Public Policy Forum

Can and Should NYC's Campaign Finance Reforms be Extended to State Offices?

Presented by Nicole A. Gordon, Amy Loprest, and Michael J. Malbin

April 25, 2007

Tom Gais:

Thank you very much. Welcome to the Rockefeller Institute. I'm Tom Gais, co-director of the Institute. Today's topic is campaign finance reform in New York State. I originally asked the discussants to talk about whether New York City's campaign finance reform should be extended to state offices in New York and that's still one of the major issues we want to address. However, we have loosened up that question a bit. With all of the attention to the issue in recent days from many different perspectives, I told the panelists they are free to draw on their extensive knowledge in this area to talk about any campaign finance reforms they think are most appropriate to New York.

We have three superb panelists with an impressive understanding of the many complicated issues involved in designing and implementing campaign finance laws. Their extensive practical experience or in-depth empirical research are very important because, at least in my opinion, too many discussions of campaign finance reform are abstract, rather highfalutin, and disengaged from real-world administrative and political realities — as if new policies somehow magically refashion politics. It is true that many complicated and often competing values are involved in the design of campaign finance reforms. I know one of our speakers will be talking about those issues and values, from increasing political quality to minimizing political corruption, enhancing competition, and encouraging citizen participation, all the while preserving free speech and free association. But to really grasp how these values are affected by reforms, it is essential to know how real campaign finance reforms work in practice. Fortunately for us, our panelists know a lot about that.

Nicole Gordon is vice president of the JEHT Foundation in New York. The JEHT Foundation was established in 2000 to promote the core values of justice, equality, human dignity, and tolerance. Among its programs, the foundation promotes the integrity and fairness of democratic elections in the United States by ensuring the integrity of elections, promoting political participation, and increasing elected officials' responsiveness to citizens. Before Nicole came to the foundation, she served 18 years as executive director of the New York City Campaign Finance Board. The Campaign Finance Board was set up in 1988 to administer the city's partial public funding program and its voter education efforts. Despite facing a turbulent and not altogether friendly early political situation, Nicole was widely viewed as running the most effective and professional campaign finance administrative agency in the country. Her skills and achievements have been widely noted. Among many others, she was elected president of the Council of Government Ethics Laws, which also gave her an outstanding service award. She is a lawyer by training and a graduate of Columbia University School of Law and holds a bachelor's degree from Barnard College.

Amy Loprest is the current director for the New York City Campaign Finance Board and is Nicole's successor. Before that, she served as the board's assistant executive director since 2004. And before that, she held many jobs at the board, including deputy general counsel and chief of the candidate services unit. She has often spoken publicly on campaign finance issues and the building of democratic societies both in the United States and internationally. Amy received a BS in economics from the Wharton School of Business at the University of Pennsylvania. She is a lawyer, having graduated with honors from the Fordham University School of Law. Her legal experience includes her clerkship with the Honorable Denise Cote, U.S. District Judge in the Southern District of New York.

Finally, Michael Malbin is executive director of the Campaign Finance Institute in Washington, DC, which is affiliated with George Washington University, and he is a professor here in political science at the University at Albany. Michael is one of the nation's leading campaign finance scholars and has written extensively in the field for more than three decades. His books include *The Election After Reform: Money, Politics and the Bipartisan Campaign Reform Act*, which was published in 2006; *Life After Reform: When the Bipartisan Reform Act Meets Politics*, published in 2003; and *The Day After Reform: Sobering Campaign Finance Lessons from the American States,* published in 1998. His research is impressive not just in its volume but in its empirical richness and depth (especially when he writes with the right co-authors), and it encompasses the wide-ranging issues you need to grapple with to really understand the effects of campaign finance laws. Before he came to the University at Albany, Michael was a resident fellow at the American Enterprise Institute, a reporter for the *National Journal*, and an associate director of the House Republican Conference. He was also a former speech writer for a former secretary of defense. The best years of his professional life were, however, between 1990 and 1999 when he directed the Rockefeller Institute's Center for Legislative Studies.

Michael Malbin:

Thank you, Tom, for the introduction. It's really good to be back in this building. I'm sure you all figured out that the unmentioned co-author of *The Day After Reform* was Tom Gais. He chose not to mention it because the books are available for you to take copies. Tom mentioned our research. We had piles and piles of material from the states that, in an unusual moment, I almost thought about getting rid of. They are now filling up a storage room and we have researchers at the Campaign Finance Institute who will say, "Oh, my God! You have Minnesota stuff from 1990?"

I'm going to be speaking generally on the subject of public financing even though a lot of the news this week has been about the contribution limits. I do have some comments I can make about that subject, but in the interest of time I'm not going to deal with that subject now. I am a bit off the listed topic because I'm not going to talk only about New York City's system. Governor Spitzer had said during the campaign that he supports a program of public financing for elections but that support already has and obviously will continue to run up against some political opposition. Nevertheless, we can assume that at some point such a program will be introduced. And based on what has happened in other states — several of which have adopted public financing programs of one form or another in the past decade — we can assume that whatever his programs may be, some of its supporters will make rather large claims about what it might accomplish and the claims will sound plausible. But there will also be rather large claims made by opponents, which will also sound plausible. Fortunately, there has been enough research into these matters in recent years that ought to help us get past the sound bites. So what I'm planning to do today is to present some of the claims that are generally made to support public financing and then I will tell you what the scholarly research so far says about whether the programs are effective with respect to those particular goals.

Let's just begin with the most important question, the one that gets the shortest shrift in most debate, which is, what does it mean to be effective? To be effective means to help accomplish a goal. The goals are usually not dissected or laid out. So I will do that first. I will examine what political science research has to say about whether public financing in fact helps one achieve those goals. The research summary is based on an excellent literature review paper by Nolan Reichl, which was written as a senior thesis for Stanford Law School and made available through the Social Science Research Network (SSRN) as Reichl 2006. My summaries will depart from his in places and I don't want to make him bear the weight of my policy conclusions, but the underlying structure is his. A number of the findings will be disturbing to people on one side or the other, or surprising. Some will be reassuring. But in very few cases is there significant scholarly controversy about them.

GOALS	RESEARCH FINDINGS
1. Reduce Cost of Elections	
a. Total costs for candidates	
b. Private funds for candidates	
c. Private funds in system	
2. More Diverse Candidates	
a. Race / Gender	
b. Other Characteristics	
3. Make Elections More Competitive	
a. More incumbent defeats	
b. Closer election margins overall	
c. More races closely contested	
d. Fewer races completely uncontested	
4. Alter Behavior in Campaigns	
a. Less time fundraising	
b. More grassroots activity, voter contact	
5. Bring Average People into the Process	
a. General voter turnout	
b. Small donor participation	
c. Other political voluntarism	
6. Reduce Special Interests' Role in Elections	
7. Affect Government	
a. Behavior of office holders	
b. Policy	

The goals that we will talk about and the goals you most often hear mentioned are outlined in this table. Just look at the seven major topics for now and we will get to the subtopics later. Public financing programs are often put forward (1) as ways to reduce the cost of elections; (2) as ways to diversify the pool of people who are willing to run for office and who, in fact, run for office; (3) as ways to make elections more competitive; (4) as ways to change how candidates behave during campaigns; (5) as ways to bring average citizens into the political process as participants, not necessarily as candidates but in various other ways; and (6) as ways to shift the role of special interests in elections. Then shifting from elections to governments, (7) the payoff for a lot of people is in the claim that public financing would (a) affect the way office holders behave or (b) affect the policies that they adopt or enact. So let's go through these to see what we know and what, in some cases, we don't know.

Has public financing in general cut the overall cost of elections? No. But that really shouldn't be terribly surprising. Total candidate spending (including public funds) is up. But private money to the candidates is down. Again, that shouldn't be surprising. Then comes the "but." "What about private funds in the system?" It turns out that in Arizona and Maine — two full public-funding states — basically the money for the party committees has pretty much made up the money that didn't go to candidates. There has been an increase in private money to the party systems. And then over and above that, there has been a very steep increase in expenditures in ballot initiatives and there also has been a significant, although not as steep, increase in independent expenditures. So if you want to ask, "Does this reduce private funds in the system?" I would say, basically, no. While that doesn't automatically mean that one would reject a public funding system it does mean that certainly one's analysis and arguments would change. Perhaps private money to the candidates is the main thing you're most interested in (as opposed to private money in the system).

Does a system of full public funding — or a matching fund system, or a multiple-match or whatever you have — result in new people or new kinds of people running? Here, I was a little bit surprised at the one research finding so far. There is lots of anecdotal evidence of candidates who say they wouldn't have run otherwise, people who come from something other than a normal political career path. The one political science research paper on the subject shows that with respect to race and gender, there has been no change in states with public funding systems. Now maybe, and I think it's fair to say this, maybe the diversity issue with respect to candidates is not specifically about race and gender. Maybe it's really about the kind of career paths, the kind of life experiences people have. That's fair enough. All I can say on that is that nobody has done the research on this, so all that we have is anecdotal. So we don't know.

What about making elections more competitive? There are lots of different ways to look at competition. Are there more incumbent defeats? No. Are there closer margins overall statewide? No. It turns out that with respect to the percentage of votes incumbents get across the state, there really hasn't been a change. Are there more elections decided by a margin that you would call contested? The answer there is yes. And, finally, are there fewer races where the candidate gets a free ride with no opponents? Again, the answer is yes. And that should not be a surprise. People are willing to run if they don't take a financial hit in a situation when they know they're going to lose. And that can have an important value for the system.

Next, what about changing the way people campaign? The first thing we hear is that people will spend less time raising money. There is only one survey out in the field on this subject and the answer to that one is yes. Candidates spend less time raising money when they don't have to raise money.

What about other campaign activities? And the answer, as we said, is we don't know, but currently we're in the process of doing a research project in Connecticut with students and others. But is there a significant shift in the other kinds of behavior? There are lots of plausible reasons to say yes and lots to say no. So the answer there is who knows? Specifically, is there more grass roots activity, more voter contact? I think it varies with the kind of public funding system but I will get to that in a moment.

What about bringing average citizens back into the system? Increasing the general voter turnout? No. Nothing there.

What about small-donor participation? What about getting average people in some way more hooked into playing in the system? There the answer depends upon the public funding system. It depends on the details, and on what kind of a system it is. In the clean election systems in Arizona and Maine, only the $5 contributors who give qualifying contributions can get involved financially. In New York City, there is a multiple match of $4 for every $1 — I think it's up to $100. And the basic research shows that does seem to have an effect on getting people out. Ohio has a 100 percent tax credit for the first $50 you contribute. Does that work? No. Why? It's a poorly designed system. It's a good example of how legislative details matter. It's only available on the long tax form, plus there's no implementation or public education. A similar system (actually it's somewhat different) exists in Minnesota, a $50 rebate. Does that make a difference? Apparently, yes. The $50 rebate in Minnesota seems to bring out a lot of people.

What about other forms of political volunteerism? Again, we don't really have that data and we are doing research in public funding states, among others. We have good reason to think that there is an interlock between the small donors and political volunteerism in this field as there is in many charitable situations. In a candidate survey in Minnesota that we just finished, it is quite clear that a number of candidates say that they use the rebates as a way of building up their volunteer quota. And then they go back over and over again. And that's the kind of campaign that Senator Obama says he wants to run for the presidency. It's not so much the small contribution; it's getting those people in and going back to them over and over again. We are looking into that. So the answer is, in my view, there is promising research still to be finished.

What about reducing the role of special interests in elections? There is not any evidence that removing direct contributions removes special-interest participation in politics. It is quite convincing that it affects one form of participation, which means it favors groups that can do independent expenditures and other kinds of things for mobilization, and it disfavors groups that do contributions. So to this question you'd say: some. Some special interests. It depends on the kind of interest, the nature of their resources.

GOALS	RESEARCH FINDINGS
1. Reduce Cost of Elections	
a. Total costs for candidates	NO
b. Private funds for candidates	YES
c. Private funds in system	NO
2. More Diverse Candidates	
a. Race / Gender	NO
b. Other Characteristics	?
3. Make Elections More Competitive	
a. More incumbent defeats	NO
b. Closer election margins overall	NO
c. More races closely contested	YES
d. Fewer races completely uncontested	YES
4. Alter Behavior in Campaigns	
a. Less time fundraising	YES
b. More grassroots activity, voter contact	?
5. Bring Average People into the Process	
a. General voter turnout	NO
b. Small donor participation	VARIES
c. Other political voluntarism	?
6. Reduce Special Interests' Role in Elections	SOME
7. Affect Government	
a. Behavior of office holders	?
b. Policy	?

Moving from elections to government: Does public funding alter the way officeholders behave in office? Contribution limits do have that effect. Does public funding over and above contribution limits have an additional effect? We don't know. We can surmise, but we don't know. Does it, therefore, have an effect on policy? Again, we don't know. There is research being done right now on this. But I can't say that the claim either has been supported or refuted over and above having effective contribution limits, which clearly do make a difference.

Goals	Public Funding	Contribution Limits		
		To Candidates	To Parties	From Parties to Candidates
1. Reduce the Cost of Elections	Mixed	No		
2. More Diverse Candidates	Limited Research			
3. Make Elections More Competitive	Mixed	Mixed		No
4. Alter Behavior in Campaigns	Yes	Yes		
5. Bring Average People into Process	Varies			
6. Reduce Special Interests' Role in Elections	Some	Some	Some	
7. Affect Government	?	Yes?	Yes?	Yes?

The Campaign Finance Institute * www.CampaignFinanceInstitute.org

So, here is the bottom line, looking at what's there and what's not there, and then I'll get into publications. The research seems to suggest that, again over and above contribution limits, public funding makes, or seems to make, seems it can make, a difference in what I call the *opportunity* side of the ledger — related to candidate recruitment, competition, and participation. On the squeezing-down side of the argument — reducing the role of private money, reducing the special interests and so forth — I think the arguments are all more problematic, based on the research.

What should we make of those findings? A couple of general thoughts and I'll end. Public funding is often put forward as a way to promote political equality. But the "problem of equality" in money and politics refers to at least two separate sets of issues, not one. One relates to candidates, the other relates to candidate citizens, ordinary people. For the candidates, the playing field can be leveled. Voters can be given more choices through a system that recognizes the public good in giving some kind of support to candidates who pass state qualification thresholds. And that would be any system of public funding, whether it's in-kind or in cash. With respect to donors, however, the problem is both more fundamental and much more complicated. Contribution spending limits are very blunt instruments for promoting political equality in that respect. That's because the real need is to empower or encourage those who do not now participate while most existing laws focus on restraining those who participate now. Contribution limits do serve a purpose, as I said, and I'm not arguing against them, but they cannot by themselves substantially reduce this source of inequality.

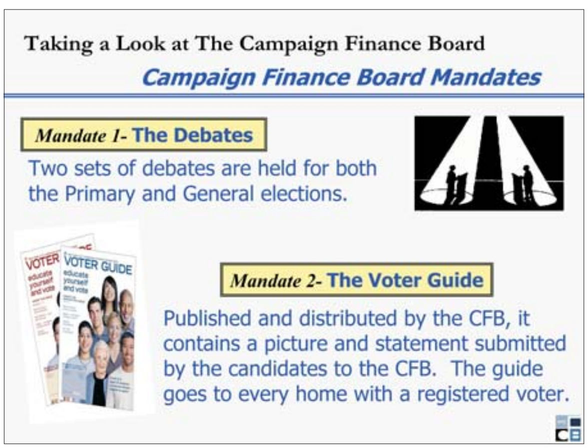
A more promising path for them, we suspect, may be to work from the bottom or middle up to focus on policies that work directly on awakening what I think of as the sleeping giant of campaign finance in the United States, the nine out of 10 people who don't give anything. My organization, the Campaign Finance Institute, has recently undertaken a major project — with grants from, among others, the JEHT Foundation — to put this suspicion through an empirical test. Until that research is finished, my unproven but strongly based suspicion is that two kinds of systems — in New York City, a matching funds system, and in Minnesota, the rebate kind of system — both do positive things for participation that full public funding or clean money does not. New York City and Minnesota give candidates a reason to go back to small donors repeatedly during a campaign. And, as I said, the small-donor list becomes a source of other kinds of activity. Full public funding doesn't prevent that. I don't mean to say that it releases the candidates' time from fundraising but it does not seem likely to me to have the same kind of reinforcing effects, interactive effects. I do have to emphasize that this is what I call an intelligent hunch as opposed to a research-based conclusion.

So we still do have questions with respect to what the best means are, but I don't think we can be neutral regarding the ends or the goals. If the goal is, among other things, to enhance equality among the citizens, then campaign finances need to be tested directly by whether more people are brought into the system. That is, whether equality is advanced by enlarging the playing field instead of shrinking it.

Amy Loprest:

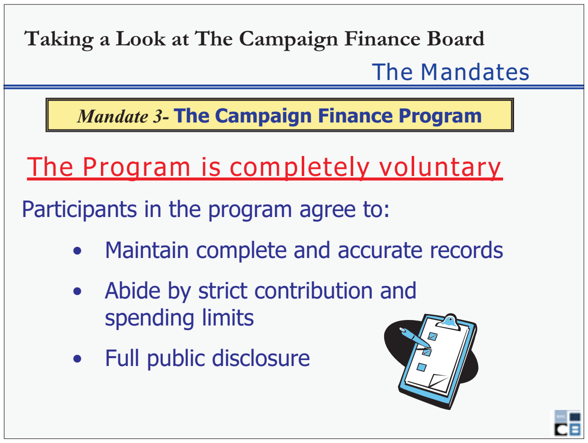
I thought that I would talk a little bit about what the New York City program does since we're trying to compare whether or not the state should implement a system like it. Then, at the end of my remarks, I'm going to give some ideas of what I think are the most important things that make the New York City program successful. Whether or not the state adopts exactly the same kind of program, at least these are ideas that should be included in any kind of program that the state adopts.

The New York City program started in 1988. It was at the reform end of a scandal that had nothing to do with campaign financing but, as many campaign finance scandals do, campaign finance reform generally tends to work that way. The Campaign Finance Board is an independent, nonpartisan board comprising five members. There are two members chosen by the speaker of the City Council, who have to be not of the same political party; two members chosen by the mayor, who also have to be not of the same political party; and then a chair, who is chosen by the mayor after consultation with the speaker of the City Council.

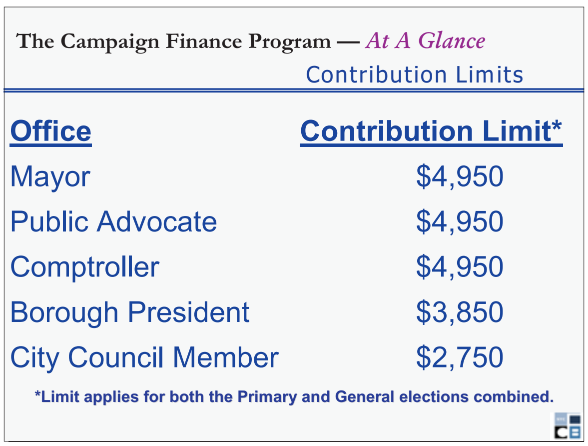


I'm going to talk primarily about the public financing program, but also I thought I would talk about two other things that the Campaign Finance Board does. First we administer two sets of debates for the primary and general elections for candidates who are running for citywide office. In addition, we also publish *The Voter Guide*, which is distributed to every household that has a registered voter in the City of New York, once during the primary and once during the general election. Candidates are allowed to put in *The Voter Guide* a statement and a picture of themselves. This is very useful information for the voters of New York City.

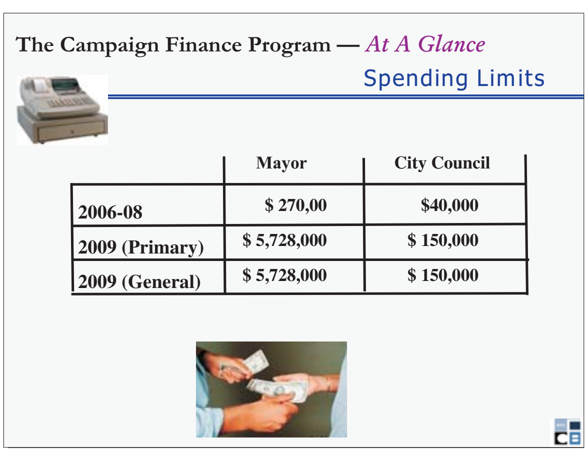
What I came to talk about is the campaign finance program. The public matching program is completely voluntary, but this slide (see next page) is a little misleading because some aspects of the program are not voluntary. In 2004, the New York City Council passed legislation that holds all candidates for city office to the same contribution limits and bans as candidates who opt to join the public matching funds program. Later we will talk about



what the contribution limits are and some of those prohibitions. When candidates join the program they agree to keep complete records, abide by strict contribution and spending limits, and give full public disclosure. All candidates in New York City are now required to file disclosure with the New York City Campaign Finance Board and all that disclosure is available on our web site.

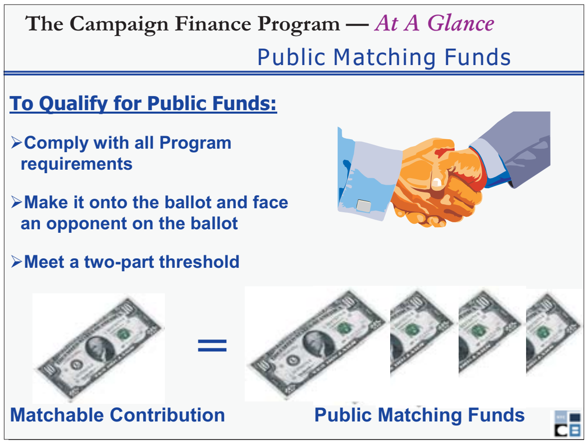


To give you an idea of what our contribution limits are compared with other states and in keeping with what Governor Spitzer is talking about, the contribution limits are rather low. The board has made recommendations to lower the contribution limits, but as they stand now, the contribution for mayor is about $5,000, running down to about $3,000 for a member of the City Council. For those who are not so familiar with New York City, 51 City Council members, the mayor, the public advocate, the controller, and all five borough presidents are covered by our program. In addition, there are certain types of contributions that are banned altogether. Corporate contributions are banned. Candidates cannot take corporate contributions and they also cannot take contributions from political committees not registered with the Campaign Finance Board. In addition, the board has long recommended banning all organizational contributions, but so far the ban extends only to corporate contributions.

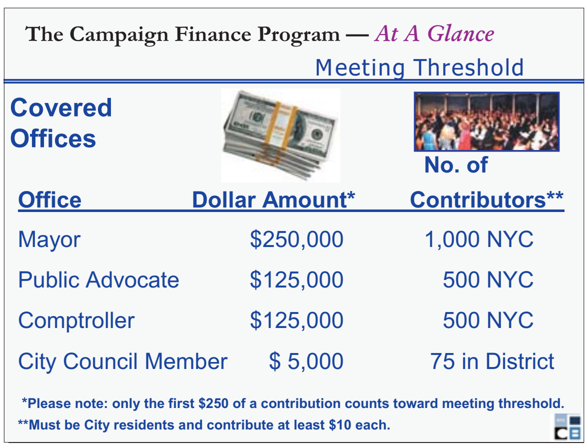


One of the main things the public gets for people agreeing to join the program is the compliance with strict spending limits. I just put in the spending limits for City

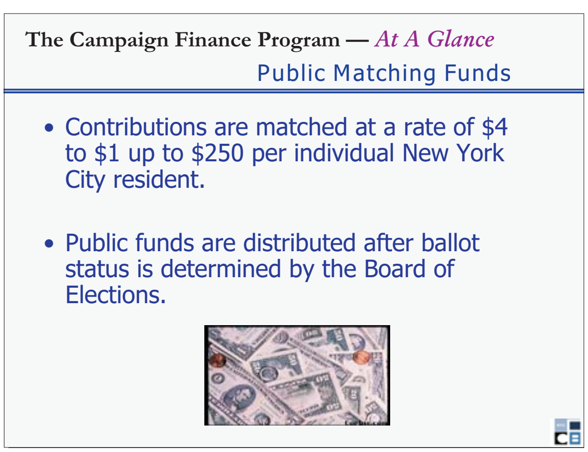
Council and mayor. New York City is a major media market, so the spending limits for mayor have to be quite high, about $5.7 million.



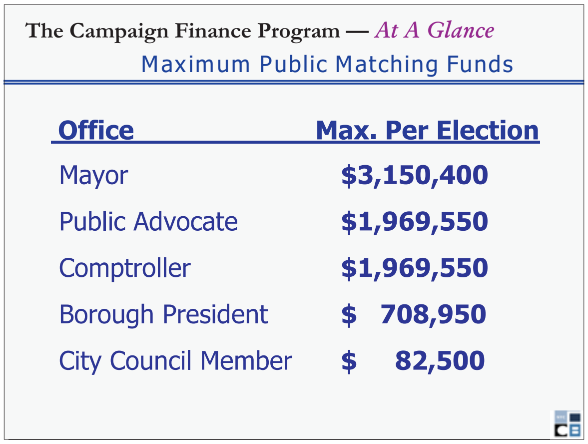
The public matching funds program is a four-to-one match. You can receive $4 for every dollar up to $250 that you receive from an individual New York City resident. There are some qualifications. You have to be on the ballot. You have to be opposed by someone who is on the ballot. You have to be in compliance with the rules of the program in order to qualify for the money. You also have to meet a two-part threshold.



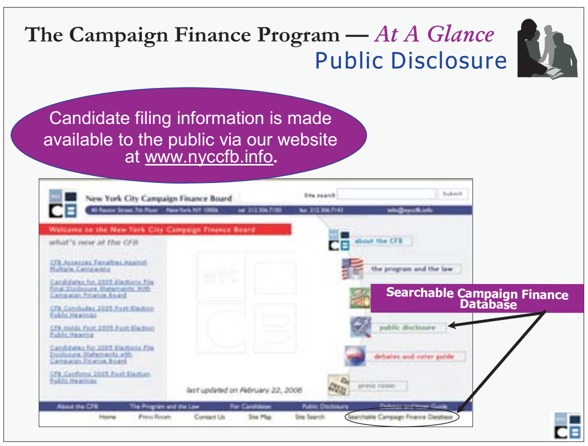
This is the two-part threshold. It is both a dollar amount and the number of contributors. The purpose, obviously, for this is to show that you have a certain minimal level of support in your community. So a person who is running for City Council, in order to qualify for public funds would have to raise $5,000 in matching contributions. Remember, matching contributions are only contributions of $250 from individual New York City residents. In addition, a City Council member candidate also would have to raise 75 contributions from people who live within their district to show that they have a level of community support.



Just to give you an idea of the amount of public funds, the maximum is 55 percent of the spending limit, so the most that person who is running for mayor can receive is about $3 million. The maximum a person running for City Council can receive is about $82,000, and that's for both the primary and the general elections. So they can receive $500 in the primary and then an-



other $82,500 in the general. This has led to a fair amount of money being paid out in the past two citywide elections. The Campaign Finance Board paid out about $25 million in the 2005 citywide elections and in the 2001 citywide elections, which were the first elections after term limits came into effect in New York City, the board paid out about $42 million in public funds. And over the course of the whole 20-year history of the program, about $100 million has been given out.



This is just a plug for our web site. We have a lot of information. You can search all the candidate financial data. There is a lot of information about the programs, so if you want more detailed information it's all there.

I'm going to talk just for a minute or two about what I think are the most important aspects that make the program successful. I think first and probably most important is the fact that the Campaign Finance Board is an independent and nonpartisan board. That level of independence and nonpartisanship has allowed the board to act effectively throughout its 20-year history. That brings me to the next aspect, which is that the board also has engaged in pretty rigorous enforcement of the programs, rules, and regulations over the course of that 20-year history. The board audits every single candidate, before and after the election. We audit every single contribution that candidate receives for claiming public funds and we also verify that all public dollars are spent for the purposes for which they are intended.

The final and a less obvious thing that makes the New York City program very good is that in the original law, the City Council put in a requirement that after each election the board should go back and review how the program operated in that election and make recommendations for change. The board has done that after each election and the City Council has often, against their own self interest, adopted many of those recommendations over the course of time. I think that that kind of built-in review and revitalization makes the program current and relevant. So I think that any program that is adopted really should have that kind of aspect in it. Thank you.

Nicole Gordon:

Good afternoon. I want to thank the Institute for including me in this panel. I hope I'm not going to be duplicative of Amy's very good account of the New York City system. I do want to say I'm quite intrigued by Michael's report. Some preliminary conclusions are not so surprising to me based upon experience rather than hard research, even though they might seem counterintuitive or, in some cases, less than what those of us who support public financing might hope to see.

I want to make just a few practical remarks about campaign finance reform and emphasize, as suggested by Michael's presentation, that one of the first things people really ought to do is focus on what problem it is they think they're trying to solve, because there are lots of different components and lots of different influences on elections. You talk to people who think that the problem they're trying to solve is that incumbents should be turned out of office, and if that's what they want to do, then perhaps they should support term limits. I personally would not support term limits, but if turning out incumbents is what people want, then that's what they should do. I never have understood entirely the argument that the number of incumbents who are defeated in office should be the be-all and end-all of whether a system is yielding intelligent results, largely because I think that there are good reasons why voters re-elect incumbents. And they are not all about money. In fact, if I'm not mistaken, and Michael will correct me, incumbency all by itself has been the most consistent predictor of success in an election — above spending money. So that says something. Maybe it's not the whole story, but it says something. I also appreciate the comment about the focus on detail because I think that any financing system, by any name you want to call it, can be an incumbent-protection program or can help engage more candidates and more citizens. Some of these results, as I say, are very interesting to me.

But I want to give a couple of examples of things that have happened in New York that might be worth being aware of. For example, expenditure limits where, again, I think a high expenditure limit or a low one can arguably favor incumbents. But if you are looking for a sweet spot where an expenditure limit will create a situation that gives people a better opportunity to compete on a level playing field, then assuming you can find that spot, what you want to see is some concrete results from it. I think if you look at the New York record, you will see at least at the mayoral level that expenditure limits for the candidates who opted in did create a level playing field, if what we mean by that is that everybody was spending more or less the same amount of money, and it had consequences. I don't think that there's any question about that, starting with the Koch primary in 1989 and going through Hevesi's loss in the primary in 2001. So I think those are all things that might be interesting to look at. I am not clear why, and this is a political science question and not one that I can answer, expenditure limits at the City Council level in New York City don't seem to have had very much effect in any direction. I don't know whether that's just because they've been set at a figure higher than what makes any difference to anyone (so that it's the same as not having expenditure limits), or whether it will change now because there is much more money in City Council races and more candidates are spending at the limit. I have also wondered whether we should be thinking about the same system for every level of office. Maybe legislative races should have a different kind of program from the mayoral race. Some people who look at the promise of a public funding system think that this means that John Doe can now become mayor of the City of New York. And they think that if they opt in and then don't become mayor of the City of New York the system has failed. In reality, we hope people are thinking in terms of getting their names out in the community, then aspiring to run for City Council and then, based on experience holding public office, aspiring to run for something else, and so on.

On the issue of opportunities, I think one of the items that is very interesting is whether it will turn out that characteristics other than race and gender will appear on Michael's chart as distinguishing populations assisted by public financing.

Again, a little bit of a history is instructive. If you look, for example, at Freddy Ferrer's performance in the 2001 elections, what you see is a candidate with a constituency that is in general less affluent, running on a completely even playing field with an Alan Hevesi and others who had much more access to money and much larger contributions. And I think there are some stories from the candidate's side and also from the voters' and the contributors' side worth exploring.

I think there are some values that public financing programs can offer, which are a little bit, perhaps, off the list here, as important as this list is, that Michael suggested. One of them, speaking as an administrator, is the issue of compliance with the law. With the carrot of public funds, the Campaign Finance Board of New York City has been able to achieve a very, very high degree of compliance among candidates with requirements like disclosure and contribution limits. There are other aspects of campaigns that are quite important and that I believe can be enhanced with the carrot and not just the stick. With a public financing program, you can also get other agreements from candidates. Expenditure limits is the traditional item, but debates, for example, can be made a part of the package in return for which candidates receive public funds.

I think the subject of empowering average voters is incredibly important, and Michael already gave full disclosure about JEHT's funding of his project. That was put in motion before I came to JEHT, but I'm very pleased JEHT's doing it.

One defect, I think, in the New York City system, and it's one that should be on the front burner here in Albany, is that our contribution limit is higher than the top matching amount. In other words, you can qualify for matching for contributions of up to $250, but the contribution limit is higher than $250, so that there is always an incentive to go after the higher contributions regardless of whether you're getting matching money for them. I think that if you want to have a better test and a better sense of what you can do in terms of voter engagement, certainly having those two limits be the same is an important piece of it.

I wanted to talk in a more detailed way about what's happening at the state and whether the New York City type of system should be imported to the state. To which my answer would be, "Yes, but…." And one of the biggest buts for me is on the subject of enforcement and the agency that would carry out the mandate, whatever that is, because I think it's an inevitability that the agency that does this, if it does a good job, will not be beloved by the people it regulates. There is just no way to get around that, but it does have serious implications for whether you want to see a system that is really going to succeed. There is a very tough call that people who are governed by these systems have to make. They get public funds, which is great from their point of view, but like anybody else, they don't like to be audited. And, yet, I argue certainly to the reform community that any reform worth its name has to come with a serious enforcement component. It's not just because it's the right thing to do; it's also pragmatic because the public does not understand the subject of public financing very well, and I think that being burned in that arena has much greater consequences for the program than for other government operations.

For example, I think that for New York City residents if there's a scandal in the sanitation department, nobody is going to say, "You know what, I don't want the government picking up my garbage after all." That's not what's going to happen. The public is going to continue to ask the government to pick up the garbage and people will hope there will be some reform and the bad guys will get caught. But if we had a bad record of enforcement of campaign finance reform, where taxpayer money is going to the candidates, I do think that is something the voters would give away pretty quickly if they felt it was not being used well. It's a much more abstract kind of value that taxpayers are supporting and they have real and legitimate questions about it. "Why is my money going to support people I don't agree with?"

So I think there is a pragmatic reason as well as the good government reason for demanding strict enforcement, and that does mean an agency that is nonpartisan and independent. I haven't seen any proposed legislation, but among the recommendations I saw published was to increase the current state Board of Elections to a five-member board to oversee any new campaign finance regime, which to date as far as I know doesn't include matching funds or any kind of public funds. But that is worrisome to me because I think that the intended structure of the state Board of Elections, which under the Constitution in New York State is bipartisan, is the wrong mold for an agency mandated to enforce campaign finance reform. I don't know how the New York State constitutional mandate for a bipartisan board can be transformed legally into a five-member board. But to take an analogy from the federal level, the Federal Election Commission (FEC) is established as a bipartisan agency not to oversee elections, but to oversee campaign finance, and the FEC is a model of dysfunction. It would be wiser to start anew and not expect an agency that has one function to take on something else, which really ought to be done in a vigorous way, engendering, unfortunately, enmity from the very people who approve the agency budget and also, we hope, benefit from the campaign finance program.

There is another practical question I would raise about importing the New York City system to the state level, which I think could easily be overcome, but I think someone has to pay attention to it. One thing that we have in New York City is an incredibly high degree of candidate assistance. We have a population that is within five boroughs and a lot of the assistance is done face-to-face. Now in the days of much more widespread use of the Internet and so forth, I think that is something that can be handled on a statewide basis. But I think it would be very wise to take a close look at New York City and see what works and maybe what doesn't work as well and think about what the scales are. I'm not a believer in one size fits all. I think that one has to look at every jurisdiction separately to see what makes sense.

And on the measures of success, I'd like to comment a little more on some of the results we saw earlier. My instinct over time has been to have fewer and fewer grandiose expectations about what public campaign finance can achieve, and that instinct is confirmed by some of the information we got today. The research apparently shows that, so far, there are fewer races completely uncontested under public financing systems. I think that's incredibly important, and a value all unto itself. One of the most important things we can hope for from a better campaign finance system is not that incumbents get thrown out and maybe not that there are narrow margins of victory, but simply the regular presence of opposition and the threat that someone might have the wherewithal to make a meaningful run for office. This is very important because it forces elected officials to focus on what the voters want, keeps the officials from becoming complacent about the power of incumbency, and, I hope, not distracted by all the other pressures placed on them

So I hope I haven't failed to spend a lot of time on many of the virtues of the New York City system. I think they're substantial because even though some of the evidence, admittedly, is anecdotal, there are people in the system who have been very pleased by what they thought was an opportunity both for them as candidates and, as they reported to us, for small contributors to have more of a presence. I usually start my conversations on this subject with a line I will leave you with. Jim Hightower wrote a book called *If The Gods Had Meant For Us To Vote — They Would Have Given Us Candidates*. I think that brings me back to square one, which is that the campaign finance systems should be devised thoughtfully and carefully, with a lot of attention to detail. In the end, of course, money is one factor. My hope is that whatever system is in place draws people who are more diverse in that last category on Michael's chart, the "unknown" category. This is not necessarily a given diversity – ethnic or minority. It is a category of people who might not otherwise have an opportunity, but who — with the help of public funds — would run for office and perhaps engage more of the electorate.

Thank you very much.

Tom Gais:

Thank you. That was one of the wisest, most thoughtful discussions I've heard on campaign finance for a very long time. I would like to give the panelists an opportunity to comment on each other's presentations. Michael?

Michael Malbin:

I appreciated that Amy and Nicole opened the question of what is the minimum we should have in the system to make it work. I completely agree with everything they said. I want to add a couple of thoughts to that. Most of what was discussed had to do with enforcement and the difficulties of it. In fact, Amy and Nicole barely got into the sort of insulation you need. You really needed to develop a thick skin in that position because everybody comes after them and will come after whoever gets this other job. But I completely subscribe to and agree with what they said.

I want to add to that by thinking about what it would take to get *candidates* involved in a system of public financing. This is — necessarily, under the Constitution — a voluntary system. So any system you have, no matter what the basic approach you take, has to have also at least the following:

1) Enough money to give the candidates an incentive to participate.

2) A spending limit that's high enough so the candidates aren't committing suicide if they run against someone who opts out. This is why the U.S. system is failing and why the Wisconsin system isn't working.

3) Some method for candidates to protect themselves against independent spending. A lot of systems have some sort of a match. Eventually that tops out and the independent spending swamps it. This is often where the parties can play an important role.

4) Finally, for the system as well as for the campaign finance board, some insulation — a stable form of funding. Massachusetts adopted a public funding system; it was with no money. If you rely on appropriations, you are basically putting the power into the hands of the people who have the least incentive to make payment. Arizona has a different and completely separate form of funding. I'd like to add those items to the earlier mix.

Nicole Gordon:

May I just comment? I'm just delighted about one thing that Michael did not mention and should not have, and I'm glad he didn't. There is often a complaint about programs that they're too complex and that candidates should find it easy to comply with them. Interestingly, that has never translated into a lack of participation. But time and again, elected officials claim that if the program wasn't made even easier to comply with, candidates would not opt in. We have always tried to do our best to make it as easy as possible. For all the complaints, however, the participation had only increased. The fact is that public money is a very powerful incentive if it's enough, as Michael was suggesting.

Amy Loprest:

I completely agree with what Michael said. I think there are a lot of different funding sources and that's probably the key to your public financing program. The way the New York City program works, it is from the general fund but the board actually has the power to set the budget, and the mayor is required by law to include it in his executive budget.

Tom Gais:

Let me add just one thing before I open the forum to questions from the audience. I thought Amy made an excellent point about the importance of the board reviewing, after every election, the experience of the previous election and making modifications in the rules. When Michael and I looked at the implementation of campaign finance reforms in the 90s, I guess at the time it was in the mid-1990s, that was one problem that struck me. Campaign finance reforms cannot be static. You're regulating a very dynamic industry. And we've got a lot of smart people out there making lots of changes in campaigns and fund-raising techniques. If you're not making changes in the regulations to adjust to those developments, then your laws are really not addressing a lot of the major goals. It's a hard thing to do and it really requires the political independence to make those kinds of changes.

All right! I've said my piece. Do we have any questions out there?

Rachel Leon:

Hi, I'm the executive director of Common Cause/New York. I have two questions. One is, could either Nicole or Amy go more into the fines that they've levied against incumbents because I think of how tough they've been. Some more examples of that would be really impressive. And then, from Michael, after the ban on soft money, one of the positive things we did see was more small donations, so maybe he could talk about if it was part of the research.

Amy Loprest:

The board, as Rachel pointed out, has assessed pretty significant penalties. I guess they have a long history of that, starting with assessing a fairly sizable penalty against Mayor Koch, who was the founder of the program, in the first year of the election. Now, whenever he speaks he still talks about how he can't believe it. And I guess aside from Mayor Bloomberg, the board has the distinguished honor of having assessed fairly significant penalties against every City mayor of the City of New York since the inception of the program. It says a lot about the independence of the board and their ability to assess penalties against people who have the power to significantly change your power and the structure of your entity. Nicole gave the example of the sanitation department. If you don't enforce it and there is a big scandal, or the public views that money is just pouring out of the system, there will be no more campaign financing.

Nicole Gordon:

Just to be more concrete about the examples I gave, both Dinkins and Giuliani were fined in the neighborhood of $250,000 to $300,000. So it's not just significant in tens of thousands of dollars. It was really a very serious amount of money. And that's something that definitely needs to be incorporated into a system — the ability to have not just cost-of-business kinds of penalties but serious items that are going to get people's attention.

Amy Loprest:

One of the other important things was to assess those penalties during the elections because, unlike a lot of other entities, we audit both before and after the election. The board can assess penalties during the election cycle. Voters thought they were important issues to be considered during the election.

Tom Gais:

Yes, the U.S. FEC often takes years to impose fines if they ever do. Michael?

Michael Malbin:

Yes, it's to the credit of the New York City board and even more so to the elected officials of the City of New York, which I assume means also the public of the City of New York, that when they do this, they get the power straight. The first time the Federal Election Commission went after an incumbent member of Congress, who happened to be the chair of the House Rules Committee, they had the power of having independent audits terminated.

Nicole Gordon:

And, less to everybody's credit, this is an issue that comes up every year with the City Council in New York City about trying to contain the board's powers.

Michael Malbin:

On the question of small contributions, the ban on soft money did two things. Directly, what it was supposed to do was to stop officeholders from being able to twist the arms of donors for unlimited amounts of money. You know the corruption argument in campaign finance is usually portrayed as private interests buying government policy. I've always thought that at least as important — and we certainly have lots of evidence of this — as the public official going out and pressing donors for money without giving policy in return. The evidence shows that there was a fair amount of that going on, but we have no research. In our book, *The Day After Reform*, 98 percent of the corporations that gave large amounts of soft money — $100,000 plus in successive election cycles — of the large publicly traded corporations that did it, 98 percent did not replace that money by increasing their hard money when the soft money was banned (PAC money or individual contributions). So the corporate soft money contributions were money that I call "pull" as opposed to "push" money. Push money comes from people who are eager to participate in the system. Those are the people who did move out to the 527 system. These are the ones who you're not going to get to stop playing because they're doing so out of an impulse to participate. What happened when the soft money was prohibited is that the amount of money that came in ($20,000 or more into the political parties) went from 46 percent of the money to less than 20 percent. Parties had to replace that or else suffer. They replaced. The parties had a tremendous incentive and the percentage of small money went from 23 percent of party receipts in 2000 and 2002 to well over 40 percent. Now that doesn't automatically translate into the same thing when you talk about candidates. It did happen on the presidential campaign level in 2004, but only after Super Tuesday, when the nominees were clear. So when you have a highly polarized, simplified context, that brings in the small donors. On the congressional candidate level, the technology alone did nothing of the sort. The percentage of small contributions did *not* increase to candidates at the federal level. It actually went down. The high money went up because the contribution limits went up. That's one of the reasons in the early first quarter of the presidential cycle this time it was mostly big money, mostly $1,000-plus contributions. That is why we've said that a matching system for small contributions is probably what you have to do in a complex primary race if you're trying to get people involved. The person you need to give an incentive to is the candidate. The candidate's incentives now lead them to focus on big money. Pardon me for going on a little longer, but candidates who raise $25 million in the first quarter of the year, if you bother doing the math, had to raise the equivalent of six maxed-out contributions, $2,300, every waking hour of every single day for the quarter. So, imagine what you'd have to do with $100 contributions. So a multiplier won't change the incentives.

Richard Kirsch:

I am the executive director of Citizen Action of New York. The topic today is: Would the New York City system be a good model for the state? Just a couple of things on that. I think enforcement is absolutely necessary, extraordinarily so. And also it's interesting to look at the structure of the New York City campaign finance law. If you look at other proposals in the state for full public financing proposals for Suffolk County, so much of the basic structure of the law is translatable and a really good model. The governor's proposal is for a full public financing system similar to Maine or Arizona or the one just passed in Connecticut. And I just want to talk about a couple of reasons why we think that makes more sense, really paraphrasing from that wonderful annual report that you do every year. The report that was issued for last fall, in September I think it was, said that the high-end contributions play a disproportionate role in funding city campaigns. It still gives the candidates with access to the wealthiest donors a substantial advantage over the ones who do not. You pointed out that less than 6 percent of the wealthy contributors paid in 40 percent of the money. So you still have a system in New York City where a small number of donors are making up a tremendous amount of money and candidates with access to wealthy donors have a big advantage. With full public financing, that's not true because you're basically collecting a set number of small contributions up to $100 and you have your full public financing. So there is no advantage to someone who can raise wealthy contributions.

The second thing you said is that outside of a relatively small number of hotly contested races for open seats, the 2005 elections were marked by a distinct lack of competition. A program could not be judged a success if it helps create vibrant competition, an even playing field only in open races. In a perfect world a program will have the capacity to create competitive races in every district and every election. You pointed out that incumbents raised a good five times as much as challengers in 2005. Again, under a full public-financing system, you get a flat amount of public financing for every candidate who qualifies. You then equalize the playing field in terms of dollars. Obviously, as Michael said, it doesn't guarantee outcomes, but at least you have the same resources.

And the last thing is in terms of this whole question of independent expenditures and candidates who don't participate in the system. It's something that we continually hear from incumbents. Under the City system of enhanced match, you still have to raise a lot of money. Under a full public-financing system you get a grant of public dollars when there is excess independent expenditures for nonparticipating candidates. In fact, in 2001, in what became defined as the Bloomberg Issue, which is how everyone talks about it now, Gene Russianoff of the New York Public Interest Group (NYPIRG) testified before the Campaign Finance Board that they thought that the same kind of system using full public financing, grants, and public dollars would make more sense as opposed to an enhanced match, as that would allow candidates to keep up with nonparticipating candidates and expenditures without having to constantly fund-raise. So, you know, our hope is that the governor is for public financing, I think for a lot of these reasons, as he says, to cut special interest money out of campaigns, one of his goals is to have a more competitive races. That kind of system makes sense, learning as well from the City system in terms of things like enforcement and a lot of the structural issues in the law, the debates, and things like that.

Nicole Gordon:

The first point about the givers at the high end having too much dominance, that's exactly in the context of what I was saying earlier, which is that there should not be a distinction between the contribution limit, which in New York City, unfortunately, is higher than the matching amount. If it were, the matching amount phenomenon would disappear. So that's not a distinction between 100 percent campaign financing and matching. That's an anomaly of New York City law, which I think is unlike any other matching system. It's a hard fact that in New York City that they ended up with a higher contribution limit than the matching limit and that is wrong.

The enhanced amount of money people receive if there is a nonparticipating opponent does, in fact, operate just like a grant. What happened in 2001 was that many people felt the amount given was not adequate, but the issue was not about the timing or having to raise more contributions at all. What happens is there's an automatic change from one matching rate (four to one) to another (five to one in 2001) when it is declared that the high-spending opponent has triggered the bonus; thus, the candidate got a grant for the full increased amount on the spot. It was automatic. There was no additional fund-raising involved. What the board did say was that the amount yielded based on the five to one formula was probably inadequate and that the amount should be increased. The City Council did increase the amount to a six to one level, which was in effect in 2005. The challenge to a public-financing program posed by a high-spending opponent or independent expenditures is in no way better addressed by a 100 percent model over a matching system. The resolution depends only on whether you're going to give out more money or not (and how much), and the jurisdiction has to decide whether it is prepared to spend extra money. No public program — 100 percent or matching — is going to guarantee to a candidate that the government is going to match every dollar that somebody might conceivably spend, because we don't know what that amount is. In the last New York City election, Mayor Bloomberg spent over $80 million, and I don't think, as a realistic matter, the public is prepared to say yes, we will guarantee that, no matter how high the nonparticipating candidate goes, we'll pay for it. I don't think the voters will do that for a 100-percent system or a matching system. I think the contrasts you're making are not between 100 percent versus matching; they're about particular examples of challenges that have to be addressed under either system.

By the way, there is a very important distinction. 100 percent versus matching has one technical issue, but it's also an ideological question that people have to address. One of the details that is very difficult to deal with is where you set the threshold for someone to qualify for money. And that's a difficult question even in the context of a matching system because you don't want to give public funds to everyone who wants to run, but you also don't want to limit it so that reasonable candidates don't get an opportunity to run. Under a 100-percent model, everything rides on where you put that threshold because it means that an unknown Joe Blow on the one hand and other more established, known candidates on the other hand all get 100 percent of the public funding available and get equal resources if they qualify. So marginal people would join with the serious candidates at 100-percent funding from day one. To some, this would be a very offensive result. Or you can set the threshold high enough for a 100-percent system with the result that you always exclude all marginal candidates entirely, which creates a different dynamic, and then only people who are well-established get to qualify. It will never work perfectly under either system. But in a matching system, you have leeway because you're not saying that every candidate is equally important to the public, and not every candidate is. Instead, you give greater resources to more serious candidates, but you don't exclude the very marginal ones entirely. You have to decide whether the public financing system is giving every candidate the same resources, which is one value, or saying, "You know what, we don't count every candidate as equal, but they have the opportunity to become completely equal if they are able to show they can garner serious support." Anyway, I think that's an inclusive general answer to some of the questions you raised.

Amy Loprest:

I just wanted to add to what Nicole said is that the decision of high-end donors, and it's definitely a factor of the difference in the contribution limit. Another finding in that same report is that, as I said in the case, the contributions at $250, that's the most frequent contribution I've seen, at the max. People are really maximizing their dollars by collecting contributions at that maximum $250 number. There are a lot of factors. I don't think it's necessarily about whether it's a matching system or a flat grant system of public funding. But also I think that part of the issue is really to give enough money to candidates who are facing those nonparticipants so they can get their message out. I don't think it is the intent to be dollar-for-dollar. Arguing issues of challengers, that is really an anomaly of the term-limit situation in New York City. That's one of the issues we were talking about. How do you try and counter this because now elected officials are held to two terms? There is just going to be a certain level of people who will not run in that midterm election because they would rather wait it out and get the endorsement of the incumbent. In four more years you might see some benefit in waiting it out, so they'll just wait it out. So that's kind of an anomaly of that term-limit situation, which doesn't exist on the state level.

Barbara Bartoletti:

I'm with the League of Women Voters, New York State. Yes, Ms. Gordon, we clearly agree with you about the essential enforcement agency and we understand very well the limitations of the state Board of Elections. Did you mean enforcement outside of the Board of Elections or would you comment on what you would like to see or what you think would be the best way to do this?

Nicole Gordon:

Well, I don't have any detail. But, yes, my personal preference would be to set up a separate agency that is just charged to do this. It is a different function. I'm not saying it couldn't be performed by the same agency, but the way the state Board of Elections was set up, it's not just the board that has to be entirely half and half; everybody on the staff is, if I'm not mistaken. And so the whole orientation and the whole thought process about the work the agency is doing is defined in that way. I much prefer to see people thinking as nonpartisan actors regardless of what their party affiliation is, maybe not even inquiring into it but just being a board of people who can handle this work without regard to their personal political party preferences.

Dick Dadey:

I'm also with the Citizen Union. You made mention of a couple of things that you would improve. Are there any other improvements that the state should consider in the public financing system? Nicole, you mentioned having in the Constitution the current matchable limit. I think it is a great idea. Are there others that we should be mindful of as we create this?

Amy Loprest:

I guess something else is the issue of spending limits. I must say that I'm not that familiar with how much it costs to run a legislative race for the state Assembly. People already discussed this in New York City, you know. Oh, it costs more to run a Manhattan Council race than a Staten Island Council race and that certainly occurs on a statewide level. Certainly in Binghamton it costs less to run an Assembly race than it would cost to run in a New York City race. I haven't really thought about it, but my answer in New York City is that it is one of the media markets so it's not really that important to make a differentiation.

In addition to having these separate programs at different level of office, I don't know how you do that without running into the Constitution. But we thought it's going to be very hard to set that spending limit on a statewide level.

Nicole Gordon:

Make it generous, but no exemptions. That would be how to do the statewide expenditures.

Michael Malbin:

Can I just clarify something for me but for the sake of this question. When one says the contribution limit should be the same as the matchable limit, I can interpret it in one or two ways and make an argument both ways. One is that if a person opts out of the system that person should be able to raise the equivalent of $1,250 — that's a four to one match for $250 — so there's no extra money allowed after that. The other interpretation would be that nobody should be able to raise more than $250 so that the person who stays in is, in a sense, getting a bonus. And I would say the argument against that interpretation would be that there are plenty of places where people opt out of public funding for ideological reasons. You might get conservative libertarians and you wouldn't want them necessarily to be penalized for that. In the state of Arizona, many of the candidates who opt out are like this.

Amy Loprest:

Yes, I think that that is worth thinking about. You know, I was thinking about that too when we talked about that. But this is a contribution of $250 or is it… ?

Nicole Gordon:

Yes, I actually wasn't even thinking about the nonparticipants. I'm glad you raised that, but I was thinking about the participants, in order to get them away from the higher-end contributions and focused on the low end.

Tom Gais:

Well, I'm afraid we've really run out of time. Thank you very much.