Testimony of
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City Council Committee on Governmental Operations

I am Nicole A. Gordon, the Executive Director of the New York City Campaign Finance Board. I am here today to testify on Intro. No. 488-A, which would provide matching funds at a $4-to-$1 rate to "ballot proposal committees," defined in the proposed legislation as political committees which make expenditures in support of or in opposition to a citywide ballot proposal. We received the current proposal late last week, so I cannot claim that our office has made a complete review of all its implications, but I am prepared to give the Board's initial reactions.

The Board appreciates the Council's intent, apparent from the face of its proposal, to support spirited debate on important issues of local concern and to create a level playing field upon which to discuss them. The current ways in which the Campaign Finance Act promotes these values are through the Voter Guide and a never-yet-used provision of the Board's rules allowing for voluntary financial disclosure by ballot proposal committees. (See Board Rule 3-10.)

As you know, the Voter Guide includes a detailed discussion of ballot proposals. It is distributed by mail to all registered voters in New York City, and it is also posted on the Web. The Voter Guide's discussion relies on an extensive solicitation of "pro" and "con" statements from the public, as well as "pro" and "con" arguments prepared by the Board, describing the major arguments made about City ballot proposals. The Board is pleased to have a consistent record of presenting the public with a balanced articulation of the substance and arguable advantages and disadvantages of the various ballot proposals addressed in the Campaign Finance Board Voter Guides. Nine Voter Guides have been published addressing ballot proposals starting in 1989.

In August 1999, a Board rule went into effect intended to give the public disclosure of campaign finance activity by ballot proposal committees. Although this provision has never yet been used, we hope that this year any ballot proposal committees do file with the Board, and, if they do, the Board will evaluate the efficacy of the rule in the Board's mandated post-election

report.

The Board believes, however, with respect to the proposed legislation, that there are legal, policy, and practical considerations that require your close scrutiny.

First, Article VIII, § 1 of the State Constitution, which addresses the use of government funds for the promotion of a ballot initiative, raises questions whether public funds may be used as contemplated by this proposal.

Next, there are many potential unintended consequences of the proposed legislation that must be addressed:

1. Will the public funding of "pro" and "con" campaigns encourage more ballot initiatives, and would that be a positive development?
2. Will the law make the playing field less level by funding more "pro" groups than "con" or vice versa?
3. What are the potential costs (both in public matching funds and administrative expenses)?
4. What criteria would the Campaign Finance Board need to apply to evaluate the content of ballot proposal committee communications to ensure that public funds are being used for the intended purpose? Are there First Amendment implications that are different from those that arise in candidates' campaigns? Similarly, how will the Board as a practical matter effectively police "coordinated" activity between candidate committees and ballot proposal committees when the incentive to create overlapping committees is much increased?
5. What mechanisms are available to combat violations and fraud?

This last area of concern, implicating the areas of disclosure, audit, and other enforcement oversight, is crucial. The proposed legislation does not even include explicit requirements for filing disclosure statements with the Board, thus raising the question how the Board will determine payment amounts, compliance with the rules, or the facial validity of public tax dollar expenditures. Similarly, there is now no mechanism for the Board to make this

information available to the public, which is a vital element to keep the process transparent. Finally, there is no provision for penalties to discourage or punish abuse. Indeed, the proposed legislation even exempts ballot proposal committees from the Act's prohibition on using public funds for payments to family members or business entities in which members of the committee have a 10% or greater ownership interest. The rules for these ballot proposal committees should arguably be at least as stringent, if not more so, than those for the candidate committees that currently participate in the Campaign Finance Program. That is because in the case of candidates, there is a requirement that candidates meet the standards to be placed on the ballot, and the candidates' opponents have an incentive to monitor compliance with State Election ballot access laws. Here, there does not seem to be a parallel standard that gives some minimum assurance of the bona fides of the ballot proposal committees. What check would there be on individuals or groups who simply want to qualify for large amounts of public funds to achieve ends unrelated to genuine debate about ballot proposals?

On a separate point, the legislation as drafted simply transposes the existing threshold and other limits that currently exist in the Act for mayoral candidates for purposes of setting limits on ballot proposal committees. It does not appear that a separate study has been done to evaluate an appropriate balance between a minimum level of fundraising required to receive public funds, on the one hand, and, on the other, allowing grassroots community groups to benefit from this expansion of the Program. Nor does it appear that levels of public funding have been calculated to reflect a considered evaluation of appropriate costs that should be borne by the public for ballot proposal committee expenditures. (Under the proposal, one ballot proposal committee this year could qualify to receive up to $3,150,400.)

The Campaign Finance Program was established by the City Council to lessen the influence of big contributors on the elective process. The drafters of the Act believed that it was important for average New Yorkers to have more influence on the ability of candidates in their communities to compete for local office. Many of you sitting here today are the very community activists the Campaign Finance Act was intended to benefit. Numerous unintended consequences, however, could arise from this legislation leading to greater influence by wealthy contributors over candidates and elections and, in the worst case, to wrongful use of public funds. This of course, is not the Council's intent, but the possibility - - even probability - - of fraud and other abuse must be faced.

The Board appreciates the intent of this legislation and is interested in working with the Council to consider creative ways to encourage discourse on ballot issues and to help create a level playing field when that discourse occurs. The Board believes, however, that the legislation as drafted more raises concerns than achieves its purposes.

In the meantime, the Board is confident that its Voter Guide will be an important resource for voters this year, and if ballot proposal committees do file with the Board, the process will be transparent. This year, for the first time, the Board will be conducting a poll and using focus groups to begin to evaluate the efficacy of the Guide. When that process is concluded, and if the public gets information from ballot proposal committees' disclosure to the Board, we will know much more than we do now about the value of the information the public gets and the sources funding that information.

Thank you, and I would be pleased to answer any questions you may have.

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