



## **New York City Campaign Finance Board**

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**Testimony of Amy Loprest  
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**City Council Committee on Governmental Operations  
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Good morning Chairwoman Brewer, and Committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board (CFB). Thank you for allowing me the opportunity to testify before you today.

Reformers have long sought to enact regulations on campaign finances as a safeguard against real or perceived corruption. In recent years, even the most reasonable of these reforms have come under attack in the courts. Challenges against voluntary public campaign financing systems like ours have called into question whether additional public funds can be awarded to participating candidates who face high-spending non-participants.

Arizona's Clean Elections program, created by that state's voters in 1998, is one of those systems facing judicial challenge. In May 2010, the U.S. Court of Appeals for the Ninth Circuit upheld Arizona's bonus funds provision in *McComish v. Bennett*. Last November, the U.S. Supreme Court agreed to consider the plaintiffs' appeal of that ruling. The system's opponents claim that the provisions of Arizona's public financing system that provide additional grants to candidates facing high-spending opponents or significant independent expenditures violate the First Amendment. They argue that these additional funds chill the speech of non-participating opponents or outside groups.

I wanted to take this opportunity to encourage the Council to weigh in on an issue that may determine the future of public campaign financing programs across the nation, including ours. I also would like to talk briefly about our Program's experience with high-spending non-participants in recent elections, which disproves the theory underlying the plaintiffs' First Amendment claims.

Candidates who join New York City's Campaign Finance Program and are opposed by a high-spending non-participant are eligible to receive additional public funds at an increased matching rate (*i.e.*, "bonus" rate), and their spending limit is raised or removed completely. This has been true since the inception of the Program's inception in 1989.

Originally, the bonus awarded matching funds at the rate of two public dollars for every dollar raised, rather than the standard one-for-one rate. With the regular matching rate now at six-to-one, there are now two bonus tiers—one for candidates facing high-spending non-participants who raise or spend more than half of the spending limit, and a second for candidates facing opponents who raise or spend more than three times the applicable limit. (See attached chart for more information.)

It is important to note that there are fundamental differences between New York City's matching funds program and the "Clean Money" programs at issue in Arizona and other jurisdictions. In "Clean Money" programs, participating candidates receive all of their campaign funds from the public financing system. In Arizona, candidates who face high-spending opposition may receive "equalizing funds" to match their opponent's spending, up to two times the original spending limit. In our matching funds system, participating candidates must continue to gather private support from New Yorkers to maximize their access to public funds.

All public financing programs, however, have the common goal of preventing corruption and the appearance of corruption—a goal that is best achieved when more candidates participate in the system. If public financing programs are not able to offer an adequate

level of public funds to candidates facing high-spending non-participants, these programs will be unable to attract participants. The disincentive to participation created by high-spending non-participants is a serious challenge to any public financing program.

Opponents claim that so-called “trigger” funds, or bonus funds, suppress the speech of a non-participating candidate, because the non-participant’s spending may cause additional payments of public funds to his opponent. In our long experience, we have seen no evidence whatsoever of a “chilling” effect on non-participants’ spending. If it were true, we would see many candidates who spend up to the trigger amount, and stop before they exceed it. But to the contrary, practically all candidates who opt out of the system spend well below or well above the bonus trigger amount.

Since 1989, 35 high-spending non-participants have triggered bonus payments for participating candidates. A clear majority, 23 candidates (65.7 percent), spent more than double the trigger amount. Eleven of these candidates (31.4 percent) spent more than *six times* the trigger amount. Even without Michael Bloomberg, non-participants whose spending resulted in bonus determinations averaged more than four times the trigger amount.

On the other end of the spectrum, many non-participating candidates conduct small campaigns, or report no spending at all. Of the 313 non-participants since 1989 who did not spend enough to trigger a bonus, only 53 candidates had enough financial activity to require itemized reports of their spending. On average, these participants spent 82.5 percent below the bonus trigger amount. Only two came as close as 5 percent of the bonus trigger, and both were candidates in the same City Council race in 1997.

The truth is that public funds have increased—rather than restricted—the volume of political speech in New York City elections. For example, in the most recent mayoral election, Michael Bloomberg, a non-participant in the program, outspent William Thompson, a participant, by nearly \$100 million. There is no suggestion whatsoever that Bloomberg’s campaign felt “compelled” to curtail its spending in order to limit the

amount of public funds available to his opponents; his campaign spent what it felt was necessary. Additional public funds distributed through the Campaign Finance Program provided Thompson with a greater ability to get his message out, helping provide voters with a real choice.

Public financing helps ensure candidates have the resources to communicate with potential voters, even if they lack access to large contributions or personal wealth. Our Program's ability to provide an appropriate level of funding to participants competing against high-spending non-participants has been absolutely critical to maintaining high levels of participation in the Program.

Thank you again for allowing us the opportunity today to speak about our experiences, and for stepping forward to take a leadership role on this important issue.

## New York City Campaign Finance Board

### Fact Sheet: THE BONUS SITUATION

If you are a participating candidate running against a well-financed non-participant, you can qualify to receive additional public funds at an increased matching rate and have your spending limit raised or removed. This is called “the bonus situation”.

#### **Tier 1: Non-participating opponent raises or spends more than half the applicable spending limit**

Under the Tier 1 bonus, your eligible contributions are matched at a higher rate, up to \$1,250 in public funds per contributor, and the cap on the total amount of public funds you can receive increases from 55% to 2/3 of the spending limit. In addition, your spending limit for that election is increased by 50%.

#### **Tier 2: Non-participating opponent raises or spends more than three times the applicable spending limit**

Under the Tier 2 bonus, you can receive up to \$1,500 in matching funds per contributor; the cap on the total amount of public funds you can receive increases to 125% of the spending limit; and your spending limit is removed entirely.

OFFICE	BONUS TIER	MATCHING RATE	“TRIGGER” AMOUNT	MAXIMUM PUBLIC FUNDS	EXPENDITURE LIMIT
<b>Mayor</b>	No bonus	\$6 : \$1	—	\$3,534,300	\$6,426,000
	Tier 1	\$7.14 : \$1	\$3,213,001	\$4,284,000	\$9,639,000
	Tier 2	\$8.57 : \$1	\$19,278,001	\$8,032,500	no limit
<b>Public Advocate/ Comptroller</b>	No bonus	\$6 : \$1	—	\$2,209,900	\$4,018,000
	Tier 1	\$7.14 : \$1	\$2,009,001	\$2,678,667	\$6,027,000
	Tier 2	\$8.57 : \$1	\$12,054,001	\$5,022,500	no limit
<b>Borough President</b>	No bonus	\$6 : \$1	—	\$795,300	\$1,446,000
	Tier 1	\$7.14 : \$1	\$723,001	\$964,000	\$2,169,000
	Tier 2	\$8.57 : \$1	\$4,338,001	\$1,807,500	no limit
<b>City Council</b>	No bonus	\$6 : \$1	—	\$92,400	\$168,000
	Tier 1	\$7.14 : \$1	\$84,001	\$112,000	\$252,000
	Tier 2	\$8.57 : \$1	\$504,001	\$210,000	no limit