



TESTIMONY
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before the
NEW YORK CITY CAMPAIGN FINANCE BOARD
hearing on the
2009 NEW YORK CITY ELECTIONS
December 1, 2009
40 Rector Street, 6th Floor

Thank you for the opportunity to comment today on the findings of the post-2009 election report of the Campaign Finance Board.

NYPIRG congratulates the CFB for its work in 2009. As in the past, the City's landmark campaign finance program fostered a level playing field in most races, increased real-time disclosure on financing, educated the public, and made sure public funds were spent properly.

Back in 1988, NYPIRG lobbied successfully for a provision requiring the CFB to evaluate the effect of the campaign finance program on the last election. That provision has served the city well. The Board has heard from a range of candidates and their staffs, as well as civic groups. In the wake of past hearings and Board reports, the CFB has produced careful and detailed evaluate that honestly discussed the merits and demerits of the program. And the Council has responded by enacting comprehensive legislation to improve the program.

As a result, the law has adapted with the times. Among the amendments that have kept the program relevant and valuable are:

- lowering the contribution limits over last 21 years;
- increasing the matching rate when facing high-spender over last 21 years;
- requiring citywide candidates in the program to debate (1996);
- banning corporate contributions (1998);
- increasing public matching funds and incentives to join the program (1998 and 2007);
- extending contribution and disclosure requirements to non-participants (2004);
- eliminating matching funds for contributions from lobbyists (2006);
- listing what are unlawful personal expenditures of campaign contributions (2007); and
- restricting contributions from people who do business with the city (2007).

We hope this history of growth and change continues. In that spirit we are here more to listen than to speak. In advance of detailed analysis by the Board, we offer the following observations, suggestions and questions for further study.

- (1) **Competitive Races:** NYPIRG agrees with the preliminary listing of Council primary results by Board staff that indicates that the program fostered more competition in election races. As CFB staff found: “Fewer candidates ran without an opponent on the ballot than in 2005, in both the primary and general elections. At the Council level, there were more competitive races in both the primary and the general election than in 2005.”
- (2) **Flat Grants:** Currently, the rate of the current match when facing a high-spending self-financed non-participant goes to 8.5 to 1. While that’s a generous match, it still requires a badly outspent candidate to devote much time to fundraising, while the non-participant can devote their time to campaigning. NYPIRG thinks the CFB should consider the merits of moving from the matching set-up to a dollar flat grant. That approach is used in a runoff election, tied to a candidate’s primary fundraising. One other possibility for leveling the playing field is for the law to require three mayoral debates, instead of the current two. While such debates are not mandatory, non-participants in the program would confront consideration pressure to debate.
- (3) **Doing Business (“Pay to Play”):** As you know, this election cycle saw the first impact of new provisions enacted to limit the influence of people who do business in a variety of ways with the City. At this point, we mainly have questions to ask: How effective was the law in restricting these kind of contributions? What were the challenges and opportunities that the Campaign Finance Board faced in implementing the law? Does the law need changes in definition to better capture contributions from those doing business with the City? How will the CFB handle auditing of the doing-business lists, as well as the Board’s ability to discover over-the-limit doing-business contributions? One key note here: Answers to these questions are complicated as the doing-business data bases kicked in at different times during the cycle leading up to the 2009 elections.
- (4) **Coordination:** During the 2009 election, the Working Families Party was criticized for setting up a non-profit arm – Data and Field Services. It has been charged with providing lower-than-market rates to WFP-backed candidates, with the aim of skirting the City’s contribution and spending limits. A related issue of possible coordination has been raised in which candidates worked with entities (mainly labor unions) at the same time those entities also contributed to Data Field Services. NYPIRG looks to the CFB to continue in its tradition of tough but fair audits of the campaign practices of participating candidates. In addition, the WFP has hired Judith Kaye, former Chief Judge of the New York Court of Appeals – to conduct a review of its compliance with the campaign finance law. NYPIRG urges the CFB to consider requiring greater disclosure by a number of entities, including political parties, campaign vendors and entities conducting independent campaign efforts.

- (5) **Lower Contribution Limits:** The law's contribution limits have been lowered from a \$7,700 mayoral citywide limit to \$4,950. The current borough-wide limit is \$3,850 and the Council limit is \$2,750. (The first \$175 of a contribution from a New York City resident is matchable at the rate of 6 to 1.) Further reductions may be in order in light of the reality of the size of contributions given in the last election. We look forward to reviewing the 2009 data compiled by the CFB on contributions and expenditures.
- (6) **Sure Winners:** There has long been a concern that public funds not be wasted in very lopsided elections. Under the current approach, races are capped at 25% of public funds, if a participant's opponent has not raised or spent more than 20% of the expenditure limit. If the candidate still feels they need the cap lifted, they can submit a "statement of need." That statement has to provide information to support specific criteria, such a number of media mentions or endorsement by a membership group. The statement is placed on the website. NYPIRG has wanted the CFB to decide whether the statement justified the disbursement of more public funds. In 2009, however, only nine candidates filed the statement in the primary and three in the general elections. In most cases, the races for these candidates were largely competitive.
- (7) **Intermediaries:** The definition of "intermediary" now includes individuals who solicit contributions on behalf of a campaign—even if they did not collect or deliver contributions—where such solicitation was known to the campaign. How has that worked? What do we learn from taking a look at those contributions?
- (8) **Mass Mailing:** The City Charter prohibits mass mailings on behalf of city candidates/official less than 90 days before an Election Day in which they are running. Has the CFB used its authority¹ to audit mailings by candidates/officials? Has it found violations? We understand that the CFB actually reviewed mailings during the black out period in which the Council argued that the communication was permitted, such as for matters relating to public health. NYPIRG would support legislation to: 1) tighten up exceptions to the law; and 2) require disclosure of all communications sent out during the black out periods.

(1) ¹ §1136.1(4) of chapter 49 of the New York City Charter which reads: The law states: "...the campaign finance board shall have the power to investigate and determine whether any use of governmental funds or resources pursuant to paragraph (b) of subdivision two of this section is a violation of such paragraph and, if such violation is found, whether such use of government resources also violates or constitutes a contribution and/or expenditure under chapter seven of title three of the administrative code of the city of New York or any rule promulgated thereunder. The campaign finance board may assess civil penalties, upon giving written notice and the opportunity to appear before the board, against candidates for offices covered by the system of campaign finance reform, in an amount not in excess of ten thousand dollars for each such violation."