

**Testimony of
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New York City Campaign Finance Board
October 16, 2003
City Council Committee on Governmental Operations;
and City Council Committee on Charter Revision**

I am Nicole A. Gordon, the Executive Director of the New York City Campaign Finance Board. Thank you for the opportunity to testify today on these important ballot proposals.

As you know, the Campaign Finance Board, a non-partisan agency, takes no position for or against the current Charter Revision Commission ballot proposals. As you also know, the Board produces a non-partisan Voter Guide, which includes information for the public on each proposal, including “pro” and “con” statements. These Guides are going into the mail stream even as we speak. In both July and August, however, I testified before the Charter Revision Commission on areas of concern to the Board about the proposals for “non-partisan” elections and how they might affect New York City’s pioneer Campaign Finance Program, and I will summarize those points again today.

The Board remains particularly concerned about the potential for “soft” money spending by the parties if a system of “non-partisan” elections goes into effect. Under current State law, party spending is forbidden during the primary period. During the general election, the Board essentially operates on the basis of a presumption that party spending on behalf of a party’s nominee is “coordinated,” and thus can be legitimately counted towards the nominee’s spending limit. Thus, in the current system, potential “soft” party spending is tightly regulated, ensuring that party activity does not disrupt the level playing field created by the Campaign Finance Program’s contribution and expenditure limits.

Under a “non-partisan” system, presumably the State law governing the primary period would have no effect because there would be no party primaries. The Board’s presumption for the general election might not be effective, either. This is because a party primary and a ballot line for the party create a link between the nominee and the party that justifies treating them as one entity. If the party has no primary and no ballot line on which its candidate appears, the party’s link to a candidate may consist in nothing more than the party’s endorsement of the candidate. Under current constitutional doctrine, however, entities that spend “independently”

of the candidate, even when they have endorsed that candidate, cannot be linked to the candidate for purposes of counting their spending against the Program's expenditure limits. In "non-partisan" elections, the link between the nominee and the party may not appear to be – or be – any stronger than the link between the candidate and any other entity that endorses a candidate. And, as I said, entities that endorse candidates are free to spend "independently," – and may do so lavishly – if they wish. Under these circumstances, the Board would be faced with an extremely difficult – perhaps impossible – task to show "coordination," between the party and its candidate, instead of being able to rely on its current presumption.

The Charter Revision Commission's proposal requiring the Board to promulgate new rules to attribute party spending to a candidate in the absence of party primaries is no different from what the Board does now, but if "non-partisan" primaries take effect, it is very likely that that attribution would be challenged – possibly successfully – in the courts. The experiences of other large cities with both campaign financing programs and "non-partisan" elections, particularly Los Angeles, show that uncontrolled party spending does take place and is a threat to a strong campaign finance system.

The Commission's original proposal to ban all organizational contributions (an idea long supported by the Board) has been altered so that it no longer resembles the Board's recommendations from its 1997 post-election report, nor does it have anything to do with, or even attempt to address, the problem of "soft" party spending. The Program, through the current contribution limits, already has some means in place to regulate the "hard" money contributions from political parties and political party PAC's that this proposal would ban. As it is now written, the proposal seems to further complicate compliance with the Program, with no gain for the public in terms of controlling "soft" party spending.

I am handing up with this testimony the testimony I offered on two occasions to the Charter Revision Commission on behalf of the Board. I thank you for the opportunity to testify.

I would be happy to answer any questions you may have.

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