Testimony
of
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New York Public Interest Research Group
before the
New York City Campaign Finance Board
hearing on the
2005 New York City Elections
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The New York Public Interest Research Group (NYPIRG) appreciates today's chance to comment on how we think the city's landmark campaign finance law worked in the 2005 elections.

Indeed, we have testified before every post-election hearing held by the Board since the law's start in 1988. We helped draft the original requirement that the Board issue a report evaluating the program by the September of the year after an election year (section 3-713 of the New York City Campaign Finance Act.) We think this provision has led to a living program, which has been changed repeatedly by the City Council and Mayor for the good. Such changes include the post-1993 requirement that participants must debate, the post-1997 four-to-one match, and the post-2003 requirement that non-participants abide by the law's contribution and disclosure requirements.

We are hopeful that we are at the start of a process of evaluation and progressive change again. In this spirit, NYPIRG offers responses to those questions on your list of "issues for consideration" where we have an opinion. Our responses are keyed to your numbers.

NYPIRG's Responses

4. Do you believe the law furthered governmental reforms?

By any fair measure, the city's campaign finance program has furthered key goals since its start in 1988 and in many of the 2005 races. These include reducing the influence of special interests on city elections; enabling New Yorkers of modest means to run serious races; promoting more competitive elections by leveling the playing field; contributing to more diversity of candidates and officials and thereby fostering greater choice for voters; and generating greater disclosure of how campaigns raise and spend money. Our testimony below fleshes out our views.

5. Do you think the Program's contribution and spending limits are appropriate? Would it be preferable to have higher expenditure limits without exempt expenditures?

First, NYPIRG supported the 2004 city legislation to require all candidates for city office to abide by the contribution limits and disclosure rules set in the campaign finance law. The limits in state law are both too high and too complex.

It made sense to have one set of limits for participants and non-participants, both for clarity and to discourage large individual contributions and limited disclosure. For example, while Mayor Bloomberg did not participate in the program, the public received more detailed and timely disclosure than they would have under state law. We believe no one has challenged the Board's authority to set limits and disclosure rules for all city candidates.

Second, NYPIRG supports lowering the contribution limits now in the law. We believe that the contribution limits remain too high and support the Board's prior recommendations for lowering contribution limits. In September 2004 the Board recommended lowering Council contribution limits from $2,750 to $250. We believe this change would yield more competitive elections (along with a lower spending ceiling in Council races) encourage a broader base of people participating in the political process and further reduce the influence of bundlers.

Third, NYPIRG also supports eliminating the category of exempt expenditures. This move would simplify the reporting burden on candidates and the administrative burden on the Board — and at the same time further level the playing field between incumbents and challengers. We would support increasing the spending ceilings, in the range of the "safe harbor" rule that allows non-detailed filings if exempt expenditures are in the range of 7.5 percent of total expenditures.

10. What was the impact of the Board's Web site and its publication of computerized campaign finance data?

The web site was an invaluable tool for us, making it easy to obtain key information quickly, including the requirements of the law, regulations and advisory opinions. It allowed us to more efficiently field inquires from citizens, candidates and the media.

12. Candidates who faced low-spending opponents must now state their need for large sums in public funds. Do you think the law attempting to limit public fund outlays to candidates facing minimal opposition was effective? Do you have any recommendations for alternatives?

The current law is not effective. A preliminary analysis of both the 2005 primary and general elections shows that those who are nominally opposed and win by significant majorities (mainly incumbents) continue to receive significant—and often the maximum of— public matching funds.

A preliminary analysis shows that out of the 28 contested City Council races, 10 City Council candidates won with more than 80 percent of the vote; six won with 70-79 percent of the vote; and six won with 60-69 percent of the vote. These 22 City Council candidates received $1.1 million in public matching funds, or 52 percent of all public funds disbursed to City Council Candidates for the General Election. The 10 candidates (all but one incumbents) who won with more than 80 percent of the vote received 16 percent of all public funds disbursed to City Council candidates for the General Election.

In the 2005 primary elections, out of the 24 contested 2005 City Council races, two candidates won with 80-85 percent of the vote; six candidates won with 70-79 percent of the vote; and two candidates won with 60-69 percent of the vote. These ten candidates—all incumbents—received $761,732 in public matching funds, or 17.5 percent or all public funds disbursed to City Council candidates for the Primary election.

These patterns do not evidence achievement of the goal of a level playing field.

Various proposals have been offered to address this repeating problem. In our testimony to the Board in 2001, we noted our concern about "the appropriateness of awarding substantial public matching funds in some races where candidates faced token opposition or were running non-serious campaigns. This presents the thorny issue of how to set statutory criteria for "token" candidacies or "non-serious" races."

Since then, the campaign finance law was amended to require candidates to indicate they have a need for public funds when their opponent has raised less than 20% of the expenditure limit, although they could submit a letter of need indicating their need to receive additional public funds.

In general, we would support denying more than a relatively modest amount of public funds where: 1) in a general election, the district has historically gone overwhelming for one party over a number of election cycles; and 2) in a primary, where all of one candidate's opponents have raised a small amount, as evidenced by disclosure reports. We would allow any candidate to make a special showing to the Board of why this provision should not apply in their race, such as facing an opponent with high name recognition or where evidence shows that an opponent is deliberately withholding contribution reports to gain a tactical advantage. The Board would follow articulated standards in making a judgment.

An alternative would be, as the Board has recommended, to lowering the Council total expenditure ceiling, which would in turn lower the allowable public funds ceiling.

13, 21 and 23. Do you have recommendations for simplifying compliance with and administration of the Program while maintaining protections for the use of public money? Do you have any comments on how campaigns dispose of "hard goods" after an election? Do you think there should be further restrictions on the use of public funds?

NYPIRG is greatly concerned about media reports describing allegations of improper use of public funds. We will listen closely for ideas that won't overly burden candidates but safeguard precious public dollars.

14. Do you have specific recommendations for changes to the Program with regard to Program participants facing a high-spending non-participant?

The program needs to provide greater rewards to participating candidates facing high-spending non-participants, such as a significant flat grant of added public funds in certain cases.

In 2001, Mayor Bloomberg—who did not participate in the program—outspent his Democratic general election opponent at a rate of more than five-to-one. He again did not participate in 2005, and reportedly outspent Democrat Fernando Ferrer by more than ten to one. It is always hard to assess the impact of this disparity on the outcome of that election, but at the very least such excessive spending creates a very uneven playing field, chills contributions and contributors, and discourages the media coverage and supporters.

NYPIRG feels strongly that the program should be amended to give future candidates an even stronger set of incentives to participate when facing a self-finance non-participant.

In 2001, the $5.2 million mayoral spending ceiling was lifted for Democrat Mark Green. He received a five-to-one match instead of a four-to-one and was allowed to have public funds make up a larger percentage of his overall spending. But the bottom line for Green in 2001 was that these "bonuses" yielded only an added $765,000. In 2005, a six-to-one match proved similarly inadequate, leaving a candidate facing a high-spending non-participant with a crushing burden to fundraise in the closing days of a campaign.

NYPIRG therefore supports awarding a significant additional flat grant of public funds to candidates in such situations, acknowledging that there are serious political and logistical challenges in trying to do so. As an initial suggestion, NYPIRG urges that the board give consideration to supporting an award on an expedited basis of one-fifth of the spending estimated as made by a non-participant, after a participant has reached the program's expenditure ceiling.. We do not support raising contribution limits in this situation, since that undermines a central goal of the program: limiting the influence of individual donors.

In addition, as described below, in such situations perhaps significant additional spending by the political party of the candidate facing a high-spending opponent in the general election be permitted.

15. Do you have views on how multiple contributions should be treated that are made by related entities, such as LLP', LLC's and unions?

Along with Common Cause/NY and Citizens Union we testified before the City Council in opposition to Intro 564-A. That bill is still pending and we still hope to work with the Council and unions in crafting a better response. Our statement, in part, was as follows:

"Our organizations oppose 564-A. Historically, we have supported efforts by the New York City Campaign Finance Board to require contributions from a single source be totaled and counted together under the campaign finance program. Limiting the influence of corporations and organizations and increasing the weight of contributions from individual citizens in the election process are key tenets of the campaign finance program.

In general, we support the requirements that seek to minimize the influence that groups acting under the direction of a single decision-making source have in city elections. Indeed, we strongly supported aggregating contributions of corporations and their subsidiaries and affiliates before all corporate contributions were made unlawful in 1998.

In 1988, our groups successfully pushed for a requirement that the Campaign Finance Board issue a report on the impact of the law by September of the year following elections. In response, the Board has held public hearings in the December following an election cycle. Those hearings allow the Board, candidates, groups and the public to take a look at the program as a whole and to evaluate the effect of different proposals. The hearings would be the appropriate setting for the raising the issues embodied in Intro 564-A. Both our groups and the Board would be sensitive to those concerns. The Board produces a detailed and often self-critical review, along with reams of data about contributions and expenditures."

That said, Intro 564-A as presently written fails to adequately safeguard against the same decision-maker authorizing over-the-limit contributions, and is in fact a road map to how to evade the law.

17. Should political parties have a different contribution limit from the limit for individual donors?

This is a hard one.

In 1993, it seemed unfair that the State Democratic Party could claim it was acting independently in making a large mailing on behalf of Mayor Dinkins in his unsuccessful bid for re-election. In 2005, it seemed unfair the State Democratic Party could not financially help counter the incredible spending by Mayor Bloomberg. In general, we are unhappy with the high-spending of the committees of the New York State legislative majority parties on behalf of so-called "marginal" candidates. Among other things, it leaves such candidates very beholden to the legislative leaders. And contributions to state parties are not subject to the limits in the campaign finance program.

Again, we are eager to hear from others concerned with the workings of the law. One possible direction is to allow additional spending for a party's candidate where that candidate faces a high-spending non-participant.

18. Should those who "do business" with the City be subject to special disclosure, special contribution or other limits?

NYPIRG has long favored restrictions on government awarding benefits to city campaign contributors. The burden should be on the government (as it is in New Jersey, for example) to do the work: to create a data base of who is doing business with the State and debar those entities that have made illegal contributions. It is a mistake and unfair to put the burden on each participating individual candidates to check with their contributor if they fall in the "doing business" zone.

This is a position that is easy to take, but hard to implement. The questions abound: How do you define what "doing business" is? Certainly having a contract should constitute doing business. But what about land use matters or discretionary licenses or appointment to a board? And for what period? While bidding on a contract to a cooling off period after a contract has concluded? And to whom should the prohibition apply? The contractor for sure. But what about their partners? Their subsidiaries and affiliates? Their spouses and unemancipated children?

NYPIRG stands ready to tackle this emergency area alongside the Board, the Council and the City Administration. (A copy of our January 31, 2005 testimony on this issue is attached.)

19. What is the impact of elected officials' use of government resources on the campaign? Should there be further regulation of this activity?

NYPIRG supports tightening current restrictions on use of governmental resource and increasing enforcement. A bit of history is in order: In 1998, the City enacted legislation that prohibits elected officials from promoting themselves on city-funded electronic or print materials in election years. And it modestly strengthened the law in 2004; for example, the blackout period was extended from 30 days to 90 days before an election and the Board was given some enforcement powers.

The laws were passed after abuses by former Mayors David Dinkins and Rudy Giuliani, both of whom appeared in city-funded television ads in the summer before their re-election campaigns. Unfortunately, the law has no specific enforcement mechanisms. We preferred the Campaign Finance Board make these determinations rather than the Conflicts of Interest Board (as recommended by the Campaign Finance Board) because the Conflicts Board is appointed by only one official. The Board was given limited authority.

But clearly the envelop was pushed by Democratic candidate Gifford Miller in 2005, when the Council sent out a $1 million to almost each district right before the 90-day deadline with a prominent photograph of the Speaker. We would support both a longer blackout period, no exemption from the deadline for budget reporting in an election year, and a prohibition on prominently featuring a photograph and commentary of officials outside the particular district. We also would hope that a review is conducted of both the overall scope of the guidelines and there enforcement.

20. Do you think candidates should be allowed to transfer "war chests" from one campaign to another?

NYPIRG supports prohibiting the transfer of war chests, which would help further level the playing field among candidates and simplify reporting and auditing. We believe that whatever provisions are adopted on this issue should apply equally to elected city officials, candidates and those that are elected to non-city posts.

24. Do you think the Program should be extended to other offices, such as District Attorneys and judges?

NYPIRG supports extending to the program to District Attorneys, depending on whether the city believes it has authority to cover these offices. We are open to covering judicial races, but would like to know about the impact of such a move in the context of whether or not there are additional reforms of judicial elections.

26, 27 and 32. Do you think the Voter Guide is an effective aid for voters, and do you have any specific recommendations to improve it? What do you think of the Voter Guide's redesign? Did you find the pro/con statements regarding ballot proposals helpful? Did you find the statements balanced?

NYPIRG believes that the Voter Guide has been effective and useful. This was particularly true in the 2005 elections, where the Guide was the best and fairest source of information on the complex and detailed proposals on the proposed legislative budget changes and the $2.9 billion Transportation Bond.

We applaud the Campaign Finance Board for conducting a survey of public opinion of the Guide and making changes in response. In general, the Guide is better organized, laid out and attractive. We encourage the Board, if possible, to conduct another evaluation process.

NYPIRG looks forward to a lively debate on many of these challenging issues.

TESTIMONY
of
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before the
NEW YORK CITY CAMPAIGN FINANCE BOARD
on
REGULATION OF "PAY TO PLAY" CAMPAIGN CONTRIBUTIONS
January 31, 2005

Good morning. We appreciate the opportunity to speak to you today about the addition of needed "Pay to Play" provisions to the Campaign Finance Program. NYPIRG supports restrictions on such contributions and is encouraged by recent efforts to begin the creation of a database identifying contractors doing business with the city.

But much more needs to be done to ensure that the proposal is comprehensive, fairly implemented and does not create an unworkable system. In particular, we believe any workable system must be administered by the City Administration and affect all candidates. In other words, entities that are competing for contracts, lobby, engage in land transactions or have other business dealings with the city should be barred from doing such business if they make a significant contribution to a candidate for city office. Additionally, in the spirit of fully airing the questions surrounding 'Pay to Play' restrictions, the Administration needs to explain why current common sense charter provisions prohibiting city officials from fundraising, shouldn't be extended to non-campaign related efforts such as the NYC2012 Olympic organizing committee.

NYPIRG commends the Mayor for finally directing city agencies to develop a workable database of contractors doing business with the city. We hope that this change of position signals a more sincere interest in developing a workable system to address the problem of 'pay to play' contributions. We encourage the Mayor to show further leadership and support of the campaign finance program by opting in to the system should he choose to run for re-election later this year.

Why the Contractor Database Approach Falls Short
While the creation of a contractor database would be both an important civic resource and necessary component of any "Pay to Play" auditing effort, it fails to adequately tackle this problem on its own. Relying on such a database and voluntary candidate compliance attacks the issue in the wrong way.

Such an approach has it backwards. Instead of burdening candidates and the Campaign Finance Board at the end of the contribution process with attempting to ascertain whether a contributor is doing business with the city, it should be made clearly illegal to do so in the contracting process before the contribution is made. (With the same approach being adopted for the lobbyist registration process, application for zoning variances, etc.) This alternative approach has the additional benefit of ensuring that contributions to all candidates, not only those participating in the campaign finance program are covered.

Unfortunately, the Administration's approach, as outlined in their proposed Council bill Intro 467, would potentially discourage participation in the campaign finance program since non-participants would still be free to accept such contributions, creating an incentive for not entering the campaign finance program.

A better approach has just been adopted in New Jersey, an effort the Mayor himself has pointed to as an example for the city. There, former Governor McGreevey issued an executive order banning contributions by vendors that do business with state agencies. The burden for administering the ban falls as it appropriately should, on a state government that has the resources and expertise to determine who is doing business with government — and the ability to sanction those businesses that violate the ban on contributions.

We have been dismayed at the Bush Administration's challenge to the New Jersey system, but believe that before the city implements a "pay to play" component we should see how the debate plays out in the courts. By doing so, we increase the likelihood of having a truly effective check on contractor contributions. In the interim, 'Pay to Play' legislation should include a severability clause exempting contracts that utilize federal dollars.

Comprehensive Pay to Play' Provisions are Needed That Don't Create Loopholes
We urge that any 'Pay to Play' provisions adopted by the city or board include a broad interpretation when defining those who do business with the city. Here are a few examples of the range of interests beyond those holding current contracts that need to be covered under a 'Pay to Play' system:

- What sense does it make to limit contributions from Acme Ltd., a partnership seeking a city contract when you don't also limit contributions from the lobbyists Acme Ltd. has hired? Money is like water and will seek any loopholes or cracks in the regulatory walls set up to limit money's impact on;

- Likewise, a legal firm employed by Acme to write and develop their contract proposal and that represents them before city agencies would not be covered by the Administration's proposed database;

- Lobbyists that are seeking budgetary, administrative, regulatory or legislative action from city government also need to be covered. New York needs to take a lesson from Albany where the ability of lobbyists to contribute to campaigns has eroded public confidence and corrupted the fundraising process; and

- New York is known as a real estate town. It would be absurd to imply we had a working 'Pay to Play' system without covering individuals and entities seeking to influence the land use process. Consideration must be given to cover those seeking zoning variances and tax breaks or involved in real estate transactions with the city.

- If 'Pay to Play' is basically about contributors being or feeling pressured to contribute to campaigns in return for favorable consideration of their contract bids, it's probably too late in many cases to limit contributions from those who have already won contracts. Consideration must be given to covering those entities that have submitted bids for contracts. Similarly, to prevent the appearance of a quid pro quo, contributions should be limited for at least six months to a year after a contract expires as well.

Consideration must be given to all these areas, along with many others including the licensing processes of city agencies, granting of franchises and concessions and the inclusion of sub-contractors.

How Should Contributions From Those Doing Business by Treated?
The Board has raised a wide range of questions about how affected contributions would be regulated. Our initial thoughts on some of these issues are listed below:

- NYPIRG does not support an outright ban on contributions from those doing business with the city. Instead, we believe such contributions should be regulated through a combination of decreased contribution limits and the elimination of such contributions from being considered matchable under the program's guidelines. NYPIRG believes the current contribution limits allowed under the program are too high, and believes they should be lowered for all offices. That said, if current levels are maintained, we believe that regulated contributions from those doing business with the city should total no more than 5 to10 percent of the contribution limit for that office. For the current cycle that would mean limits of $137.50 to $275 for Council races and $247.50 to $495 for citywide offices;

- The Campaign Finance Board should first produce a report detailing what percentage of current contributions to candidates would be effected under various 'Pay to Play' regulatory scenarios before deciding what level of additional matching funds might be considered to compensate for the decreased ability of campaigns to raise funds;

- Ultimately, 'Pay to Play' restrictions should be implemented by local law and not rely upon the rule making authority of the Campaign Finance Board. In addition to having a stronger legal footing, only legislation can make sure that limits apply to all candidates and not just those participating in the campaign finance program;

- The primary burden of any restrictions should be borne by the city and not candidates. Care must be given to ensure that any provisions do not discourage participation in the campaign finance program; and

- Those with controlling interests in an entity doing business with the city should also be subject to 'Pay to Play' restrictions. Those with a certain dollar interest in a covered entity should be subject to the restrictions as well.

- Further study and hearings should be undertaken by the Board to define and identify what types and level of business dealings with the city should be exempt from these provisions. For example, does the city award grants and for what types of activities? Standardized procedures such as paying parking tickets or applying for or receiving certain city services should clearly not be defined as doing business with the city.

'Pay to Play' and the 2005 Elections
It is too late in the current election cycle to debate, formulate and implement meaningful and comprehensive 'Pay to Play' provisions into place for this year's elections. We also have reservations about 'changing the rules of the game' in an election year. Primary Day is less than eight months away, and many but the most wealthy of citywide candidates are already well into their fundraising. However, we urge that a preliminary database of contractors, lobbyists and real estate entities and others doing or seeking business with the city can be online and integrated with the Campaign Finance Board's database before that time.

In conclusion, the creation of a contractor database would be a valuable first step in helping auditors determine whether donors are currently 'doing business with the city.' However, a database alone isn't enough to put a meaningful system in place, and could undermine confidence of the city's campaign finance program.

NYPIRG stands ready to work with both the City Administration, City Council and Campaign Finance Board to address the challenging issues in crafting a workable ban on 'pay to play' contributions.