the matching system, somebody would give me a check for \$100, who I think would have given \$50, because of every dollar being matched 4-to-1. I got a lot of contributions of \$250, which is the maximum amount that gets matched, from people who I'm sure would have given \$100 in the absence of the matching program.<sup>81</sup>

Yassky's weren't the only contributors to increase the size of their contributions to maximize the \$4-to-\$1 match. The most popular contribution size (the mode) rose from \$100 in 1997 to \$250 in 2001. The mode was \$100 in 1993 and \$25 in 1989.<sup>82</sup> This increase in the modal contribution size might cause concern to the extent that larger contributions increase the risk of corruption. Given that contributions above \$250 are not matched, however, it is unlikely that the modal contribution size will continue to rise. A contribution of \$250 is low enough to present little risk of corruption of a candidate raising hundreds of thousands if not millions of dollars.

The average contribution size decreased from \$412 in 1997 to \$388 in 2001, though it remained higher than the average contribution of \$326 in 1989 and \$303 in 1993.<sup>83</sup> It is clear from these averages that, while the \$4-to-\$1 match has encouraged more contributors to give to candidates, the city's high contribution limits allow candidates to receive a significant number of large contributions.



The \$4-to-\$1 match is undoubtedly a significant factor in the increased competitiveness of city council elections. New York Public Interest Research Group (NYPIRG) Senior Attorney Gene Russianoff praised the \$4-to-\$1 match, explaining:

The truth is, that the program was not doing a lot for the competitiveness of the city council overall until now—the twelfth year of the program. The set of incumbent advantages in New York are enormous. You can't get on the ballot. Challengers get knocked off before they even get started. They run the district lines so they perfectly suit the incumbent. The whole thing is set up in a way that really dramatically favors incumbents, particularly in the local legislature [*i.e.*, city council], which is precisely why Ron Lauder came along in 1993 and proposed term limits. The campaign finance program wasn't changing any of the reality on the council level. But now the 4-to-1 match also makes a big difference.<sup>84</sup>

The Campaign Finance Board administered a post-election survey to all candidates late in 2001 asking, “Do you believe that the 4-to-1 public funds matching rate is appropriate?” Candidate responses were mixed, with 14 candidates supporting the \$4-to-\$1 match and seven candidates advocating a reduction or elimination of public financing. Candidate responses included:

- “Yes, it encourages contributors to participate by giving.”
- “The rate is fair and if anything raised not lowered.”
- “I believe it is too high. Candidates should work harder at fundraising, especially at the grass-roots level.”
- “Absolutely not. Optimally there should be no matching fund program, but if the public must have it (of which I am not certain) an even match would be more than sufficient.”
- “4-1 is great, but it could be increased.”
- “No, I believe that any matching rate of public funds is immoral, but the 4-to-1 rate is particularly egregious. It amounts to stealing taxpayers' money for the benefit of candidates whom the taxpayer may not support.”
- “It was a good amount. More would have been helpful.”<sup>85</sup>

Some candidates were initially skeptical, but then changed their minds. Robert Cermeli, a candidate in the 30<sup>th</sup> council district Democratic primary, said, “At first I thought it was too generous. I don't think the 4-to-1 rate pertains to every city but, given the demographics and the size of the population I had to deal with, I had a lot of people to mail to and I needed the money.” Cermeli continued, “I think what they're trying to do is equalize the playing field, so that a person like me—who does not come out of the party machinery, but does represent the public—can run a competitive campaign.”<sup>86</sup>

The Campaign Finance Board also asked its survey respondents whether joining the campaign finance program led candidates to change their fundraising strategy. Twenty-four candidates answered “yes,” while 22 said “no.” Candidates commented:

- “More people were willing to give \$100 donations to see their contribution become \$500.”
- “The emphasis shifted to getting smaller donations from more people.”
- “Obviously, I focused my solicitations locally instead of making more universal appeals and could not solicit from businesses I might have otherwise targeted.”

Nonetheless, political pundit Fred Siegel was skeptical about the \$4-to-\$1 match leading to *increased* grassroots fundraising, at least among council candidates. Siegel commented, “There are very few fat cats who contribute to council campaigns in the first place. If I look at how people have run the city council races that I’ve been involved in, at least peripherally, they’ve *always* involved endless house parties. City council is too insignificant.”<sup>87</sup>

A corollary to the increased importance of small contributions in candidates’ campaigns is the decreased need of candidates to rely on wealthy special interests to fund their campaigns. Donors who make large contributions to candidate campaigns want something in return for their investment. Candidate reliance on a large number of small contributions substantially reduces the threat of corruption posed by candidate reliance on a small number of large contributions. Newly elected Brooklyn Borough President Marty Markowitz, praising the public financing program at the Campaign Finance Board’s public hearing, put it this way:

[I]t is a system that allows those of us who have no access to wealth . . . an opportunity to be beholden to no one other than the people who elect us . . . . The [public] campaign financing gave me the freedom of not having to take money from the financial powerhouses in the borough of Brooklyn. It gave me the freedom that I didn’t have to enter into any arrangements, whether spoken or expected, in terms of payback if I become elected. It gave me the freedom to encourage people like myself that work for a living, that don’t make a great income . . . [to give] me \$25 to be able to make that \$125.<sup>88</sup>

New York City’s \$4-to-\$1 match has contributed in two distinct ways to an increase in the number of city residents participating in the electoral process. The \$4-to-\$1 match has increased the total number of candidates running for city office. The \$4-to-\$1 match has also inspired more city residents to participate in elections by making small donations to candidates. The \$4-to-\$1 match makes it just as worthwhile for a candidate to campaign among voters who can write \$250 checks as special interest political action committees that make \$1,000 contributions. The \$4-to-\$1 match also makes it possible for candidates without access to \$1,000 donors to run competitive campaigns. For these reasons, New York City should retain its \$4-to-\$1 match.

## **B. Public Financing Enables Candidacies by Individuals Who Otherwise Would Not Have Run for Public Office**

Public financing enables individuals without access to wealthy donors to wage competitive campaigns for public office. Public financing can increase the political

representation of historically underrepresented communities: women, people of color and lower-income people of every race. In the words of C. Virginia Fields, the African American Manhattan borough president:

The underlying purpose . . . of the Campaign Finance Program is to make our elective process more democratic and encourage people of limited resources to run for office . . . . [C]andidates from communities of color should not be constrained from seeking higher office because of not having access to the financial resources required.<sup>89</sup>

In 1989, one year after adoption of the public financing program, New York City voters adopted a charter amendment increasing the size of the city council from 35 to 51 seats. The twin reforms of public financing and city council expansion were intended to give greater representation to historically underrepresented communities.<sup>90</sup>

A special off-year election was held in 1991 to elect representatives for the 51 newly-drawn council districts. Twelve new people of color were elected to the city council, ten of whom had participated in the public financing program.<sup>91</sup> Una Clarke, a Caribbean-American city council member elected in 1991, said that the public financing program enabled “a larger number and a more diversified group of persons, both economically and racially, to run an effective campaign and to win.” Clarke pointed to herself as an example.<sup>92</sup>

The availability of public financing dovetailed with term limits in 2001 to produce an unprecedented number of candidates running for public office in New York City. More than 350 candidates joined the public financing program in 2001, nearly 100 more candidates than the 1991 record of 256.<sup>93</sup> As a result of New York State’s draconian ballot access laws, however, 73 of these candidates did not qualify for the ballot. Nonetheless, encouraged by 4-to-1 matching funds and the absence of incumbents in most races, more candidates than ever before threw their hats into the ring.

New York City’s trend toward increased political representation of traditionally underrepresented communities continues today. As a result of the 2001 elections, approximately half of the city’s 51 council seats, three of five borough president seats and one citywide office are held by people of color. Asians and Asian Americans, however, make up nearly 10% of the city’s population and continue to be dramatically underrepresented, having just elected the first Asian American to city government in 2001.<sup>94</sup>

Nevertheless, progress has clearly been made over the past decade toward more democratic governance. New York City’s public financing program has enabled candidates from a wide variety of backgrounds—candidates who without public financing would not have run for office—to run competitive campaigns and win.

Most candidates interviewed cited *both* the availability of public financing and term limits as equally important to their decision to run for office. District 1 city council candidate Rocky Chin stated:

I chose to become a candidate in part because of the term limits, but also in large part because of the campaign finance program. . . . One of the highlights of our fundraising campaign was we were able to track a very

broad and diverse base of donors, among the largest number of individual donors of any City Council candidate.<sup>95</sup>

City council candidate Steven Banks told CGS:

The confluence of term limits in New York City and the availability of public financing is what led to me running. Frankly, I wouldn't have run if it wasn't for the two things occurring. Although I didn't win, people thought it was a good race to have a nontraditional candidate in. And I think, when I look around the city, the availability of matching funds made it possible for lots of different kinds of people to run—not necessarily win—but run.<sup>96</sup>

When asked whether the availability of public financing influenced his decision to run for office, first term Councilman David Yassky replied, “Unquestionably! I wouldn't have done it without public financing. And couldn't have done it. I think there were a ton of races in New York City this year where the person who won would not have won without the campaign finance program.”<sup>97</sup> City council district 22 candidate Sandra Vassos said that “The campaign finance program was a definitive factor in my decision to run for office.”<sup>98</sup>

Public advocate candidate and former New York State Assemblyman Scott Stringer insisted that “middle-income New Yorkers who were not blessed with a lot of money in their families . . . were able to run competitive races because of the [public financing] program. I'm very grateful for it.”<sup>99</sup> And Campaign Finance Board Executive Director Nicole A. Gordon noted:

At the city council level, the value of having public funds has changed the face of the races. It really did give an opportunity to people who might otherwise not have run. And this year we had some examples of that at the citywide level as well. In the mayoral primary, we would in all likelihood have had a different candidate coming out of that primary if there hadn't been a campaign finance program. I think that Freddy Ferrer would not have had as meaningful an opportunity. [Former Comptroller Alan] Hevesi would possibly have raised so much more money than the others that the other candidates might not have even entered the race. I know one candidate for controller who said “I'm a guy from Brooklyn, a city council member. I never could have dreamed of running a citywide race without the 4-to-1 match.”<sup>100</sup>

Candidate after candidate testified at the Campaign Finance Board's public hearing in December 2001 that the availability of public financing made their candidacies possible. To be sure, some candidates would have run regardless of the availability of public financing. First term Councilman John Liu, for example, told CGS that the availability of public funds did not influence his decision to run for office. But when asked whether public financing effected his ability to run a competitive campaign, Liu responded, “Absolutely. It takes the onus of fundraising largely out of the picture. It levels the playing field for candidates. My campaign benefited from being able to get matching funds. The public benefits from the incentive for candidates to give full disclosure.”<sup>101</sup>

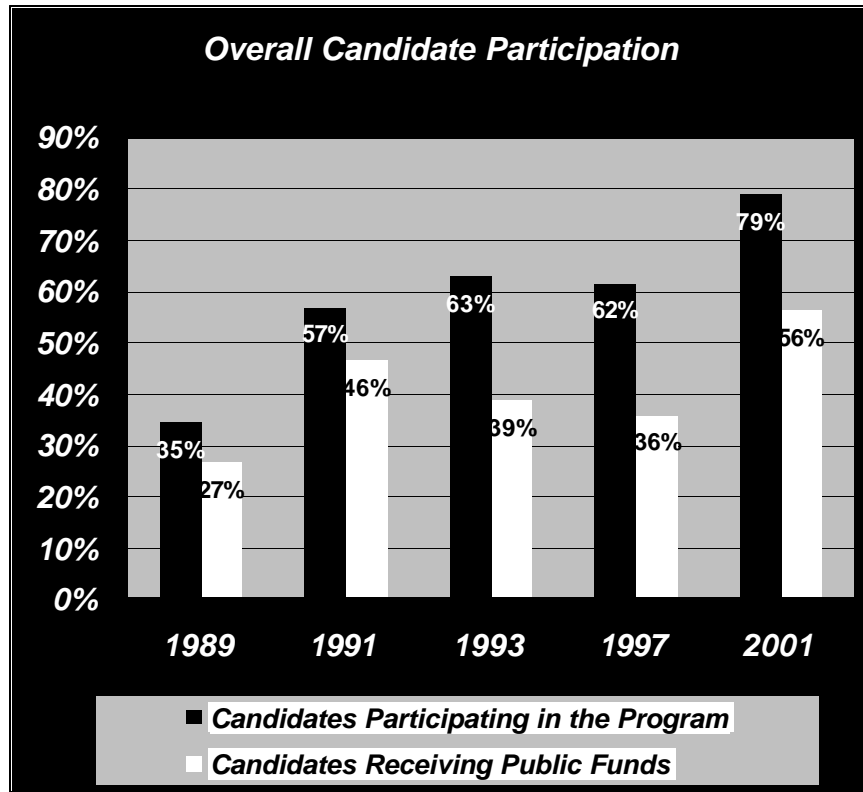
It is clear that the public financing program, particularly as amended in 1998 to increase the matching funds rate to \$4-to-\$1, has met or exceeded the program’s goal of enabling candidates with limited access to wealthy donors to mount viable campaigns.

### C. Candidate Participation Is Near 100% and Has Risen Dramatically Since 1989

Matching funds were first available to New York City candidates in 1989, when 48 of 139 candidates (35%) appearing on the ballot participated in the public financing program. (“Participating” candidates agree to abide by spending limits and other campaign finance restrictions, but may not meet all of the requirements to receive public funds.) In 1989, 37 candidates (27%) met all program requirements and received public matching funds. (The raw data on candidate participation can be found in **Figure 6**, below.)

**Figure 4** shows the increasing trend in candidate participation between 1989 and 2001. Among all candidates qualifying for the ballot during this period, overall candidate participation in the program has risen from 35% to 79%. **Figure 4** also shows the percentage of candidates on the ballot that received public matching funds. Candidate receipt of public financing has more than doubled from 27% to 56% between 1989 and 2001.

**Figure 4**

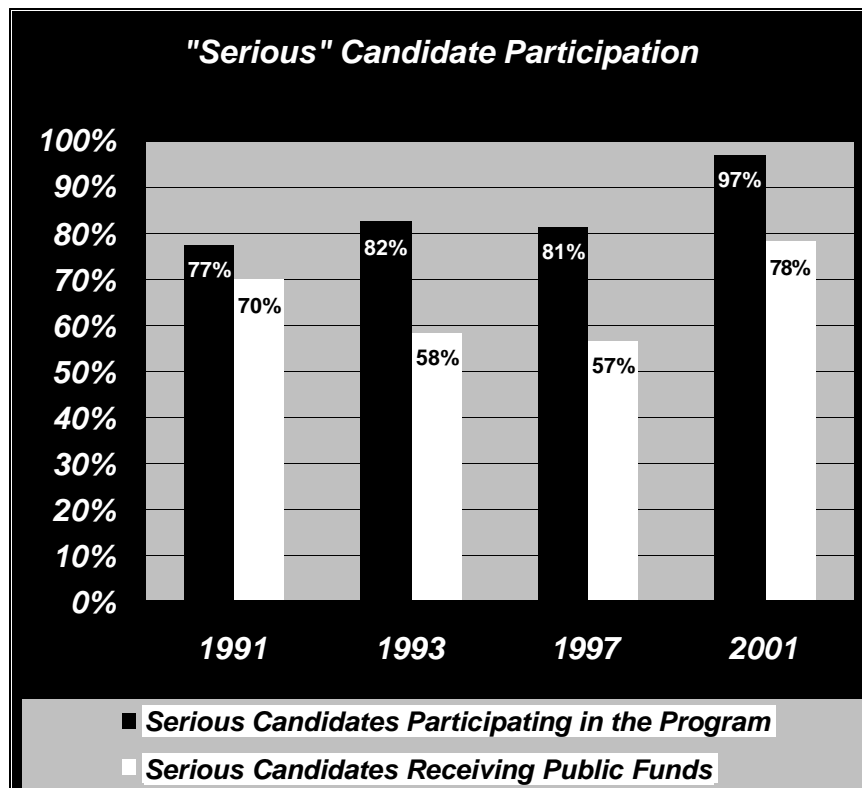


Both the number of candidates receiving public funds and the total amount of public funds distributed to candidates has risen dramatically between 1989 and 2001. In 1989, 37 candidates received \$4.5 million in public funds. In 2001, 200 candidates received a total of more than \$41 million in public funds.

An arguably more accurate estimation of the popularity of the program is participation among serious candidates, as opposed to candidates who wish merely to appear on the ballot. **Figure 5** shows program participation among serious candidates, with “serious” defined as a candidate who has raised or spent at least \$5,000. A candidate who raises or spends only \$5,000 for a mayoral campaign in New York City might not be deemed a serious candidate. However, a low threshold of exclusion was chosen in order to be over-inclusive rather than under-inclusive.

**Figure 5** shows that program participation among “serious” candidates who raised or spent at least \$5,000 is substantially higher than overall candidate participation, rising from 77% in 1991 to 97% in 2001. New York City’s serious candidate participation rate is among the highest in the United States, rivaled only by the public financing program in Los Angeles which also has nearly full participation. The percentage of New York City’s serious candidates who actually received public funds is the highest in the United States, surpassing even Los Angeles.<sup>102</sup>

**Figure 5**<sup>103</sup>



**Figure 6**

<b>New York City Candidate Participation</b>					
	<b>1989</b>	<b>1991</b>	<b>1993</b>	<b>1997</b>	<b>2001</b>
<b>Total Candidates</b>	139	239	170	229	355
<b>Candidates Participating in the Program</b>	48 35%	136 57%	107 63%	141 62%	280 79%
<b>Candidates Receiving Public Funds</b>	37 27%	111 46%	66 39%	82 36%	200 56%
<b>Total “Serious” Candidates<sup>104</sup></b>	NA	159	113	145	256
<b>“Serious” Candidates Participating in the Program</b>	NA	123 77%	93 82%	118 81%	248 97%
<b>“Serious” Candidates Receiving Public Funds</b>	NA	111 70%	66 58%	82 57%	200 78%

As is clear from **Figures 4, 5, and 6**, candidate participation and receipt of matching funds has grown steadily throughout the program’s history. The percentage of serious candidates participating in the program, and thus agreeing to spending limits, has exceeded 80% in the last three elections, reaching nearly 100% in 2001. The jump in candidate participation from 81% in 1997 to 97% in 2001 is likely due to the increased matching funds rate from \$1-to-\$1 to \$4-to-\$1. In 2001, 47 of 51 city council members elected were participants in the public financing program. Consequently, these candidates abided by limits on the size of contributions accepted, the source of contributions and the total amount of campaign funds spent. These candidates also agreed to far more extensive campaign finance disclosure than nonparticipating candidates.

New York City’s high levels of candidate participation suggest approval by candidates of the public financing program as a whole. This near-full participation is solid evidence that the spending limits, contribution limits, disclosure requirements, public funding levels and other provisions of the program are reasonable. The general trend of increasing candidate participation shows the value of the city’s willingness to revisit and revise the campaign finance law following each election. This evolution of the public financing program, resulting in increased levels of candidate participation, bodes well for the future of New York City elections.

#### **D. Public Financing Qualification Thresholds Are Appropriately Set**

Public financing programs, like any government program, must spend taxpayer dollars wisely. Public financing programs must thus provide funding to qualified candidates, not to any and every candidate that seeks it. One of the greatest challenges facing architects of public financing programs is distinguishing between serious

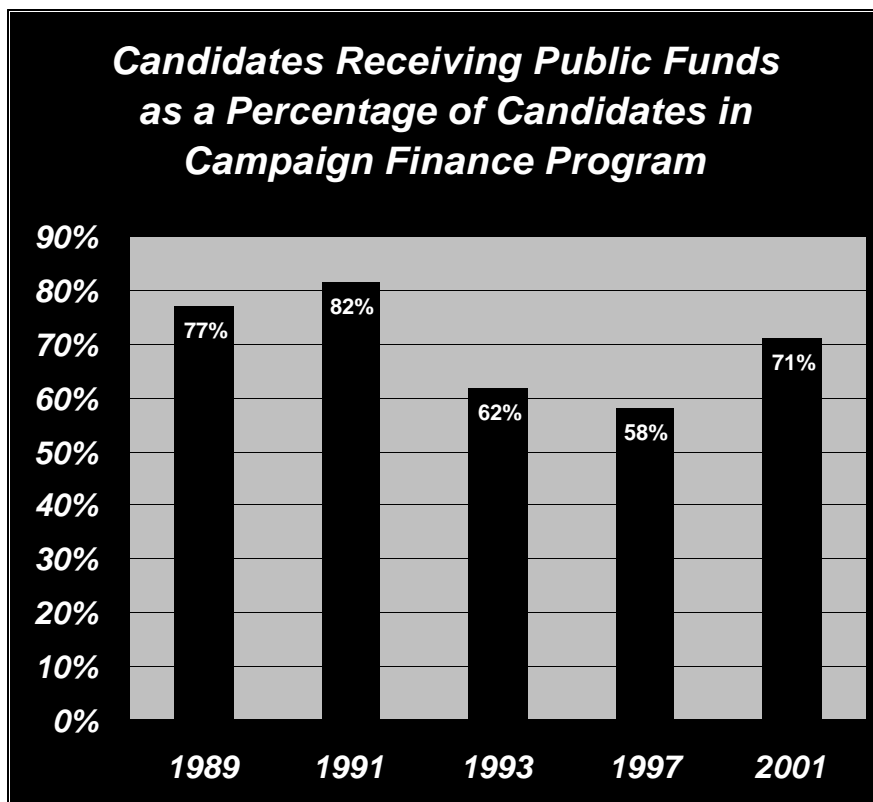
candidates worthy of receiving public funds and fringe candidates with little popular appeal.

If the qualification threshold is too high, then few candidates will be publicly funded and the goals of the program will be frustrated. If the threshold is too low and fringe candidates receive funding, program costs will skyrocket and limited public resources will be squandered on candidates with no realistic chance of election.

New York City's program requires candidates to demonstrate a broad base of popular support by collecting a specified number of contributions that total a specified dollar amount, depending on the office sought, in order to qualify for matching funds. A candidate for mayor, for example, must collect at least 1,000 contributions of \$10 or more for at least \$250,000 in total. A candidate for city council must collect 50 contributions of \$10 or more from residents of the council district for at least \$5,000 in total. The qualification thresholds for other city offices are listed in section II(B)(above).

To illustrate the difficulty of candidates seeking public financing to meet all program requirements and actually receive funding, **Figure 7** shows the candidates who received public funds as a percentage of all candidates who agreed to the campaign finance program restrictions. If anything, these figures overstate the difficulty of meeting the qualification thresholds because, undoubtedly, some of the candidates who joined the public financing program had no intention of waging serious campaigns.

**Figure 7**





In its 2001 post-election survey, the Campaign Finance Board asked candidates if the fundraising thresholds were too high, too low, or appropriate. Among the 47 candidates who responded to the questions, 17% said the thresholds are too high, 9% said the thresholds are too low and 74% thought the thresholds appropriate. Campaign Finance Board Executive Director Nicole A. Gordon told CGS:

One of the things that we've found is very difficult with our local campaigns is that, this year, the campaigns that had a hard time meeting the threshold in the city council races did not have a hard time meeting the monetary amount. They had a hard time meeting the number of district resident contributions, which is 50 per city council district. And that's troubling because you want the program to be something that is generating a lot of local support, and if you can't show that you have 50 council district residents who are supporting you, that's not a very good sign for your campaign.<sup>105</sup>

Council candidate Ethel Chen suggested that the number of required in-district contributions be increased from 50 "to 100, or even 200." Chen complained that the opponent who beat her in the Democratic primary raised most of his money from outside the district.<sup>106</sup>

Council candidate Steven Banks commented that the 50-resident contribution requirement should be higher if the goal is to force people to raise money in district. But Banks feels the number is appropriate if the goal is simply to encourage nontraditional candidacies, because nontraditional candidates have a hard time raising any money. Banks suggested that one answer might be to institute a requirement that a certain percentage of total contributions must be raised from inside the district.<sup>107</sup>

Political attorney Carmen Williams, who has worked as the campaign finance law compliance officer for candidates at the federal, state and New York City levels and serves as a CGS consultant,<sup>108</sup> applauded the in-district contribution requirement for council candidates. Williams asserts that:

The campaign finance program forces candidates to think about things completely differently from the way they have in the past. The first instinct of the typical candidate is *not* to prioritize fundraising within their district. Most candidates raise money outside of district. The good that the program does goes beyond eliminating corruption. The program brings more people into the process.<sup>109</sup>

Throughout the history of New York City's public financing program nearly 500 candidates have met the qualification thresholds and received public funds. The percentage of campaign finance program participants that received public funds has exceeded 70% in three out of five elections, and has exceeded 50% in every election. The data and candidate testimony show that serious candidates are able to meet the qualification thresholds with little or no difficulty. No adjustments to the thresholds are recommended.

## **E. Electronic Disclosure Has Revolutionized Dissemination of Campaign Finance Information**

The New York City Charter mandates that the Campaign Finance Board maintain a computer database containing candidate campaign finance information and that this database be accessible to the public.<sup>110</sup> The Campaign Finance board has taken this mandate seriously. Throughout the history of the city's public financing program, the Campaign Finance Board has explored ways of using technology to improve disclosure to the general public.

Prior to the city's launch of the public financing program in 1988, campaign finance disclosure for city elections was in a miserable state. The authors of *Power Failure*, a detailed history of New York City politics published in 1993, described the state's campaign finance disclosure law:

Lack of enforcement has exacerbated the law's weaknesses. The New York State Board of Elections delegates responsibility for enforcing the election laws to local election boards. However, these boards are not given resources adequate to ensure compliance and to make the data available to the public. For the most part, these offices serve only as storage places for the candidates' filings. Summaries of the data are nonexistent and computerization of the statements is rare. This lax enforcement essentially negates the [state] law's public disclosure requirements.<sup>111</sup>

The Campaign Finance Board immediately changed this. In October 1989, the board released its first computerized public disclosure reports. In January 1990, the board made available to the public computer diskettes containing complete campaign finance data for the leading mayoral candidates.<sup>112</sup>

The city's electronic disclosure of campaign finance information has continued to improve throughout the years. The Campaign Finance Board developed its own candidate campaign finance reporting software, known as C-SMART, and introduced it during the 1993 election cycle.<sup>113</sup> The board launched its Web site in July 1997 which, by the summer of 1998, contained a searchable database of all campaign contributions.<sup>114</sup> The Web site was redesigned for the 2001 elections. Improvements included the addition of candidate expenditure information to the searchable database.<sup>115</sup>

Campaign Finance Board Executive Director Nicole A. Gordon noted the great strides that have been made since the program's inception:

At the citywide level, the program's been tremendously effective on disclosure. There's no question now that we are light years away from where we were before the program was in place. And part of the effectiveness of the disclosure is the incentive that candidates have to do it right, because if they don't, they won't get public funds. I think that's a very important component. I'm always very skeptical of the people who propose the "disclosure only" solution to campaign finance problems. I don't believe in that. But I think the disclosure has been a tremendous

success, particularly in New York, where we have a very poor past record of disclosure on the state level.<sup>116</sup>

Thousands of voters, candidates, journalists and scholars utilize the Campaign Finance Board's electronic campaign finance information annually. (Much of the analysis in this report would have been impossible without access to campaign finance information in an electronic database format.) New York City is setting the standard nationwide for electronic campaign finance disclosure. When asked what the greatest strengths of the city's campaign finance program are, NYPIRG's Gene Russianoff replied:

Disclosure! Reporters, the media and even the public really know what's going on with the candidates. A lot of stuff came out about the candidates during the [2001] campaign that affected how people view them. Alan Hevesi, the way his consultant reported his costs, became an issue which was a liability for him. Mark Green's brother's bundling issues became a front page *Times* story on him; Peter Vallone, the speaker, spending \$2 million of council money to promote his name and face. All that stuff came out, and shaped how people viewed the candidates. You know, you are what you eat—how you fundraise tells a lot about the candidate and how they'll behave if elected. It's all in a database and it's all accessible. It's a very, very powerful tool.<sup>117</sup>

Candidates voiced near-unanimous praise of the program's electronic disclosure component. Councilman David Yassky described the electronic filing succinctly as, "Perfect, great." Yassky was asked if he used the Campaign Finance Board Web site to keep track of his opponents fundraising and he replied:

Absolutely. There are 51 council districts. My opponent raised more money than the candidates in any of the other races [except for one candidate in district one]. He raised maybe \$315,000 or \$320,000, something like that. The newspapers wrote stories about how much money this guy raised. And I think that put him in a bad light.<sup>118</sup>

A few shortcomings of the C-SMART software were noted by candidates testifying at the board's public hearings. District 22 council candidate Sandra Vassos recommended that the electronic filing systems be redesigned so as to allow candidates to file their campaign finance reports over the Internet, rather than submitting diskettes to the board. Vassos also recommended that the C-SMART software be modified to interface with popular accounting software that is often used by candidates for record keeping.<sup>119</sup>

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

## F. Program Funding Mechanism Serves as a Model for Other Jurisdictions

The most critical factor in the success or failure of a public campaign financing program is whether the program is sufficiently funded. At one end of the spectrum are programs doomed to failure by a lack of funding, such as the program in Suffolk County, New York. Suffolk County's program is the subject of *Dead On Arrival: Breathing Life Into Suffolk County's New Campaign Finance Reforms*, a report published by CGS in June 2002. Suffolk County's public financing program relies entirely on volunteer donations from individuals who respond favorably to the Suffolk County Campaign Finance Board's solicitation included with annual property tax bills. Not surprisingly, the program is woefully underfunded.

At the other end of the spectrum are public financing programs in New York City and the City of Los Angeles. The public financing program of the City of Los Angeles relies on a charter-mandated annual appropriation of \$2 million (adjusted for changes in the cost of living) into a public financing trust fund. The city charter completely insulates public financing program appropriations from political pressures. As a result, the city's public financing program has been fully funded for every election cycle.

New York City's program funding mechanism has proven equally well insulated from political pressures. New York City's program relies on a modified version of the standard legislative budget process. The Campaign Finance Board submits its budget estimate to the mayor and, because of a 1998 voter-approved charter amendment, the mayor *must* include this estimate *without revision* in the executive budget sent to the city council for approval.<sup>120</sup> This differs from the standard legislative process used to fund public financing programs in jurisdictions such as San Francisco, where the mayor has the power to submit a budget to the legislative body with no public financing program appropriation whatsoever.

New York City's legislative appropriation process is backed up by a unique charter provision which authorizes the Campaign Finance Board, in the event that insufficient funds are allocated through the legislative budget process, to draw necessary funding directly from the city's general fund via written order to the city's commissioner of finance.<sup>121</sup> The Campaign Finance Act was passed by the city council in February 1988 without a guaranteed funding source. The council initially promised to set aside \$28 million for the 1989 elections, but then recanted in June due to a looming fiscal crisis. NYPIRG Senior Attorney Gene Russianoff lobbied the charter revision commission to include the draw-down provision among its charter amendments about to go before the voters. The commission did so and the amendments passed. The draw-down provision was codified in the charter and the Campaign Finance Board was established as a charter commission.<sup>122</sup>

The "draw-down" provision has never been utilized because the mayor and council have fully funded the program in every election year. But the draw-down provision serves as valuable insurance for the Campaign Finance Board. Its very existence in the city charter makes it unlikely that the city would refuse to appropriate the necessary program funding, because elected officials would be publicly criticized for

undermining the voter-approved program *and* the funding would be obtained by the Campaign Finance Board from the city's general fund: a lose-lose situation for officials.

New York City's program funding mechanism has advantages and disadvantages when compared to that of Los Angeles. The major advantage of New York City's funding mechanism is that it allows for greater flexibility in funding levels, whereas the funding mechanism in Los Angeles, a \$2 million annual appropriation, would require a voter-approved charter amendment to increase its amount. The disadvantage of New York City's funding mechanism is that the modified legislative budget process is still subject to the approval of elected officials who often oppose campaign finance reform because they believe it tends to aid political challengers. And some have suggested that New York City's draw-down provision may be susceptible to legal challenge because it empowers an un-elected administrative board to circumvent the legislative process. The legality of the draw-down provision has never been tested.

New York City's public financing program funding mechanism has worked well, fully meeting all qualified candidate requests for public funds throughout the program's history. The city's 2001 elections were a serious test for the funding mechanism, with over \$41 million of public funds distributed to 199 candidates. New York City's program funding mechanism serves as a model for other jurisdictions.

## **G. Program Costs Are a Tiny Fraction of the Total City Budget**

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

--Rudolf W. Giuliani (1991)<sup>123</sup>

Giuliani's statement was true in 1991, when he was gearing up to challenge incumbent Mayor David Dinkins, and continues to be true today. Giuliani went on to beat Dinkins in the 1993 general election. But 10 years later, Giuliani had changed his tune. In January, 2001, the Giuliani administration sued the Campaign Finance Board in an attempt to prevent the board from distributing public funds to candidates at the new \$4-to-\$1 matching rate. Giuliani's suit was dismissed and the implementation of the \$4-to-\$1 match proceeded on schedule.<sup>124</sup>

Prior to the 2001 elections, the Giuliani administration estimated that the public financing program would cost New York City taxpayers more than \$120 million. The Campaign Finance Board estimated that public funding to candidates would exceed \$60 million.<sup>125</sup> Both estimates proved to be high. The Campaign Finance Board actually distributed just over \$41 million to candidates in the 2001 elections—far more than had ever before been distributed to candidates in New York City—but still a tiny fraction of the total city budget.

Throughout the public financing program's 14 year history, program costs have been a small portion of the budget. Like other cities' programs, the burden imposed on New York City voters and taxpayers is light. **Figure 8**, below, breaks down the cost of New York City's public financing program in relationship to the total city budget, each

registered voter and each city resident. (Annual budget figures are aggregated for the entire four-year election cycle.)

**Figure 8**

<b>Public Financing Program Costs</b>					
<b>Election Cycle</b>	<b>Total Matching Funds Distributed<sup>126</sup></b>	<b>Total City Budget for Election Cycle<sup>127</sup></b>	<b>Percent of Total Budget</b>	<b>Cost Per Registered Voter Per Year</b>	<b>Cost Per Resident Per Year</b>
<b>1988-89</b>	<b>\$4.5 million</b>	<b>\$51.8 billion</b>	<b>0.0009%</b>	<b>\$0.71<sup>128</sup></b>	<b>\$0.31<sup>129</sup></b>
<b>1990-93</b>	<b>\$9.4 million</b>	<b>\$117.4 billion</b>	<b>0.0008%</b>	<b>\$0.71<sup>130</sup></b>	<b>\$0.32<sup>131</sup></b>
<b>1994-97</b>	<b>\$7.2 million</b>	<b>\$129.4 billion</b>	<b>0.0006%</b>	<b>\$0.51<sup>132</sup></b>	<b>\$0.22<sup>133</sup></b>
<b>1998-2001</b>	<b>\$42.7 million</b>	<b>\$146.6 billion</b>	<b>0.003%</b>	<b>\$2.64<sup>134</sup></b>	<b>\$1.33<sup>135</sup></b>
<b><u>Total / Annual Average</u></b>	<b>\$63.8 million / \$4.56 million</b>	<b>\$445.2 billion / \$31.8 billion</b>	<b>0.001%</b>	<b>\$1.13<sup>136</sup></b>	<b>\$0.57<sup>137</sup></b>

As Giuliani stated in 1991, the public financing program costs are a percentage of a percentage of a percentage of the total city budget. During the 1998-2001 election cycle, the public matching funds program cost *three thousandths of one percent* of the total city budget.

The public financing program cost \$2.64 per registered voter per year for the 1998-2001 election cycle. The \$4-to-\$1 matching funds rate, combined with an unprecedented number of candidates, caused an increase of \$2.13 per voter from the 1994-97 election cycle. The average cost throughout the program's history is \$1.13 per voter. The program cost per resident per year is roughly half of the per voter cost. Public financing in the 2001 election cycle cost \$1.33 per resident, with an average cost of \$0.57 per resident throughout the program's history.

**Figure 8** does not include program administration costs. The Campaign Finance Board's total operations budget appropriation for fiscal year 2001-02 was approximately \$13.9 million. This figure includes \$6 million for production of the voter guide, leaving administrative costs of the city's campaign finance program at just under \$8 million for

the largest election in the city's history. The board's 2002-03 operations budget is approximately \$1 million less.<sup>138</sup>

Program administration costs are higher in New York City than in other jurisdictions with public financing programs. This is due to a number of factors. Most significantly, the New York City Campaign Finance Board regulates the campaign finance activities of far more candidates than any other jurisdiction with a public financing program. The campaign finance board monitored the campaign finance activities of 353 participating candidates. In comparison, the Los Angeles City Ethics Commission, with an operations budget of just under \$2 million per year, regulated the campaign finance activities of only 64 candidates in the 2001 citywide elections.

In exchange for this expenditure, New York City residents get a broader selection of candidates to choose from, and elected officials with far fewer favors to repay than they would have, had they needed to raise hundreds of thousands more dollars in contributions from private donors.

## **H. Campaign Finance Board Does a Difficult Job Well**

The Campaign Finance Board is charged with regulating the campaign finance activities of the very elected officials who hold the board's purse strings—not an enviable position. On top of its responsibility to publicize any campaign finance wrongdoing by officeholders, the board distributes public funds that enable candidates to challenge officeholders in their reelection bids. Furthermore, the board must balance the demands of hundreds of candidates in each election who seek public funds, with the duty of spending limited public tax dollars wisely.

Despite the difficulty of their position, the Campaign Finance Board is praised not only in New York City but nationwide for a job well done. While testifying before the Campaign Finance Board in December, 2001, Los Angeles City Ethics Commission Executive Director LeeAnn Pelham remarked:

I want to say for the record and very publicly, that the assistance your Board has provided to our agency in the decade that we have been in existence has been extraordinary. And I think having come from the annual [Council on Governmental Ethics Laws] meeting where state, federal and local agencies gather together every year, you should know that your staff is held in very high regard, as is the Board, for the work you have done over the years.<sup>139</sup>

Perhaps the most telling aspect of the public's perception of the Campaign Finance Board's performance is the fact that the board is perceived as fair but tough. Praise for the board does not stem from attempts to please everyone. The board and its staff is respected for its competency.

When asked how he would rate the administrative performance of the Campaign Finance Board, Councilman David Yassky referred to the board as "Very good. Tough. Very nit-picky, which is good. As somebody who followed all the rules, I want them to be nit-picky, because I want everyone else to follow all the rules."<sup>140</sup> Councilman John

Liu called the board, “Superb. Very professional, dedicated individuals. They’re wrong sometimes, but I guess no one’s perfect.”<sup>141</sup> Green Party 20<sup>th</sup> council district candidate Paul Graziano testified:

You know, I have heard from other candidates that I ran against, candidates from other districts, how harsh the Campaign Finance Board was on them on their audits and that it was very unfair. I found it extremely fair, maybe because I just followed the rules, and people should be following the rules if they are planning to get public funding.<sup>142</sup>

Candidate after candidate testified at the board’s 2001 post-election public hearings as to the competency of the board and its staff. Council district 22 candidate Sandra Vassos testified, “I would also like to commend the staff of the CFB [Campaign Finance Board]. They were very helpful. They were always there when we called and they always followed up. So I thank them for that.”<sup>143</sup> Councilwoman Helen Foster commented, “Fortunately, the person that we worked with at the Campaign Finance Board, Patrick Wehle, was excellent. I cannot give him enough praises.”<sup>144</sup>

Despite this widespread praise for the integrity and competency of the Campaign Finance Board, candidates and elected officials do not always respond to the board’s actions with candor and respect. During the 1993 election cycle, for example, the board assessed a penalty of \$320,000 on then-Mayor Dinkins’ ultimately unsuccessful re-election campaign for violation of the campaign finance law. On December 30, 1993, after losing to Rudy Giuliani in the general election, and on the eve of leaving office, Dinkins replaced Campaign Finance Board Chairman Joseph A. O’Hare with Thomas Schwartz. O’Hare’s term had expired the previous March and he had continued to serve without appointment. The *New York Times*, among others, viewed Dinkins’s act as purely retributive and called for the resignation of the new chairman. Schwartz resigned after eight days, and Mayor Giuliani reappointed O’Hare to his second term on January 10, 1994.<sup>145</sup>

One of most difficult areas of responsibility for the Campaign Finance Board is deterring fraud. The board does have success stories, such as the prosecution of Ron Reale, former head of the city’s transit police union and 1993 candidate for public advocate. According to Campaign Finance Board Executive Director Nicole A. Gordon:

Reale’s campaign used fraudulent money orders to get \$150,000 in matching funds. We discovered in post-election auditing that the money orders were serially numbered, and in the same handwriting. We turned it over to the US attorney’s office and it turns out that he was facing a lot of other kinds of fraud as well. He went to jail for seven years and the Campaign Finance Board just got the money back last week.<sup>146</sup>

According to Gordon, however, the type of fraud detected by the board is typically very difficult to prosecute. Gordon explained that the Campaign Finance Board staff continues to see occasional fraudulent money orders, cash contributions, and forgeries. The board turns them over to the district attorney. But the amount of money involved is so small, relatively speaking, that the district attorney often chooses not to prosecute. The board denies the funds to the perpetrators of fraud, but has power to do little else when the district attorney refuses to press charges. If public money is never distributed in



the first place, then the district attorney often may not be interested because of a perception there has been no actual harm to the city.<sup>147</sup>

The Campaign Finance Board's strongest line of defense against violators of the campaign finance laws is its policy of closely scrutinizing candidate contribution records before distributing public funds to candidates. The board conducts extensive auditing of campaign finance records both before and after an election; every participating candidate's campaign is audited. The most common violations of city law in the 2001 election cycle were candidate acceptance of prohibited corporate contributions, late or missing disclosure reports and candidate acceptance of contributions from political committees that had failed to register with the campaign finance board.<sup>148</sup>

The board assessed civil penalties against at least 119 campaigns totaling more than \$86,000 for violations of city laws during the 2001 election cycle. The board maintains a list on its Web site of candidates who fail, after repeated notice, to pay penalties and to repay public funds owed to the city. According to the board, this tactic to encourage payment of fines has produced "extraordinary" results.<sup>149</sup>

Political attorney Carmen Williams, who served as compliance officer for several candidates in New York City's 2001 elections, praised the board's program administration overall but noted several areas where improvements could be made. Williams would like to see the board offer different levels of trainings. "They have the same training over and over. They should have the basic class. But they should also have advanced training."

Williams sees public funding as a reward for rising to a higher level of campaign finance law compliance. But she insists that many candidates do not realize this and, consequently, "think many of the rules are stupid and resent the rules." Williams personally feels the rules are "mostly valuable and defensible," but thinks the board would have an easier time if it explained the rules better. Williams characterized the board as "more inclined to tell you answers than to teach you why the answer is the answer. They should explain the philosophy behind the rules." Williams is a professional who understands the rules and easily interprets them for her clients, but she claims, "The people who have been hurt most by the program administration are the people who have the least sophisticated campaigns. And those are the people who are supposed to be helped by the program."

Throughout the history of the public financing program, the Campaign Finance Board has solicited and responded to the comments of its critics. The Campaign Finance Act requires that the board review and evaluate the effect of the Act after every city election, and submit a report to the city council and the mayor on or before September first of the year following the election.<sup>150</sup> Following the 1989 elections, the board held two days of public hearings as part of this post-election review process. Thirty-eight speakers testified—including former Mayors Koch, Giuliani, and many other candidates and elected officials.<sup>151</sup> The board has repeated this practice following every major publicly financed election.

The Campaign Finance Board has published reports following each election, containing in-depth analysis of the public financing program's implementation and recommendations for improving the program. The board published its first

comprehensive report, *Dollars and Disclosure*, in September 1990. Following the 1991 elections, the board published *Windows of Opportunity* (1992). *On the Road to Reform* (1994) was published by the board following the 1993 elections. *A Decade of Reform* (1998), analyzed the board's administration of the public financing program in its first 10 years. Most recently, the board published *An Election Interrupted . . . An Election Transformed* (2002), analyzing the 2001 citywide elections.

Candidate campaign finance practices are constantly changing; campaign finance law must change with them. Many of the board recommendations contained in its reports have been made into law. This constant evolution of the public financing program is the program's greatest strength. It is in this spirit of evolution that it is hoped the Campaign Finance Board will support the CGS recommendations and keep New York City at the forefront of public campaign financing.

## **IV. Room For Improvement**

### **A. New York City Possesses Greater Campaign Finance Legislative Authority Than Is Currently Being Utilized**

New York City's campaign finance laws regulate only the activities of candidates who voluntarily agree to abide by those laws in exchange for public funding. Some candidates forego public funding and, consequently, are permitted to raise campaign funds under much higher state contribution limits. Such candidates are also not required to disclose campaign finance data to the New York City Campaign Finance Board. Nor are such candidates required to disclose to the Board of Elections the same level of detail regarding fundraising activities that is required by the Campaign Finance Board of publicly financed candidates. To properly administer the public financing program, the Campaign Finance Board must obtain paper copies of nonparticipants' reports and enter the information into their electronic database by hand. Voters seeking disclosure information for nonparticipants must go in person to the office where the report was filed and sort through the pages by hand.

New York City officials have taken a conservative approach to the question of whether the city may impose campaign finance restrictions on all candidates, regardless of the candidate's willingness to participate in the city's public financing program.<sup>152</sup> U.S. Supreme Court rulings have held that spending limits be voluntary.<sup>153</sup> But a strong argument can be made that New York State's "home rule" law does, in fact, empower New York City to impose other regulations, specifically contribution limits and disclosure requirements, uniformly upon *all* candidates for New York City office.<sup>154</sup>

New York's state constitution provides that "every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government."<sup>155</sup> The constitution specifically lists the following policy areas in which local governments may legislate: the powers, duties, qualifications, number, mode of selection and removal, and terms of office of its officers and employees; the membership and composition of its

legislative body; and the government, protection, order, conduct, safety, health and well-being of persons or property therein.<sup>156</sup>

Local laws found to be “inconsistent” with state law are preempted by state law. New York courts recognize two distinct types of inconsistency as grounds for preemption: “conflict” preemption and “field” preemption.<sup>157</sup>

### ***1. Conflict Preemption***

Conflict preemption analysis focuses on whether the state and local governments have legislated commands that clearly conflict. A clear conflict would exist, for example, if state law prohibited the use of public funds to finance candidate campaigns and New York City law required candidates to accept public financing.

The approach taken by New York courts to determine the presence of conflict preemption has changed over time. Older decisions tended to find preemption and restrict the ability of local governments to legislate in substantive areas where the state had adopted laws. More recent decisions have tended to grant greater home rule authority to local governments. The older, more restrictive approach to home rule is best exemplified by the state high court’s upholding of the appellate court’s decision in *Wholesale Laundry Board of Trade, Inc. v. City of New York* (1963).

In *Wholesale Laundry*, the appellate court struck down a New York City law setting a minimum wage of \$1.25 an hour on the ground that the city law was inconsistent with a state law establishing a minimum wage of \$1.00 an hour. Whereas many states define “inconsistent” to mean “less restrictive,” this older approach considered a local law to be inconsistent with state law if the local law was *either more or less restrictive* than state law. In other words, a local law was inconsistent with state law if it was *merely different* than state law. Specifically, the *Wholesale Laundry* court ruled that a local law is inconsistent with state law if the local law prohibits what state law permits or allows what state law forbids.<sup>158</sup> In *Wholesale Laundry*, state law would permit employers to pay \$1.00 an hour, so the city’s higher minimum wage law was preempted.

New York’s high court—the Court of Appeals of New York—affirmed the appellate court’s decision in *Wholesale Laundry* without publishing a majority opinion. Two high court dissenters, however, did write opinions foreshadowing the direction New York preemption law would take. Both dissenters argued that any local law furthering the public policy behind a state law should be found consistent with state law and upheld as a permissible exercise of home rule.<sup>159</sup>

The high court, in its 1974 *People v. Cook* decision, rejected *Wholesale Laundry*’s notion that a local law cannot prohibit what state law permits.<sup>160</sup> In *Cook*, the court upheld a New York City law that required a differential tax on cigarettes—based on the cigarettes’ nicotine content—to be reflected in the retail prices of cigarettes, despite the fact that state law also imposed a differential cigarette tax but permitted cigarette sellers to charge the same price for cigarettes regardless of nicotine content. *Cook* argued that the city did not have the legislative authority to impose the retail price differential. The court reasoned that the city’s authority was rooted in its home rule police powers.

The court acknowledged that a city may not exercise its police power by adopting a local law which is *inconsistent* with constitutional or other state law.<sup>161</sup> The court reasoned, however, that the city's enforcement of a more stringent version of a state law was a permissible exercise of the city's home rule authority. The court dismissed Cook's claim that the price differential would need to be explicitly authorized by state law in order to be permissible.<sup>162</sup> Instead, the court held that because the city law was consistent with the *legislative purpose* of the state law, the city law was consistent with state law.<sup>163</sup> This decision marks a significant departure from the court's earlier position that any difference between state and local law on the same subject was an impermissible inconsistency.

In *Town of Clifton Park v. C.P. Enterprises* (1974), a state appellate court adopted the high court's *Cook* reasoning, upholding a local ordinance specifying a method of publication for new laws that differed from the state's general law specifying a method of publication. Interpreting state home rule law, the court stated:

We do not perceive the use of the word "inconsistent" to be the equivalent of "different" . . . . To define the word "inconsistent" narrowly as meaning merely "different" would vitiate the flexibility of home rule as enunciated by the legislature and the executive branch in enacting the Municipal Home Rule Law.<sup>164</sup>

The more recent trial court decision in *Mayor of the City of New York v. Council of the City of New York* (1999) explicitly recognized the deference to be given locally enacted laws, stating:

The home rule provision of [the] NY Constitution . . . gives local governments broad police powers relating to the welfare of their citizens. Duly enacted local laws have the same presumption of constitutionality as do State laws, and the party challenging a local law has a "heavy burden" to prove that the law is inconsistent with the New York State Constitution or any general law of New York State. The presumption of constitutionality must be rebutted beyond a reasonable doubt, and a court should only declare a law unconstitutional as a last resort.<sup>165</sup>

These decisions make it clear that New York's courts have moved from a constitutional interpretation severely limiting the home rule authority of local governments to an interpretation that allows local governments much greater freedom in legislating. When faced with the question of whether a local law is in conflict with, and thus preempted by state law, a New York State court today would likely consider the extent to which the local law furthers the legislative purpose of the state law. To the extent that the local law furthers the legislative purpose of the state law, a court would likely find the local law not in conflict with state law but, rather, a permissible exercise of home rule authority—so long as the state legislature has not indicated an intention to preempt all local legislative action in the particular substantive field.

## **2. Field Preemption**

Field preemption analysis focuses on whether extensive state regulation in a particular substantive field of law indicates an intention by the state legislature to be the

sole regulators in that field. Though clear examples of conflict preemption are easy to find, finding clear examples of field preemption is more difficult. The doctrine of field preemption requires courts to discern the intent of the legislature—not an easy task. Courts recognize two types of field preemption, express and implied. Some statutes expressly indicate the desire of the legislature to preempt local lawmaking in the field using unambiguous language. Most statutes, however, neither confirm nor deny legislature’s intent to preempt local legislation.<sup>166</sup>

In *Jancyn Manufacturing Corp. v. County of Suffolk* (1987), the state’s high court considered preemption of a local law prohibiting the sale of toxic cesspool additives.<sup>167</sup> The plaintiff, a cesspool additive manufacturer, argued that the local law was superseded by a less restrictive state law regulating the content of cesspool additives.<sup>168</sup> The court began by finding that there was no direct conflict between the state and local law, noting that “The fact that both the State and local laws seek to regulate the same subject matter does not in and of itself give rise to an express conflict.”<sup>169</sup>

Instead, the court’s decision turned on whether the state preempted the entire field of sewage system cleaners. The court found no preemptive intent in either the legislature’s declaration of state policy or the statutory scheme itself.<sup>170</sup> On the contrary, the court found the statute to be “entirely absent” of any expressed desire for “across-the-board uniformity.”<sup>171</sup> The court firmly rejected the plaintiff’s argument that any local law prohibiting what state law would allow is invalid under *Wholesale Laundry*. The court responded that the rule set forth “in *Wholesale Laundry* applies only when the Legislature has evinced a desire that its regulations should pre-empt the possibility of varying local regulations or when the State specifically permits the conduct prohibited at the local level.”<sup>172</sup>

“Implied preemption” was again at issue in *Incorporated Village of Nyack v. Daytop Village, Inc.* (1991), where a corporation with a state license to run a drug rehabilitation facility claimed that a local government’s zoning laws were preempted by the state’s substance abuse treatment law, to the extent that the local zoning law prevented the corporation from opening a residential treatment center in an area zoned non-residential. Again the state’s high court upheld a local law, finding no preemption where “two separate levels of regulatory oversight can coexist.”<sup>173</sup> The court again rejected the reasoning of *Wholesale Laundry*, stating:

[T]he test is not whether the local law prohibits conduct which is permitted by State law, because that test is much too broad. Rather . . . we look to whether the State has acted upon a subject, and whether in so acting has evinced a desire that it’s regulations should pre-empt the possibility of varying local elections.<sup>174</sup>

In a more recent case, *DJL Restaurant Corp., dba Shenanigans v. City of New York* (2001), the state’s high court articulated the grounds on which field preemption will be found. In upholding a New York City zoning law, the court explained:

An implied intent to preempt may be found in a declaration of State policy by the State Legislature . . . or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area. In that event, a local government is precluded from legislating on

the same subject matter unless it has received clear and explicit authority to the contrary.<sup>175</sup>

*DJL Restaurant Corp.* makes it clear that a New York State court’s finding of implied field preemption depends on whether the court finds that the Legislature has enacted a “comprehensive and detailed regulatory scheme.” Where the state legislature has enacted a comprehensive and detailed regulatory scheme, a court will likely find any local law on the subject which differs in any way from the state law to be preempted by state law.

### ***3. Applying the Law to New York City’s Regulation of Campaign Financing***

New York’s constitution, statutes and case law make it clear that local laws must not be inconsistent with state laws. A local law will be found to be inconsistent with state law, and thus preempted, under two circumstances: (1) the local law directly conflicts with a state law and does not further the legislative purpose of the state law, or (2) the local law regulates activity in a field which the state legislature has either expressly or impliedly indicated its intent to be the sole regulator.

When asked in 1987 whether New York City’s proposed voluntary public financing program would be preempted by state law, New York State Attorney General Robert Abrams opined,

I believe that the Election Law does not preempt the subject of the [public financing] bill. Clearly, there is no explicit statement by the legislature that local legislation is preempted. Nor is there any indication from the nature of the regulatory scheme of the Election Law of a legislative intent to occupy the field of campaign financing. The mere fact that State law deals with a subject does not withdraw home rule power from a local government.<sup>176</sup>

The attorney general’s opinion regarding to the constitutionality of a voluntary local campaign finance law might apply with equal force to a mandatory local campaign finance law. The constitutionality of a mandatory law was not addressed.

#### ***a. Conflict Preemption***

With regard to New York City and New York State campaign finance law, a finding of direct conflict, without more, would likely have no bearing on the constitutionality of the local law under the constitution’s home rule provisions. Absent field preemption, a conflicting local law will only be struck down if it fails to advance the legislative purpose of state campaign finance regulations. The state of New York has enacted laws in two areas of campaign finance regulation: disclosure and contribution limits.

Though state statutes make no mention of legislative purpose or intent, it is safe to assume that the state’s purpose for enacting such restrictions on political speech is the only purpose accepted by the U.S. Supreme Court: avoiding corruption or the appearance of corruption in the electoral process. More stringent local government laws regulating campaign finance activities—such as contribution limits lower than current state limits—further the legislative purpose of state campaign finance laws.

One might argue that enactment of a state contribution limit (*e.g.*, a \$50,000 limit on general election contributions to certain borough president candidates) evinces a state determination that contributions below the limit (*e.g.*, a \$49,000 contribution) could not create an appearance of corruption. According to such an argument, the legislative purpose was to allow contributions of \$49,000 to certain borough president candidates. Lower city limits, therefore, would be inconsistent with the legislative purpose.

More likely, the legislature determined that contributions above the state limits posed significant threat of corruption or the appearance of corruption, justifying the limits as established and leaving open the question of whether lower limits might be necessary to avoid the appearance of corruption under certain circumstances. In fact, the legislature has acknowledged that contributions of less than \$50,000 to borough president candidates can pose a serious threat of corruption. State law provides that candidates for Manhattan borough president in the 2001 general election could accept contributions up to \$50,000 under state law, while candidates for Staten Island borough president were subject to a state limit of \$11,256. Similarly, 2001 Democratic primary candidates for Manhattan borough president could accept contributions up to \$38,345 while minor party candidates were subject to a \$1,000 limit. (*See Figure 2*, p. 11.)

Under *Mayor of the City of New York*, local laws are presumed to be constitutional. The party challenging a local law has a “heavy burden” to prove that the local law is inconsistent with state law. The constitutionality of the local law must be rebutted beyond a reasonable doubt. There is certainly reason to doubt that the legislature considered no contribution below \$50,000 to threaten corruption. The establishment of lower contribution limits for different boroughs and different political party candidates belies such a claim.

Under *Cook, Town of Clifton Park* and *Mayor of the City of New York*, stringent local campaign finance laws, even those in direct conflict with state campaign finance laws, should not be preempted by state law.

#### **b. Field Preemption**

Field preemption seems a possible—but unlikely—barrier to stronger New York City campaign finance regulation. Field preemption may be either express or implied. There is no express indication in New York’s Election Law of any intent by the legislature to be the sole regulators in the field. On the contrary, the Election Law section titled “Applicability of chapter” states, “Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law.”<sup>177</sup>

This provision clearly indicates the legislature’s intent *not* to be the sole regulator in the field of campaign finance. Nevertheless, an opponent of New York City campaign finance law might argue that this provision applies only to other state law and that preemption of local law may be implied where the legislature has enacted a “comprehensive and detailed regulatory scheme.” While some might argue that the New York State legislature has enacted such a campaign finance regulatory scheme, the argument is not convincing.

New York State campaign finance laws are far from comprehensive and are among the least restrictive in the United States. The state does not provide public financing to candidates—an element considered critical to comprehensive campaign finance regulation by many political scientists. Furthermore, the state’s campaign finance disclosure laws fail to bring independent campaign expenditures that support or oppose specific candidates into full public view. Labor unions and other organizations spend tremendous sums to influence New York State and local elections without having to fully disclose such expenditures. State disclosure laws are likewise deficient in that they do not require campaign contributors to disclose the identity of their employer—information essential to detecting illegal efforts to evade contribution limits.

One might argue that the operative question is whether the state of New York’s campaign finance law was comprehensive, and therefore indicative of a legislative intent to preempt the field, when enacted in 1976. The answer is no. In 1976, for example, 13 states and the federal government had adopted some form of public financing, but New York failed to do so. Its contribution limits were far higher than any other campaign finance reform jurisdiction, and its disclosure requirements were weaker. Furthermore, though the state legislature has amended its election law countless times since 1976, it has repeatedly failed to close obvious loopholes in the law, thereby evidencing an apparent lack of interest in creating a “comprehensive and detailed regulatory scheme.” New York State’s spotty performance thus suggests no clear intent to occupy the field of campaign finance regulation.

#### ***4. Public Policy Considerations***

Public policy concerns cut strongly against finding field preemption. Local elections are the very core of local home rule principles. The state’s allowance of stringent local campaign finance laws would create little or no extra-local impact. The monetary cost of local campaign finance laws are borne by local taxpayers. Stricter local campaign finance laws would impact only candidates running for local office and political committees participating in local elections. The existence of differing campaign finance laws in local jurisdictions would impose no additional burdens on candidates, who do not run for local office in more than one jurisdiction at a time.

To be sure, some political committees are active in both city and state elections. Requiring such committees to comply with differing state and local campaign finance laws might impose a burden upon them. But requiring state committees to abide by local laws when engaged in local electioneering is fair to local voters. To comply with local contribution limits, a political committee active statewide should be required to demonstrate that it received enough contributions within the city’s limits to fund all political expenditures supporting or opposing New York City candidates. The burden of complying with differing disclosure laws would be avoided altogether if the state legislature were willing to bring its disclosure requirements up to the standards of New York City. Both the city and the state should enact independent expenditure disclosure requirements. The city and the state currently utilize electronic campaign finance disclosure technology, which should be interfaced to further reduce potential burdens on political committees.



## **Recommendation 1: Make City Contribution Limits Mandatory on All Candidates and Committees Participating in City Elections**

New York City should make its contribution limits mandatory and binding on all candidates and political committees participating in city elections, not just those participating in the public financing program. In accordance with its constitutional power of home rule, New York City may enact and enforce campaign finance laws furthering the legislative purpose of state campaign finance law for *all* city candidates, regardless of the candidates' willingness to participate in the public financing program. The U.S. Supreme Court's interpretation of the federal constitutional law prohibits the imposition of mandatory spending limits on candidates, and also prohibits limits on the amount of personal funds a candidate may contribute to (*i.e.*, spend on) his or her campaign.<sup>178</sup> The city's public financing and spending limits should, therefore, remain voluntary. The city's contribution limits should not be applied to a nonparticipating candidate's use of personal funds.

Extending the city's contribution limits to all candidates and committees participating in city elections will eliminate the unfair fundraising advantage currently enjoyed by nonparticipants. Under current law, for example, a citywide office candidate who chooses to participate in the public financing program is subject to a \$4,500 contribution limit. A candidate for the same office who refuses to participate in the public financing program may accept contributions ten times larger—up to \$45,400. (*See Comparing City and State Contribution Limits*, p. 9.) With the city's contribution limits extended to all candidates, candidates will be bound by the same fundraising rules.

## **Recommendation 2: Make City Disclosure Laws Mandatory on All Candidates and Committees Participating in City Elections**

New York City should extend its disclosure laws to all candidates and political committees participating in city elections, not just those participating in the public financing program. This will shed light on the fundraising and spending activities of nonparticipating candidates, political parties and independent expenditure committees. Mandated electronic disclosure by nonparticipants will, at the same time, save city tax dollars currently spent by the Campaign Finance Board collecting paper campaign finance reports from the Board of Elections and manually keying this data into the Campaign Finance Board's electronic database. Furthermore, development and enforcement of city disclosure laws for all political committees active in New York City elections will enable the Campaign Finance Board to address independent spending activity that currently goes undisclosed in New York City.

## **Recommendation 3: Grant Local Jurisdictions Authority to Regulate Local Campaign Finance Activities Through Legislative Action at the State Level**

The state of New York should clarify the status of New York City's home rule power by explicitly granting all local governments in the state authority to enact and

enforce stricter campaign finance laws for all candidates and political committees participating in local elections.

The right to elect local officials is critical to democratic municipal governance. New York City residents should be permitted to choose their elected officials as they deem fit, within the constraints of the federal and state constitutions. New York City residents and elected officials are clearly the individuals best situated to determine the most appropriate campaign finance regulations for the conduct of fair and democratic city elections.

## **B. Weak Disclosure Requirements and Lax Enforcement Render Independent Spending Invisible**

Independent expenditures are playing an increasingly significant role in elections throughout the United States, as wealthy individuals and organizations seek to exert political influence beyond that which is possible under a regime of contribution limits. There is substantial evidence of undisclosed independent expenditures in New York City.<sup>179</sup>

Independent expenditures are of particular concern in jurisdictions with public financing programs, because those candidates who agree to limit their spending are faced by independent expenditure committees without limits. Independent expenditures undermine the spirit of contribution limits by enabling wealthy special interests to exert a level of influence exceeding that which is possible through campaign contributions. Prohibited from giving a \$50,000 contribution to a mayoral candidate by the Campaign Finance Board's \$4,500 limit and the state's \$5,000 limit on corporate contributions, a special interest group may instead choose to spend \$50,000 on a campaign mailer independently of the candidate's campaign.

To date, the U.S. Supreme Court has protected independent expenditures as a form of free speech.<sup>180</sup> Yet such large independent expenditures do, in fact, pose a risk of corruption or the appearance of corruption, a risk recognized by the Court when justifying limits on campaign contributions. Though candidates would prefer to control their own message, most would accept the support of large independent expenditures or fear such expenditures made against them.

One candidate told CGS in confidence, "There was an independent expenditure made on my behalf. In retrospect, I appreciate what [the independent spender] did. I didn't know he was doing it, but I really appreciate what he did." While the general public may not know the identities of independent spenders, candidates are typically well aware of them. Big independent spenders may receive the same preferential treatment they would expect had they given a large contribution directly to the candidate.

Independent expenditures pose a direct threat to publicly financed elections. Publicly financed candidates who agree to spending limits often lack the resources to respond to independent expenditures attacking them. New York City lifts the spending limits for publicly financed candidates facing opponents who exceed the spending limit. It does not monitor independent expenditures or lift the spending limit for candidates who

are attacked by independent expenditures or whose opponents benefit from large independent expenditures. Other jurisdictions do. In Los Angeles, for example, a publicly financed city council candidate's spending limit is eliminated when independent expenditures in the race exceed \$50,000. No local government jurisdiction currently offers additional public funds to candidates facing large independent expenditures, though several are considering such a policy.

When asked whether independent expenditures play a significant role in New York City elections, Campaign Finance Board Executive Director Nicole A. Gordon replied:

This is one of the great mysteries of New York City. We keep waiting to see the independent expenditure issue raise its ugly head, and so far it has not. The unions do have a very active operation which they direct to their members. And they certainly do get-out-the-vote [GOTV] activities and so on but, so far we're not aware of any significant independent spending and have not received complaints about it.<sup>181</sup>

The Campaign Finance Board's latest report, *An Election Interrupted . . . An Election Transformed* (September 2002), makes little mention of independent expenditure activity in New York City elections.<sup>182</sup>

The fact that labor unions are very active in New York City elections is common knowledge. Nonetheless, a survey of campaign finance reports filed with the state by the city's most active unions disclose nothing about union GOTV expenditures, even though state law requires them to do so.

### ***1. Current Disclosure Requirements***

The New York City Campaign Finance Act imposes no separate disclosure requirements on non-candidate political committees active in city elections. Political committee disclosure is regulated only by state law. New York State law requires political committees to disclose, among other things: the dollar amount of every expenditure, the name and address of the person to whom it was made, the date of the expenditure, and the purpose of the expenditure.<sup>183</sup>

State law defines "political committee" as any combination of one or more persons operating or cooperating to aid or promote the success or defeat of a political party or candidate, but not including such a combination of persons whose only political activity is making contributions to a registered candidate or political committee.<sup>184</sup> The New York State Board of Elections has advised that a labor union is deemed a political committee if it:

(a) solicits or accepts funds (other than regular dues no portion of which are specifically collected for political purposes) from its members . . . for political purposes, or (b) expends funds directly in behalf of any candidate or "political committee" (e.g., posters, mailings, media advertisements, etc.).<sup>185</sup>

The State Board of Elections was asked to issue an opinion whether "partisan communications (i.e., telephone calls, letters, mailings, etc.) requesting that the recipient vote for or against a particular candidate or proposition, whether directed to the union's members and their families or to the general public" would make the union a political

committee subject to state disclosure requirements.<sup>186</sup> The board opined that such activities would bring a union within the definition of a political committee if the activities caused an expenditure of funds, unless the activity was reported as an in-kind contribution.<sup>187</sup> It seems impossible that a campaign mailer would not cause an expenditure of funds, and the cost of a single mailer for any city office would exceed the Campaign Finance Board's contribution limits.

It is clear that under New York State law, expenditures for GOTV activities supporting particular candidates must be disclosed by the organization making the expenditures as either in-kind contributions to the beneficiary candidate (subject to contribution limits) or as independent expenditures. In New York City, however, labor union GOTV activity on behalf of specific candidates is commonplace and goes unreported.

## *2. Abundance of Anecdotal Evidence*

When asked whether labor union independent expenditures played a significant role in his race, first-term City Councilman John Liu replied, "Some of the larger unions had strong get-out-the-vote operations . . . I was strongly backed by labor. It was generally a whole slate, getting out the vote for the mayoral candidate they backed and the other citywides and the borough president candidates."<sup>188</sup> "Did this include SEIU 1199?" he was asked. "Yeah, they did send out flyers to their members giving them a suggested slate and I was on that slate in my district. I have no idea how much that stuff costs."<sup>189</sup>

Steven Banks, who finished second in the Democratic Party primary for the 39<sup>th</sup> city council district seat, told CGS, "There are labor unions that supported me and labor unions that supported other candidates. I received tremendous help from unions. [Independent spending] is a concern. It influences the outcome of certain races." When asked whether campaign mailers were sent out by labor unions for candidates in his race, Banks replied, "Some of the unions that supported me certainly sent out those types of things."<sup>190</sup> Banks continued:

I'm really proud to have all the labor support that I had. Other candidates in the race were also supported by labor. Would it be a fairer system overall if independent expenditures were chargeable to a campaign? Yes, it would be a fairer system overall. On the other hand, I think the system is set up to deal with the fact that workers frequently don't do as well in the political context as people of higher income. So to be able to encourage labor union members to participate, that's a good thing.<sup>191</sup>

Jerry Skurnick, co-owner of the voter contact company Prime New York and a man the *New York Times* called "the master of lists,"<sup>192</sup> confirmed that his company has sold voter contact lists to labor unions for local election activities.<sup>193</sup>

John Siegal, chairman of Mark Green's mayoral campaign, testified at the Campaign Finance Board's December 2001 public hearings that he has "no doubt that there was significant independent campaign activity" during the weeks between September 11 and the rescheduled mayoral primary. When asked by Nicole A. Gordon whether it was union activity, Siegal replied, "I suspect it was, but I don't know. There

were automated phone calls going to a large part of the City during that two-week period.”<sup>194</sup>

Candidates CGS interviewed refused to publicly disclose details of union spending. Privately, one candidate told CGS that an opponent of his was an official in a union and that the union “essentially ran that campaign—staffed it, supplied it, dispatched members all over the district” working for the candidate. Another candidate in the same race had support from two other unions, which “provided mailings to a substantial number of people in the district, phone calls, and election day operation people.”

One candidate asked, “If a union mailer goes out and says, ‘Here’s eight races we’re concerned about in Brooklyn,’ in other jurisdictions that’s a reportable expense?” The candidate noted with a chuckle, “Doesn’t happen in New York City!”

Political commentator, professor and author Fred Siegel remarked that the Campaign Finance Board’s electronic disclosure system is the most important component of the public financing program, but noted:

What it doesn’t pick up is the in-kind contribution, the public sector union contribution. That’s where [Democratic candidate for mayor in 2001 Fernando] Ferrer had a huge advantage. Ferrer took off when he had [SEIU 1199 President Denis] Rivera, because what Rivera brought was a field operation. And once you added that field operation, things looked very different.<sup>195</sup>

Strangely, candidate after candidate acknowledged union campaign activity but commented that it was directed only at union members, sharing a common misperception that union member communications are exempt from campaign finance disclosure requirements. No such exemption exists under city or state law.

### ***3. No Smoking Gun***

Candidate testimony evinces substantial independent spending activity, yet neither the Board of Elections nor the Campaign Finance Board has acknowledged this. Determining exactly how much money labor unions and other organizations have spent in recent years to influence New York City elections is impossible given the state’s weak disclosure laws and the lack of local enforcement by the Board of Elections.

State law clearly requires political committees to report all expenditures, including independent expenditures. State law does not, however, require political committees to disclose whether an expenditure was intended to support or oppose a particular candidate. State law also does not require political committees active only in New York City to file disclosure reports in an electronic format and, instead, requires them to file paper copies of their reports with the New York City Board of Elections. This makes it incredibly difficult for members of the public to review disclosure reports of New York City committees and impossible to ascertain whom their expenditures were intended to benefit. This difficulty is exacerbated by the fact that the City Board of Elections will not provide members of the public with a list of committees filing paper disclosure reports with the agency. Interested voters must guess the names of committees that may have filed disclosure reports with the Board of Elections, then specifically

request to review the reports of the committees whose names have been correctly guessed.

Campaign finance reports filed with the Board of Elections for the year 2001 by the state and local political committees of SEIU 1199 disclose campaign contributions to candidates running for New York City office, but do not list any other expenditures. Campaign reports of the New York City Central Labor Council PAC are a bit more revealing. The Central Labor Council's reports list many political contributions to city candidates. The reports also list a "political contribution" of \$6,212 to the New York City law firm of Menagh & Falcone and a payment of \$13,650 for campaign mailings to political consultants The Advance Group on Sept. 21. It should be noted that the Campaign Finance Board had declared a moratorium on all campaign spending by publicly financed candidates during the period from Sept. 11 through the rescheduled primary on Sept. 25.

A single mailing for a citywide or borough president candidate typically consists of 100,000 pieces at a cost of approximately \$0.50 per piece, for a total of \$50,000.<sup>196</sup> According to candidate reports, unions were sending slate mailers supporting candidates for citywide office, borough president and city council on a single mail piece. It's safe to assume that a single union mailer, even if sent only to union members, would cost at least \$50,000.<sup>197</sup> Candidates also reported extensive use of phone calls. Though live phone calls placed by union volunteers pose little threat to the integrity of the city's public financing program, pre-recorded automated phone calls costing between five and ten cents per completed call may constitute significant campaign spending.

The public has no way of knowing how many union mailers were sent out or how many automated phone calls were placed during the 2001 New York City elections. This total unavailability of information is most troubling. The public relations firm for SEIU 1199, Sunshine Consultants, denied our request for an interview with SEIU 1199 president Denis Rivera. The New York City Board of Elections advised CGS that it is "not a complaints department," instructing CGS to raise our concerns with the State Board of Elections in Albany. The State Board of Elections told CGS that investigations into alleged wrongdoing are initiated only by citizen complaints—the board typically does not initiate investigations on its own. The New York City Campaign Finance Board has no mechanism in place, and no explicit jurisdiction under the Campaign Finance Act, to monitor independent spending activity.

#### **Recommendation 4: Require Disclosure of Independent Expenditures**

Two things are certain: Substantial independent campaign spending is occurring in New York City and the public has no means of knowing its extent. Independent expenditures may undermine the integrity of publicly financed elections, particularly when the expenditures go undisclosed. A candidate may agree to New York City's spending limit and, in exchange, receive hundreds of thousands—or millions—of dollars in public financing. Though the public believes its tax dollars have been well spent, insuring that a candidate did not rely on special interest money to win the election, the candidate may in fact have been the beneficiary of hundreds of thousands of dollars in undisclosed independent expenditures by a special interest group.

The city and the state of New York should adopt disclosure laws requiring all political committees and individuals making independent expenditures supporting or opposing candidates to provide the public with full disclosure.

Most importantly, New York City should require all committees or individuals spending money to influence New York City elections to report independent expenditures to the Campaign Finance Board in an electronic format. Disclosure of independent expenditures will enable the public to make better-informed voting decisions and will enable the Campaign Finance Board to implement public financing program provisions designed to aid candidates whose opponents benefit from substantial independent spending.

### **Recommendation 5: Adopt a Trigger Provision Lifting Spending Limits and Increasing Public Funding to Candidates Facing Large Independent Expenditures**

With an independent expenditure disclosure law, it will be possible to determine which candidates benefit from independent spending. It is likely that one or two candidates in a race benefit disproportionately from independent spending, to the detriment of other candidates in the race. In order to maintain the integrity of its public financing program, New York City should enact laws to mitigate the disproportionate effects of large independent expenditures.

The regulation of independent expenditures in the context of publicly financed elections is at the cutting edge of campaign finance reform policy. Of the 13 local government jurisdictions in the United States with public financing programs, only four have provisions dealing with independent expenditures.<sup>198</sup> The City of Los Angeles eliminates spending limits for publicly financed candidates when independent expenditures in the race exceed specified thresholds. Los Angeles is currently considering strengthening this independent expenditure trigger provision.

New York City should adopt a trigger provision that provides additional public funds to and lifts spending limits for candidates opposed by substantial independent expenditures. Adopting such a trigger would require the city to:

- Devise a mechanism to determine which candidate actually benefits from an independent expenditure;
- Establish an independent expenditure threshold which, when exceeded, triggers the additional funds and lifted spending limit; and
- Determine the amount of additional funds a candidate should receive.

#### ***a. Determining Which Candidate Benefits From an Independent Expenditure***

The most significant challenge to implementing an independent expenditure trigger involves determining whether an independent expenditure was truly to a particular candidate's benefit. This finding would be necessary to determine whether the spending limit should be lifted for the other candidates and those candidates given additional public funds.

Most independent expenditures will clearly benefit one or more specific candidates. Independent spenders are typically attempting to exert political influence beyond the constraints of candidate contribution limits. Consequently, most independent spenders sincerely attempt to assist the candidacies of their preferred candidate and their intentions are no secret. Harming a candidate's attempt to get elected is no way to curry favor.

It is possible, however, that an unpopular group might make an independent expenditure attempting to benefit a candidate but, in fact, harming the candidate. An apartment owners association, for example, might make an independent expenditure urging voters to elect council candidate "X." Candidate X, however, might be running in a district with an extremely high percentage of renters. Candidate X may cringe at this well-intended endorsement by the apartment owners association, while candidate X's opponents seize the opportunity to brand candidate X as an ally of slumlords.

How should the Campaign Finance Board determine which candidate benefited from the apartment owners association's independent expenditure? Should opponents of candidate X have their spending limits lifted and become eligible for additional public funds?

New York City should adopt a law requiring independent spenders to disclose, under penalty of perjury, which candidate the expenditure is intended to support or oppose. This disclosure would create a presumption rebuttable only by a finding of fraud in a court of law. The Campaign Finance Board's determination of which candidate benefited from an independent expenditure would, consequently, depend solely on the intent of the spender, not on the perception of a candidate or the presumed impact of the expenditure on voters.

In the example above, candidate X would be deemed the beneficiary of independent spending by the apartment owners association absent a court finding of fraud. This outcome might seem harsh at first blush. Nonetheless, the proposed method for determining which candidate benefits from an independent expenditure is the most objective test available. A test dependent on the perception of a candidate or the presumed impact of an expenditure on voters would be unworkable. Instances of an independent spender harming the campaign of its preferred candidate are rare.

#### ***b. Trigger Thresholds***

In addition to developing a procedure for determining which candidate benefited from an independent expenditure, the city would need to determine the amount at which independent spending becomes significant enough to warrant raising the spending limit and providing candidates with additional public funds.

In the City of Los Angeles, if an independent expenditure committee, or committees in the aggregate, spend more than \$200,000 in a mayoral race, \$100,000 in a race for other citywide office, or \$50,000 in the case of a city council race, in support or in opposition to a candidate, the spending limit is no longer binding on any candidate in the race.<sup>199</sup>

The thresholds used in Los Angeles have worked well and provide a good starting point for New York City. New York City should consider adopting similar thresholds for



mayoral and citywide races, and a lower threshold for city council races, given the smaller size of New York City Council districts and lower council spending limits.<sup>200</sup> Once established by law, the thresholds can and should be amended if proven to be too high or low. New York City should begin by adopting the following independent expenditure thresholds:

- Mayor: \$200,000
- Other Citywide Office: \$100,000
- Borough President: \$50,000
- City Council: \$25,000

**c. Increased Spending Limits**

When total independent expenditures benefiting a single candidate have exceeded the specified threshold, spending limits should be raised for all participating candidates in the same race not benefiting from the independent expenditures. The new spending limit should equal the standard spending limit plus the dollar value of the independent expenditures.

**d. Additional Public Financing**

Finally, New York City must determine how much additional public financing a candidate opposed by large independent expenditures should receive. The best approach would be for candidates to receive one additional dollar in public matching funds for every dollar in matchable contributions raised, up to the dollar amount of the independent expenditures. Total public funds received by a candidate, however, should not exceed *twice* the applicable spending limit for the office. (Current law limits public funding to *two-thirds* of the applicable spending limit.) **Figure 9** shows the maximum amount of public funds a 2005 primary election candidate could receive under current law, under the proposed trigger based on current spending limits and under the proposed trigger based on CGS proposed adjusted spending limits. (See **Recommendation 11** for proposed spending limits.)

**Figure 9**

<b>Comparison of Maximum Public Funds Available to Candidates Under Current and Proposed Public Funding Limits</b>			
	<b>Maximum Public Funds Available to 2005 Primary Candidates Under Current Law</b>	<b>Public Funds That Would Be Available to 2005 Primary Candidates Under Proposed Trigger With Current Spending Limits</b>	<b>Public Funds That Would Be Available to Candidates Under Proposed Trigger and Proposed Primary Spending Limits</b>
<b>Mayor</b>	\$3,818,667	\$11,456,000	\$12 million
<b>Other Citywide Office</b>	\$2,387,333	\$7,162,000	\$5,000,000

<b>Borough President</b>	\$859,333	\$2,578,000	\$2,000,000
<b>City Council</b>	\$100,000	\$300,000	\$260,000

The recommended independent expenditure trigger provision will maintain the integrity of New York City’s public financing program by requiring disclosure of independent expenditures and enabling candidates to compete effectively despite significant independent spending on their opponents’ behalf.

### **C. Candidates Facing Opponents Who Exceed Spending Limits Require Additional Assistance**

Under current law, if a nonparticipating candidate receives contributions or makes expenditures in excess of 50% of the applicable spending limit, the spending limit is lifted for every candidate in the race and participating candidates receive matching funds at the increased rate of \$5 in public funds for each \$1 in matchable contributions, up to \$1,250 in public funds per contributor. However, total public funds received by a participating candidate may not exceed two-thirds of the spending limit.<sup>201</sup>

The biggest news story in New York City’s 2001 election was the race between self-funded billionaire Michael Bloomberg and his Democratic opponent Mark Green. Bloomberg chose not to participate in the city’s program of public financing with voluntary spending limits. Instead, Bloomberg spent \$73 million of his personal fortune to win the Republican Party primary and the mayoral general election. Bloomberg outspent public financing program participant Mark Green by more than 4-to-1.

In addition to the mayoral general election, high-spending candidates triggered additional public funds and the elimination of spending limits in three city council Democratic primary elections (council districts 1, 13 and 18).

As a result of the high-spending opponent trigger provision, mayoral candidate Mark Green received an additional \$765,885 in public funds. Green’s Campaign Chairman John Siegal testified before the Campaign Finance Board that, with respect to the mayoral general election, “[t]he campaign finance system failed completely.” Siegal continued:

The additional matching funds provided to participating candidates to counterbalance unlimited personal spending by a candidate who opts out is wholly inadequate and had absolutely no impact in this election. The additional funds provided were spent on one afternoon’s television advertising. The Republican candidate spent in direct mail alone more than 10 times the amount of funds that we received as a result of the additional matching [funds].<sup>202</sup>

Siegel was not alone in his sentiments. Many candidates and political activists were troubled by the lopsided spending in the mayoral race. When asked whether the public financing program adequately deals with high-spending non-program participants, newly elected Councilman David Yassky replied:

No. I think that the match should be dramatically increased for people who are being overspent by large amounts, so that, in a council race, if somebody's going to spend a million bucks, matching funds should put me close to a million, \$700,000 or \$800,000. Not dollar for dollar maybe, but close enough that someone would see no gain to be made in raising that kind of money.<sup>203</sup>

When probed as to how much the match should be increased, Yassky responded:

I don't know, 10-to-1, 15-to-1. What you need to do is require someone to say how much they're going to spend. I think that would be constitutional. If you could require someone to tell, in advance, how much they're going to spend, and if they're going to overspend by, let's say, more than twice the amount, then it jumps.<sup>204</sup>

Council candidate Steven Banks expressed concern for the type of message conveyed to future candidates by Michael Bloomberg's ability to outspend a publicly financed candidate by such a wide margin. Banks believes:

For the system to be viable, we can't have a repeat of what just happened. There has to be some disincentive to somebody to say, "Hey, I can run because I can spend my own money or I can raise enough money." And right now there aren't those kinds of disincentives. And the model of the last election certainly says to people that the publicly financed candidate is going to get swamped.<sup>205</sup>

Political pundit Fred Siegel insisted that Mark Green, a chief architect of the city's campaign finance law, was seriously handicapped by his decision to participate in the public financing program and abide by its limits. According to Siegel:

What really had an impact was the fact that Green, by sticking with [the campaign finance program], was overwhelmed. Bloomberg spent more in the last week than Green spent in the entire campaign. One effect of campaign finance in this election was to allow Bloomberg to buy the election. That's not too strong. I'm skeptical of these [campaign finance] laws. It's hard to argue that campaign finance reform didn't backfire this time. I'm not terribly partisan. I worked for Clinton in '92 and Giuliani in '93. I thought Green was the better candidate this time. I thought the way the money game played out this time was pretty unfair.<sup>206</sup>

Green's fundraising ability was likely hindered by the Democratic Party's fractured state following heated primary and runoff elections between Green and Fernando Ferrer. Bloomberg's victory should not be attributed solely to his ability to dramatically outspend Green. While stressing Bloomberg's campaign spending and Green's inability to keep up, Siegel attributes Bloomberg's win to many factors. "Part of the case here was that no one thought that Bloomberg was going to win. The

concatenation of the Giuliani endorsement, Bloomberg's money, the war in Afghanistan, and anthrax, driving city politics . . . because of these unusual circumstances, you could buy your way.<sup>207</sup>

In fact, Mark Green spent more than any other mayoral candidate in New York City history, except for Michael Bloomberg. Campaign Finance Board Executive Director Nicole A. Gordon commented:

The program is not intended to be, and should not be, a guarantee of success. All it can do is help to even things out. The only question is, did Green have enough money to be competitive to get his message out? I think he probably did. I can imagine that he, and maybe others, would beg to differ.<sup>208</sup>

Gordon summed up the dilemma. "Unless the Supreme Court is going to say some day that there can be limits on spending, I don't know that a public financing program can ever fully address the resources that might be available to a nonparticipant."<sup>209</sup>

The current high-spending opponent trigger provision is deficient in at least two respects. First, the increase of one dollar in the public funds matching rate is insufficient to make a meaningful difference in the publicly financed candidate's campaign. Second, the total cap on public financing at two-thirds of the spending limit dramatically limits the effectiveness of the trigger.

### **Recommendation 6: Require Any Candidate Who Exceeds Spending Limit to Report the Fact Within 24 Hours**

To successfully implement a high-spending opponent trigger provision, New York City must require a nonparticipating candidate who receives contributions, makes expenditures or has cash on hand in excess of the applicable spending limit to report this fact to the Campaign Finance Board within 24 hours.

The City of Los Angeles requires candidates who raise or spend funds in excess of the applicable spending limit to report this fact to the City Ethics Commission by telephone and either telegram or fax the day the funds are received or the limitation is exceeded. The provision has worked well facilitating the commission's administration of the city's high-spending opponent trigger.

### **Recommendation 7: Provide Additional Public Financing To Candidates Facing Opponents Who Exceed Spending Limit**

New York City should amend its campaign finance law to raise the threshold at which participating candidates qualify for additional public funding. Under current law, nonparticipating candidate expenditures above 50% of the spending limit trigger additional matching funds and elimination of the spending limit for participating candidates. Instead, participating candidates should not become eligible for additional matching funds and elimination of the spending limit until a nonparticipating opponent

receives contributions, makes expenditures or has cash on hand *exceeding* 100% of the applicable spending limit.

Under current law, candidates facing opponents who exceed 50% of the spending limit receive increased matching funds at the rate of \$5-to-\$1, rather than the standard rate of \$4-to-\$1. New York City should amend its campaign finance law to provide that, if a nonparticipating candidate receives contributions, makes expenditures or has cash on hand exceeding 100% of the applicable spending limit, participating candidates in the race receive public funds at double the normal matching funds rate (\$8-to-\$1 rather than \$4-to-\$1). Total public funds received by a candidate, however, should not exceed *twice* the applicable spending limit for the office. (Current law limits public funding to *two-thirds* of the applicable spending limit.) **Figure 9**, p. 49, shows the maximum amount of public funds a 2005 primary election candidate could receive under current law, under the proposed trigger based on current spending limits and under the proposed trigger based on CGS proposed adjusted spending limits. (See **Recommendation 11** for proposed spending limits.)

## **D. Large Contributions Threaten Corruption or the Appearance of Corruption**

New York City's contribution limits are the highest local government contribution limits in the nation among jurisdictions with public campaign financing programs.<sup>210</sup> New York City's 2001 publicly financed candidates were limited to contributions of \$2,500 (city council), \$3,500 (borough president) and \$4,500 (citywide office) per contributor *per election year*. These limits have been increased to \$2,750, \$3,850 and \$4,950 for 2003/2005 candidates to reflect changes in the cost of living.

In the event of a primary runoff election, the contribution limits are increased by 50%. In 2001, for example, mayoral candidates Mark Green and Fernando Ferrer were permitted to accept contributions up to \$6,750 per contributor—50% higher than the standard \$4,500 limit—as a result of the Democratic primary runoff election.

In comparison, the City of Los Angeles enforces *per election* contribution limits of \$500 (city council) and \$1,000 (citywide office). Even if the Los Angeles limits were doubled to account for the fact that some New York City candidates must compete in two elections—a party primary and a general election—in an election year, New York City's limits would be more than twice as high, and three times higher in the event of a runoff election.<sup>211</sup>

New York City's \$6,750 contribution limit for Green and Ferrer in 2001 was significantly higher than the recently increased federal limit of \$2,000 per contributor per election. A candidate for the presidency of the United States, for example, is limited to a total of \$4,000 per contributor for the primary and general elections combined.

As mentioned earlier, New York City's contribution limits apply only to candidates who voluntarily participate in the public financing program. (See section II(B)(2).) Nonparticipants are bound only by the state's excessively high loophole-ridden

limits. According to a leading published work on New York politics, *Power Failure: New York City Politics & Policy Since 1960*:

The state's contribution limits are, in effect, limitations in name only. Individuals and organizations can legally contribute amounts in excess of the limits through the "housekeeping" exemption and the exemption for contributions to political party committees. . . . Combined with high limits, these provisions erode public confidence in the law and encourage the practices the law was designed to prevent.<sup>212</sup>

New York City's \$4-to-\$1 matching funds rate is designed to encourage candidates to solicit small contributions, but many candidates took advantage of the city's high contribution limits by accepting large contributions. Our research shows that 146 New York City Council candidates who participated in the public financing program received contributions exceeding \$1,000 from more than 1,200 contributors. At least 11 council candidates received contributions in excess of \$1,000 from 20 or more contributors.

Councilwoman Eva Moskowitz, for example, accepted contributions exceeding \$1,000 from more than 40 contributors for a total of \$89,000. Councilman Martin Golden received contributions exceeding \$1,000 from 39 contributors for a total of more than \$78,000. Councilman Bill DeBlasio received contributions exceeding \$1,000 from more than 30 contributors for a total of more than \$72,000. Councilwoman Melinda Katz accepted contributions exceeding \$1,000 from 31 contributors for a total of more than \$58,000. And Steven Cohn, who lost the 33<sup>rd</sup> council district Democratic Party primary to David Yassky, received contributions exceeding \$1,000 from nearly 50 contributors, totaling more than \$100,000.

Citywide office candidates have even greater access to wealthy contributors and have received far more large contributions than city council candidates. Mayoral candidate Mark Green, for example, accepted contributions exceeding \$2,000 from more than 1,800 contributors for a total of more than \$7.5 million. Mayoral candidate Fernando Ferrer accepted contributions exceeding \$2,000 from more than 750 contributors for a total of more than \$3 million.

Many New York City candidates and experienced observers alike feel the city's contribution limits should be lower, particularly in the case of city council candidates. Gene Russianoff, Senior Attorney for the New York Public Interest Research Group, told CGS that the contribution limits:

Were and are too high. Of all the city groups [fighting in the late 1980s for public financing in New York City], we objected from the get go that they were too high. They're particularly too high in the case of the council. We advocated a limit of about \$1,000 in council races. The tension is, you have to get the government and elected officials to restrict the advantages they have. So, the compromises we struck are very defensible.<sup>213</sup>

When asked to comment on the city's contribution limits, Councilman John Liu told CGS, "I think the key to leveling the playing field and making a candidate and future

elected official accountable to people and less to donors is the contribution limit. And maybe we should decrease the contribution limits even more.” When asked how low the contribution limit should be, Liu responded, “I don’t know how low they should go. I set a personal limit myself. I did not accept any contribution over \$1,000, with one exception, that’s my direct blood family. I accepted \$1,100 from them, because I wanted them to be my biggest supporters.”

Councilman Oliver Koppell testified at the Campaign Finance Board’s public hearings that he voluntarily limited his campaign contributions to \$1,000 because he believes that the city’s limit “may be a little bit high.” Koppell testified that, because of the matching funds system, it wasn’t necessary for him to accept larger contributions and now he’s an officeholder with “no substantial obligations to any special interests.”<sup>214</sup>

Councilman David Yassky, whose opponent Steven Cohn raised more than \$100,000 in contributions exceeding \$1,000, was asked whether the city’s contribution limit for council candidates is reasonable. Yassky replied, “If I was designing it I’d probably make it lower, maybe \$1,000.”<sup>215</sup>

While perhaps not being low enough, the city’s contribution limits for citywide office candidates have had a more discernible impact. Before implementation of the city’s public financing program, mayoral candidates commonly received contributions ten times the size of the current \$4,500 limit. Gene Russianoff told CGS, “You had all these real estate developers giving \$50,000, \$100,000, \$150,000 contributions to Koch. He ran in 1985 against another citywide official, the city council president, and outspent her 11-to-1, \$11 million to \$1 million—largely with these \$50,000 and \$100,000 contributions from developers.”<sup>216</sup> Campaign Finance Board Executive Director Nicole A. Gordon likewise commented:

At the mayoral level, there’s no question that the contribution limit has changed the face of elections in a very big way. Our contribution limits before the program was enacted enabled candidates to get as much as \$100,000 from a single contributor. They’ve been lowered somewhat at the state level, not nearly enough.<sup>217</sup>

While noting that the mayoral contribution limits even under the program may not be low enough, Gordon continued to emphasize the positive impacts of the current \$4,500 limit:

To the extent that you can say that contributions might influence elected officials, that’s been diminished. And the playing field leveling at the mayoral level has been spectacular because before the program was in place you had situations where candidates were outspent by vast differentials and didn’t have the resources to compete. And now, you saw a Democratic primary in New York City this year that had four campaigns that were all able to spend the same amount of money. They all got about the same in public funds. And there’s no question that it was a competitive race.<sup>218</sup>

Some are not concerned about the \$2,500 city council contribution limit, contending that council candidates are simply unable to raise large contributions. Nicole A. Gordon told CGS that “If anything, at the city council level, the contribution limit is

artificially high because the bottom line about city council races is that they don't raise contributions at the \$2,000 level. They just don't get large contributions."<sup>219</sup> Some candidates echoed Gordon's sentiments. Councilman Yassky told CGS, "I would have been happy to have a lot of \$2,500 contributions, but I couldn't. I didn't have people who were willing to give me that much money."<sup>220</sup>

## **Recommendation 8: Lower New York City Contribution Limits**

New York City's contribution limits are too high. Candidates solicit and accept the largest contributions allowed under the legal limits. Such large contributions create the potential for corruption or, at the very least, the appearance of corruption. The fact that both citywide and city council candidates accepted thousands of contributions exceeding \$1,000 in 2001 should be cause for concern. New York City's \$4,500 limit on contributions to candidates for citywide office is more than twice the size of the recently-increased \$2,000 federal limit on contributions to candidates for U.S. President, Congress and Senate.

Only a tiny percentage of New York City's population can afford to make contributions exceeding \$1,000. While candidates unanimously report that they are not influenced by large contributions, most readily acknowledge that their colleagues could be and have been corrupted by large contributions.

Some have suggested that the contribution limits should be increased when a candidate faces an opponent who has exceeded the voluntary spending limit. When asked whether the city's spending limits were reasonable, for example, council candidate Steven Banks stated, "I think in a council race they could be lower. I think what we saw in the mayoral race recently was that perhaps they should be higher when someone is not going to opt into the public financing system."

New York City's generous public financing program makes it possible for most candidates to wage competitive campaigns without relying on large contributions from wealthy special interests. Raising the contribution limits when a wealthy, self-financed candidate enters the race would defeat a primary purpose of the city's public financing program—killing the patient with the medicine, so to speak. Where candidates are unable to wage competitive campaigns relying only on small contributions and public funds—candidates facing a wealthy opponent such as Mayor Michael Bloomberg—the appropriate remedy is more public funding, not larger contributions from the handful of wealthy donors who can afford to give more.

New York City's contribution limits for every office are too high, threatening corruption or, at the very least, an appearance of corruption. Many candidates running in 2001 voluntarily limited their contributions to amounts smaller than the city's limits, finding the city's limits unnecessarily high. New York City should reduce its per election cycle contribution limits to the following amounts:

- Citywide Office: \$2,000
- Borough President: \$1,500
- City Council: \$1,000



The city should enforce these limits for all candidates running for city office, regardless of a candidate's willingness to participate in the public financing program. The city should retain its provision that increases the contribution limits by 50% in the event of a runoff election.

Lower contribution limits will substantially reduce the threat of corruption or the appearance of corruption in New York City politics. Furthermore, these recommended contribution limits, when combined with the city's generous public financing program, will allow candidates to raise sufficient funds to wage competitive campaigns. These lower contribution limits will also reduce the unfair fundraising advantage enjoyed by candidates with greater access to wealthy donors.

## **E. Time Spent Fundraising Varies**

Proponents of public campaign financing have long argued that a well funded public financing program will reduce the amount of time candidates spend fundraising. Less time fundraising, the argument goes, means more time for candidates to discuss issues with voters. Less time fundraising by incumbents means more time to perform official duties.

In reality, the amount of time candidates spend fundraising depends on many factors beyond the availability of public financing. Public financing certainly plays an important role in reducing the amount of time candidates spend fundraising. Other significant factors include whether the jurisdiction has a fundraising blackout period, the size of a jurisdiction's contribution limits and the amount of a jurisdiction's voluntary spending limits.

In jurisdictions combining public financing with voluntary spending limits, the spending limit becomes the *de facto* fundraising goal for serious candidates. New York City Councilman John Liu told CGS, "My stated goal from the outset was that I would spend the maximum allowed under law. I'm very happy that there was a spending limit, because that was my fundraising goal. Getting into this unlimited fundraising, it just gets to be ridiculous."<sup>221</sup> This attitude is by no means unique to New York City candidates. CGS found this to be true among candidates in the City of Los Angeles, as well.<sup>222</sup>

### **1. Pre-Election Year Fundraising**

Unlike most jurisdictions with public campaign financing programs, New York City places *no* restrictions on when candidates may begin fundraising for an election. Consequently, a city officeholder may start fundraising for a reelection campaign on the day he or she takes office and continue fundraising throughout his or her tenure as a city official. Contributors willing to make donations to an officeholder three years before an election are likely seeking political access or influence rather than merely demonstrating support.

Though all candidates are legally permitted to raise campaign funds as early as they want, year-round fundraising is typically engaged in by incumbents, to the disadvantage of challengers. Incumbents have no difficulty raising funds from special interests with business before the city and sometimes use this incumbency advantage to

build a war chest substantial enough to deter challengers. Campaign contributions to an officeholder years before an election may at the very least create an appearance of undue contributor influence.

Term limits have little impact on this practice. Officeholders who are termed out of office commonly seek election to a different public office, playing political musical chairs. In 2001, for example, all of the major candidates competing for the Democratic Party's mayoral nomination were "quasi-incumbents"—officeholders termed out of their office and seeking election to a different office. Mark Green had been the city's public advocate. Fernando Ferrer had been borough president of the Bronx. Alan Hevesi had been the city's comptroller. Peter Vallone had been the speaker of the city council. All four of these candidates began fundraising more than two years before the 2001 primary election.

The public advocate race likewise involved three quasi-incumbent candidates who began fundraising as public officeholders more than two years before the 2001 primary election: former City Councilman Steven DiBrienza, former City Councilwoman Kathryn Freed and State Assemblyman Scott Stringer. All three candidates lost in the Democratic primary election to Betsy Gotbaum, who had never before held public office. Gotbaum went on to win the general election with 86% of the vote.

In the comptroller's race, the only quasi-incumbent in the race was also the only candidate to begin fundraising more than two years before the primary election—former City Councilman Herbert Berman.

In the Queens borough president race, three of the four major candidates were quasi-incumbents: former Councilman Sheldon Leffler, former Councilman Alfonso Stabile and former Councilwoman Helen Marshall, who won the race. Two of these three quasi-incumbents, Sheldon Leffler and Alfonso Stabile, began fundraising more than two years before the primary election. Leffler is under investigation by the Manhattan district attorney's office for illegal fundraising activities related to \$10,000 in contributions from a Queens real estate executive.<sup>223</sup>

In the Manhattan borough president race, incumbent Borough President C. Virginia Fields began fundraising more than two years before the election and faced no serious opposition, winning the race with 72% of the vote.

The race for Brooklyn borough president involved two quasi-incumbents, former Councilman Ken Fisher and former State Senator Marty Markowitz. They were also the only two candidates to begin fundraising more than two years before the 2001 primary election. After a close Democratic primary contest, Markowitz went on to win the general election with 76% of the vote.

Three quasi-incumbents ran for Bronx borough president, former Councilman Adolfo Carrion, former Councilwoman June Eisland and State Senator Pedro Espada. Both Carrion and Eisland began fundraising more than two years before the election, while Espada did not begin fundraising until 2001. Carrion went on to win the office.

Two quasi-incumbents ran for Staten Island borough president in 2001, State Assemblyman Robert Straniere and Councilman O'Donovan. O'Donovan began fundraising more than two years before the election, while Straniere did not begin

fundraising until 2001. Both were defeated by Staten Island Deputy Borough President James Molinaro in the general election.

Early fundraising was not as prevalent among city council candidates, most of whom had never before held elective city office. Out of 298 city council candidates on the ballot, 29 began fundraising more than two years before the 2001 primary election. Four of these early fundraisers were city council incumbents. Only one city council incumbent who began fundraising early ran in a competitive race.<sup>224</sup>

## ***2. Fundraising on a Daily Basis***

The amount of time spent fundraising by New York City candidates on a daily basis varies widely. Candidates for citywide office and borough president tend to fundraise nearly full-time during the election year. Candidates for city council spend significantly less time fundraising. Methods of fundraising also vary. Candidates for citywide office, borough president and some council candidates rely heavily on phone calls. Many council candidates, however, relied primarily on house parties.

District 20 council opponents Ethel Chen and John Liu both relied on phone calls to raise funds. Council candidate Steven Banks relied on house parties, and council candidate David Yassky used a variety of fundraising tools. Liu said he spent:

Every day, on average, an hour. But I spaced it out over a long period of time. I started fundraising at the beginning of 1998. My goal was to have it finished by the end of the year 2000, so that I could actually have all of 2001 talking about the issues and getting the vote out. I did finish my fundraising by the end of 2000. The average of one hour a day amounts to over 1,000 over three years.<sup>225</sup>

Chen began her fundraising about two years before the election and, taking the advice of her consultant, spent approximately two hours per day dialing for dollars. Chen said:

The worst thing about raising money is to ask people to give you money. We were told by our campaign consultants to keep asking for donations. That's the most painful part of elections, to ask people for money, but it's also the most important part. So we needed to ask every day, instead of spending time out in the community.<sup>226</sup>

Yassky began fundraising in January 2000, about 20 months before the primary election. Yassky gave a detailed description of his fundraising:

I did this myself. For George Bush, fundraising is calling people on the phone and attending events. For me, a lot of the time was spent arranging the fundraising events themselves, which were house parties. I did it through a whole series of house parties. I'd ask somebody to host a party at their house for me. And to make it easy for people to do that, I said "I'll do the work." They would give me a guest list, I'd do the invitations, and often mail the invitations out, all the production work. I had 30 house parties, with maybe five hours of production work, so 150 hours, plus phone calls. And I did a couple of mass mailings to my friends and associates. I'd log it all into a database, so there was data entry time. So five hours per party, plus another 30 hours of computer time total, for 180

hours total. Plus another 200 phone calls, times five minutes per call, that's 1,000 minutes. About 200 hours total, for 20 months. That makes 10 hours a month. Plus the house parties themselves were two hours each, so that's another 60 hours to be added. So 260 hours.<sup>227</sup>

Banks began fundraising two years before the election and held 50 house parties. Banks chose house parties as his major fundraising mechanism because the parties also served as a community organizing strategy. But Banks commented, "I think far too much of my time was spent focusing on how to raise money, to the detriment of the time that could have been spent doing door to door work, for example."<sup>228</sup>

### **Recommendation 9: Impose Fundraising Blackout Period**

In contrast to New York City, the City of Los Angeles prohibits candidates for citywide office from fundraising more than 24 months before an election, while candidates for the Los Angeles City Council may not fundraise more than 18 months before an election.

New York City Campaign Finance Board Executive Director Nicole A. Gordon acknowledged that so-called "off year" fundraising advantages incumbents, who can easily raise funds years before an election.<sup>229</sup> NYPIRG's Gene Russianoff likewise noted this incumbency advantage and told CGS that there has been political resistance to proposals that would limit the fundraising time period.<sup>230</sup>

Candidates had mixed feelings about limits on pre-election year fundraising and spending. Numerous candidates, including city council candidates Ethel Chen and Steven Banks, told CGS that early fundraising should be allowed in order to provide dark-horse candidates the opportunity to build credibility, but that pre-election year campaign spending should be strictly limited. City council candidates running for office in 2001 and participating in the public financing program were permitted to spend up to \$64,000 in the three years preceding an election year.<sup>231</sup> Spending by candidates not participating in the public financing is unlimited. Banks believes pre-election year campaign spending should be prohibited for participating candidates, while Chen advocates a limit of \$10,000-\$15,000 per pre-election year.<sup>232</sup>

Nonetheless, it is clear that among candidates for borough president and citywide office, incumbents and quasi-incumbents typically begin fundraising more than two years before the election while their opponents do not. This practice is cause for at least two distinct concerns. First, officeholder solicitation of contributions three or four years before an election poses a risk of undue contributor influence. Second, the greater ability of officeholders to raise funds years before an election, in comparison to a challenger, allows incumbents to amass warchests and deter challengers. The second concern is mitigated, to some extent, by the city's voluntary spending limits. But this mitigation disappears if the officeholder chooses not to abide by the spending limits.

New York City should prohibit candidates from raising campaign funds more than 24 months before the primary election. Officeholders should be permitted to raise limited funds, to be used exclusively for expenditures related to official duties and not for campaign purposes. These funds should be maintained in a segregated officeholder

account. Officeholders should be permitted to raise up to \$50,000 per year in contributions of \$1,000 or less per contributor per year. The officeholder account balance should never exceed \$50,000.

## **F. Spending Limits Are Too Complex and Need Adjustment**

The New York City Campaign Finance Board administers a fairly complex regime of spending limits, with separate limits regulating campaign spending:

- between the primary election and the general election;
- between January 1 of the election year and the primary election;
- during the year preceding the election year; and
- during the third and fourth years preceding the election year, combined.

The specific spending limits that applied during these periods for the 2001 elections are detailed in section II(B), **Current Law** (above). Candidates who exceed the limits applicable to the three pre-election years are not penalized by the Campaign Finance Board. Instead, the amounts exceeding the pre-election year limits are charged against the first limit applicable in the election year. Candidates who are not on the ballot in a primary election must abide by the general election spending limit for all expenditures in the election year.

The ideal spending limit is high enough to allow candidates to communicate their messages to voters, but low enough to allow most serious candidates to reach the limit, so as to reduce the advantage of candidates with greater access to wealthy donors. Because New York City's provision of public funds is based on its spending limits, with candidates receiving up to 67% of the spending limit in public funds, a spending limit set too high will needlessly increase program costs.

### ***1. City Council***

New York City's 2001 primary elections, the most competitive in the city's history, serve as the perfect case study for determining the appropriateness of the current spending limits. The 2001 primary election year spending limit for city council candidates was \$137,000. The combined primary limit for the election year and the three years preceding the election year was \$201,000.

Among the 184 council candidates running in Democratic or Republican party primaries for whom campaign finance data was available, the median campaign expenditure was \$94,597.<sup>233</sup> The average campaign expenditure among this group was \$95,842. How much does it take to win a city council primary? The average major party primary winner spent \$126,799. The median amount spent by major party primary winners was \$123,643. Both of these figures are well below the statutory maximum \$201,000 that primary candidates were authorized to spend.

Only three percent (6 out of 192) of the council candidates on a major party primary election ballot reached or exceeded the \$201,000 limit. Four of these candidates ran in the district 1 Democratic Party primary, where Elana Posner chose not to

participate in the public financing program and spent \$582,529. Posner's high-spending caused the spending limit to be lifted in the race for publicly financed candidates. Consequently, three publicly financed candidates lawfully exceeded the \$201,000 program limit. Posner's spending did her little good. She finished fifth out of six candidates.

The other two candidates to reach the \$201,000 limit were district 4 incumbent Eva Moskowitz and district 20 candidate John Liu. Moskowitz won her primary with 80% of the vote, while Liu edged out his nearest opponent by only two percentage points.

Less than 7% (12 out of 192) of the council candidates on a major party primary election ballot reached the two-year primary spending limit of \$177,000. The fact that so few council candidates reached the maximum four-year \$201,000 spending limit or the two-year \$177,000 limit is strong evidence that the city council spending limit is too high. This evidence is further supported by the fact that median expenditures by winners, as well as median expenditures by all candidates are both below the election year primary limit of \$137,000. The city council spending limits are in need of downward adjustment.

## ***2. Borough President***

The 2001 election year primary spending limit for the office of borough president was \$1,177,000. The maximum primary spending limit, including allowable expenditures in the three years preceding the election year, was \$1,357,000. Highly competitive open seat primaries were held in four of the five boroughs. Democratic incumbent C. Virginia Fields was running for reelection as Manhattan borough president and faced no primary challengers. The 11 candidates running in the city's four borough president primary elections were all participants in the public financing program. The average candidate spent \$770,783, while the median spent by candidates was \$774,378. The average spent by winners was \$930,593, while the median spent by winners was \$936,403. The average spent by losing candidates was \$679,463, while the median spent by losing candidates was \$641,024. Despite the 2001 primary elections being highly competitive, all of these figures are well below both the election year primary limit and the total primary limit. The borough president spending limits should be adjusted downward.

## ***3. Public Advocate***

The 2001 election year primary spending limit for the offices of public advocate and comptroller was \$3,270,000. The maximum primary spending limit, including allowable expenditures in the three years preceding the election year, was \$3,540,000. Competitive Democratic Party primary elections were held for both offices, with all nine candidates participating in the public financing program. The average candidate spent \$1,579,781, while the median expenditure was \$1,900,904. The average and median expenditure of winning candidates was \$2,423,177. The average losing candidate spent \$1,338,811, while the median expenditure of a losing candidate was \$1,117,656. As was the case among candidates for borough president, candidates for public advocate and comptroller spent well below the primary spending limit. The spending limit should be adjusted downward.

#### **4. Mayor**

The 2001 election year primary spending limit for the office of mayor was \$5,231,000. The maximum primary spending limit, including allowable expenditures in the three years preceding the election year, was \$5,501,000. The Democratic Party held a highly competitive mayoral primary involving five candidates who were all participants in the public financing program. The Republican Party and the Green Party also held primaries, though they were considerably less competitive, each of which involved one candidate participating in the program and one candidate foregoing the opportunity to receive public financing—most notably Michael Bloomberg, who spent \$30 million of his own money to win the Republican primary.

The average amount spent by a Democratic Party mayoral primary candidate was \$5,161,990, while the median was \$6,070,886. The highest spending Democrat was Mark Green. Green spent \$7,223,026 (including exempt expenditures) and placed second to Fernando Ferrer, who spent \$6,441,587 (including exempt expenditures). Green defeated Ferrer in a primary runoff and went on to face Bloomberg in the general election. Four out of five Democratic candidates reached the spending limit. Three of the four candidates in the less competitive Republican Party and Green Party primaries spent far less than the limit, while Bloomberg spent far more than the limit.

Candidates in the Democratic primary were able to wage competitive campaigns and communicate effectively with voters. Unlike the spending limits for other New York City offices, there is no evidence to suggest that the mayoral primary spending limit should be lower. There is also no evidence that the limits were too low, preventing candidates from getting their message out. On the contrary, the mayoral limits seem perfectly set, allowing serious candidates to compete effectively on a level playing field.

Close examination of general election spending limits is unnecessary. Spending limits appropriate for competitive primary elections will likewise accommodate competitive general elections. Given the overwhelming voter enrollment advantage of the Democratic Party in New York City, competitive primary elections are far more common than competitive general elections. In most instances, the winner of the Democratic Party primary is considered the preordained winner of the general election. Exceptions certainly exist, particularly in mayoral elections where the winners of the past three general elections have been Republicans. Nonetheless, maintaining the same spending limit for primary and general elections is appropriate.

### **Recommendation 10: Simplify Spending Limits**

New York City's multiple spending limits—different limits applicable to election year and pre-election year spending—combined with the Campaign Finance Board's list of expenditures exempt from the spending limits, results in a system that confuses candidates and voters alike. Most jurisdictions with public financing programs, like the City of Los Angeles, impose much simpler systems with a primary election limit, a general election limit and few or no exemptions. Simple spending limits make it easier for candidates to comply with the law and for voters to track campaign spending.

In an effort to simplify campaign accounting for candidates, and to simplify the public financing program generally, New York City should eliminate the two pre-election year spending limits. Instead, the city should enforce two identical spending limits—one for the primary election and one for the general election—at the amounts recommended in **Figure 10** (below). The city should maintain its current provision establishing a runoff election spending limit of one-half the standard spending limit.

Furthermore, New York City should eliminate all spending limit exemptions with one exception. Candidate expenditures to *defend* against ballot access challenges should be exempt from the spending limits. (See **Recommendation 12.**)

### **Recommendation 11: Lower Spending Limits for Public Advocate, Comptroller, Borough President and City Council**

New York City’s spending limits for city council, borough president, comptroller and public advocate are too high and should be reduced. The mayoral spending limit is appropriately set.

**Figure 10** lists the median amounts spent by the winners of the major party primaries in 2001, the total amount of money candidates will be permitted to spend on their 2005 primary election campaigns, and our recommended spending limits for the 2005 primary elections.

New York City’s 2005 primary election spending limits are clearly higher than necessary for every office but mayor. CGS recommends that spending limits be reduced for all offices except mayor to the amounts listed in **Figure 10**. The recommended limits will allow candidates to spend amounts adequate for communicating with voters while, at the same time, leveling the campaign playing field and reducing the amount of time candidates spend fundraising.

**Figure 10**

<b>2001 Candidate Spending</b>			
	<b>Median Spent by 2001 Major Party Primary Winners</b>	<b>Total 2005 Primary Election Spending Limits</b>	<b>Recommended 2005 Spending Limits</b>
<b>Mayor</b>	\$18,469,711	\$5,998,000	\$5,998,000
<b>Public Advocate / Comptroller</b>	\$2,423,177	\$3,851,000	\$2.5 million
<b>Borough President</b>	\$936,403	\$1,469,000	\$1 million
<b>City Council</b>	\$123,643	\$190,000	\$130,000



## **G. Draconian State Ballot Access Laws and City Spending Limit Exemptions, Enable Well-Financed Candidates to Keep Challengers on Sidelines**

The New York City Campaign Finance Act provides that candidate expenditures made for the purpose of complying with the state’s election law, including legal costs to challenge or defend the validity of candidate nominating petitions, are not limited by the public financing program spending limits.<sup>234</sup>

The state of New York’s ballot qualification requirements are among the most onerous in the United States and the subject of countless lawsuits in every election year. Perhaps the most visible of these lawsuits was the one filed by 2000 presidential candidate John McCain. A 1999 *Salon.com* news article reporting the lawsuit began, “John McCain may have been able to outlast his tormentors in a Vietnam prisoner of war camp, but that doesn’t mean he’s equipped to outsmart New York’s tortuous ballot access laws.” McCain’s lawsuit claimed that New York’s ballot access laws place an “undue and overwhelming burden” on candidates.<sup>235</sup>

McCain won his lawsuit and did appear on the New York State Republican Party presidential primary election ballot, but the scope of his legal victory was limited to altering the ballot access laws for presidential primary elections. The laws that regulate ballot access for New York City offices remain byzantine.

New York State law contains page after page of specific detail regarding ballot qualification petition requirements. The period for filing petitions with the Board of Elections begins ten Mondays before the primary election and ends four days later.<sup>236</sup> Signatures on the petitions must be collected within 37 days of the filing deadline.<sup>237</sup> The number of signatures required is established by state law. A candidate must obtain signatures from the lesser of 5% of the registered voters of the party in the jurisdiction or:

- 7,500 party members for citywide office;
- 4,000 party members for borough president; or
- 900 party members for city council.<sup>238</sup>

Any tiny misstep serves as grounds for a legal challenge. For example, petition signers must note their county of residence. Though the geographic boundaries of New York City’s five boroughs—Brooklyn, the Bronx, Manhattan, Queens and Staten Island—are coincident with the boundaries of the city’s five counties, the formal names of three of the counties differ from the corresponding borough’s name. The borough of Brooklyn is named Kings County. The borough of Manhattan is named New York County. The borough of Staten Island is named Richmond County. A signatory’s confusion of the borough name for the county name is legal grounds for invalidating the signature.

Of the 443 candidates who filed ballot qualification petitions with the Board of Elections for offices covered by the public financing program, 88 (20%) failed to qualify for the ballot. Of the 353 candidates who filed certification papers with the Campaign Finance Board to participate in the public financing program by the June 1, 2001 deadline, 73 (21%) failed to qualify for the ballot.

Candidates enjoying the support of the Democratic Party machine have little difficulty qualifying for the ballot, with limitless numbers of party foot soldiers willing and able to collect the requisite number of petition signatures in the requisite petition format. The party's favored candidates likewise have no difficulty raising funds necessary to sustain legal challenges to the validity of opponents' petitions. The fact that expenditures to challenge opponents' petitions are exempt from the campaign finance program spending limits only encourages the practice.

Sandra Vassos ran for city council in district 22 against Democrat Peter Vallone Jr., son of term-limited speaker of the city council and 2001 mayoral candidate Peter Vallone. Vassos attempted to qualify for the Democratic Party primary ballot but had her petitions challenged. Vassos testified at the Campaign Finance Board's public hearing that:

The petition challenge process . . . enables a well-funded candidate to use political tactics to tie up another candidate in court for weeks and force another candidate to spend a lot of money in defending those petitions regardless of merit. It is the process that is a difficult hurdle here for candidates who are not as well-funded as others.

For example, my Democratic petitions were challenged, brought to trial, and then brought to appeal, costing well over \$13,000. I, along with many other candidates for City Council, were forced to drop our appeals or to curtail them. I, in particular, was very fortunate, given that I had also secured the Republican party endorsement for City Council, which enabled me to survive the challenge process and go on to the general election. It is also my understanding that many less-funded candidates just gave up and went home and closed down their races.<sup>239</sup>

Candidates are currently prohibited from using public funds to pay for any expenditures exempt from the spending limits. Vassos recommended that the Campaign Finance Board allow candidates to use public funds to pay for their legal defense against petition challenges.

When asked what the public financing program's greatest weakness is, council candidate Steven Banks said, "There isn't a finite amount that can be spent because of the use of exemptions." Banks elaborated, "It's a very effective law, but I think it would be a more effective law if all expenditures were countable, but the ceiling for expenditures was higher, because the existence of exemptions creates the ability for candidates who raise more money to spend money differently. Many of the exempt expenditures were related to getting on the ballot, petitioning-related expenditures." Banks noted that candidates with greater access to wealthy donors often pay for ballot access petition signature gatherers. This is a form of campaign field work, building candidate name recognition, which is exempt from the spending limits. Banks emphasized, however, that expenses related to *defending* ballot qualification petitions *should* be exempt from the spending limits, because the candidate playing defense has no way to avoid these expenditures.<sup>240</sup>

Ethel Chen, a 2001 council candidate in district 20, had her petitions challenged by the Democratic Party's endorsed candidate John Liu. Chen had been knocked off the

ballot in 1997 and, consequently, anticipated a ballot access challenge in 2001. Chen took precautions, collecting five times more signatures than the 900 required, and survived the challenge. Chen told CGS that the Democratic Party's influence in the ballot qualification process extends beyond financial and *pro bono* legal support for the party's chosen candidate. The county Democratic Party organizations also choose the judges appointed to the bench in overwhelmingly Democratic New York City. These judges, according to Chen, have "no sympathy" for candidates defending petitions against legal challenges.<sup>241</sup>

The use of ballot petition challenges as a political tactic by well financed candidates not only keeps opponents off the ballot, but also delays the receipt of public financing by those opponents who eventually survive the petition challenges. New York City law requires that a candidate qualify for the ballot *before* receiving public funds. Under current state law, candidates may not submit petitions to qualify for a primary election more than 10 weeks before the election.<sup>242</sup> Candidates wishing to appear on the September 11, 2001 New York City primary election ballot could not submit qualification petitions before the first week of July 2001. This telescoped time frame makes petition challenges all the more effective. Candidates are often tied up in legal battles well into August, leaving only a few weeks, at best, to campaign for office using public funds.

Candidates participating in the public financing program who challenge the petitions of their opponents receive multiple benefits. Not only can a publicly financed candidate wage a high-cost legal battle to knock an opponent off the ballot, but the candidate can do so without reducing the amount of money the candidate can spend on his or her campaign because the legal expenses are exempt from the spending limits. The candidate may also severely delay their opponents' receipt of public funds using this tactic.

The process of challenging petitions gives an unfair advantage to party machine candidates and reduces electoral competitiveness in New York City. The current structure of the campaign finance program only encourages this practice.

## **Recommendation 12: Eliminate All But One Spending Limit Exemption**

The New York City Campaign Finance Act exempts expenditures for compliance with state election laws and the city's campaign finance law from the city's spending limits. These exemptions further complicate an already complex system of spending limits. The exemptions give candidates with greater access to wealthy donors numerous advantages over other candidates. Candidates with the ability to raise funds in excess of the spending limits may use paid signature gatherers to fill their ballot qualification petitions, while opponents rely on campaign volunteers to collect signatures. Well-funded candidates may also challenge ballot petitions of their opponents in court. Such petition challenges whittle away opponents' limited financial resources, sometimes knock opponents off the ballot, and always delay opponents' access to public funds.

New York City should eliminate these advantages enjoyed by candidates with greater access to wealthy campaign contributors by eliminating all spending limit

exemptions, with one exception. Candidate expenditures to defend against ballot petition challenges should be exempt from the spending limits. Legal defense expenditures are unavoidable and in no way grant an unfair advantage to the candidate making the expenditure.

Elimination of all but one spending limit exemption will simplify the city's spending limit regime and level the legal playing field between candidates with varying access to campaign contributors—with only one possible drawback. Political attorney and CGS consultant Carmen Williams warned that, if compliance exemptions are eliminated, candidates will choose to spend limited resources on campaign mailers or other forms of advertising rather than on a campaign compliance officer. Williams said:

A candidate has \$10,000 left to spend. She can spend \$9,000 on a mail piece and \$1,000 on compliance. Or she can spend \$8,000 on a mail piece and \$2,000 on compliance. They're going to spend \$9,000 on the mail piece and \$1,000 on compliance. The only reason I'm hired to do compliance work is because my salary is exempt.<sup>243</sup>

While it is possible that candidates would spend less on compliance if the exemption were eliminated, a candidate's desire to receive the maximum amount of available public funding might offset this tendency. A campaign's employment of a compliance attorney would likely pay for itself through the attorney's ability to maximize available public funding. The City of Los Angeles amended its public financing law prior to its 1997 elections to eliminate spending limit exemptions for compliance. The city saw no discernable deterioration in candidate compliance as a result of the amendment.

The benefits of eliminating all but one spending limit exemption would outweigh the risk that candidate compliance would deteriorate. The Campaign Finance Board has a proven record of vigorous enforcement of the city's campaign finance law. The only one hurt by a candidate's failure to comply with the campaign finance law would be the candidate. In short, if a candidate doesn't comply, the candidate doesn't get paid.

## **H. Officeholders Convert City Funds to Personal Political Use**

The New York City Charter prohibits any city official running for public office from:

- Appearing or participating in any television, radio, Internet or printed advertisement paid for in whole or part with city funds during the election year;
- Using government funds or resources for any mass mailing placed in the mail less than 30 days prior to an election in which the official is a candidate; or
- Using government funds or resources for any communication supporting or opposing a candidate, political party or ballot issue.<sup>244</sup>

The law does not apply to city funds disbursed through the public financing program. The law was intended by its primary sponsor, then-Speaker of the City Council Peter

Vallone, to prevent elected officials from abusing their office through unregulated expenditure of public tax dollars for campaign purposes. But the law contains huge loopholes, including an exception for “ordinary communications between elected officials and their constituents.”

Despite this charter amendment being passed in 1998, public tax dollars were again spent for campaign purposes in 2001—this time by the charter amendment’s sponsor, Peter Vallone. When asked to pinpoint weaknesses in the campaign finance program, NYPIRG’s Gene Russianoff retorted:

The Vallone problem—a powerful city official spending millions of dollars in newsletters, flags, buttons and tote bags promoting his name all through the election cycle. This is essentially the Dinkins-Giuliani-Vallone problem. Dinkins spent a million dollars in 1993 on TV ads promoting municipal bonds that looked and smelled like campaign commercials. He did it in July of the campaign year. Giuliani denounced him for it, but then did it in 1997. He ran a million dollars worth of ads with the Yankees manager promoting recycling. He ran them all the way through September. We got a law passed in 1998 which prohibits TV and radio commercials with candidates names and faces. But then this year Vallone spent it on mailings. So we need to fix that loophole in the law.<sup>245</sup>

Vallone, a 2001 mayoral candidate, spent more than \$100,000 in city funds on canvas tote bags, with the New York City insignia surrounded by the words “Compliments of New York City Council, Peter F. Vallone, Speaker” silk-screened on the side. Vallone’s spokesman defended the bags as an environmental “initiative to encourage waste prevention.”<sup>246</sup> One week later, *Newsday* reported Vallone spending \$94,000 on flags containing the same message distributed at parades and other events. The article likewise mentioned the expenditure of public funds for mailings by Vallone earlier in the year.<sup>247</sup>

In its most recent report, *An Election Interrupted . . . An Election Transformed*, the Campaign Finance Board reported these events and encouraged the city council to strengthen the charter provision cited above.<sup>248</sup>

### **Recommendation 13: Strengthen Law Prohibiting Elected Officials From Using Public Dollars to Promote Their Candidacies**

One obvious weakness in New York City’s current law is that it only prohibits mailings within 30 days of an election, instead of a longer period of time. City officials should be prohibited from using government funds or resources for any mass mailing placed in the mail during the calendar year of an election in which the official is a candidate.

Another substantial weakness is that the law makes no mention of officeholder expenditures on gifts, such as the tote bags and flags distributed by Vallone, for the promotion of an officeholder’s candidacy. City officials should be prohibited from using government funds or resources for the production of any gifts, such as tote bags and

flags, bearing the official's name during the calendar of an election in which the official is a candidate.

Lastly, the law fails to define its exception for "ordinary communications between elected officials and their constituents," a loophole that could be exploited in future elections. The term "ordinary communications between elected officials and their constituents" should be defined as communication in response to letters or inquiries from constituents.

## **I. Substantial Public Funds Are Distributed to Candidates With No Serious Opposition**

Critics and supporters of the public financing program alike have noted that the program sometimes distributes public money to candidates who arguably do not need it—candidates who are not engaged in competitive races. In the words of Campaign Finance Board member Dale Christensen:

[O]ne of the things we are confronted with in an era of competing needs for scarce resources is the distribution of public monies to candidates in [general election] races . . . where, because of the registration advantage of one party over the other, . . . there is no real contest.<sup>249</sup>

In order to receive public financing, New York City's program does require a candidate to qualify for the ballot, to be opposed by a candidate who qualifies for the ballot, and to meet the program's fundraising thresholds. There is no program provision, however, to ensure that public funding is distributed only to candidates who face serious opponents. Though some would argue that New York's ballot qualification process alone is a sufficient test of a candidate's seriousness, most would agree that truly serious candidates engage in a modicum of campaign fundraising and spending.

Some local government jurisdictions with public financing programs do require that candidates face serious opposition in order to receive public funds. In the City of Los Angeles, for example, in order to receive public financing, a candidate must be opposed by a candidate who has either qualified for public financing or who has raised, spent, or has cash on hand of at least:

- \$200,000 in the case of a candidate for mayor;
- \$100,000 for other citywide office; and
- \$50,000 for city council.<sup>250</sup>

The City of Los Angeles requires extensive campaign finance disclosure by all candidates running in city elections. Each candidate, regardless of whether the candidate participates in the public financing program, must notify the City Ethics Commission on the day such candidate raises, spends or has cash on hand exceeding these thresholds.<sup>251</sup>

New York City Campaign Finance Board member Christensen wasn't the only one expressing concern at the board's December 2001 public hearings. District 1 city council candidate Rocky Chin testified:

[I]n District 1, the candidate who received the least number of votes, just under 1,000, or less than 10 percent of the total, being able to then go on and get more campaign financing raises a question of maybe there should be a limit, saying if you don't get a percentage, whether it is 10 percent or 15 or whatever it is, maybe public funds should not be forthcoming. It doesn't seem to me to be a very good use of public funds.<sup>252</sup>

Chin continued, in reference to candidates in other races, "I happened to see some television ads for candidates who I don't think had serious opposition. I don't think that is really appropriate and possibly not a good use of public funds."<sup>253</sup> Councilman Oliver Koppell echoed Chin's sentiments, stating:

It turned out in my race, to be perfectly frank about it, my opponent, who I thought would campaign actively, did not do so. We are giving money back, because we did not spend it all. That is an indication that there was perhaps too much money available in my case where we didn't face any significant opposition. I know there were other races of that sort.

I think what you should explore is the possibility of limiting public money where there has been virtually no money spent in opposition. I realize there are dangers in that, because even without spending money, somebody might be a reasonably strong candidate, and you do not want to eliminate the possibility of a candidate being able to put their message forward. But there is a possibility of abuse there where there is very weak or no opposition where you are putting public money in the campaign.<sup>254</sup>

Examination of campaign finance data from the 2001 elections reveals grounds for concern. At least 35 truly noncompetitive general election contests were held in 2001, with winners receiving at least 70% of the vote. There were 21 contests in which the winners received more than 80% of the vote. Among the winners of the 35 noncompetitive general election contests, 33 received a total of nearly \$3 million in public funds after the primary election. Most of these publicly financed candidates outspent their highest spending opponents by at least 2-to-1 in the general election.<sup>255</sup>

In the race for Brooklyn borough president, for example, Marty Markowitz won the Democratic Party primary by less than six percentage points. In doing so, Markowitz raised \$579,347 in contributions and received \$647,350 in public funds to cover \$1,157,495 in primary expenditures. Markowitz went on to win the general election with more than 76% of the vote, receiving an additional \$519,618 in public funds. Markowitz's highest spending opponent in the general election was Kenneth Fisher, who had also run and lost in the Democratic Party primary but appeared on the general election ballot as the Liberal Party's candidate. Fisher spent only \$48,616 on his general election campaign—*less than one-tenth* of the public funds received by Markowitz for the general election. The Republican candidate on the general election ballot, Lori Sue Maslow, did no significant campaign fundraising or spending and was not required by state law to file disclosure reports.

Some candidates have demonstrated the capacity to police themselves, refusing to accept public funds in noncompetitive races or returning public funds to the campaign

finance board when a race proves not to be competitive. Many candidates, however, aspire to careers in politics and will use every opportunity to build name recognition, regardless of the opponent they face in the race at hand. The purpose of the public financing program is to foster competitive elections—not political careers.

### **Recommendation 14: Distribute Public Funds Only to Candidates with Serious Opponents**

New York City should distribute public funds only to candidates who face serious opponents. A primary election candidate should be eligible to receive public funds only if another candidate running for the same office (regardless of whether the candidate is in the same party primary) has either qualified to receive public financing or who has raised, spent, or has cash on hand of at least:

- \$250,000 in the case of a candidate for mayor;
- \$120,000 for other citywide office;
- \$75,000 for borough president; and
- \$20,000 for city council.

A general election candidate should be eligible to receive public funds only if an opponent on the general election ballot has met the above thresholds in general election funding.

This recommendation would require the Campaign Finance Board to monitor the campaign finance activity of nonparticipating candidates. Without extending the city's electronic disclosure requirements to nonparticipating candidates, this will be a difficult task. (*See Recommendation 2*, p. 41.)

Limiting public funding to candidates who face serious opposition could save the city millions of dollars in each election. This money could be redirected to more pressing needs, such as the provision of additional public funding to candidates facing large independent expenditures (*see Recommendation 5*, p. 47) or to candidates facing high-spending opponents (*see Recommendation 7*, p. 52).

## **V. Conclusion**

Public campaign financing has undoubtedly enhanced democracy in New York City. The city's \$4-to-\$1 match has increased the importance of small campaign contributions which, in turn, has expanded political participation and reduced candidate dependence on wealthy donors. Public financing, combined with term limits, encouraged a record number of candidates to run for office in 2001. Candidates without access to wealthy donors, including many women and people of color, have run for office under the public financing program and won—insisting they could not have done so without the city's \$4-to-\$1 match. Nearly every serious candidate in 2001 participated in the program, dramatically increasing public disclosure of campaign finance information in comparison to years before the program's adoption. All of this has been achieved for a tiny fraction of the city's budget.



New York City's public financing program is a model for the nation. Evolving campaign finance practices and weak New York State campaign finance laws, however, have created loopholes in the city's program that must be closed if New York City is to remain among the nation's leaders in campaign finance reform. New York City should make its campaign finance laws mandatory for all candidates running in city elections. New York City should join the City of Los Angeles, another national leader in campaign finance reform, in its effort to address the deleterious impacts of independent expenditures and wealthy self-financed candidates. New York City should require disclosure by independent spenders and provide additional public financing to candidates facing large independent expenditures or high-spending candidates who reject public financing and spending limits.

New York City's demonstrated willingness to improve its public financing program has produced nearly fifteen years of successes. The recommendations in this report provide New York City with the roadmap to continue its success stories well into the future.

## Notes

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- <sup>1</sup> Council on Governmental Ethics Laws (COGEL) 24<sup>th</sup> Annual Conference Program, 29 (2002).
- <sup>2</sup> For population statistics, *see* United States Census Bureau 2000 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.
- <sup>3</sup> According to N.Y. State Board of Elections statistics, the city had 4,043,278 registered voters as of April 1, 2001. *See* New York State Board of Elections (visited April 25, 2001) <<http://www.elections.state.ny.us/report-output/11072473.htm>>.
- <sup>4</sup> New York City boroughs are Brooklyn, the Bronx, Manhattan, Queens and Staten Island. The five counties that correspond exactly with the boroughs are named Kings County, Bronx County, New York County, Queens County and Richmond County, respectively.
- <sup>5</sup> The borough president, the chief elected official of the borough, is an officer of the city government, not a separate borough government. The borough president participates in the budgeting process by developing an annual budget statement and lobbying the city council for inclusion of projected budgetary needs in the city budget. The New York City Charter assigns the borough president direct control over a portion of the city budget (approximately \$10-\$15 million per year) for implementation of various projects and programs in the borough. The borough president also reviews all major public and private land use proposals for the borough, recommending approval or rejection of proposals to the city planning commission and city council. The borough president appoints a member of the city board of education, a member of the city planning commission, and members of many other city boards.
- <sup>6</sup> The eight political parties with ballot status in the state of New York's 2001 elections were: Republican, Democratic, Independence, Conservative, Liberal, Right to Life, Green and Working Families. *See* New York State Board of Elections (visited April 25, 2001) <<http://www.elections.state.ny.us/report-output/11072473.htm>>. The Liberal, Right to Life and Green parties have lost ballot status for the 2003 elections.
- <sup>7</sup> *See* New York State Board of Elections (visited April 25, 2001) <<http://www.elections.state.ny.us/report-output/11072473.htm>>.
- <sup>8</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE 29 (1990).
- <sup>9</sup> Under fusion voting, a single candidate may appear on the general election ballot multiple times as the nominee of multiple parties. The votes a candidate receives from different ballot lines are "fused" (or added) together to determine the candidate's vote total. Fusion voting systems facilitate the growth of minor parties by allowing minor parties to endorse major party candidates and demonstrate the importance of the minor party to the major party candidate's vote total. A progressive minor party's (*e.g.*, Green Party's) ability to endorse a Democrat, for example, allows more voters to vote on the minor party's ballot line without fear of "spoiling" an election. Furthermore, the potential for such a cross-party endorsement may lead the Democratic Party to nominate a more progressive candidate with hopes of gaining the minor party's endorsement. As a minor party grows, it may also choose to run its own candidates.
- <sup>10</sup> For a more detailed account of the numerous Koch administration scandals, *see* URBAN POLITICS NEW YORK STYLE 283-86 (Jewel Bellush & Dick Netzer eds., 1990).
- <sup>11</sup> CHARLES BRECHER & RAYMOND D. HORTON, POWER FAILURE 125 (1993).
- <sup>12</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE 10 (1990).
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.* at 11.
- <sup>15</sup> For more information on the New York City Board of Elections, *see* (visited March 10, 2000) <<http://vote.nyc.ny.us/index.htm>>.
- <sup>16</sup> New York, N.Y., Administrative Code § 3-703(1)(b) (2001).
- <sup>17</sup> New York, N.Y., Charter Ch. 46 § 1052(12)(c) (2001).
- <sup>18</sup> *See* Campaign Finance Board Press Release, "Campaign Finance Board Submits First-Ever CFB Budget Under New Protection Provided By Charter Revision," March 10, 1999.
- <sup>19</sup> New York, N.Y., Charter Ch. 46 § 1052(10) (2001).
- <sup>20</sup> New York, N.Y., Administrative Code § 3-703(1)(a) (2001).
- <sup>21</sup> *Id.* at § 3-703(5).
- <sup>22</sup> *Id.* at § 3-703(1)(c).
- <sup>23</sup> *Id.* at § 3-703(3).

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<sup>24</sup> *Id.* at § 3-703(4).

<sup>25</sup> *Id.* at § 3-703(6).

<sup>26</sup> *Id.* at § 3-705.

<sup>27</sup> *Id.* at § 3-705(5).

<sup>28</sup> *Id.* at § 3-703(2)(a).

<sup>29</sup> *Id.* at § 3-702(3).

<sup>30</sup> *Id.* at § 3-702(2)(b).

<sup>31</sup> *Id.* at § 3-706(1). *See also* New York City Campaign Finance Board, *2005 Limits, Requirements, and Public Funds* (visited Oct. 15, 2002) <[http://www.cfb.nyc.ny.us/program/program\\_2005\\_info.htm](http://www.cfb.nyc.ny.us/program/program_2005_info.htm)>. The original limits enacted in 1988, which are adjusted periodically for changes in the cost of living, were \$4 million for mayor, \$2.5 million for other citywide office, \$1.177 million for borough president and \$105,000 for city council.

<sup>32</sup> New York, N.Y., Administrative Code § 3-706(2) (2001).

<sup>33</sup> *Id.* at § 3-706(5). *See also* New York City Campaign Finance Board Rule 1-08(j) (2001). Spending in excess of the limits applicable to the three years prior to an election year will be charged against the first applicable limit in the election year. The candidate does not become ineligible to receive public funds and is not in violation of the program rules unless the amount by which such expenditures exceed the limitation is in excess of the expenditure limitation which applies to the candidate in the election year. As a result of post-census redistricting, New York City is conducting city council elections in 2003 and again in 2005. These limits do not apply to the 2003 and 2005 city council elections.

<sup>34</sup> New York, N.Y., Administrative Code § 3-706(3) (2001).

<sup>35</sup> *Id.* at § 3-709.5.

<sup>36</sup> In 2001, the state contribution limit formula produced a limit lower than the city's \$2,500 limit in numerous races. Republican and minor party city council primary election candidates were required to abide by the state's \$1,000 limit in nearly every council district.

In the general election, however, the state's city council contribution limit was lower than the city's \$2,500 election year limit in only one race—the 21<sup>st</sup> council district general election—where the state limit was \$2,377 per election.

Nonetheless, considering that the city limit is an aggregate limit on contributions for the primary and general elections combined, the city limit of \$2,500 is typically a more stringent limit than the combined primary and general election state limits. Consequently, Republican and minor party city council candidates typically must raise funds for the primary election under the state contribution limits, with the city's \$2,500 election year limit restricting their fundraising activity for the general election.

<sup>37</sup> New York, N.Y., Administrative Code § 3-703(1)(f) (2001).

<sup>38</sup> *Id.*

<sup>39</sup> The contribution limits are linked to the registered voter population of the borough. Consequently, there is wide variation in the size of the contribution limits in the City's five boroughs. In 2001, the primary election limits were as follows (from highest to lowest): Brooklyn \$38,345, Manhattan \$29,048, Queens \$28,342, the Bronx \$21,078 and Staten Island \$5,134. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>40</sup> The general election limits were as follows (from highest to lowest): Brooklyn \$50,000; Manhattan \$42,909; Queens \$44,726; the Bronx \$28,100; Staten Island \$11,256. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>41</sup> As is the case with borough president candidates, the contribution limits binding city council candidates vary widely from district to district depending on the registered voter population. Given the 51 council districts, there are far too many limits to list them all here. In order to show the range, both the lowest and the highest are given in the chart. The lowest limit of \$1,515.20 was in effect in the 25<sup>th</sup> council district, while the highest limit of \$3,597.65 was in effect in the 9<sup>th</sup> council district. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>42</sup> The lowest general election limit of \$2,377.70 was in effect in the 21<sup>st</sup> council district, while the highest limit of \$4,513.90 was in effect in the 9<sup>th</sup> council district. *See* New York City Board of Elections Memorandum "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>43</sup> *See* New York State Board of Elections (visited April 25, 2001) <<http://www.elections.state.ny.us/report-output/11072473.htm>>.

<sup>44</sup> New York, N.Y., Administrative Code § 3-707 (2001).

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<sup>45</sup> The city charter prohibits participating candidates from accepting corporate contributions. *See* New York, N.Y., Charter Ch. 46 § 1052(12) (2001). Technically, nearly all political committees, including candidate committees and political party committees, are incorporated for legal liability purposes. While the letter of the charter prohibits participating candidates from accepting contributions from *any* corporation, the Campaign Finance Act makes an exception for contributions from incorporated political committees. *See* New York, N.Y., Administrative Code § 3-703(1)(l) (2001).

<sup>46</sup> New York, N.Y., Campaign Finance Board Rule 1-04(h) (2001).

<sup>47</sup> *Id.* at 1-04(j).

<sup>48</sup> New York, N.Y., Administrative Code § 3-702(8) (2001).

<sup>49</sup> N.Y. Elec. Law § 14-114(1)(b) (2001). The full text of the state of New York's elections laws can be found at the Board of Elections website (visited July 10, 2002)

<<http://www.elections.state.ny.us/download/law/elaw2001.pdf>>.

<sup>50</sup> None of the contribution limits listed here for citywide office are the product of the statutory formula. Instead, the limits are the results of the statutory minimum (for the minor parties) and maximums (for both major party primaries and the general election), as adjusted for changes in the cost of living.

<sup>51</sup> The contribution limits listed for the major party primaries are the result of the statutory formula. The contribution limit for minor party primaries is the statutory minimum adjusted for changes in the cost of living. The contribution limits listed for the general elections are the result of both the statutory maximum (in Brooklyn) and the statutory formula (in the other four boroughs).

<sup>52</sup> The contribution limit formula is based on the registered voter population of the borough. Consequently, there is wide variation in the size of the contribution limits in the city's five boroughs. In 2001, the Democratic Party primary election limits were as follows (from highest to lowest): Brooklyn \$38,345, Manhattan \$29,048, Queens \$28,342, the Bronx \$21,078 and Staten Island \$5,134. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>53</sup> In 2001, the Republican Party primary election limits were as follows (from highest to lowest): Queens \$6,884, Brooklyn \$5,508, Manhattan \$4,969, Staten Island \$3,496 and the Bronx \$2,288. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>54</sup> In 2001, the general election limits were as follows (from highest to lowest): Brooklyn \$50,000, Manhattan \$42,909, Queens \$44,726, the Bronx \$28,100 and Staten Island \$11,256. *See* New York City Board of Elections Memorandum, "Information Relative to 2001 Contribution Limitations" (May 1, 2001).

<sup>55</sup> As is the case with borough president candidates, the contribution limits binding city council candidates vary widely from district to district depending on the registered voter population. Given the 51 council districts, there are far too many limits to list them all here. In order to show the range, both the highest and the lowest are given in the chart. In nearly every Republican Party city council primary, and in every single minor party city council primary, the contribution limit is the statutory minimum, adjusted for changes in the cost of living, and is not based on the statutory formula

<sup>56</sup> N.Y. Elec. Law § 14-114(1)(b) (2001).

<sup>57</sup> The statutory maximum contribution limit applied in every borough but Staten Island, where the statutory formula produced a lower contribution limit.

<sup>58</sup> The statutory maximum contribution limit applied in every borough but Staten Island, where the statutory formula produced a lower contribution limit.

<sup>59</sup> N.Y. Elec. Law § 14-114(3) (2001).

<sup>60</sup> The statutory limit is \$62,500, plus an adjustment for changes in the cost of living. *Id.* at § 14-114(10).

<sup>61</sup> The language of the statute states that during the 12 month period prior to a general election, a party committee may not spend more than the greater of \$500 or \$0.01 per registered voter in the district in which the committee is organized in support of candidates running for office. *Id.* at § 14-114(5).

<sup>62</sup> *Id.* at § 14-116.

<sup>63</sup> *See* N.Y. State Board of Elections Memorandum, "Contributions and Receipt Limitations" (visited Dec. 20, 2001) <<http://www.elections.state.ny.us/finance/climit.htm>>.

<sup>64</sup> N.Y. Elec. Law § 14-114(6)(a) (2001).

<sup>65</sup> *Id.* at § 14-114(6)(b).

<sup>66</sup> *Id.* at § 14-114(8).

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- <sup>67</sup> See N.Y. State Board of Elections Memorandum, “Contributions and Receipt Limitations” (visited Dec. 20, 2001) <<http://www.elections.state.ny.us/finance/climit.htm>>.
- <sup>68</sup> New York, N.Y., Charter Ch. 46 § 1052(12)(b) (2001).
- <sup>69</sup> *Id.* at § 1053.
- <sup>70</sup> *Id.* at § 1052.
- <sup>71</sup> New York, N.Y., Administrative Code § 3-708(5) (2001).
- <sup>72</sup> *Id.* at § 3-711.
- <sup>73</sup> *Id.* at § 3-708(6).
- <sup>74</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE 138 (1990).
- <sup>75</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, WINDOWS OF OPPORTUNITY 91 (1992).
- <sup>76</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, A DECADE OF REFORM 131 (1998).
- <sup>77</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 7 (2002).
- <sup>78</sup> *Id.*
- <sup>79</sup> *Id.* at 46.
- <sup>80</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Helen Foster, New York City councilwoman district 16).
- <sup>81</sup> Interview with David Yassky, New York City councilman district 33, Dec. 6, 2001.
- <sup>82</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 48 (2002).
- <sup>83</sup> *Id.* at 47.
- <sup>84</sup> Interview with Gene Russianoff, Senior Attorney for the New York Public Interest Research Group, Dec. 7, 2001.
- <sup>85</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, 2001 Candidate Survey Results.
- <sup>86</sup> Interview with Robert Cermeli, New York City Council candidate district 30, Jan. 16, 2002.
- <sup>87</sup> Interview with Fred Siegel, Professor of History at the Cooper Union for Science and Art and Senior Fellow at the Progressive Policy Institute in Washington, D.C., Dec. 7, 2001.
- <sup>88</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Brooklyn Borough President Marty Markowitz).
- <sup>89</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Manhattan Borough President C. Virginia Fields).
- <sup>90</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, WINDOWS OF OPPORTUNITY 23 (1992).
- <sup>91</sup> *Id.* at 31.
- <sup>92</sup> *Id.*
- <sup>93</sup> See Campaign Finance Board Press Release, “Record Number of Candidates Join The Campaign Finance Program,” June 20, 2001.
- <sup>94</sup> City Councilman John Liu is the first Asian American to ever be elected to New York City office. For population demographic statistics see United States Census Bureau 2000 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.
- <sup>95</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 10, 2001 (statement of Rocky Chin, New York City Council candidate district 1).
- <sup>96</sup> Interview with Steven Banks, New York City Council candidate district 39, Jan. 30, 2002.
- <sup>97</sup> Interview with David Yassky, *supra* note 31. Yassky went on to give specific examples: “For one, the mayoral primary. Alan Hevesi would have won the primary without the campaign finance system. Here in Brooklyn, the borough president race was won by a guy named Marty Markowitz. There was someone in the race named Ken Fischer, who was able to raise and did raise at least twice what Markowitz raised and would have beaten him for sure. Other council races, in the district that adjoins mine, a fellow named James Davis beat a woman Tish James. And I think Tish would have raised a lot more money and that might or might not have been enough to beat him.”
- <sup>98</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Sandra Vassos, New York City Council candidate district 22).
- <sup>99</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Scott Stringer, New York City public advocate candidate).

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- <sup>100</sup> Interview with Nicole A. Gordon, executive director of the New York City Campaign Finance Board, Dec. 4, 2001.
- <sup>101</sup> Interview with John Liu, New York City councilman district 20, Jan. 28, 2002.
- <sup>102</sup> In the Los Angeles 2001 city elections, 96% of serious candidates participated in the public financing program and 70% received public funds. For detailed information on the City of Los Angeles' public campaign financing program, including candidate participation statistics, see Center for Governmental Studies, *Eleven Years of Reform: Campaign Financing in the City of Los Angeles* (2001) <<http://www.cgs.org>>.
- <sup>103</sup> Campaign finance data is not readily available for nonparticipating candidates in the 1989 elections, so the 1989 elections have been excluded from our "serious" candidate analysis.
- <sup>104</sup> "Serious" is defined as a candidate who raised or spent at least \$5,000.
- <sup>105</sup> Interview with Nicole A. Gordon, *supra* note 100.
- <sup>106</sup> Interview with Ethel Chen, New York City Council candidate district 20, Jan. 16, 2002.
- <sup>107</sup> Interview with Steven Banks, *supra* note 96.
- <sup>108</sup> Approximately six months after Carmen Williams granted CGS the interview cited in this report, Ms. Williams was hired by CGS as a part-time consultant to research independent campaign spending in New York City elections.
- <sup>109</sup> Interview with Carmen Williams, Political Attorney and CGS Consultant, Dec. 7, 2001.
- <sup>110</sup> New York, N.Y., Charter Ch. 46 § 1052 (2001).
- <sup>111</sup> CHARLES BRECHER & RAYMOND D. HORTON, POWER FAILURE 124-25 (1993).
- <sup>112</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE 113 (1990).
- <sup>113</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, ON THE ROAD TO REFORM, VOL. 1 61 (1994). C-SMART stands for Candidate Software for Managing and Reporting Transactions.
- <sup>114</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, A DECADE OF REFORM 1988-1998, VOL. 1 71 (1998).
- <sup>115</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 111 (2002).
- <sup>116</sup> Interview with Nicole A. Gordon, *supra* note 100.
- <sup>117</sup> Interview with Gene Russianoff, *supra* note 34.
- <sup>118</sup> Interview with David Yassky, *supra* note 31.
- <sup>119</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Sandra Vassos, New York City Council candidate district 22).
- <sup>120</sup> New York, N.Y., Charter Ch. 46 § 1052 (2001).
- <sup>121</sup> *Id.*
- <sup>122</sup> Interview with Gene Russianoff, *supra* note 34.
- <sup>123</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, A DECADE OF REFORM 1988-1998, VOL. 1 61 (1998).
- <sup>124</sup> City of New York v. New York City Campaign Finance Board, No. 400550/01 (Sup. Ct., N.Y. County May 8, 2001).
- <sup>125</sup> New York City Campaign Finance Board Press Release, *Campaign Finance Board's Cost Projection for Public Funds in 2001 is \$63.3 Million*, March 7, 2001.
- <sup>126</sup> Based on "Public Funds Disbursed per Election" figures presented in Fact Sheet 6.3 in NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 105-06 (2002).
- <sup>127</sup> Based on budget data obtained from Carole Campolo, deputy executive director of the New York City Campaign Finance Board (Dec. 9, 2002). Because the Campaign Finance Board was not created until 1988, only the budgets for fiscal years 1989 and 1990 were used to calculate this figure.
- <sup>128</sup> Based on 1989 voter enrollment: 3,183,739. See Voter Enrollment, New York City Board of Elections (visited May 8, 2001) <<http://www.vote.nyc.ny.us>>.
- <sup>129</sup> Based on Census Bureau population statistics for 1990: 7,322,564. See United States Census Bureau 1990 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.
- <sup>130</sup> Based on 1993 voter enrollment: 3,301,683. See Voter Enrollment, New York City Board of Elections (visited May 8, 2001) <<http://www.vote.nyc.ny.us>>.
- <sup>131</sup> Based on Census Bureau population statistics for 1990: 7,322,564. See United States Census Bureau 1990 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

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<sup>132</sup> Based on 1997 voter enrollment: 3,514,974. See Voter Enrollment, New York City Board of Elections (visited May 8, 2001) <<http://www.vote.nyc.ny.us>>.

<sup>133</sup> Based on Census Bureau population statistics for 2000: 8,008,278. See United States Census Bureau 2000 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

<sup>134</sup> Based on April, 2001 voter enrollment: 4,043,278. See Voter Enrollment, New York State Board of Elections (visited May 8, 2001) <<http://www.elections.state.ny.us/enrollment/enroll.htm>>.

<sup>135</sup> Based on Census Bureau population statistics for 2000: 8,008,278. See United States Census Bureau 2000 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

<sup>136</sup> Based on April, 2001 voter enrollment: 4,043,278. See Voter Enrollment, New York State Board of Elections (visited May 8, 2001) <<http://www.elections.state.ny.us/enrollment/enroll.htm>>.

<sup>137</sup> Based on Census Bureau population statistics for 2000: 8,008,278. See United States Census Bureau 2000 General Population and Housing Characteristics for New York City (visited Aug. 10, 2002) <<http://factfinder.census.gov/servlet/BasicFactsServlet>>.

<sup>138</sup> Based on chart entitled, *Campaign Finance Board Adopted Budget History*, obtained from Carole Campolo, deputy executive director of the New York City Campaign Finance Board (Dec. 13, 2002).

<sup>139</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of LeeAnn Pelham, executive director of the Los Angeles City Ethics Commission).

<sup>140</sup> Interview with David Yassky, *supra* note 31.

<sup>141</sup> Interview with John Liu, *supra* note 101.

<sup>142</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Paul Graziano, New York City Council candidate district 20).

<sup>143</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Sandra Vassos, New York City Council candidate district 22).

<sup>144</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Helen Foster, New York City councilwoman district 16).

<sup>145</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, *A DECADE OF REFORM 1988-1998*, VOL. 1 114 (1998).

<sup>146</sup> Interview with Nicole A. Gordon, *supra* note 100.

<sup>147</sup> *Id.*

<sup>148</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, *AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED* 132-33 (2002).

<sup>149</sup> *Id.* at 132.

<sup>150</sup> NYC Administrative Code § 3-713.

<sup>151</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, *DOLLARS AND DISCLOSURE* 11 (1990).

<sup>152</sup> CGS research has uncovered no published documents analyzing the authority of the city to adopt mandatory campaign finance laws. Prior to adopting its public financing program, however, New York City sought and received an opinion from the New York State attorney general on the constitutionality of the proposed *voluntary* public financing program. The attorney general opined that the proposed public financing law was within the scope of the city's home rule authority. See Letter from Robert Abrams, New York State attorney general, to New York City Mayor Edward Koch 2 (October 21, 1987).

For a thorough exploration of the city's authority to enact voluntary campaign finance laws in the context of state law preemption, see Jeffrey D. Friedlander et al., *A Symposium On Ethics In Government: The New York City Campaign Finance Act*, 16 Hofstra L. Rev. 345 (1988). See also Richard Briffault, *Taking Home Rule Seriously: The Case of Campaign Finance Reform*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM* 35 (Frank J. Mauro & Gerald Benjamin eds., 1989).

<sup>153</sup> The U.S. Supreme Court has interpreted the First Amendment of the federal constitution to prohibit mandatory spending limits. See *Buckley v. Valeo*, 424 U.S. 1, 49 (1976) (*per curiam*). The *Buckley* Court did rule, however, that Congress may "condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations." *Id.* at 57 n. 65.

<sup>154</sup> For a comprehensive review of both the theory and application of local government home rule law, see Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 Colum. L. Rev. 1 (1990). The legislative authority of local governments throughout the United States is determined by state

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law. According to traditional legal theory, a local government exists only as a result of state action. The state, as a local government's creator, has absolute power to alter a local government's jurisdictional boundaries, or to abolish the local government all together. During the first century of this nation's existence, local governments were empowered to do only that which states authorized them to do. *Id.* at 8.

The relationship between state and local governments began changing in the second half of the nineteenth century. Missouri was the first state to grant significant legislative authority to a local government in 1875, when it adopted a constitutional amendment granting the City of St. Louis the power of "home rule." California followed suit, granting San Francisco home rule authority in 1879 and then extending home rule to cities throughout the state eight years later. The home rule movement spread throughout the country during the Progressive Era, giving local government's broad lawmaking authority. *Id.* at 10.

At least 41 states have some form of home rule for local governments today. Home rule provisions generally fall into two categories. The home rule constitutional amendments adopted from the late 1800s into the early 1900s treated the local government as a "state within a state," possessing full police power with respect to municipal affairs and immunity from state interference with respect to municipal affairs. Most states adopting home rule provisions since World War II have relied on a more modest "legislative" model, which grants local governments all legislative authority except that which is expressly prohibited by state law. *Id.* at 10.

The home rule authority invested in local jurisdictions by the state of New York would most accurately be characterized as following the "legislative" model. The investment of "legislative" model home rule authority in local governments is found in N.Y. CONST. art. IX, § 2(c). New York State law does contain a trace of the "state within a state" model, prohibiting the state from passing a law targeted at a specific local jurisdiction without the local jurisdiction's permission. *See* N.Y. CONST. art. IX, § 2(b)(2). *See also* N.Y. CONST. art. IX, § 3(d)(1) (definition of the term "general law"). *See also* N.Y. Municipal Home Rule Law §§ 2(5), 10(1).

<sup>155</sup> N.Y. CONST. art. IX, § 2(c). *See also* N.Y. Municipal Home Rule Law § 10(1).

<sup>156</sup> N.Y. CONST. art. IX, § 2(c). *See also* N.Y. Municipal Home Rule Law § 10(1).

<sup>157</sup> For a detailed analysis of the intersection between New York State law, municipal home rule authority and campaign finance reform, *see* Richard Briffault, *Taking Home Rule Seriously: The Case of Campaign Finance Reform*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM* 35 (Frank J. Mauro & Gerald Benjamin eds., 1989). *See also* Jeffrey D. Friedlander et al., *A Symposium on Ethics in Government: The New York City Campaign Finance Act*, 16 Hofstra L. Rev. 345 (1988). Briffault, Friedlander and Friedlander's co-authors all convincingly argue that New York City acted fully within its home rule powers in adopting its public campaign financing program. None of the authors, however, explicitly address the question of whether New York City may go beyond the public financing program with regulations binding all candidates for city office.

<sup>158</sup> *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 234 N.Y.S.2d 862, 864-65 (1st Dep't 1962), *aff'd*, 239 N.Y.S.2d 128 (1963).

<sup>159</sup> *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 239 N.Y.S.2d 128, 129-30 (1963).

<sup>160</sup> *People v. Cook*, 34 N.Y.2d 100 (1974).

<sup>161</sup> *Id.* at 105-06.

<sup>162</sup> *Id.* at 110.

<sup>163</sup> *Id.* at 111.

<sup>164</sup> *Town of Clifton Park v. C.P. Enterprises*, 356 N.Y.S.2d 122, 124 (N.Y. App. Div. 1974).

<sup>165</sup> *Mayor of the City of New York v. Council of the City of New York*, 696 N.Y.S.2d 761, 765 (N.Y. Sup. Ct. 1999) (internal citations omitted) (upholding New York City Council's creation of an independent board to oversee police department despite mayor's claim that oversight board violated the state constitution).

<sup>166</sup> *See* Richard Briffault, *Taking Home Rule Seriously: The Case of Campaign Finance Reform*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM* 35, 39 (Frank J. Mauro & Gerald Benjamin eds., 1989).

<sup>167</sup> *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91 (1987).

<sup>168</sup> *Id.* at 95.

<sup>169</sup> *Id.* at 97.

<sup>170</sup> *Id.* at 98.



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- <sup>171</sup> *Id.*
- <sup>172</sup> *Id.* at 100 (internal citations omitted).
- <sup>173</sup> *Incorporated Village of Nyack v. Daytop Village, Inc.*, 78 N.Y.2d 500, 507 (1991).
- <sup>174</sup> *Id.* at 508.
- <sup>175</sup> *DJL Restaurant Corp., Doing Business As Shenanigans v. City of New York*, 96 N.Y.2d 91, 95 (2001) (internal quotation marks and citations omitted).
- <sup>176</sup> Letter from Robert Abrams, New York State attorney general, to New York City Mayor Edward Koch 2 (October 21, 1987).
- <sup>177</sup> N.Y. Elec. Law § 1-102 (2001).
- <sup>178</sup> *Buckley v. Valeo*, 424 U.S. 1, 49 (1976) (*per curiam*).
- <sup>179</sup> An “independent expenditure” is an expenditure by a person or organization directly advocating the election or defeat of a candidate which is in no way coordinated with a candidate’s campaign. An example of an independent expenditure might be a glossy 5” x 8 ½” mail piece sent by a labor union to all of its members urging voters to elect a particular candidate or group of candidates endorsed by the union. In some jurisdictions, expenditures by an organization to communicate with its members fall into a “member communication expenditure” exception and are not subject to the same fundraising limitations and disclosure requirements as “independent expenditures.” New York State law contains no such exception. *See* Cal. Gov’t Code § 85312, which removes member communication expenditures from California’s definition of “independent expenditure.” *See also* Center for Governmental Studies, *On the Brink of Clean: Launching San Francisco’s New Campaign Finance Reforms*, 16 (2002).
- <sup>180</sup> *Buckley v. Valeo*, 424 U.S. 1, 45 (1976) (*per curiam*).
- <sup>181</sup> Interview with Nicole A. Gordon, *supra* note 100.
- <sup>182</sup> The 170 page report contains two paragraphs explaining the meaning of the terms “independent expenditure” and “soft money.” The second paragraph concludes: “No allegations were made of significant ‘independent’ activity during the 2001 elections.” *See* NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 87 (2002).
- <sup>183</sup> N.Y. Elec. Law § 14-102(1) (2001).
- <sup>184</sup> *Id.* at § 14-100(1). *See also* New York State Board of Elections 1975 Opinion #2.
- <sup>185</sup> New York State Board of Elections 1975 Opinion #2.
- <sup>186</sup> New York State Board of Elections 1978 Opinion #16.
- <sup>187</sup> *Id.*
- <sup>188</sup> Interview with John Liu, *supra* note 101.
- <sup>189</sup> *Id.*
- <sup>190</sup> Interview with Steven Banks, *supra* note 96.
- <sup>191</sup> *Id.*
- <sup>192</sup> Dan Barry, *A Diviner of Meaning in Political Names and Lists*, New York Times, July 31, 2001.
- <sup>193</sup> Interview with Jerry Skurnick, co-owner Prime New York, Jan. 17, 2002.
- <sup>194</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 10, 2001 (statement of John Siegal, chairman of mayoral candidate Mark Green’s campaign).
- <sup>195</sup> Interview with Fred Siegel, *supra* note 37.
- <sup>196</sup> Interview with Jerry Skurnick, *supra* note 192.
- <sup>197</sup> SEIU 1199 has more than 150,000 members in New York City.
- <sup>198</sup> The cities of Austin, Los Angeles, Oakland and San Francisco currently enforce trigger provisions that eliminate spending limits in a race when independent expenditures exceed specified thresholds. *See* Center for Governmental Studies, *Public Financing Laws in Local Jurisdictions* (Chart) (2002) (visited Nov. 1, 2002) <<http://www.cgs.org>>.
- <sup>199</sup> Los Angeles, Cal., Municipal Code at § 49.7.14.
- <sup>200</sup> One of New York City’s 51 council members represents approximately 157,000 residents and has a primary election spending limit of \$137,000. One of Los Angeles’ 15 council members represents approximately 246,000 residents and has a primary election spending limit of \$330,000.
- <sup>201</sup> New York, N.Y., Administrative Code § 3-706(3) (2001).
- <sup>202</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 10, 2001 (statement of John Siegal, chairman of mayoral candidate Mark Green’s campaign).

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<sup>203</sup> Interview with David Yassky, *supra* note 31.

<sup>204</sup> *Id.*

<sup>205</sup> Interview with Steven Banks, *supra* note 96.

<sup>206</sup> Interview with Fred Siegel, *supra* note 37.

<sup>207</sup> *Id.*

<sup>208</sup> Interview with Nicole A. Gordon, *supra* note 100.

<sup>209</sup> *Id.*

<sup>210</sup> See Center for Governmental Studies, *Public Financing Laws in Local Jurisdictions* (Chart) (2002) (visited Nov. 1, 2002) <<http://www.cgs.org>>. The only local jurisdiction with a public financing program and higher contribution limits is the Town of Cary, NC, with a \$4,000 contribution limit established by state, not local law.

<sup>211</sup> New York City candidates are subject to the same “per election year” contribution limit whether they run in both a party primary and a general election, or run in only one of the two. Given the overwhelmingly Democratic party registration in the city, open seat races typically result in highly competitive Democratic Party primaries with little competition from Republican or other minor party candidates in the general election. Races involving a Democratic incumbent typically produce no competition. Republican and other minor party primaries are rare. Consequently, though the contribution applies to the entire election year, it often applies to only a single election.

The City of Los Angeles holds nonpartisan elections. If a single candidate fails to garner more than 50% of the vote in the general election, then a runoff election is held between the top two vote-getters. Open-seat races often lead to runoff elections, whereas incumbents typically win the general election outright. Consequently, many candidates compete in only a single election and thus are subject to the per election contribution limit for an entire election year.

Therefore, while it is tempting simply to double Los Angeles’ per election contribution limit for the sake of comparing it to New York City’s per election year limit, this approach has its shortcomings.

<sup>212</sup> CHARLES BRECHER & RAYMOND D. HORTON, *POWER FAILURE* 125 (1993).

<sup>213</sup> Interview with Gene Russianoff, *supra* note 34.

<sup>214</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Oliver Koppell, New York City councilman district 11).

<sup>215</sup> Interview with David Yassky, *supra* note 31.

<sup>216</sup> Interview with Gene Russianoff, *supra* note 34.

<sup>217</sup> Interview with Nicole A. Gordon, *supra* note 100.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> Interview with David Yassky, *supra* note 31.

<sup>221</sup> Interview with John Liu, *supra* note 101.

<sup>222</sup> See Center for Governmental Studies, *Eleven Years of Reform: Campaign Financing in the City of Los Angeles*, 28 (2001) (visited Nov. 1, 2002) <<http://www.cgs.org>>.

<sup>223</sup> Jonathan P. Hicks, *Ex-Councilman Changes His Mind And Awaits His Day in Court*, *New York Times*, Sept. 27, 2002.

<sup>224</sup> Incumbent Councilman Phillip Reed won his primary race with less than 52% of the vote. The other three incumbents who began fundraising more than two years before the 2001 primary election, Martin Golden, Bill Perkins and Madeline Provenzano, won their races by at least 15 percentage points.

<sup>225</sup> Interview with John Liu, *supra* note 101.

<sup>226</sup> Interview with Ethel Chen, *supra* note 106.

<sup>227</sup> Interview with David Yassky, *supra* note 31.

<sup>228</sup> Interview with Steven Banks, *supra* note 96.

<sup>229</sup> Interview with Nicole A. Gordon, *supra* note 100.

<sup>230</sup> Interview with Gene Russianoff, *supra* note 34.

<sup>231</sup> City council candidates may spend up to \$40,000 in the year prior to the election year and up to \$24,000 in each of the third and fourth year preceding an election year.

<sup>232</sup> Interview with Steven Banks, *supra* note 96. See also Interview with Ethel Chen, *supra* note 106.

<sup>233</sup> Campaign finance data was not available for 10 major party council candidates who registered with either the Campaign Finance Board or the Board of Elections as small campaigns and, consequently, were

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not required to file disclosure reports. Likewise, data was unavailable for seven candidates who chose not to participate in the campaign finance program and failed to file timely reports with the Board of Elections.

<sup>234</sup> New York, N.Y., Administrative Code § 3-706(4) (2001).

<sup>235</sup> Andrea Bernstein, *McCain vs. New York*, SALON.COM, DEC. 9, 1999 (visited Aug. 15, 2002)

<<http://www.salon.com/news/feature/1999/12/09/mccain/print.html>>.

<sup>236</sup> N.Y. Elec. Law § 6-158(1) (2001).

<sup>237</sup> *Id.* at § 6-134(4).

<sup>238</sup> *Id.* at § 6-136(2).

<sup>239</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Sandra Vassos, New York City Council candidate district 22).

<sup>240</sup> Interview with Steven Banks, *supra* note 96.

<sup>241</sup> Interview with Ethel Chen, *supra* note 106.

<sup>242</sup> N.Y. Elec. Law § 6-158(1) (2001).

<sup>243</sup> Interview with Carmen Williams, *supra* note 109.

<sup>244</sup> New York, N.Y., Charter § 1136.1 (2001).

<sup>245</sup> Interview with Gene Russianoff, *supra* note 34.

<sup>246</sup> Dan Janison, *Vallone Has Baggage*, *Newsday*, Aug. 3, 2001.

<sup>247</sup> Dan Janison, *From Flags to Bags*, *Newsday*, Aug. 9, 2001.

<sup>248</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED . . . AN ELECTION TRANSFORMED 137-40 (2002).

<sup>249</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 10, 2001 (statement of Dale Christensen, New York City Campaign Finance Board member).

<sup>250</sup> Los Angeles, Cal., Municipal Code at § 49.7.19(A)(2) (2002).

<sup>251</sup> *Id.* at § 49.7.18.

<sup>252</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 10, 2001 (statement of Rocky Chin, New York City Council candidate district 1).

<sup>253</sup> *Id.*

<sup>254</sup> New York City Campaign Finance Board, *Public Hearings on Performance of Campaign Finance Program*, Dec. 11, 2001 (statement of Oliver Koppell, New York City councilman district 11).

<sup>255</sup> It is clear from data published by the Campaign Finance Board that the highest spending opponents of at least 17 of the 33 publicly financed candidates were outspent 2-to-1 in the general election. Campaign finance data is not available for the opponents of 10 publicly financed candidates, as a result of the opponents' failure to file disclosure reports with the NYC Board of Elections. These opponents were not participants in the public financing program and thus were not required to file disclosure reports with the Campaign Finance Board. The Campaign Finance Board staff did attempt to obtain disclosure reports for all nonparticipants from the Board of Elections but were unable to do so for candidates who failed to file.

New York City's public campaign financing law, enacted in 1988, serves as a model for the United States. It has enabled candidates lacking access to wealthy campaign contributors to wage competitive campaigns. The program has also increased the importance of small campaign contributions from city residents, encouraged nearly all of the city's serious candidates to agree to fundraising and spending limits and dramatically improved campaign finance disclosure. This CGS report, *A Statute of Liberty*, explores the successes of New York City's law, but also recommends reforms to make the program operate even more effectively, urging lawmakers to:

- ○ Make City Contribution Limits and Disclosure Requirements Mandatory on All Candidates and Committees Participating in City Elections
- ○ Require Disclosure of Independent Expenditures
- ○ Provide Additional Public Funding to Candidates Facing Large Independent Expenditures or High-Spending, Wealthy Opponents
- ○ Reduce New York City's Contribution Limits
- ○ Impose a Fundraising Blackout Period
- ○ Simplify and Adjust Spending Limits



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