

**Opening Statement of Frederick A.O. Schwarz, Jr.,
Chairman of the New York City Campaign Finance Board
December 12, 2005**

Good morning. Welcome to the New York City Campaign Finance Board's 2005 post-election hearings, and thank you for helping the Board analyze the impact of the Program by participating in this hearing. We look forward to hearing your comments.

The New York City Campaign Finance Act, which created and governs the City's pioneer Campaign Finance Program, has an important provision requiring the Board, after each election, to evaluate how the Program worked and to make necessary legislative recommendations for change to the Mayor and the City Council, so that the Program can continue to be refined and to benefit all New Yorkers. No reform program is perfect, and a reform program cannot remain successful unless it adapts to changing conditions and trends.

These public hearings, along with formal and informal comment and data analysis, provide the Board with invaluable information to help assess the efficacy of the Campaign Finance Program, the Voter Guide, and the Debate Program. Among the many important issues we face now are: the Program's effectiveness when a self-funded candidate chooses not to participate in the Program; how to limit the use of taxpayer funds by candidates who win by significant margins; how "single source" contributions are defined; how "doing business" contributions can or should be regulated; the use of campaign funds to pay family members; and the disposition after the election of valuable goods purchased by the campaign.

As part of the Board's continued examination of campaign contributions from those who "do business" with the City, we will hold separate hearings on land use and other "doing business" topics. We will study with interest laws just passed in Connecticut, which includes a ban on contributions from lobbyists and contractors, and in Philadelphia, which bans contributions from contractors. We will also assess information from the Board's searchable database and the City's new VENDEX and lobbying databases.

After the 2001 elections, the Board alerted the Council to the on-going challenge of avoiding large public funds payments to candidates faced by modestly-funded opponents. The City Council did change the law before the 2003 elections in an attempt to address this, but the law did not adequately address the problem. Among other reasons, this is because the law permitted a candidate to get public funds simply by submitting a "statement of need" for public dollars. Significant public funds were paid to 2003 Council candidates who won their elections by wide margins, as documented in the Board's 2003 post-election report.

Accordingly, in December 2003, the Board urged the Council to prevent continuation of the disturbing trend of large payments to "sure winners" by: 1) eliminating the "statement of need"; 2) removing the provision automatically allowing for a payment over 25% of the maximum payment when a participant has a participating opponent who has qualified to receive any public funds; 3) enacting new fixed monetary triggers to establish meaningful opposition under the Act; and (4) allowing the participant

to make an application for relief to the Board on the basis of extenuating circumstances that justify releasing additional matching funds (such as an opponent whose name recognition is so great that there is no need for the opponent to make campaign expenditures to gain significant votes). Although good government groups supported the amendments, the Council declined to make any legislative changes before the 2005 elections.

Initial analysis indicates that, as in 2003, and as one might expect, significant public funds were again paid in 2005 to candidates who won their elections by wide margins. A preliminary General Election analysis shows that out of the 28 contested City Council races, 10 City Council candidates won with more than 80 percent of the vote (five in three-way races); six won with 70-79 percent of the vote (three in three-way races); 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.

Preliminary analysis of the 2005 primary elections shows that out of the 24 contested City Council races: two candidates won with 80-85 percent of the vote; six candidates won with 70-79 percent of the vote (one in a three-way race); and two of these candidates won with 60-69 percent of the vote (both in three-way races). These ten candidates—all incumbents—received \$761,732 in public matching funds, or 17.5 percent of all public funds disbursed to City Council candidates for the Primary election.

However, it is important to note that there were a number of Council candidates without serious races in one election or another who chose not to accept public funds.

These figures are not offered to suggest that any particular candidate did or did not have reasonable expectations of a serious race, but simply to illustrate how the current triggers for paying out public funds are simply too low and are having the opposite effect from that intended—i.e., to create a level playing field.

On the subject of “single source” contributions, the Board withdrew a rule that in the fall had engendered controversy, and the Board committed publicly to revisit this issue after the 2005 elections in the regular course. We are disappointed that the Council nevertheless passed legislation without awaiting the Board’s study and notwithstanding that the next election is four years away. That legislation unfortunately creates a loophole just for unions, and I urge the Council to reconsider this matter—just as the Board has undertaken to do. As I have stated to the City Council, unions, like all other legal contributors to campaigns, should be treated fairly, but they should also not be favored over other contributors. Thus, two union entities should be permitted to make two contributions up to the limit when the decisions to do so are made by separate decision-makers. But by the same token, two union entities should *not* be permitted to make two contributions up to the limit when the same decisionmakers are directing the contributions for both.

Among the statements that have been made by those who support the Council’s action are that insurgents are affected negatively by rules that regulate union giving and

that unions are unfairly disadvantaged in the electoral process in New York City. The Board's data, however, show that, in Council races, union contributions go almost exclusively to incumbents. As you will see from routine data made available today, unions also count as most of the top givers to Council (as well as other) campaigns and significantly increased their contributions to Council campaigns in 2005 over 2003, even though there were fewer open seats in 2005. We hope to hear from witnesses today on this subject.

Another subject, that of the complexity of the Program, is one that the Board takes seriously. We give extraordinary support to candidates and their campaign staff, rivaling and likely surpassing the assistance given to campaigns in any other equivalent program in the United States, and rivaling or surpassing the assistance that City agencies generally are able to give to their constituencies. The data show that City Council candidates do not need or do better with expensive consultants to assist them with compliance in the Campaign Finance Program. Rather, the most common cause for penalties stems from candidates filing disclosure statements late. The most common cause of delays in payment and the return of public funds is record-keeping deficiencies. Nonetheless, we are always working to serve the campaigns as best we can, and in a moment Ms. Gordon will describe a new effort that will begin shortly to assist candidates in the post-election phase of their campaigns.

Of all the challenges raised by the Program, the challenge to incumbents to avoid the appearance or reality of "self-dealing" through legislation is one of the greatest. As

we look forward to our study and to today's testimony, I take this occasion to alert you to the serious issues our City faces with respect to the Program, and to the need for the Council to address the favoritism that the law over time has come to exhibit, particularly toward incumbent Council members.

To begin, I would like introduce Nicole Gordon, Executive Director of the Board, who will offer an overview of some preliminary information we have compiled from the 2005 election data, as well as a preliminary status report on the public reaction to the new design of the Voter Guide, and additional candidate assistance we will provide in the coming months for campaigns that will now be engaged in the post-election audit process.

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