



# **New York City Campaign Finance Board**

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**Testimony of Frederick A.O. Schwarz, Jr.  
Chairman  
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**City Council Committee on Governmental Operations  
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Good afternoon, Chairman Felder. I am Fritz Schwarz, Chairman of the New York City Campaign Finance Board. With me today are Amy M. Loprest, Executive Director, Carole Campolo, Deputy Executive Director, and Sue Ellen Dodell, General Counsel.

Thank you for this opportunity to testify on the Board's recommendations to strengthen and improve the City's landmark campaign finance law. In 1988, the City Council responded decisively to well-documented scandals at the local level by creating an innovative system of public financing that lessened the influence of big money in City campaigns, amplified the voice of the individual New York City citizen, and enabled more New Yorkers to consider entering public service.

Over the years, the City Council has helped keep New York City at the vanguard of the reform movement. Last year, with a lobbying scandal at the federal level dominating the national news, the Council collaborated with the Mayor and the Board to enact restrictions on political contributions from City lobbyists.

Today brings an important moment rich with opportunity for further reform. While the past few months have brought new disclosures of scandal at the state level, they have also brought a new administration to Albany that seems determined to make campaign finance reform a priority. Our neighbors in New Jersey and Connecticut have each enacted significant reforms during the past year. The Board is eager to join the Council and the Administration to work on finding ways to enhance the Campaign Finance Program and ensure New York City remains a leader and innovator in the field.

After analyzing data from last year's election and soliciting public comment, the Board released its Charter-mandated post-election report assessing the Program's performance during the 2005 election cycle. The report contained many of the recommendations for reform I will discuss today.

### **“Doing Business”**

As you know, the Board has long been engaged with the question of how best to regulate campaign contributions from individuals or entities “doing business” with the City. Since a 1998 Charter amendment directed Board action on the issue, we have conducted extensive studies, held numerous hearings, and issued three alternative versions of “doing business” rules for public comment.

In June of this year, the Board issued an interim report on “doing business” contributions. The report, the first of its kind to quantify the amount of campaign funds raised from “doing business” sources, revealed the significant role these contributors played in both the 2001 and 2005 election cycles. Copies of this report are available at this hearing, on our website (<http://www.nycclf.info>) or by request.

The Board has worked with the Administration in developing the next generation of the City's VENDEX contractor database, the City Clerk's lobbyist database, and other sources of “doing business” information to make them more reliable, searchable, accessible, and compatible with the Board's searchable database. We anticipate this process will continue. With these technological obstacles near a resolution, it is time to make progress on this important issue. We are hopeful the next step will include the establishment of a database that includes applicants before the City's land use boards and commissions, a key to fair and equal enforcement of any “doing business” regulation. We urge the Council to consider requiring the completion of these databases by a date certain.

The Board continues to strongly recommend directly regulating those who “do business” with the City, instead of burdening campaigns with new disclosure requirements, or chilling

contributions by forcing all contributors to respond to questions that may prove confusing. A much more effective model is Securities and Exchange Commission (SEC) Rule G-37, which bans certain financial professionals from “doing business” with a municipality if they have made a prohibited contribution. This straightforward approach precludes the need for a complicated enforcement regime, as the threat of losing a contract provides those entities doing City business with clear incentives for self-enforcement. This approach has been adopted in New Jersey and Connecticut, as well as Philadelphia, as a measure to combat pay-to-play activity, whether perceived or real. The Board, however, lacks the jurisdiction to implement this approach through regulation. We urge the Council to pass such legislation or to join us in calling for any changes in State law that may be necessary to accomplish this approach. Attached to this testimony is a document that outlines the [principles](#) we believe should guide legislation on “doing business.”

In the absence of legislation implementing the Board’s recommended changes, however, the Board is in the process of developing rules to govern “doing business” contributions. Because the Board lacks the jurisdiction to regulate a business relationship between any individual or entity and the City, these rules will necessarily impact campaigns directly.

Other issues under consideration by the Board directly impact the “doing business” issue as well:

**Organizational contributions.** A ban on contributions by organizations is one way to reduce the perception and actuality of “doing business” contributions. Limited liability corporations (LLCs), for example, provide a distinct transparency problem; many are involved in City business, yet often there is no information in the public record about a particular LLC’s owners or principals. An organizational ban would simplify the reporting rules for campaigns, and help further enhance the voice of the small, individual City resident contributor—a central aim of the Program.

**Intermediaries.** New York City’s campaign disclosure is unique in that it requires campaigns to reveal the names of intermediaries, or individuals who “bundle” contributions to a campaign. The interim study on “doing business” showed that a significant proportion of

intermediaries are engaged in City business. The Board recommends the Council refine the definition of intermediaries to include all individuals who actively solicit contributions in addition to those who physically deliver the contributions, a step that would improve public disclosure and comprehension of the extent of the “doing business” issue.

**Lower contribution limits.** Yet another way to minimize the appearance or actuality of pay-to-play corruption is to lower the contribution limits. Lowering the limits for all contributors would reduce the need to protect against a specific class of contributors attempting to garner influence through campaign contributions. As they exist today, the contribution limits for candidates seeking City-wide office are higher than those for candidates for President of the United States. The Board recommends contribution limits of \$4,000 for mayor, public advocate, and comptroller, and \$3,000 for borough presidents. I will discuss a separate limit for City Council below.

### **Simplifying the Program**

The Board has heard complaints from various sources about the Program’s complexity. As such, many of the Board’s post-election recommendations are focused on simplifying the Program to ease compliance for campaigns. Among those suggestions are the following:

1. Eliminate exempt expenditures. A modest rise in the expenditure limit, enacted concurrently, would compensate for the inability to conduct certain campaign-related activities outside the expenditure limit. This should greatly simplify recordkeeping and compliance for campaigns, while removing one of the most contentious issues between the Board and participating candidates.
2. Provide flat, equal grants for the participants in a runoff election. Currently, the Act grants each campaign 25 percent of the amount of public funds he or she received in the primary election. This new approach would eliminate most of the rules and regulations regarding fundraising and the disbursement of public funds for runoff elections.

3. Establish a maximum dollar amount—about \$2,000—that can be spent on any single durable good, such as computers, printers, copiers, or the like. This proposal would also prohibit the purchase of durable goods in the last three weeks of the election except in extraordinary circumstances, and set a fairly stringent cap on the total amount campaigns can spend on durable goods in an election cycle, offering campaigns simple, straightforward rules governing the purchase of durable goods. It would set clear guidelines for what will be considered an excessive purchase, and limit concerns regarding post-election disposal of these goods.
4. Eliminate the burdensome link between receiving public funds and documenting that a campaign has filed a financial disclosure form with the Conflicts of Interest Board.
5. Provide certainty for candidates participating in Board-mandated debates. The Board recommends strengthening the threshold to determine debate eligibility by requiring campaigns to have raised *and* spent the threshold amount.
6. Require Transition and Inauguration Entities (TIEs) to conform to the same limits and prohibitions as campaign accounts. This would eliminate the need for campaign treasurers to learn a new set of limits and requirements for fundraising associated with transition expenses.

### **Enhancing Competition for Elective Municipal Offices**

The lack of competitive elections in races involving incumbents leads the Board to consider measures designed to “level the playing field” for challengers. These include:

1. Limit the amount of public funds available to campaigns in races against nominal opponents. The Council has discussed ways to accomplish this goal in recent years, but ran out of time to implement a solution before the 2005 campaign got

underway. Currently, a campaign can qualify to receive the maximum amount of public funds when its opposition qualifies for public funds, spends one-fifth of the expenditure limit, or files a Statement of Need. Eliminating Statements of Need and establishing a system of progressive benchmarks to replace the current triggers would ensure participating campaigns have the funds necessary to compete, while insulating candidates from public criticism for “wasting” public funds against an insignificant opponent. The proposal envisions a set of triggers that would apply to money raised *or* spent to determine the proper disbursement of public funds, protecting campaigns against opponents who accumulate a “war chest” for their run but may delay spending until late in the election cycle. The Board envisions that this proposal would provide candidates with the opportunity to petition the Board for full payment of public funds in the rare case of an opponent whose fame or name recognition makes it unnecessary for him or her to spend money to communicate with voters. That opponent would have the burden of providing a convincing answer to disprove the assertion.

2. Restrict matchable contributions to the year of the election. One of the significant advantages incumbency provides is access to potential donors throughout an officeholder’s term in office. Challengers, on the other hand, are generally unable to raise funds until an election draws much closer. Matching contributions collected only during election years would help level the playing field.
3. Prohibit candidates from transferring surplus funds from one campaign committee to a committee formed for another office. As amended in 2004, the Campaign Finance Act requires candidates who transfer funds to obtain permission from each contributor. The Board believes this requirement may be overly onerous for campaigns. A restriction on using “war chests” amassed for previous elections would further enhance competitiveness in City elections.
4. Strengthen the debate program by providing better incentives for high-spending non-participants to take part in Board-sponsored debates. One way to do this is by extending a substantial bonus grant to a participating candidate when his or her

non-participating opponent declines to appear at a debate administered by the CFB.

### **An Easier City Council Program**

In its post-election report, the Board proposed a new program for City Council that would re-shape the Program's approach to Council campaigns. This recommendation acknowledges that City Council campaigns are generally smaller and more grass-roots than those for other offices. As detailed in the report—and in the report on the 2003 elections—the new approach to Council campaigns includes clearer guidelines on qualified expenditures and simplifications in reporting, as well as lowered spending limits, contribution limits, and maximum public funds payments.

Reflecting the narrower geographic areas that comprise a City Council district—51 in all—the expenditure limit (and maximum public funds payment) for Council campaigns has traditionally and appropriately been much lower than for mayor, public advocate, comptroller, and borough president. Indeed, the level of the Council's expenditure limits is only three percent of the limit for mayoral campaigns. By contrast, the \$2,750 contribution limit for Council campaigns is more than half the \$4,950 limit for citywide campaigns. Clearly, the Council limit should be lowered substantially. Our report recommends a \$250 contribution limit. Because of the \$4-to-\$1 match, \$250 is already the most common contribution size, and the \$250 limit would result in maximum contribution sizes in better proportion with the spending limits relative to other offices. A lower limit would encourage Council campaigns to seek a broader base of small contributors instead of relying on influence-seeking large donations.

It's important we make the Program easier for Council candidates at the same time. The Board's modified Council program includes clarified limits on qualified expenditures. Providing campaigns with a finite, affirmative list of expenditures that can be made with public funds would remove uncertainty from campaigns' compliance efforts. The Board also recommends simplifying reporting, including eliminating disclosure of subcontractors. These reporting demands placed on all candidates are appropriate and important for large, citywide campaigns,

but on the Council level, they burden campaigns with extra layers of recordkeeping and disclosure that provide relatively little in public benefit.

Furthermore, the Board's proposal includes a modest reduction in the spending limit for Council campaigns and a proportional reduction in the maximum amount of public funds available.

### **Administrative Procedures**

Over the years, some concerns have been raised over the Board's penalty assessment procedures. Suggestions have been made that the Board adopt a more formal process. The Board believes this idea is ill-advised. A more rigid, legalistic process would prove onerous and costly to campaigns, hinder the Board from fulfilling its mandate to administer the Program's requirements, and provide little benefit.

The Board's current procedures provide campaigns with a full and fair opportunity to be heard within an informal setting, designed specifically to be simple. Indeed, candidates who appear without representation and address the Board in a straightforward manner are often granted a reduction in penalties when circumstances warrant.

Most penalty matters are uncomplicated; for instance, the most common violation involves late disclosure filings. Adopting more formal procedures would require the Board to administer even the simplest matters through a process that would be both burdensome and inflexible. The more formal the Board's penalty determination procedures, the less discretion the Board can exercise on behalf of candidates when assessing penalties.

By imposing a lengthy process before decisions can be rendered and submitted to the Board, formal administrative procedures could significantly extend the audit process. In cases that require review, these administrative delays could potentially impede the timely payment of public funds to campaigns.

Still, the Board is always open to investigating ways to improve our procedures and create a process that is more open and transparent to campaigns and their representatives.



These reforms to our city's landmark Campaign Finance Program should help ensure that the Program can continue to amplify the voice of individual donors and best serve all campaigns while providing responsible stewardship of taxpayer funds.

Thank you for your time. I look forward to answering any of your questions.