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New York City Campaign Finance Board
Sue Ellen Dodell, General Counsel
40 Rector St., 7th Floor
New York, NY 10006

October 24, 2008

Dear Ms. Dodell:

I write on behalf of candidates for City Council who were planning to run for an open seat.* Some may run against the incumbent, while others will wait four more years. Regardless, each is concerned that the proposed guidelines will hand a huge advantage to current council members who had previously been running for higher municipal office.

The campaign finance program has accomplished many positive reforms for our democracy in New York City. One reform it has not achieved, however, is addressing the advantages of incumbency, especially at the City Council level. While the Program provides resources to help challengers be competitive, the power of incumbency has proven too powerful. The CFB itself has concluded that this is one of the central challenges to the Program's effectiveness (see e.g. Public Dollars for Public Good: A Report on the 2005 Election, Forward of Chairman Schwarz). We were therefore very surprised that the CFB's proposed guidelines would heavily favor incumbents and saddle challengers with huge disadvantages.

Council candidates not currently holding public office have been playing by the rules set out in the Campaign Finance Act. The Rules say the following:

The following limitations apply to all expenditures made by a participating or limited participating candidate and his or her principal committee in the three calendar years preceding the year of the election for which such candidate chooses to file a certification as a participating or limited participating candidate ... [S]uch expenditures by a participating or limited participating candidate for one of the following offices and his or her principal committee shall not exceed the following amounts:

mayor, public advocate or comptroller:	\$ 290,000
borough president:	\$ 129,000
member of the city council:	\$ 43,000

The CFB now proposes to suspend this provision of the law for incumbents, effectively turning a blind eye to the expenses incurred made by current council members who have been raising and spending funds in anticipation of running for higher elective office but who, pending the Council's vote, may decide to run for re-election. We strongly urge the CFB not to take this action and propose the following alternative.

We propose that for this – and only this – upcoming election, the spending limit be raised for any challenger running against an incumbent who has already spent beyond the limit. We acknowledge that not all spending for a city or borough wide race would benefit the Council campaign, so we propose that the CFB raise the election year spending limit by two thirds of all spending above the out year spending limitations for council races for challengers. So, for example, if a council incumbent spent \$343,000 on a race for Citywide office in 2008, then the challenger would have a spending limit of \$361,000. \$343,000 exceeds the \$43,000 spending limit for 2008 by \$300,000. Two thirds of \$300,000 is \$200,000. Add the \$161,000 spending limit for 2009 council races and you would have an expenditure limit of \$361,000. We would also recommend that

the bonus funding for candidates who run against high-spending non- participants apply to participants in this unique situation.

As of July 12, 2008, sitting City Council Members and Borough Presidents who were running for higher office had spent over \$5 million. No doubt that number is much higher now. The CFB proposal treats these expenditures as if they never happened by offering current council members the option of “freezing” their accounts. Challengers, on the other hand, playing by the rules have been hamstrung with the \$43,000, 2006-2008 spending limit.

If the CFB adopts the draft guidelines, it will likely drive potential challengers out of the race. Many City Council Members favoring the extension have argued that if the people do not like their vote, the people can vote them out. While theoretically possible, the undeniable advantages of incumbency make these arguments ring hollow. The CFB’s proposed guidelines will deny the voters a choice at this critical juncture of the City’s political life by handing incumbents a huge advantage.

Incumbents running for higher office have spent significant sums on raising funds and have benefitted from the spending they have already made. Moreover, fundraising in itself – without even spending the money raised – raises the profile of candidates, itself a significant advantage. The media has been reporting for over a year about the fundraising prowess of various city council members running for higher office. There have been few, if any, media reports on plucky council candidates who raised \$20 or \$30 thousand.

Moreover, relationships with major donors that have been established through huge fundraising expenditures will make raising money for the upcoming council

campaigns much, much easier for incumbents. It is pure fiction to deny the advantages of spending tens or hundreds of thousands of dollars on fundraising efforts. Council incumbents running for reelection will benefit significantly from this spending. Pretending otherwise is bad public policy.

Similarly, other types of spending will provide a big benefit to incumbents. Large amounts of money spent up front to consultants well in advance of when the most work is to be done, the election year, will lead to significantly discounted or donated services for what will now be a smaller council campaign. We doubt that the CFB will be able to detect such in-kind contributions. And, at any rate, to pretend that such expenditures provide no benefit to a Council campaign amounts to willful ignorance. Furthermore, donations to political organizations before the “freeze” will provide other benefits for the Council campaign. For example, certain polling activities are likely to be useful in a council race, and obviously, any expenditures on voter contact will be a giveaway to the council campaign under the draft guidelines.

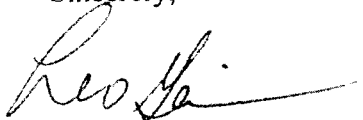
Rather than ignoring the direct and indirect benefits of millions of dollars of spending, the CFB must take clear, affirmative steps to level the playing field. At the very least, it should allow challengers to spend as much money as their incumbent opponents. Hence, our proposal.

Our one-time only proposal may need Council approval. But the CFB is empowered by law to make recommendations to the Council, and we strongly urge you to make recommendations that will level the playing field between incumbents and challengers in this situation. We also suggest that the CFB’s draft guidelines would

require Council legislation, and there would almost certainly be litigation challenging its enactment by the CFB alone in its current form.

We thank the CFB for this opportunity to respond to its proposed guidelines, and look forward to working with you to make this unusual situation as fair as possible to all candidates.

Sincerely,



Leo Glickman, Esq.
Stoll, Glickman & Bellina, LLP

- * David Kerpen, 23rd Council District
- Yetta Kurland, 3rd Council District
- Richard Realmuto, 10th Council District
- Ydanis Rodriguez, 10th Council District
- Jo Anne Simon, NY State Committeewoman, 33rd District
- Bob Zuckerman, 39th Council District