

**Testimony of Frederick A.O. Schwarz, Jr.
Chairman
New York City Campaign Finance Board**

**City Council Committee on Governmental Operations
December 15, 2005**

Good morning, Chairman Perkins and members of the Committee. I am Fritz Schwarz, Chairman of the New York City Campaign Finance Board. With me is Nicole Gordon, Executive Director. I am here today to update you on the work of the Campaign Finance Board and, more specifically, to discuss the effects of high-spending non-participants and term limits on the Campaign Finance Program.

Program Overview

Earlier this week, the Board held two days of post-election hearings to help the Board make its mandated evaluation of the effectiveness of the Program, the Voter Guide, and the Debate Program during the 2005 elections and to inform any legislative recommendations for improving the City's Campaign Finance Act. We heard very useful testimony from a number of witnesses, including three Council members, on a range of issues and learned of several ideas that we will be studying. We will be hearing more as time passes, and we hope that you as Council members will continue to give us your thoughts.

One consideration apparent from our hearings is that many issues relating to legislative reform of the Act overlap. Considerations of raising the contribution limit for candidates facing a high-spending non-participant, on the one hand, and, on the other, regulations on contributions from those who do business, while seemingly separate, do relate to each other. A higher contribution limit could possibly give the appearance that large contributors, especially those doing or seeking to do business with the City, will have greater access to decision-makers. Another example of interrelationship is that if one were to increase public funding in connection with high-spending non-participants, it

would be especially important, at the same time, as it always is, to protect taxpayer money and to address any aspects of the Program that enable candidates with nominal opposition to receive large amounts of public funds.

We must be careful not to alter individual items in the Act without examining the law as a whole to protect its overall purpose and to uphold the public's confidence in the electoral system. Therefore, individual Program items should not be viewed or discussed in isolation.

In preparation for the hearings, Board staff conducted preliminary analyses of data obtained from financial disclosure statements and election results. These analyses are of course not complete; the January filing marks the end of the election cycle for most purposes, and it will be the data from those filings upon which the Board will rely for its in-depth study. As the statute requires, we will be conducting a comprehensive review of the data and presenting our recommendations to the Mayor and the City Council in our post-election report. In the meantime, we continue to solicit your views and the views of others as we prepare the statutorily-mandated study we submit to you and to the Mayor.

This year, 188 candidates joined the Campaign Finance Program for the 2005 elections; an additional 82 ran as non-participants. For Council races, 152 candidates joined the Program, a reduction from 2001, but an increase from previous participation rates in 1997 and 2003.¹

The Board during the 2005 elections disbursed \$24,065,860 to qualified Program participants. Council participants received \$6,454,593 in public funds. Last week, the Board returned \$20 million in unspent public funds to the Office of Management and Budget.

¹ There were 138 Council candidates participating in 1997 and 133 in 2003.

Overall, Council participants received more contributions of up to \$250 this year than in 2003 and, through public matching funds, were able to maximize total funds available.

The database shows that union contributions to Council candidates have increased despite fewer open seats compared with 2003. Overall, specific unions were among the largest single donors to candidates, including to Council candidates.

The Board remains committed to assisting candidates with compliance. The Board has a comprehensive program of training seminars for candidates and their staffs, handbooks, C-SMART[®] software, and a Candidate Services Unit devoted specifically to answering candidate questions and concerns. In this continuing effort, the Board will be holding a new type of seminar, beginning in the end of January, to cover the audit process in an effort to eliminate any unnecessary problems or misconceptions. We urge candidates to attend with their staff. Candidates are concerned about the level of detail required of them to comply fully with the Program. Our research indicates that there is a positive correlation between candidates who participate in the Board's candidate trainings and compliance rates.

In addition, now that the State requires local candidates to file statements electronically with the Board of Elections, we will be making adjustments to the C-SMART[®] software to allow candidates to make these filings without re-entering their data from the 2005 elections.

Costs to the Program

The Board closely tracks the costs of elections and of the public outlay of tax dollars. The Board's strict compliance efforts are one way in which the Board safeguards

the public's investment in this Program. Similarly, the prompt return by the Board of unused public funds to the General Fund also protects taxpayers' interests.

A question has been raised about the cost to the Program of term limits.

Institutionally, the Board does not have a position on term limits.

The cost of the New York City Campaign Finance Program, when examined in the context of elections in general or within the New York City budget, is negligible. A policy question as significant as term limits should not be linked to, or driven by, financial concerns about the Campaign Finance Program, especially considering that the Program costs so little within the context of the NYC budget. In fact, term limits themselves are not the cause of a significant increase in Program costs; rather significant increases in cost result much more from the high maximum public funds' limits and the matching rate.

And yet, any taxpayer money that is misspent is wasted. As the custodian of the election fund, the Board recognizes its obligation to taxpayers and, therefore, conducts extensive audits to ensure that the public funds are being used legally and analyzes the data to ensure that they are used for the intended purpose of leveling the playing field.

Unfortunately, many candidates - - often incumbents - - continue to spend large amounts of public funds when they face little competition. The preliminary analyses of both the 2005 primary and general elections show that incumbents who are nominally opposed and win by significant majorities continue to receive significant - -and often the maximum amount - - of public matching funds, sometimes through the use of "Statements of Need."²

² A preliminary General Election analysis shows that out of 28 contested City Council races, 22 candidates who received public funds won with more than 60 percent of the vote. Of these 22 candidates, 10 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 (two in three-way races). 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 incumbent) 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.

The Board has recommended changes to the law in order to prevent the disturbing trend of large payments to candidates, usually incumbents, with little to no competition. The Council's earlier attempt to curtail this trend by capping public funds payments to 25% for participants facing nominal opposition is easily bypassed through the use of "Statements-of-Need," and submission of these statements continues to occur in questionable cases.

I urge the Council to respond when the Board makes specific recommendations, as the Board will, and to work with the Board to protect the integrity of the Program and the public fund entrusted to it against the inappropriate spending of candidates

Due to legislative changes enacted in 2004, the Board now receives financial disclosure statements from all candidates, including non-participants. Many concerns have been raised about the ability of participants to compete with high-spending non-participants. Comprehensive election data for all candidates will be available by mid-January, and the Board will analyze the effect of high-spending non-participants.

I do have some preliminary observations on this issue. The record spending by one New York City Mayoral candidate has recently dominated the press, and his spending is often regarded as a new or different growing phenomenon in politics. Without question, this is a serious matter that can lead to undermining the goals of the Program this Council created 17 years ago.

It is also important, however, to observe that the phenomenon is not wholly new. Since the Program's inception, Program participants have from time to time faced high-spending non-participants at different levels of government. In 1989, Ronald Lauder spent \$14 million (almost all in the Primary period) on his failed bid for Mayor and

Preliminary analysis of the 2005 primary elections show that out of 24 contested City Council races, 10 candidates who received public funds won with more than 60 percent of the vote. Of these 10 candidates, two candidates won with 80-85 percent of the vote; six won with 70-79 percent of the vote (one in a three-way race); and two 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.

triggered the bonus for his primary opponent, Rudolph Giuliani. Andrew Stein was forced out of the mayoral race for taking large contributions outside the Program, including his own. In both 2001 and 2005, bonuses were triggered by high-spending non-participants in City Council districts as well as in the mayoral race.

Neither self-financing nor excessive spending is a guarantee of success. As I mentioned, Ronald Lauder and Andrew Stein both failed in their bids for Mayor despite high-spending. On the Council level, in 2001, a self-financed non-participant lost the Democratic Primary in Council District 1 to a Program participant.

The Board is nonetheless very concerned about this issue. As long as the Supreme Court interprets the Constitution as forbidding mandatory spending caps, there is no complete remedy available. Moreover, care needs to be taken that remedies for this problem do not undermine other important values of the Program.

Some proposals suggested to the Board to combat this phenomenon, such as removing some caps on contributions, may not do much to remedy the problem--because enormous spending by one candidate can suppress the ability of another candidate to raise money-- and can undermine other important values of the Program. For example, an increase in the contribution limit, including, unless otherwise treated, contributions from those who do or seek to do business with the City, would return New York City to the corruption, and appearance of corruption, prior to the adoption of the Campaign Finance Act. I have previously referred to the period in New York City politics when state limits governed as a "sewer."

In contrast, a recommendation by the State Democratic Party to consider a separate bank account governed by local contribution limits is of interest, even while the negatives may be obvious. Other proposals, such as flat grants, also should be seriously considered. Following from this thought, another new idea presented in our hearings was that of having an automatic additional payment to a candidate faced with a high-spending non-participant if the high-spending opponent does not appear in debates organized under

the law. The value of the hearings was proven with these and other creative ideas that we will explore.

I know that the Board and the Council will continue to work together to refine the Program. In the meantime, it is our observation, subject to the mandated study we will be conducting over the next few months, that the high matching rate, high maximums for Council races, and the low triggers for public funding account for most of the excessive payments to candidates and distorted elections favoring incumbents.

Attached to this testimony is my opening statement for the hearings that highlights other issues of importance, as well as the list of questions we and others are studying.

I am confident that we will be able to work together to achieve what is best for the people of the City of New York. Again, I would urge you to not visit items individually. They are interconnected, and the Board looks forward to working with you on all the issues raised by the Program. Thank you, and I will be pleased to answer any questions you may have.