

**Testimony of  
Frederick A.O. Schwarz, Jr.  
Before the City Council Committee  
On Government Operations  
November 30, 2004**

Good morning. I am Fritz Schwarz, chairman of the New York City Campaign Finance Board. I understand that today's hearing may cover a variety of topics and I am prepared to answer any questions you may have. I would first like to address a few threshold issues. As you know, the Board is a trustee of the public and it is acutely aware of the tension inherent in its dual mandates: (1) to administer the Campaign Finance Program in order to disburse public funds in a timely way to candidates during the election and (2) to protect the Public Fund from error, abuse, and even fraud. We are also aware of the potential tensions inherent in a relationship that involves your oversight of us just as we oversee your campaigns and disburse funds to your campaigns when you are Program participants. But as elected representatives of the citizens of New York City, you, as much anyone, must appreciate the seriousness with which the Board takes its responsibilities under the Campaign Finance Act. Many of you hold the Program up as a model for the nation. If the Campaign Finance Program is indeed a model for the nation, then it is due to its nonpartisan, evenhanded, and vigorous enforcement of the law.

**What's New**

The Board is gearing up for the 2005 elections and, in anticipation of pending changes in the law, hard at work planning the necessary administrative changes. A new and improved Candidate Handbook was completed and has been posted to the website. We will be making changes to our literature to reflect pending changes in the law. In addition, as necessary, we will issue new rules for public comment. We have also begun preparations for the 2005 Debate Program and hope we will be able to solicit a larger pool of sponsors given pending changes in the law.

## **Assessment of the New Legislation**

There are many aspects of the new legislation that the Board is pleased to see enacted into law and we are especially pleased to see the Council take the bold step of imposing the same contribution limits and disclosure requirements on nonparticipating candidates as those in effect for participants, further leveling the playing field and increasing disclosure.

While this is a start, there is much more to be done. The Board was bitterly disappointed to see that the Council dropped provisions from the bill that would have reduced wasteful public funds payments in noncompetitive races.

Enacting such a provision is an important way to maintain credibility with the public and to ensure that this Program does not appear to be, and is not, a giveaway to incumbents.

Payments in non-competitive races are unnecessary and wasteful, and the Board urges the Council to tackle this subject, as well as others, such as lowering contribution and spending limits, reducing the amount of public funds available to Council campaigns, and banning all organizational contributions, as soon as possible.

## **Doing Business with the City**

There has been a great deal of attention paid recently to the subject of regulating political contributions from those who do business with the city. The Board recently sent a letter to Chairman Perkins detailing the Board's position on the best way to address this issue. The Board recognizes this as an important area to regulate. In short, the Board believes that a legislative solution is better than one accomplished through rulemaking. This is so because the problem is best tackled, not by regulating candidates or all contributors in general, but by directly regulating those who "do business". The Board has no

jurisdiction to do this. And direct regulation of those doing business is the way this problem has been addressed by the Securities and Exchange Commission, the State of New Jersey, the model law of the Council on Governmental Ethics Laws, and every other jurisdiction we are aware of. Second, the solution should reach contributions to all candidates, and not just those to Program participants. Again, the Board cannot establish this.

I would like to note, however, that if the Council does not pursue a legislative solution to this problem, the Board anticipates going forward with a rulemaking – with any rule contingent on the availability of ways to enforce it. Currently, there is no detailed, centralized, computerized source of information that reveals who does business with the city. The Campaign Finance Board has been calling attention to this deficiency since the Charter Revision Commission hearings in 1998, including in a letter from my predecessor, the Rev. Joseph A. O’Hare, to Corporation Counsel Michael Hess in December 2000. More recently, the Board has been calling the Administration’s attention to the lack of a database repeatedly over the last year. Board staff have met with several city agencies in an attempt to ascertain the scope of a project to establish such a resource, and the Board believes the Administration should provide the necessary muscle to build a comprehensive database based upon which the Board could enforce any law that is adopted or rules that are promulgated.

### **Administrative Process**

I want to put to rest some misconceptions about the Board’s process. The Board is an investigative body and not an “adjudicative” body, and its considerations of penalties or public funds repayment obligations are handled through informal hearings, not formal administrative procedures. Board meetings are not adversarial, nor are they judicial proceedings.

The informal nature of the process gives candidates much more leeway to address issues informally and to permit candidates to make their case without the necessity of hiring a

lawyer or observing formal administrative rules. Also, remember that the vast majority of issues are resolved for candidates at the staff level in the audit process. I have personally gone through the audit process and was impressed by the staff's diligence, fairness, and the numerous opportunities candidates have to respond to requests for information or to ask questions. In this connection, I want to emphasize that the Board staff operates as an arm of the Board. The staff advises the Board, throughout all the Board's processes, before, during, and after Board meetings. In the end the Board is responsible for making the ultimate decisions.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have.